

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 22<sup>nd</sup> August, 2012

The House met at 2.30 p.m.

*[Mr. Speaker in the Chair]*

### PRAYERS

### PAPERS LAID

The following Papers were laid on the Table:-

Financial Statements of the Town Council of Wote for the years ended 30<sup>th</sup> June, 2009 and 2010 and the certificate thereon by the Auditor-General.

Financial Statements of the Municipal Council of Nyeri for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Auditor-General.

Financial Statements of the County Council of Murang'a for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Auditor-General.

Financial Statements of the Town Council of Othaya for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Auditor-General.

Financial Statements of the Town Council of Makuyu for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Auditor-General.

Financial Statements of the Municipal Council of Nyahururu for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Auditor-General.

Financial Statements of the County Council of Nyeri for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Auditor-General.

Financial Statements of the Municipal Council of Thika for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Auditor-General.

Financial Statements of the County Council of Maragwa for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Auditor-General.

Financial Statements of the County Council of Kwale for the year ended 30<sup>th</sup> June, 2010 and the certificate thereon by the Auditor-General.

*(By the Assistant Minister for Education (Prof. Olweny) on behalf of the Minister for Local Government)*

Financial Statements of the Postal Corporation of Kenya for the year ended 30<sup>th</sup> June, 2009 and the certificate thereon by the Auditor-General.

Financial Statements of Kenya Copyright Board for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Auditor-General.

*(By the Assistant Minister for Education)*

*(Prof. Olweny) on behalf of the Minister for  
Information and Communications)*

Annual Report and Financial Statements of Agro-Chemical and Food Company Ltd for the year ended 30<sup>th</sup> June, 2011 and the certificate thereon by the Auditor-General.

*(By the Assistant Minister for Education  
(Prof. Olweny) on behalf of the  
Minister for Agriculture)*

Report of the Departmental Committee on Lands and Natural Resources on Question by Private Notice by hon. Edick Omondi Anyanga, MP, on the licensing of the Mid Migori Mining Company Ltd. to explore and prospect gold in Nyatike, Migori County.

Report of the Departmental Committee on Lands and Natural Resources on status of ownership of South Ngariama Ranch, LR.13963, in Kirinyaga South District, Central Province.

Report of the Departmental Committee on Lands and Natural Resources on status of ownership of LR.2890 in Timau Township of Buuri District, Meru County

*(By Mr. Musyimi)*

The Ethics and Anti-Corruption Commission Second Quarterly Report, 2012.

*(By the Attorney-General, on behalf of the Minister for justice,  
National Cohesion and Constitutional Affairs)*

The Kenya Copyright Board Financial Statement for the year ended June, 2011.

*(By the Attorney-General on behalf of the  
Minister for Information and Communications)*

**Mr. Speaker:** Member for Vihiga, what is it? I have no notice that you will be laying a Paper.

**Mr. Chanzu:** Mr. Speaker, Sir, I was just preparing to ask a Question!

**Mr. Speaker:** You are preparing to ask a Question even before we come to that Order? I will pardon you for the moment!  
Next Order!

## NOTICES OF MOTION

### ADOPTION OF REPORT ON STATUS OF OWNERSHIP OF NGARIAMA RANCH LR.13963

**Mr. Musyimi:** Mr. Speaker, Sir, I beg to give notice of the following Motions.

THAT, this House adopts the Report of the Departmental Committee on Lands and Natural Resources on the status of ownership of South Ngariama

Ranch LR.13963 in Kirinyaga South District, Central Province, laid on the Table of the House on, Wednesday, 22<sup>nd</sup> August, 2012.

ADOPTION OF REPORT ON STATUS OF  
OWNERSHIP OF LR.2890 IN TIMAU TOWNSHIP

THAT, this House adopts the Report of the Departmental Committee on Lands and Natural Resources on the status of ownership of LR.2890 in Timau Township of Buuri District, Meru County, laid on the Table of the House on Wednesday, August the 22<sup>nd</sup>, 2012.

**Mr. Speaker:** Next Order!

**QUESTIONS BY PRIVATE NOTICE**

ENCROACHMENT ON IDAVAGA MUSLIM SECONDARY SCHOOL LAND

**Mr. Chanzu:** Mr. Speaker, Sir, I beg to ask the Minister for Education the following Question by Private Notice.

(a) Is the Minister aware that Idavaga Muslim Secondary School in Vihiga District cannot carry out its expansion programmes because its land has been encroached on?

(b) What measures will the Ministry take to solve the problem to enable the school implement its expansion programmes?

**The Assistant Minister for Education** (Prof. Olweny): Mr. Speaker, Sir, I beg the indulgence of the House to give me one week to come up with an appropriate answer to this Question.

**Mr. Speaker:** Member for Vihiga, are you willing to extend that indulgence to the Assistant Minister?

**Mr. Chanzu:** Mr. Speaker, Sir, I will allow that but the Assistant Minister should ensure that this is done. There is very high enrolment in the school. We thought that we would use this land to put up some structures to be able to accommodate the students. If the Assistant Minister can expedite action on that, I will appreciate.

**Mr. Speaker:** Fair enough. The Question is deferred to Thursday next week at 2.30 p.m.

*(Question deferred)*

ERADICATION OF PRODUCTION OF ILLICIT  
BREWS IN KIRINYAGA COUNTY

**Mr. Gitari:** Mr. Speaker, Sir, I beg to ask the Minister of State for Provincial Administration and Internal Security the following Question by Private Notice.

(a) Is the Minister aware that Mr. Mwangi Gatimu collapsed and died after drinking a second generation brew in a bar at Kibingo Market near Kerugoya Town in Kirinyaga County on 7th August, 2012?

(b) Has the Government taken a sample of the liquor to the Government Chemist to check its suitability for human consumption?

(c) What steps is the Ministry taking to ensure that production of illicit brews is completely stopped as it is claiming lives of many youths in the county?

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji):** Mr. Speaker, Sir, I beg to answer.

(a) I am aware that on 7<sup>th</sup> August, 2012, Mr. Mwangi Gatimu, aged 47 years, who appeared emaciated collapsed and died after consuming second generation brew known as Kibuga at Modern Bar at Kibingo Market in the outskirts of Kerugoya Town.

(b) Samples of the brew were collected from the scene and taken to the Government Chemist for analysis to ascertain its suitability for human consumption. However, police were unable to collect body specimen from the deceased after the relatives moved to court and swore an affidavit stating that they did not wish that a postmortem be done on the deceased. I wish to table a copy of the affidavit. The results from the Government Chemist are being awaited.

*(Mr. Haji laid the document on the Table)*

(c) Stringent measures have been put into place by the Government in conjunction with NACADA to govern production, packing, labeling of alcohol drinks and licensing of premises used for manufacturing and selling of liquor. Further, stiff penalties have been provided for in the Alcoholic Drinks (Control) Act (No.4 of 2010) to deter illicit brewing. The police have also increased vigilance to detect those involved in illicit brewing. In this regard for the last six months within Kirinyaga Police Station area alone, a total of 72 suspects have been arrested for illicit brewing, and a total of 2,263 liters netted. The suspects were fined a total of Kshs766,000 during the same period. Out of the 72 cases, 12 are still pending before court.

The Provincial Administration, in collaboration with other stakeholders, is sensitizing the members of the public on the dangers associated with the production and consumption of illicit brews. Similarly, political leaders, both Members of Parliament and councilors, should always during public fora emphasize the need for members of the public to abstain from consumption and production of the same.

**Mr. Gitari:** Mr. Speaker, Sir, while I appreciate the comprehensive answer from the Minister, illicit brews in Central Kenya, not only in Kirinyaga, are a menace. What is the Ministry doing? In my district, for example, we do not have a District Commissioner at the moment. However, we know some of the dens but it appears the Ministry does not have enough personnel to address the people who produce the illicit brews. What is the Minister doing to make sure that in conjunction with the local leaders we are able to go round and wipe out all the illicit brews dens?

**Mr. Haji:** Mr. Speaker, Sir, the arrest of 72 suspects is not a mean achievement by the administration and regular police officers. Also, the destruction of 2,263 litres is another effort which is being made. I do not think that it is only the administration and regular police who are supposed to sensitize the people about the dangers of drinking illicit brews. So, we will do everything possible, but will also need the support of the leaders.

**Mr. Njuguna:** Mr. Speaker, Sir, while lauding the Minister for taking this matter very seriously, there are areas where the Provincial Administration is not effective on the ground and,

therefore, abetting the production of these drinks. What extra effort is the Ministry going to take to make sure that Central Province is free of these illicit brews?

**Mr. Haji:** Mr. Speaker, Sir, I would have wished to know which administrative officer is not able to do his job, so that I can deal with him. I am afraid that I am not able to answer a general question. But I think that efforts are being made under the National Agency for the Campaign Against Drug Abuse (NACADA) Act and stiff penalties have been given. We need the co-operation of everybody, so that people do not take to drinking illicit brews.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, in South Africa, during the apartheid regime, when the Government wanted to silence the black man, it came up with policies of allowing them to take this kind of liquor. Is it possible that this Government, because of the failure to provide employment for the poor, has adopted the same policy of the apartheid regime in South Africa?

**Mr. Haji:** Mr. Speaker, Sir, fortunately, we are not in an apartheid era and, therefore, we are not able to do that.

**Mr. Kiptanui:** Mr. Speaker, Sir, indeed, the consumption of this illicit brew is widespread across the country. The other day, we lost two Kenyans in Iten, in Elgeyo/Marakwet County after consuming this illicit brew. Recently, we passed a Bill which was brought by hon. Mututho, which prohibits the consumption of illicit brews. What measures are being put in place to ensure that these illicit brews are not sold and people do not consume alcohol during the day?

**Mr. Haji:** Mr. Speaker, Sir, these brews are not sold in public places. Most of them are sold in hidden places. All efforts are being made to reach these people and stop them. But, as I said earlier, this needs the efforts of every Kenyan where these drinks are prevalent. Religious, political and opinion leaders should be able to sensitize people. Fortunately, the Muslims do not drink illicit brews, but consume *miraa*.

**Dr. Khalwale:** Mr. Speaker, Sir, it should be clear to the Minister that whatever you do, you cannot stop men from drinking alcohol. It is a fact. These people are responding to the fact that the so-called commercial liquor is too expensive. What is your Government doing to make alcohol affordable to the poor of the nation, so that they can also enjoy the way the rich enjoy?

**Mr. Haji:** Mr. Speaker, Sir, I think that Question should be directed to the Minister for Finance. In the first place, I do not know of any Government which brews for people to drink cheap drinks. Therefore, I am unable to answer that question.

**Mr. James Maina Kamau:** Mr. Speaker, Sir, I am sure that this Minister is aware of the dangers caused by these drinks. It is causing a lot of havoc, especially in Central Province and I am sure that the Government and the Minister are aware. We know for sure that the local chiefs are aware of all the dens. What is the Minister doing to ensure that the chiefs actually do exactly what they are required to do? What are the consequences of not reporting those who are manufacturing these illicit brews?

**Mr. Haji:** Mr. Speaker, Sir, on the contrary, I think the chiefs are doing their best. People are also very clever and resort to any means. They even hide the brews under their beds. Chiefs are not angels and so, we need to help each other to make sure that we stop this menace.

**Mr. Musyimi:** Mr. Speaker, Sir, I am sure that the Minister knows that last week, we buried 13 people in my constituency because of illicit brew and eight people are blind. This is because poison is being put in alcohol. Where is the Government when brewers are putting poison in substances?

**Mr. Haji:** Mr. Speaker, Sir, while I sympathize with the families who lost their family members and the hon. Member under whose constituency these people died, as I said earlier, when somebody is cooking his own food in his house, if he decides to put in poison, the

Government cannot be there to supervise the cooking. Therefore, I think that this question is not relevant to me.

**Mr. Speaker:** Last question, hon. Gitari.

**Mr. Gitari:** Mr. Speaker, Sir, you have heard the Minister say that the arrest of 72 people who prepared this illicit brew is not a small number. I would like to bring to your attention that there is a place called Ngomongo in my constituency, where if we go now, we can arrest more than 100 brewers because they do it in the open. I have tried to pursue it with the District Commissioner (DC) and I am almost giving up. What will the Ministry do about this?

**Mr. Haji:** Mr. Speaker, Sir, we will be on the radar from now. So, next week, you will tell me whether action has been taken or not.

## ORAL ANSWER TO QUESTION

*Question No.1625*

### CURBING VANDALISM OF TRANSFORMERS/TELKOM WIRES

**Dr. Otichilo** asked the Minister of State for Provincial Administration and Internal Security:-

(a) whether he is aware that due to high demand of scrap metal, vandalism has greatly increased especially the destruction and theft of Kenya Power transformers, Telkom wires, roads, furniture and metal tools from homes;

(b) whether he is further aware that the economic crime has continued to increase because lenient fines and jail terms are imposed on the culprits; and,

(c) what short, medium and long-term measures he will take to curb this economic crime.

Mr. Speaker, Sir, I have no written answer, but I am ready to interrogate the Minister.

**Mr. Speaker:** Mr. Minister, proceed and explain why you have not supplied a written answer.

**The Minister of State for Defence and Acting Minister for Provincial Administration and Internal Security (Mr. Haji):** Mr. Speaker, Sir, this is a cross-departmental Question. Particularly, the National Environment Management Authority (NEMA) will be involved. I ask to be given one more week---

**Mr. Speaker:** Order, Minister! This Question was previously directed to the Minister for Industrialization and he did then plead that it be directed to the Minister who is in charge of the police force and generally, security. That is why it was then directed to your Ministry. If you are not ready, we will understand, although, it has been pending for some time.

**The Minister of State for Defence and Acting Minister for Provincial Administration and Internal Security (Mr. Haji):** Mr. Speaker, Sir, I am asking to be given a week, because it is a very involving Question. We need to countercheck with all other arms of the Government which deal with these kinds of things. So, if I am given one more week, I will be able to answer the Question.

**Mr. Speaker:** Yes, indeed, Minister. We acknowledge that you are a strong personality and that is why you have been given two powerful Ministries. So, Thursday, next week! Member for Emuhaya, please, note.

(Question deferred)

Hon. Members, that brings us to the end of Order No.6.

**Mr. Speaker:** Hon. Members, that brings us to the end of Order No.6. Before we move to the next order, I have one Communication to make.

### COMMUNICATION FROM THE CHAIR

#### CARDIOVASCULAR AND HYPERTENSION AWARENESS DAY FOR HON. MEMBERS

**Mr. Speaker:** The Catering and Health Services Committee is a Committee of Parliament established by resolution of the National Assembly on 29th November, 2011. The mandate of the Committee is *inter alia* approval of services to be provided at the Health Club including outdoor and indoor games for the overall wellbeing of Members. In view of the foregoing, the Committee has organized for a cardiovascular and hypertension awareness day on Thursday, 23<sup>rd</sup> August, 2012. The event will involve the following:-

1. Presentation on cardiovascular and hypertension diseases by a team of medical experts led by Dr. Gikonyo.

2. Baseline Screening on sight.

Hon. Members, I, therefore, take this opportunity to invite all of you to this awareness day as is scheduled to take place tomorrow, Thursday, 23<sup>rd</sup> August, 2012 in the Senate Chamber, or if you like the Old Chamber between 10.00 a.m. and 1.00 p.m.

I thank you.

### MINISTERIAL STATEMENTS

**Mr. Speaker:** Are there any Statements for delivery? I know that there are many Statements which are pending. Minister of State for Provincial Administration and Internal Security, do you have a Statement? Kindly indicate how long you are going to be before I give you the Floor. How long are you going to last?

**The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji):** Mr. Speaker, Sir, five minutes.

**Mr. Speaker:** Five minutes and strictly so. Please, proceed.

#### ORGANISED CRIMINAL ATTACKS AGAINST RESIDENTS OF WAJIR SOUTH CONSTITUENCY

**The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji):** Yesterday, 21<sup>st</sup> August, 2012, hon. Mohammed Affey, Nominated Member, rose on a point of order seeking a Ministerial Statement regarding the criminal attack on the people of Akalan area in Wajir South Constituency which left one person dead and several others critically injured. The hon. Member sought to know the

persons behind the attacks, their motives and why the suspects used Government firearms under the directive of Government officers.

In addition, he sought to know whether there were any arrests that were made and if so, the number of suspects who have been arraigned in court.

He also wanted confirmation whether the criminal gang confiscated national identity cards of over 20 villagers and Kshs5,000 from an innocent lady. He further sought to know whether there has been any humanitarian assistance extended to the victims.

Lastly, he sought to know whether there have been boundary changes on the border between Wajir and Garissa counties since Independence.

At the same time, hon. Mohammed Sirat, Member of Parliament for Wajir South Constituency requested that I table the Report by the former North Eastern Provincial Commissioner, Mr. ole Seriani, on Wajir South and Lagdera Boundary Dispute. I wish to state as follows:

Mr. Speaker, Sir, on 16<sup>th</sup> August, 2012, at about 10.00 a.m., a member of the public reported through a mobile phone that there was tension following a boundary dispute between Aulihan Clan from the center urban division in Lagdera District and the Maqabul from Habaswein Division of Habaswein District at Abakore area which is about 66 kilometres from Wajir Police Station. Police officers accompanied by the District Commissioner, Lagdera, and the District Officer, Habaswein, visited the area and managed to calm down the two clans who agreed to solve their differences peacefully. One person was, however, slashed and injured on the lower parts of the legs and the police were deployed in the area to maintain peace.

On 18<sup>th</sup> August, 2012, at about 9.30 a.m., at Abakore Junction, members of the two clans, that is, Aulihan and Maqabul clashed and a shootout ensued during which one person, Abdulahi Khalif, aged 65 years, was shot on the head and died on arrival at the hospital. The following persons were also injured during the clashes: Osman Abdi Korane, shot on the upper right hand and legs; Mohammed Mahamud aged 32 years, injured on the leg; Hussein Ahmed aged 30 years, injured on the right knee; Abdi Aden Murji aged 35 years, injured on the head; Abdi Khalif Adan injured on the chest; and Ahmed Dagane Biyei age 40 years, injured on the head.

The injured were all taken to Habaswein District Hospital while the deceased's body was moved to the hospital's mortuary for postmortem. Police visited the scene and recovered eight rounds of live ammunition and one spent cartridge of 7.62 mm special calibre.

Investigations were launched immediately to establish the cause of the conflict, who was behind it and the source of the firearms. The organizers of the clashes have not been identified yet and the same is subject to investigation.

Therefore, I am neither aware that the attackers used Government firearms nor that they were acting under the directives of Government officers. This incident is being investigated with a view to identify and arrest the attackers. The police have not yet received any report from any of the victims that their national identity cards were confiscated by their attackers nor has anybody reported losing any money. However, the police have now been directed to investigate and bring the culprits to book.

After that attack, the Government and the Kenya Red Cross provided foodstuff, shelter and water to the victims. The Government is not aware of any changes or alterations on the Wajir County and Garissa County boundary.

Lastly, I wish to table a copy of the Report by the former North Eastern Provincial Commissioner, Mr. James ole Seriani, that details the efforts made in resolving the conflict in a series of meetings that were held in April, 2011.



*(Mr. Haji laid the document on the Table)*

However, as the way forward, it was recommended that the arbitration be referred to another level, preferably to the North Eastern Parliamentary Group Committee after the meeting ended in stalemate.

**Mr. Speaker:** Hon. Members, we will allow three interventions beginning with hon. Affey. Minister, will you keep notes?

**Mr. Affey:** Mr. Speaker, Sir, first of all, I want to thank the Minister for this Statement and particularly for tabling this very important Report. If the Government had implemented the contents of that Report, I am sure there would have been no death at all.

Mr. Speaker, Sir, we have a Government that has intelligence. There is a department that constantly gives intelligence information to various departments of Government. I want to ask the Minister: Why did they have to wait until now when there is death of one innocent old man and people sustaining critical injuries? As we speak now, there is a man who is in the theatre in a hospital in Nairobi. He is undergoing an operation to remove bullets from his body. To date, why is that there have never been arrests? Why is it that a crime is committed, people die and yet no arrests are preferred?

Mr. Speaker, Sir, as I know, the communities affected have already provided sufficient statements in Habaswein, but there is no desire on the part of the police to arrest criminals. Why is it that up to now they have not arrested---

**Mr. Speaker:** Order, Mr. Affey! That now begins to be repetitive.

**Mr. Duale:** Mr. Speaker, Sir, in the last seven days, 60 people have been killed including 48 people who were massacred this morning in Tana River, five people in Mandera two days ago, and one in the area we are discussing today. Could the Minister tell this country why in a span of 72 hours 60 people have been killed in the northern part of the country? Is the Government in charge? Is the Government, both the security and intelligence agents, under control?

**Mr. Bahari:** Mr. Speaker, Sir, the issue of boundaries and conflict in northern Kenya is very common. In particular, my constituency has an issue with Lagdera along the lines that Habaswein or Wajir South has. We have taken this matter up to the level of the province and even the Office of the President. Could the Minister undertake to resolve some of these issues, including the one of Isiolo South and Lagdera, so that we do not have these happenings where Kenyans lose their lives?

**Mr. Speaker:** Hon. Members, we will take hon. Wambui, just to keep some sense of gender balance.

**Mrs. Shebesh:** Mr. Speaker, Sir, you keep calling me a name that is shocking many of my colleagues.

**Mr. Speaker:** Yes, my records indicate that your name is Rachael Wambui Shebesh.

**Mrs. Shebesh:** Mr. Speaker, Sir, that is my name and I am very proud of it.

When will the Government open its eyes and stop putting its head in the sand and deal with the political problem? As hon. Duale has said, the issue of boundaries is real. It is amazing to hear the Minister say that the Government is not aware of any boundary issues between Garissa and Wajir, unless I heard it wrongly. Is he bold enough to look his colleagues in the eye and say that this is not real? The issue of boundaries is real in these areas where 48 people can die in a day. We are going into an election that will affect this issue even more. Is he ready to

take the bold step and arrest those whom he knows are behind that issue who are sitting in this House today? If he cannot, then he should instruct an agency that can do that work.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. The Member has made a very serious allegation that we have Members of Parliament sitting in this House, who are responsible for the issue that we are interrogating now. Could she, please, substantiate in according to our Standing Orders?

**Mr. Speaker:** Order! Hon. Shebesh, that is a legitimate challenge, but be aware that you have to live within the Standing Orders.

**Mrs. Shebesh:** Mr. Speaker, Sir, when we come to this House as back benchers, many times, Ministers ask us to ask questions for them. I asked one of the questions on behalf of one of my colleagues, whom I will name, because you have asked me to name names, and this is Maj. Godhana. There was a crisis in his constituency that involved the Minister and the Minister also knows, and I spoke to them. During that time, I also spoke to hon. Nuh and the three of them made it clear to me that this is a political problem. It is about boundaries and they can solve it if they wanted to because they are the political leaders. It is about small tribes and other tribes who are coming in and the integration of these two tribes. So, I am substantiating by saying that those are the names that I am referring to on that particular issue.

**Mr. Speaker:** Fair enough, hon. Shebesh. I think you have done very well. You have stayed within the rules and supplied information. Minister, will you, kindly, respond and incorporate that information that has been given by hon. Shebesh in your response?

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji):** Mr. Speaker, Sir, in response to the question raised by hon. Affey as to why no arrests have been made, it was in my Statement at the beginning that so far, arrests have not been made but an investigation is being carried out. This morning at 7.30 a.m., in my office, I summoned the Commissioner of Police and the Permanent Secretary and told them that there is no way people can fight and people die and nobody is being arrested. Therefore, I have said that investigations should be carried out immediately. One person is alleged to have carried people in a vehicle. I said that if that vehicle cannot be found, the owner should be traced and arrested. Therefore, we are waiting to see what is going to happen with the police.

With regard to the question raised by hon. Duale, I dispute that 60 people have been killed in the last one week. But even one person is killed is a serious matter. Everybody in this House should know that people in the north including some parts of the Rift Valley, have a lot of illegal firearms. Where people used to fight with sticks and hands, they are now fighting using AK 47. Therefore, that is how these kinds of things happen away from the police and even away from the administration. For example, Lagdera where this happened is not more than 66 kilometres away from Wajir Police Station. However, that is not a good reason not to arrest those who perpetrated those kinds of actions.

With regard to the question raised by hon. Bahari and also my sister, hon. Shebesh, the biggest problem in this country is boundary disputes. The same thing that hon. Shebesh is raising about Godhana's constituency and my constituency, Tana River, which is a national resource, is seven kilometers away from Ijara and people are not allowed to access the water. That is why people keep on quarrelling and fighting. When the Ligale's Commission was looking into the issue of boundaries, we asked them to look into it and they said that it was not under their mandate. The IEBC also said this is not in its mandate. The matter has gone to court and the court has deferred it. Therefore, it is a national issue which needs to be handled very decisively. I

cannot do anything on the constitutional boundaries, but if I am going to remain in this Ministry, I will make sure that the administration boundaries, which are verified by the surveyors, are implemented even if it means arresting Members of Parliament, I will do that.

**Dr. Khalwale:** On a point of order, Mr. Speaker, Sir. In view of what the Minister has just said and in view of the statement by hon. Shebesh, is he in order to expect this House to believe that he can be a neutral arbiter in this matter? It is known that in hon. Godhana's constituency, there are three miles beyond the river. We hear from the public that the Minister has built a secondary school called Yusuf Haji Secondary School in a neighbouring constituency. Is he convinced that if he remains the Minister of State for Defence and Acting Minister for Provincial Administration and Internal Security, the people from hon. Godhana's side will enjoy their rights? Is he in order to mislead the House?

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji):** Mr. Speaker, Sir, I am very neutral person and you will see. However, there is nothing that I can do about the constituency boundaries. I am saying that the people have the right to access the water. This water is draining into the Indian Ocean and nobody is stopping it. It flows from Mt. Kenya all the way to the Indian Ocean. We are asking the Government to intervene and find a solution, so that the people can co-exist. But on the issue of the district boundaries---

**Mr. C. Kilonzo:** On a point of order, Mr. Speaker, Sir. We are at a loss because we are back benchers. When the Government comes and says that it is asking the Government, and it is the Government, we are at a loss. More so, this is a Minister who holds two Ministries. The Government thought that he is so good that he can hold two Ministries. Is he in order?

**Mr. Speaker:** Order, Minister! That is a legitimate challenge. You are talking about the Government, you are asking the Government yet you are in the Government.

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji):** Mr. Speaker, Sir, there are certain issues which a Member of Parliament or a Minister cannot handle. This is a matter of constitutional nature and it is only when a boundaries Commission is established that this matter can be looked into. I am speaking as a Member of Parliament for Ijara that is when she knows my name, not as a Minister of State for Defence and Acting Minister for of State for Provincial Administration and Internal Security.

**Mr. Farah:** On a point of order, Mr. Speaker, Sir. It is a pity I was not in the House when this matter was being interrogated because it is my constituency, Lagdera, that is involved. I do not want to get involved as a leader in creating tension in this country by saying so-and-so is at fault and so-and-so is at fault. The only way these issues can be tackled properly is if there is a Parliamentary Committee that goes on the ground and carries out the investigation. If we allow things to happen the way some people would want them to happen, then we will have ethnic cleaning from one place to the other. People will say that this is the boundary of such and such community, they are the majority in that or the other district and there will be that kind of a thing.

I wish I had been informed by the Minister that this Ministerial Statement was being delivered today because I had tried to get that information from him in the morning when I was in the Chair. The only way is for you to direct the Committee. Not only do we have a problem in the boundary between Garissa and Wajir, but a much more serious problem in Mandera where 10 people have lost their lives within the shortest possible time. We should have the Committee go down there. In Lagdera and Garissa, we lost one life and we regret it in every sense but if that

can be handled by that independent Committee, other than that, even the Government itself can be biased in one way or the other, and we saw that in the last Government.

*(Applause)*

**Mr. Speaker:** Mr. Minister, do you have any response to that otherwise I want to give the final direction on the matter?

**Hon. Members:** On a point of order, Mr. Speaker, Sir.

**Mr. Speaker:** Order! We have already spent a lot of time on this.

Yes, Mr. Minister!

**The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji):** Mr. Speaker, Sir, this cannot only be dealt with by a Parliamentary Committee. This problem needs a Commission to investigate and make recommendations because it is not only felt in one area but it is nationwide. Therefore, we recommend that a Commission be appointed to look into the boundaries as we wait for the Boundaries Commission to be appointed.

**Mr. Speaker:** Very well. What is it the Member for Lagdera?

**Mr. Farah:** Mr. Speaker, Sir, if we are not careful - we have just lost over 30 people in Tana River - we are likely to lose hundreds of lives in these places particularly in North Eastern Province. As I am speaking now, there was a clash between the people from my constituency and the neighbouring constituency. The neighbouring constituency is where my father and my grandfather were born and that is where my uncles were hurt. The man who has been killed is my uncle. So, we are suffering and bleeding. The men who are in hospital right now as a result of those clashes are my own kith and kin from the neighbouring constituency. We need an immediate Government intervention so that we can save the lives of Kenyans and we do not have to politicize the lives of Kenyans. It has to be something that is dealt with by all of us as a country because this is the beginning and we are going for elections. Politicians might want to validate themselves by showing themselves as heroes, champions and as warlords of their communities or constituencies. Something should be done.

**Mr. Speaker:** Order! The Member for Lagdera, we have heard you. Those were very strong sentiments. Mr. Minister, among other things in your responses, you have indicated that you will request for a Commission of Inquiry to be set up. Can you, kindly, do so forthwith? We, on our part, will reinforce that request from the Legislature. So, confirm that you will make the request and we undertake to reinforce it from the Legislature.

**The Minister of State for Defence and the Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji):** Mr. Speaker, Sir, I have undertaken to request that a Commission be appointed to investigate this matter.

**Mr. Speaker:** That is good enough because it goes on record. I want the Committee which oversees the Department of Internal Security and Provincial Administration to take the cue and follow up on this matter to see that action is taken as much as possible by way of appointment of a Commission of Inquiry at the earliest opportunity possible. So, the ball is in the court of both the Minister and the relevant Departmental Parliamentary Committee. Let this matter not lie, particularly, taking into account where we are as a nation, not very far from elections. We will take one more Statement because we just have time for one.

The Minister for Foreign Affairs, indicate how long you will be.

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): Thank you, Mr. Speaker, Sir. It will take less than 30 seconds. I was going to issue a Statement on a matter involving Shelter Afrique but we encountered a problem because we did not receive adequate information from the State Law Office, which has promised that we will receive the information tomorrow in the morning. I have promised my colleague, hon. Shebesh Wambui, that the Statement will be issued appropriately tomorrow afternoon or as the House may see fit.

**Mr. Speaker:** You will deliver the Statement tomorrow in the afternoon!

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): Yes, Mr. Speaker, Sir.

**Mr. Speaker:** That is noted. Let the matter rest there. We would now like to move on and take any requests that have been approved. Are there any requests for Ministerial Statements that have been approved?

**Dr. Khalwale:** Thank you, Mr. Speaker, Sir. It is now two weeks since I requested the Prime Minister to address this House through a Ministerial Statement on the recent visit by the US Secretary of State, Mrs. Hillary Clinton. Apparently, I do not see him in this House. Maybe any of his Deputies can issue the statement.

**Mr. Speaker:** Is there anybody who is able to remind the Prime Minister about the visit by the US Secretary of State? The Assistant Minister for Foreign Affairs, I think that is partly in your portfolio. When will that statement be made?

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

I do not see your request! You do not have the Floor because you have not asked for it!

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): Mr. Speaker, Sir, my apologies. Technology is confusing me a bit. I should be able to discuss this with my Minister and most likely, we will relay the message to the Prime Minister's Office.

**Mr. Speaker:** This is a bit of an urgent matter. So, can you prevail upon the Prime Minister to bring that Statement on Wednesday next week?

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka): Yes, Mr. Speaker, Sir. I will do that.

**Mr. Speaker:** We want to take the next order.

Mr. Attorney-General, are you the one who will move this Procedural Motion?

## **PROCEDURAL MOTION**

### **REDUCTION OF REFERRAL PERIOD OF THE KENYA DEFENCE FORCES BILL**

**The Attorney-General** (Prof. Muigai): Yes, Mr. Speaker, Sir, On behalf the Leader of Government Business, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order 111, this House orders that the referral period of the Kenya Defence Forces Bill, Bill No.35 of 2012, to the relevant Departmental Committees be reduced from ten to six days.

I beg to move.

**Mr. Speaker:** Who is seconding the Attorney-General?

**The Assistant Minister for Foreign Affairs** (Mr. Onyonka) seconded.

*(Question proposed)*

**Mr. Ogindo:** Thank you, Mr. Speaker, Sir. I rise to support the Procedural Motion and complain at the same time. I am a Member of the Departmental Committee on Defence and Foreign Relations within which this Bill falls. At the Committee level, we do not have adequate time because the Executive has been very slow on its job. I think this House needs to send a very strong message to the Executive to take their work seriously because the reduction of time in scrutinizing these Bills undermines their quality. But notwithstanding that, I know we are facing a constitutional deadline which we must meet. To that extent, I support the Procedural Motion.

**Mr. Langat:** Mr. Speaker, Sir, I support. As my colleague has said, the Executive should do their job sufficiently because we have been in the business of shortening time almost the whole of this year. We could have excused them immediately the new Constitution was promulgated. But by now, they should have learned to prepare in advance so that we pass quality laws. Otherwise, at this rate, we will make mistakes because of rushing.

**Mr. Njuguna:** Mr. Speaker, Sir, I rise also to support the reduction period. This House is ready and willing to debate the remaining crucial Bills for the interest of this country.

**Mr. Chanzu:** Mr. Speaker, Sir, I also want to support. One of the key elements in the new Constitution is that we need to give enough time for Kenyans to know what is going on. So, it is necessary that, in future, we keep to time. If it is 10 days, it should be 10 days, so that we allow as much ventilation as possible. But for now, I beg to support.

**Mr. Ochieng:** Mr. Speaker, Sir, I also want to support the reduction of this period to six days and equivocally blame the Executive. They must actually rise from the slumber and stop delaying Bills to this House. In fact, they have delayed so many Bills in this House. That is why we keep on requesting for more time, so that the Committee can get sufficient time to look at these Bills. I believe six days is sufficient.

I beg to support.

**Mr. Mututho:** Mr. Speaker, Sir, I rise to support this reduction. Let me also seek the Chair's intervention, so that the Executive gives us a clue on which Bills we, as a Committee chairpersons, are expecting in order to plan our work. If possible, we have the Draft Bills in advance so that we can prepare ourselves.

I beg to support and say poor planning on their part should not really constitute an emergency on our part.

**Mr. C. Kilonzo:** Mr. Speaker, Sir, as I support, I have noted with concern the culture by the Government to bring Bills at the last minute which forces us to rush. When we pass laws in a rush, we are likely to pass bad laws. Three Ministers in this particular Ministry have been a big letdown to us. Even when we organize seminars, they do not even bother to come or send a representative. Only the other day, all the key players participated, but nobody knows where the three Ministers were. I understand that very soon, we will go to an election year, I think they owe this House an explanation. When they fail to show up, it is not in good faith because they want us now to rush this Bill. They owe this House and the Committee an apology---

**The Assistant Minister, Ministry of State for Defence (Mr. Musila):** On a point of order, Mr. Speaker, Sir. I rise on a point of order on the point raised by Mr. C. Kilonzo. We dealt with it in his Committee and finished with it. Is it in order for the hon. Member to repeat a matter that has been properly dealt with in the Committee and the matters settled?

**Mr. Speaker:** Member for Yatta, any response at all?

**Mr. C. Kilonzo:** Mr. Speaker, Sir, surely, do I need to respond to that? That was for the information of hon. Members so that they do not repeat it again. They are my good friends, but please, give us your participation when we are passing these Bills. When the political wing of the Government does not show up when Committees are discussing Bills with their technocrats and then they want us to rush these Bills, they are not doing service to this country.

With those few remarks, I support.

**Mr. Nyammo:** Mr. Speaker, Sir, I rise to support the Motion with a reminder that for those of us who come from the private sector deadlines are dead; they are not capable of extension. We seem to be keen on trying to flog dead horses. Could the Executive be reminded that deadlines must remain dead?

I beg to support.

**Mr. Mureithi:** Mr. Speaker, Sir, while I support this reduction of time, it actually calls for Committees to work extra hard. Had it not been for you, Mr. Speaker, who supports us in the public life, members of the public believe that hon. Members are not working and they are sleeping on the job. I have heard the Speaker saying several times that we are working very hard. Whereas we accept the reduction of time, may I request that the Chair gives a directive as to when these Bills must be brought so that at least we can arrange our time? This is to ensure that you do not keep on supporting us there and telling the public that we are working very hard. The Executive is the one that is delaying and they are eating into our time and making us work overtime.

I support the reduction of time, but we should have a timeline so that we know exactly how we organize these Bills.

**Mr. Speaker:** Thank you for that contribution, Member for Ol Kalou for those kind words. Indeed, all of us should be working to improve the image of ourselves. So, I expect that all of us, whenever you have an opportunity, you will put things on record as they should be. We have noted the rider which you have added and we will take up that matter with the House Business Committee. If need be, I will even issue communication on the matter.

*(Question put and agreed to)*

## **COMMUNICATION FROM THE CHAIR**

### **REORGANIZATION OF BUSINESS ON THE ORDER PAPER**

**Mr. Speaker:** Order! Hon. Members, the information I have and according to our records on the HANSARD, business at Order No.9 was disposed of this morning. So, we will now be obligated to move on to the next Order. According to the prevailing circumstances, we will take Order No.12 first. I understand Order No.12 will be very brief.

As a matter of fact, hon. Members, I know some of you may be a bit alarmed by that direction, but the position of the matter is that business at Order No.12 is largely embracing the practice as we have had under the Standing Orders. So, if you follow that very closely, you will find that you are really not being ambushed. So, we will take that first.

Next Order!

## **BILL**

## *Second Reading*

### THE PETITIONS TO PARLIAMENT (PROCEDURE) BILL

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. Wamalwa): Mr. Speaker, Sir, I beg to move that the Petitions to Parliament (Procedure) Bill, Bill No.34 of 2012 be read a Second Time.

Mr. Speaker, Sir, as you have rightly observed, this Bill largely embraces the procedures and traditions we have already set out in our Standing Orders allowing the public to petition Parliament. This particular Bill seeks to give effect to Article 119 of the Constitution on the right to petition Parliament and to make provisions for the procedure for the exercise of the right pursuant to that article and to enhance public participation in the parliamentary and legislative process and for connected purposes.

Mr. Speaker, Sir, this Bill is also important in terms of empowering Kenyans and embracing the values set out in Article 10 of our Constitution, which requires that the public participates in the process of making laws and, directly petition Parliament. What we need to do is to lay down a clear procedure for that purpose. Through this Bill, we are largely embracing our Standing Orders. Looking at the Bill, one will agree that it is a very short one. I want to thank hon. Members for agreeing that we deal with it first.

Under Part I of the Bill, clauses 1 and 2 provide for the Short Title and the Interpretations. Clause 3 of the Bill provides for the form in which a petition should be presented to Parliament. All members of the public will be guided to present their petitions to this House through the particular form set out under Clause 3. Most importantly, Clause 4 of the Bill outlines the procedure for presenting a petition, which should be formulated in accordance with Clause 3.

Mr. Speaker, Sir, clauses 5 and 6 of the Bill provide for the manner in which petitions will be considered by the relevant House Committees, and the manner of registration of all petitions that will be brought to the House. This is a very important procedure. It will open this House to all Kenyans who may have serious petitions they would want to bring to this House to do so in the manner prescribed in this Bill.

Through the petition system, this House has received several petitions. I had the privilege of presenting before this House, a petition on the freedom fighters of Kenya; the Mau Mau. It is a pity that for the petitions that we had presented to Parliament, we did not have a follow-up mechanism to ensure that Kenyans who petitioned this House got responses within the prescribed time. According to our Standing Orders, after referral of a petition to a Committee of this House, we are supposed to have the relevant Committee report back to the House and a response from the Government given within 21 days.

Mr. Speaker, Sir, I am aware that one of the oldest petitions that are pending before this House is the one I brought about the Mau Mau freedom fighters. Last weekend, I visited Nyeri County, where I had the privilege of visiting the site where a young freedom fighter by the name of Dedan Kimathi was shot by British security agents and captured. The Mau Mau freedom fighters, who fought for our freedom, and who petitioned this House, are, to this day, still waiting for us to respond to their petition, so that they, and other freedom fighters, can be given a piece of land – the very land they fought for and died – to settle on. It is a pity that we have not disposed of that petition.



I also know that before this House is a petition which was brought by my good friend and brother, hon. (Dr.) Khalwale, about the squatters of Trans Nzoia. That petition was also referred to the Committee on Lands and Natural Resources. I believe that the Committee's Report is before the House.

Mr. Speaker, Sir, we want to encourage Kenyans to use the procedure that we are approving, through this Bill, to petition this House on matters that touch on their daily lives, and on matters of vital national importance. Through this Bill, we will be able to provide for the procedure and the form in which Kenyans can petition Parliament.

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

**The Attorney-General** (Prof. Muigai): Mr. Speaker, Sir, I would like to second this important Bill which seeks to deepen our democracy and maintain a clear link between the citizens of this country with their National Assembly and their elected leadership on matters they may consider important to them.

The drafters of our Constitution thought that it was important that, although the sovereign power of the people to make laws rests in this House, this House should be able to listen to the presentations of the public, where a petition is properly brought to Parliament.

Mr. Speaker, Sir, as you observed, this is a straight forward Bill, because it seeks to provide for much of what we already have in the Standing Orders, but which we are in any event required by the Constitution to place in a Bill.

With those remarks, I beg to second.

*(Question proposed)*

**Mr. Njuguna:** Mr. Speaker, Sir, I thank you for giving me the opportunity to contribute briefly to the debate on this very important Bill.

Mr. Speaker, Sir, this Bill seeks to streamline the procedure for presentation of petitions to Parliament. The procedure of presenting such petitions is also being established through this Bill. Even the period for a petition to be acted upon is specified. Kenyans will also be encouraged to follow up their petitions through their Members of Parliament.

Hon. Members will realize that there have been major grievances in this country in respect of which certain communities could have filed petitions. Yesterday, we heard the Minister of State for National Heritage, hon. Ntimama, raise concern about the marginalisation of the Maa Community. We also have other marginalised communities in this country. We have had issues of sharing of resources where bloodshed has been experienced.

Mr. Speaker, Sir, even the issue of forests in this country could trigger some problems because communities have not been consulted properly. We also have historical issues. For instance, when the British came into this country, some people were displaced from their ancestral land. Displacement of certain communities from their ancestral land in this country is a hot issue, which needs to be addressed in future.

I also note that, for the first time in the history of this country, a Register for Petitions will be opened. This is a very healthy direction as the Register for Petitions will be operated by the Clerk of the National Assembly, who is mandated – and directed on how – to operate the register. Therefore, this Bill is very healthy and timely for this country.

With those few remarks, I beg to support.

**Mr. Ogingo:** Mr. Speaker, Sir, I rise to support this Bill.

Mr. Speaker, Sir, I must say that a lot of things are getting structured in this country like never before thanks to the new Constitution. This House deserves commendation, like the rest of Kenyans, who approved the Constitution, which has now structured our way of life.

With the new constitutional dispensation, the focus will now be on the County Governments. So, it would be imperative that we legislate in a manner that the County Governments can also be petitioned through their respective County Assemblies. So, I want to give notice, by way of my contribution to this Bill, that I will bring an amendment, seeking to devolve the provisions of this Bill, so that we can have similar ways of petitioning our County Assemblies. I want to take that step so that we can run away from the pattern that has become fashionable at the doors of Parliament where everybody comes with placards. I do not condemn placards but this now provides a very civilized way of petitioning issues.

Mr. Speaker, Sir, allow me also to take this opportunity, because I am not privileged to be in the Powers and Privileges Committee--- We want also to go a long way and revolutionize the way we do our business at the committee level. I have seen in some democracies that it is structured in a way that the chairman has his time defined in the Standing Orders. The ranking member has his time defined in a structured manner and the rest of the committee members have adequate time. That way, everybody has adequate time with a witness or on the issue. I believe, with your guidance, we shall have a new committee system that enables good interaction with our clients and electorate.

With those few remarks, I support.

**Dr. Khalwale:** Mr. Speaker, Sir, I rise to support this very important Bill, but I would like to differ a little bit with the proposals in the Bill. Hon. Eugene Wamalwa, the Minister in charge - and I hope you are listening. I am noticing that in Clause 5, you are saying that: "The Clerk shall, if satisfied that the petition meets the requirements of this Act, forward the petition to the Speaker of the relevant House for tabling in the House." I want you to consider that the Member of Parliament who was given the petition by whatever group that is petitioning should own the process. Once the Clerk is satisfied that it is in keeping with the Act, then he should give it back to the petitioner so that the Member of Parliament or the Senator can then table it in the House for adoption and so forth.

Mr. Speaker, Sir, the second point I want to make is that you have also told us that this law is for petitioning either House. It is important that you think hard and tell us which matters the public will petition the Senate, and which specific matters the public will petition the National Assembly. That will then help you to cure the problem that you are having in Clause 4.

*(Mr. Wetangula interjected)*

Thank you! You will make your contribution, hon. President-in-waiting.

**Mr. Speaker:** Order, hon. Dr. Khalwale! Do not be diverted by a presidential aspirant or otherwise!

*(Laughter)*

**Dr. Khalwale:** Thank you, Mr. Speaker, Sir. Because he is my friend and brother, I just wanted to massage his ego a little bit. This will give you an opportunity, hon. Minister, to cure the challenge you have in Clause 4(5) where there is a likelihood that the petition could be taken to the wrong House.

Mr. Speaker, Sir, the next and final thing that I want to make comments on is that this legislation is incomplete. It is incomplete in the sense that it looks like members of public will be petitioning Senate and the National Assembly just for record. When you say at the end that we shall keep a register of the petitions, what is the use of having a register? We must have a clause that demands of the Executive that it acts on the recommendations of whatever was being petitioned. I know you share this frustration with me having petitioned on behalf of the *Mau Mau* and I having petitioned on behalf of Kiboroa squatters in Trans Nzoia. I also petitioned on behalf of the victims of the pyramid schemes.

Yes, we have done the petitions and the recommendations are there. But those people are still pushing us because they were not petitioning for fun or record. They wanted some specific result to come out of the process. I beg that you consider the need for you to expand it further so that we demand for action from the part of the Executive.

I support and thank you, Mr. Speaker, Sir.

**Ms. Karua:** Thank you, Mr. Speaker, Sir. I stand in support of the Bill. I want to say that what it contains is much of what has been in our Standing Orders pertaining to petitions. But now there is a legal mechanism which enables a member of the public to know how to bring a petition before the House. It also makes it quite clear to everybody how a petition will be dealt with, once it comes to the House.

I have heard what my brother has said to do with implementation. I do not think it is just petitions. We are short on implementation of things passed by this august House and, therefore, we must ask our Committee on Implementation--- That is because for the first time, we have a Committee on Implementation. How do we liaise with the Committee on Implementation to make sure that things that have been passed by this House, be they Motions or petitions, are actually followed up and implemented? That way, we will have a coordinated mechanism. Instead of having implementation in the Petitions Bill and implementation for Motions, can we have it composite and strengthen the Implementation Committee? I would also like to have the House notify them of all the Motions passed every week – anything that needs follow up by implementation. It is actually them who should keep a register of matters that need implementation and then the Executive will answer to the House through that committee within a given period as to the actions they have taken.

Mr. Speaker, Sir, otherwise, to conclude, this is a good initiative of reducing through law the procedure for bringing petitions to Parliament. It gives live to the provision in the Constitution about participation by the public. They will be participating in the things we do. They may not bring Motions to Parliament, but they can bring their petitions for our consideration.

I beg to support.

**Mr. Mureithi:** Thank you very much, Mr. Speaker, Sir. I stand to support this very important document that has streamlined the way members of the public will be able now to forward their petitions to this House. In the past, it has been difficult for Members of Parliament who are not lawyers to craft and draft petitions for their members. But this now has streamlined that aspect in terms of members of the public having the window to come and present their petitions.

Mr. Speaker, Sir, however, there are a number of issues that we must look at, and one of them is the feedback to the petitioner. If you look at Clause 6 – just like hon. Khalwale said - there should also be an aspect of the feedback to the petitioner, so that when they bring their petition here, either it does not meet the threshold as stipulated in this new law or it needs extra

input, so that they can also be able to come back. Otherwise, if we do not do that, then they will feel very frustrated and probably the objective of which this law is being created may not be met.

Mr. Speaker, Sir, the second aspect which I would like to raise is civic education. The majority of people in rural and urban centres view this House with a lot of respect and, probably, they may not manage to know how to forward it to the Clerk. I think when the subsidiary legislation is done on the regulations on how to implement this, various contact addresses should be given so that members of the public will be able to know how they will send their petitions to this House. I would also like to say that, as far as we are concerned, this is a very well documented piece of legislation and I am sure our people now have a way of reaching this House without fear. They will be able to know that the new Constitution has given them freedom to interact with this House.

With those remarks, I beg to support.

**The Assistant Minister for East African Community** (Mr. Munya): Mr. Speaker, Sir, I would also like to support this very important Bill that gives the public an avenue to directly have an impact on what is legislated here on their behalf. The Bill is basically a quantification of the procedure that was already existing before the new Constitution required actual legislation to provide for petitions. It is clearly a quantification of what is existing. As some of the hon. Members have said, there is need for an amendment to provide for an opportunity for feedback; we do not want to turn the House into a graveyard of petitions where petitions will come, they are recorded and that is the end of it. Members of the public would want to see that something has been done about their petitions, for example that the problem has been solved in case of something that was affecting the public. Some action needs to be taken, so that the House can appear responsive to what the members of the public petition for.

Mr. Speaker, Sir, the Bill is about petitioning Parliament. I do not see how we can amend it to provide for petitions to county assemblies, because these will not be part of Parliament. We need to realize that county assemblies are going to be assemblies on their own and they will also be passing legislation. They will not just be idle to wait for the National Assembly to pass legislation to do things in a certain way. That is why we wanted to devolve functions. Therefore, we are providing assemblies at the county level, so that they can also have business to undertake. I am sure each assembly will have its own unique way of wanting to engage the county citizens. The House should not attempt to micromanage those assemblies, when they will also have their mandates that will be limited to certain things. So, I would rather we leave them to do their own things and pass their own laws or manage their own affairs. This is about petitions to the national assembly.

With those few remarks, I beg to support.

**Mr. Chanzu:** Mr. Speaker, Sir, I also rise to support this piece of legislation. The document is brief and precise and it makes it easy for anybody who will want to make reference to it. It is also good because we have been talking about the new Constitution that we put in place two years ago. This also goes a long way to operationalize one of the articles in the Constitution that is Article 119. There is also the comfort that the petitioners will feel. The way the schedule is prepared here, has given us a standard format, which is very brief and precise. That will give comfort and is also predictable in the minds of the petitioners, because they will be able to put down in a precise form what they will want to petition about. That is very important because it gives comfort to those who will be doing it.

Mr. Speaker, Sir, it is also important because it allows, as is indicated here, public participation in Parliamentary and legislative process, which has been lacking in this country.

We have been doing things on behalf of those whom we represent but not involving them; this has had very bad effects on some of the issues that we have to deal with. This will also serve the voiceless, that is, those who were not able to be heard will now be heard through such petitions. They will also include those who are marginalized and the less fortunate. They will now have an opportunity through this law to be heard.

Therefore, I support and it is also good that we are formalizing the format in which petitions should be done.

With those few remarks, I beg to support.

**Mr. Langat:** Mr. Speaker, Sir, I also rise to support this Bill, the effect of which is to ensure that the public will get access to Parliament. For many years, there has been a disconnect between the National Assembly and the public. Many Kenyans assume that Parliament is a very sacred place, where they cannot go. This Bill will assist them to access Parliament.

**Mr. Muthama:** On a point of order, Mr. Speaker, Sir. I really do not want to interrupt the hon. Member, but looking at the business before us and the mood of every contributor, I suggest that you call upon the Mover to respond, so that we can move ahead to other business.

**Mr. Speaker:** Very well; I have heard you but looking at the requests that I have, I will capture the interest that is still left then we will ask the Mover to reply.

Proceed, hon. Member for Ainamoi.

**Mr. Langat:** Mr. Speaker, Sir, I was saying that for many years Parliament has been seen to be very far removed and sacred place which Kenyans cannot access. This is one opportunity that will enable Kenyans to access Parliament and present their petitions. We have been meeting groups of Kenyans outside the National Assembly gates trying to present petitions or raise issues. I would have wished that we make a provision that the National Assembly should create the necessary infrastructure to enable Kenyans visit and present their petitions. It should be a place where they can come and be received officially. What has been happening is that many times they have been forced to block the gate, so that they can get attention. We should formalize the attention given to members of the public who have petitions. We should have people to receive them officially.

With those few remarks, I beg to support.

**The Minister for Trade (Mr. Wetangula):** Mr. Speaker, Sir, I support the Bill and I will be very brief. I want to urge the Minister, when it comes to the Committee Stage to simplify the manner in which petitions are presented. Persons who bring petitions to the House are groups of people, or individuals, who ordinarily either are unable to come to the House or do not have a Member who represents them to bring an issue to the House. Sometimes, they even look for an hon. Member who does not even represent them in their jurisdiction. I want to urge that, as Mr. Langat said, we should have a special office for receiving petitions. Once petitions are received, there is no need to hand them over to any hon. Member to present them to the House. Once they are received, they should be deemed to have been presented and the Office of the Clerk and the Office of the Speaker should find a way of getting them to the Floor, so that the House can know that a petition has been presented.

Mr. Speaker, Sir, with the development of easy communication, I do not think that it should be hard and fast in the law that a petition must be physically presented to Parliament. Members of a community sitting in the Ilemi Triangle up north Kenya can mail their petition to Parliament. Once the petitions come in by mail, they should be received and acknowledged as if they were hand delivered and be processed like any other mail.

Mr. Speaker, Sir, once the judicial commission receives it, it does not matter whether it was hand delivered. It should be processed like any other petition. This afternoon, I heard on radio that the Chief Justice has announced that members of the public can file court documents through email. If they can do that, I do not see why Parliament should not follow suit and receive petitions through emails and other modern ways of communication. That way, we can ease the pressure on the public to come and picket at the gate or waylay any hon. Member, especially those prone to playing to the gallery, to hijack petitions at the gate and come to present them to the House.

Finally, I want to urge that once petitions are received, it should not be just statistic that the Office of the Clerk will keep a record. I want to urge the Minister at Committee Stage to bring an amendment so that within 30 days of the receipt of the petition, the petitioners should be made to know, in some way, the fate of their petition; whether it has been passed on to the relevant department, whether the Office of Mr. Speaker and the Clerk is able to deal with it or whether any other authority can deal with it, so that we do not pile petitions and at the end of the year, say we received 100 petitions and did nothing about them. That is the only way we can make and give meaning to this wonderful legislation that will give the voiceless an opportunity to present their grievances to this House.

With those few remarks, I beg to support.

**Mr. Speaker:** Hon. Members I have no further requests. That tells me, therefore, that there is no interest that is still unattended. So, proceed, Mr. Minister.

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. Wamalwa):** Mr. Speaker, Sir, I wish to thank all hon. Members for contributing and for supporting this Bill. I just want to assure them that some of the concerns they have raised are already addressed through our Standing Orders. That is because Clause 5(2) makes it very clear that once a petition - and Dr. Khalwale had raised this concern - is tabled in Parliament under this Act, it shall be considered in accordance with the Standing Orders of the relevant House. So, whether it is the Senate or the National Assembly, the Standing Orders are very clear under Standing Order No.210(2) that, once the petition is presented--- Whenever a petition is committed to a department of the Government, the Minister responsible or any other designated Minister shall - and it is using mandatory words - in not more than twenty-one calendar days from the time of reading the prayer, respond to the petitioner by way of a Statement in the House addressed to the petitioner or petitioners. Whenever a petition is committed to the National Assembly, the relevant committee shall, in not more than twenty-one calendar days from the time of reading the prayer, respond to the petitioner by way--- So, I believe this Bill as drawn together with our Standing Orders has a very clear procedure on the line of action and form of petition. We will be able to act on it. I also agree with Ms. Karua that, perhaps, the Implementing Committee of the House also needs to follow up to ensure implementation in terms of actions on the petitions. That is because as I said, there are some that are still pending. But there were others that were handled very well by this House and I am very grateful to you, Mr. Speaker. You gave directions on a petition I brought before this House on persons with albinism and, because of the action taken by this House on that petition alone, the Government set aside Kshs200 million to assist persons with albinism and persons with disabilities, including getting them sunscreen lotions to help them avoid cancer of the skin. We want to say that this Bill is important. We agree with some hon. Members who have suggested that, perhaps, we need civic education. We need members of the public to know that there is a channel in this House for them to come

directly, speak to us and petition us on matters that concern them. This has happened before with tremendous benefit to those who have had time to petition this House.

I also want to agree with Messrs. Wetangula and Benjamin Langat. It is important that when Kenyans come to this House, they must know where to go and present the petitions. So, we will need an office or a designated area where petitions are presented in an orderly manner and members of the public can get support from staff of the House to ensure that petitions are received properly and processed expeditiously. This will be very important. The form in which the petitions are presented, we are going digital. We are migrating from the analogue technology to digital technology. I think time has come when we will not just require someone moving all the way from Todonyang, Mfangano, Migingo or even Faza Island and the remotest areas of this country to come here with a bulky petition, when it can be done through technology. So, Mr. Wetangula, I want to appreciate that contribution and say that we will improve on this as we go to the Committee Stage.

With those few remarks, I beg to move and thank hon. Members for supporting it.

*(Question put and agreed to)*

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

*Second Reading*

THE NATIONAL INTELLIGENCE SERVICE BILL

*(The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security (Mr. Haji) on 22.8.2012)*

*(Resumption of Debate interrupted on 22.8.2012)*

**Mr. Speaker:** Hon. Members, our records indicate that Mr. Orenge had the Floor and he had a balance of eight minutes. He is not here. So, we will take whoever else is interested and Mr. Wetangula appears to have requested first.

**The Minister for Trade** (Mr. Wetangula): Mr. Speaker, Sir, I want to support this Bill and urge the House to support, pass it and thereafter, strengthen and implement the content so that we can secure our country.

With the growing levels of terrorism, extremism, intolerance and sophisticated crime, we need an equally sophisticated, empowered, well trained and responsive intelligence service to protect the people of this country. Previously, the intelligence service, better known in those days as Special Branch (SB), was notorious for doing everything but gathering intelligence. They were part of the brute side of the Police Force. They were notorious for torturing people. Indeed, you can see from the media that there are some myriad litigations going on at the High Court of Kenyans who were improperly treated by the forerunner to this unit of our security agencies.

*[Mr. Speaker left the Chair]*

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

Times have changed. The intelligence Service does not have to man, keep or own cells to incarcerate and torture people. They do not have the capacity to torment people. All they have is to gather intelligence and give early warning to the system, so that we are able to nib in the bud any dangers to our country.

Mr. Temporary Deputy Speaker, Sir, you have seen what has been happening of late. I am sure if the intelligence service redoubled their efforts, this young extremists and intolerant characters that have been tossing explosive devices in houses of worship and social places could be tracked down, arrested and stopped. I want to urge that as we go to the general elections, the first election after very challenging outcome of our previous election, we will count very heavily on the information gathering, early warning systems and the ability to stop any activities that may endanger peace and security in this country. What we are giving the intelligence unit in this Bill must go hand in hand with those who are charged with the ability and responsibility to enforce.

Selective application of the law has to come to an end. We have been told of cases where early warnings were given, but nothing was done. We know and we saw the outcome. So, as we support this Bill, I want to urge that the intelligence service recruits the best of the best. It is called an intelligence service. It must recruit intelligent Kenyans, intelligent Kenyans able to read situations, to understand situations, to rise to the occasion to forestall dangers where they are detected. I want to see a situation where the intelligence service living up to its name is constantly ahead of everybody else, particularly criminals. We have money launders, drug traffickers, international criminals on the run, bogus asylum seekers and all manner of people with very dubious intentions. Therefore, the intelligence service must carry out intelligence to be able to make our borders, country, and citizenry safer. In so doing, I also want to urge that the Act is for utmost good, in respect of the law, in respect of people's rights regardless of age, religion, colour or creed. I also want to urge that we avoid any dangers or temptations to profile any community or any race in this country, so that where there is a wrong doer, he must be dealt with as a wrong doer and not as Muslim, Christian, Somali, Indian or whatever. The law must apply to everybody equally.

Mr. Temporary Deputy Speaker, Sir, I have heard and so have you, I am sure, grumbling out there that the passage of this Bill will entrench or create a Police State, far from it. What I have been hearing is that we are empowering some intelligence officers to bear arms. I do not see why that should be a problem. There are so many Kenyans who are licensed to carry guns. I am sure half of this Parliament has Members who are licensed to carry guns. If we are going to entrust our intelligence service to track down criminals and dangerous criminals at that, more particularly terrorists, who maybe armed in a most dangerous manner, I do not see why we should not allow them in certain instances to be armed as well. That is the only way they can execute their duties. If there is a wrong group armed somewhere, of course, one will expect that the intelligence service will tell the police to go and arrest them. By the time they tell the police to go and arrest, the mischief will have been done. So, there must be certain situations, just like civilians, including these Members of Parliament who are licensed to bear arms, that intelligence officers should equally be allowed to be properly equipped, so that they can take care of any situation that compromises or endangers public safety, national security and peace of the people of this country.



Mr. Temporary Deputy Speaker, Sir, once this Bill is passed, I want to see a situation where every county, particularly volatile counties in areas where we have repeated restless inter-communal rifts, areas close to international borders where we have sometimes disturbances and raids from our neighbours and areas where there are constant tensions--- If you look around this country, you will know that at every election time, there is trouble in Trans Nzoia, Kipkaren, Coast and other areas which we know. Those must be areas of focus. Not for them to go there and compromise people's rights, but do a job and make sure that what we saw in 1990---

*(Mr. Wetangula's microphone went off)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Could you then request? Just press the button one more time! I will give you time.

**The Minister for Trade** (Mr. Wetangula): Thank you, Mr. Temporary Deputy Speaker, Sir. I could see my fellow bull fighter following what I was saying.

Mr. Temporary Deputy Speaker, Sir, we want to pay attention to flash points that we know, so that we can make sure that we will not have our children reading in our history books that we used to fight at election time. It has become routine that every time we go to elections, people start arming themselves as if they are going to war. We are going to competition to produce leaders for this country and may the best win, but not to quarrel, fight and lose lives.

With those remarks, I beg to support the Bill and urge colleagues to support it as well so that we can move on.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, when I think about this Bill, which I rise to support, I look at it as being the door through which we shall ensure that the survival of the state called Kenya and our national values is ensured. For this reason, I want to support this Bill and join hon. Wetangula in urging Members that if there is a Bill which we should all support, it should be this Bill that assures us State survival and survival of our national values.

Mr. Temporary Deputy Speaker, Sir, I want from the outset to congratulate the National Security Intelligence Service (NSIS) for the success they have demonstrated in ensuring that the insurgence of *Al Shabaab* has not done more damage than we have witnessed to date. I am also aware that it is also through intelligence that the Kenya Defence Forces are recording success upon success in Somalia.

Mr. Temporary Deputy Speaker, Sir, the challenge to supporting this Bill is the issue in the Constitution that addresses the matter of freedom of access to information. I want to request my colleagues that as we look at the issue of freedom of access to information, we must treat that on the principle of need to know basis. What is the use of having access to State intelligence that has got to do with matters containing a threat to the country, just for the sake of being seen that you have access to information?

Mr. Temporary Deputy Speaker, Sir, I also want to urge the hon. Members that as we take it easy on this matter of access to information, we should address the issue of patriotism. It is upon us leaders – Members of Parliament – who will be interrogating the Ministry of State for Provincial Administration and Internal Security, on matters of secrecy. We are the ones who are supposed to demonstrate patriotism by making sure that we help the Ministry of State for Provincial Administration and Internal Security to enjoy this secrecy that is important for the success of this information.

Mr. Temporary Deputy Speaker, Sir, if in being patriotic we commit ourselves to supporting the National Intelligence Service, then we must know that we must go all the way.

This will mean that Members of Parliament and the rest of the leaders in this country push the Executive to ensure that all mobile phone owners are registered. There is no way you can pursue a criminal if he is able to change his phones from time to time. It is important that we support the State on this. What is more, we must demand that the State ensures that these so-called anonymous calls that we get on our phones, are stopped. Surely, the person who is calling me knows my number. So, why should he enjoy the privilege of communicating with me when he knows my number and I do not know his number? We must stop this culture of anonymous calls. Somebody with good intentions will, surely, not give you an anonymous call.

Mr. Temporary Deputy Speaker, Sir, let me, on this issue of anonymous calls, tell the hon. Members what obtains in Ethiopia. Ethiopia might not be a good example for purposes of freedom, but in Ethiopia if you are found to be using a roaming number, believe me you, they provide that you be jailed for 15 years. I am not saying that we should do the same, but it shows--

**The Minister for Trade** (Mr. Wetangula): *(off-record)*

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, the Minister for Trade is supporting me vehemently. He is saying that the same obtains in the United Kingdom (UK). You cannot expect to be safe, unless you make it difficult, in the modern era of Information Technology (IT), for crooks to have difficulties in getting a number. We want a criminal who crosses the border from Uganda into Busia and then Kenya, to find it very difficult to make a call in Kenya, until he is forced to borrow a phone from somebody, and the moment he does that, that is the beginning of tracking down that particular criminal.

Mr. Temporary Deputy Speaker, Sir, having said those things, which are fairly dangerous on this Bill, I am supporting the clause in this Bill that provides for surveillance of phone users. We must do this. If you are pursuing the issue of surveillance of phone users; who is afraid to be subjected to this? Ordinarily, you will find that they are usually the high and mighty; Members of Parliament, sometimes, included. What is their biggest fear? Their biggest fear is actually nothing. It is that some of the communications they make on petty little things like love talk and messages will be kept on a record. Who cares if my communication with a presumed lover is recorded, but in the process of being recorded, I enjoy my relationship with her in a quiet and nice city called Nairobi, in a five-star or two-star hotel or even a brothel, for those who use them, so that we can feel safe wherever we are. Why would you want to oppose this kind of law? This is a fact. For those of you who come from the western part of the country, if you stop at a place called Salgaa, for example, or the ones who go down to the Coast, if you stop at Mlolongo, there are all those truck drivers. It is a very beautiful hideout for criminals. Therefore, we must track them.

Mr. Temporary Deputy Speaker, Sir, the only thing we would do, as we allow the NSIS to track our phones, is to demand of these officers very high ethical standards. So, an officer serving in this service must be tested and proven that he or she is a person of high ethical standards, only comparable to a group of doctors called anesthetists. Those are highly ethical people, because once he subjects you to anesthesia, you are at his mercy. He either reverses or leaves you there, and you will remain in the graveyard. So, we demand for these high standards.

Mr. Temporary Deputy Speaker, Sir, let me give the hon. Members an example of what I found while researching on this Bill, as obtaining in India. In India, which is one of the most democratic societies in the world--- In fact, it is the biggest democracy in the world. In this biggest democracy in the world, they have allowed their state intelligence to even subcontract surveillance. You can hire a private firm and tell that firm: "I am giving you this number. For the

following 72 hours track it so that I am in total picture of what that number is doing.” That is how nations of the world remain safe. What is more, usually regarding these so-called travel advisories that we hear from the United States of America, United Kingdom and Canada, they are able to tell us that Mombasa is about to be bombed by simply monitoring the conversations of the possible attackers of that particular place. So, we use that kind of method to get what we would get firsthand on our part. So, why would we then tie the hands of the officers that take care of our security?

Mr. Temporary Deputy Speaker, Sir, I will not stop---

**The Temporary Deputy Speaker** (Prof. Kaloki): Your time is up!

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, I beg for two minutes since you were very kind to hon. Wetangula.

**The Temporary Deputy Speaker** (Prof. Kaloki): You will get just a minute!

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, a minute to a presidential candidate and a minute to a senatorial candidate. Thank you very much.

Mr. Temporary Deputy Speaker, Sir, I just wanted to finish by saying that corruption amongst officers of NSIS will kill the force. It is important that we weed out corruption amongst consumers, namely, the people who implement and enforce.

Mr. Temporary Deputy Speaker, Sir, finally, I support the issue of allowing NSIS officers to carry firearms. This is because these young men and women work in dangerous places, amongst very dangerous people.

Mr. Temporary Deputy Speaker, Sir, I beg to support.

**Mr. M.M. Ali:** Mr. Temporary Deputy Speaker, Sir, I stand to support this Bill, but I have got several areas that I would like to propose to this House that we look into very seriously so that as we support the NSIS we do not undermine the Constitution.

Our territorial integrity is supreme and we must protect our territories at all costs. However, in so doing, we must make sure that we do not infringe on the rights that have been provided by the Constitution, for example, the Bill of Rights. If this Bill is passed in the present form, there are many clauses that contradict the said Bill of Rights which has been granted in the Constitution. There are, indeed, very glaring contradictions in this Bill. For example, Clauses 31 to 42 limit the rights to privacy and so forth which have all been provided for in the Constitution.

The Bill proposes that individuals' houses can be searched, instruments can be installed and communication can be monitored. Yes, we said that we have to track down the criminals, but we have to do it in a more civilized manner rather than going into everybody's house without prior information and installing gadgets. I think that is not proper and so we need to look at some of these things to ensure that we pass something which this nation will be proud of. It should not be just because we have suffered in the hands of terrorists and there are looming dangers. We cannot just pass anything simply because we have been terrorized.

There are some clauses which provide immunity to the service, but I think that borders on impunity. For example, Clause 78(2) insulates the service from normal accountability that is required of other such office holders. It goes ahead to say that the service is not accountable to a body such as Parliament or commissions of inquiry that are set up. Parliament has powers to impeach a sitting President. So, when we say that this service is not answerable to Parliament, then I do not know what we are talking about. That is in Clause 78(2).

There are some clauses which if passed in the form they are, again, they are dangerous and they will lead to censoring and, in fact, gagging the media whereby it is prohibited for people to access some information. Kenyan has achieved a level of democracy where freedom is

guaranteed. We go about our businesses in a legal manner which is not contradictory to the Constitution, but when we end up passing such stringent conditions in such an important service, this could be misused. Our media is very vibrant and informative to the nation. When we say that they should not hold some information or seek to gather some information, that amounts to gagging it and we should guard against that. I think we must be vigilant on that one.

Mr. Temporary Deputy Speaker, Sir, it is provided for in this Bill that warrants can be issued by the Director-General (DG). These warrants, as everybody knows, are normally issued by a judge! I think we need to look at that very carefully. The Bill says that the DG can issue a warrant without referring to the courts. We must guard against that. I am not having any person in mind.

Today we might be having a gentleman as the current DG. We are proud of him, but who knows who will be there tomorrow? We are passing this Bill for posterity. So, I do not think we should pass this Bill in this form. For example, I am not comfortable with the clause that states that the DG can issue a warrant. The Bill goes ahead to say that “in extreme emergencies”--- These “extreme emergencies” could be misconstrued! We have to define what an extreme emergency is. We need to go ahead and define some of the terminologies in this Bill. If we do not do that, some rogue leadership, God forbid--- We are very grateful that we have had a very decent and understanding President in the name of hon. Mwai Kibaki, but we are not sure who will be the next President of this nation. Given some loopholes such as these ones, a rogue leadership, God forbid, will use this kind of opportunity to take us back to the dark days. You all recall the torture chambers in this country. We must, therefore, be vigilante to ensure that Kenya’s democratic space that we have achieved is guarded.

We are very proud of our Constitution and we must protect its spirit and letter. Otherwise, some of the clauses as I have taken you through might lead us into reverting this nation to the dark days and even make it worse. We might bring this nation close to a police state.

Mr. Temporary Deputy Speaker, Sir, with those proposals, I support this very important Bill.

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, I will also be very brief on this very important Bill. First of all I want to thank the drafters of this Bill. The NSIS has been a mysterious body. For the last 50 years Kenyans have not known deeply anything about this body. It is through this new legislation that reforms will be carried out in this service. The operations of this service will also be modernized.

It is fresh in our minds that we have lost many youths in this country and yet this body has not told Kenyans how some of the *Mungiki* youth lost their lives. Who arrested them? Who tortured them? They were eventually murdered. If they were a credible body, this area would have been addressed properly. It is beyond our understanding how grenades and bombs and AK47s are finding their way into our churches. With a credible body, these threats facing our churches will be addressed. I recall a lone gunman in my constituency who killed more than ten people within a span of six months. This person was not arrested within that time. With such a hardworking Minister, Yusuf Haji, I would like to bring it to his attention that there is a huge well built person in my constituency at a place called Kimende who is now terrorizing my own people. It is high time the NSIS are sent there to apprehend this person.

Recently we mysteriously lost young university students in our universities. No arrests have been made. With the modernization of this service, it will be possible to address security matters in this country. Israel has Mossad. It led to the rescue operation of Israelis in Entebbe,

Uganda. Britain has M15 and M16. They address their internal security matters. The USA has the Federal Bureau of Investigation (FBI) while the Russians have KGB. We want to have a better NSIS in this country. It is this law that is going to establish the service. Currently, we have drug trafficking in this country and it is tainting the image of this country. Once this law is in place, the image of this country will improve and security issues will also be addressed.

We know about the Kikambala and Nairobi bomb attacks. Our NSIS should have addressed some of these issues. Piracy in the Indian Ocean is an issue that needs to be addressed properly. Illegal groupings also pose a very serious challenge to the stability of the country. I wish to take this opportunity to thank the NSIS for their prediction that violence was likely to occur in 2007, but the Executive sat on this crucial information. I hope the new National Intelligence Service will continue with that vigor and commitment to prevent and detect crime in this country. Carrying of arms by the service officials is important because we have terror and *Al Shabaab* threats in this country.

With those few remarks, I support the Bill.

**Mr. Mbau:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to make my contribution towards this very critical Bill, which I must say, on the outset, that I support.

In underlining the importance of this Bill, while the Constitution places, as we all know, a very high premium on the openness, freedoms and accountability of the people of Kenya, we are being called upon to ensure that we strike a balance between the extent to which the citizens of this Republic can exercise those rights and freedoms and also safeguard the interests of the wider good of the public. Earlier contributors have alluded to the need to look at the extent in which information can be accessed within public offices, and more importantly, information of security nature. We all know that the borders of our country have of late become porous and so exposed because of eternal terrorism threats. Whereas I am aware that an anti-terrorism Bill is waiting to come to this House for discussion, before it comes, I believe the passage of the law that is before us for discussion will take us a little further in ensuring that we keep the interests of our people more safeguarded.

I must also note that the current crimes that are being perpetrated on Kenyans are happening because of the level of sophistication of the criminals. We have crimes in cyber cafés, crimes occasioned from outside our borders and global crimes. We have crimes in the way of human and drug trafficking. These kinds of crimes are possible because of technological advancement in the world. I want to recommend that the provision to give our security agencies equipment and capacity to respond to and address these sophisticated crimes be safeguarded and secured in this Bill. I support the view of the Members who have stated that there is need for the members of our security organs to be allowed to carry arms and tools that can safeguard their personal interest because of the nature of the information they hold and the places where they go to gather this information.

We need to avoid situations that have been implied by hon. Wetangula; situations that occurred in this country in 2008 and we were asking where our information gatherers were. We were asking why some things happened before we could be told. Even today as we debate this Bill, we still have incidents that keep on happening and we want to begin to blame others. Before we blame others, let us also be willing to ask ourselves whether we have facilitated, armed or ensured that the right mechanisms, legal or otherwise, have been put in place within the necessary arms of the Government.

In Clause 27(3), I also note that this agency that is supposed to operate in a manner so as to secure intelligence information that is useful for safeguarding the interests of this country is also being subjected to the Cabinet Secretary. This is being done on the basis of the fact that it is important to ensure that the agency that gathers information of this nature plays a non-partisan role. When an agency exercises some autonomy; some level of independence, even though it is being over sighted and guided as provided in Article 28, we need, as Parliament on behalf of the people of Kenya, to be sure that the interests are furthered on behalf of Kenyans and not necessarily on behalf of certain groups, individuals and regions.

Clause 66 requires this agency to be subjected to oversight by joint Committees of Parliament. A previous speaker has said that the service will not be reporting to anybody, but Clause 66 states clearly that to give effect to Article 95 of the Constitution, Parliament, through a Joint Parliamentary Committee will be overseeing the expenditures and the budgeting of the agency. What Parliament may not be allowed to do is to micro-manage the day to day operations of that organ. To the extent of oversight, it is provided for in this Bill that, that will happen to the extent that we do not appear, as Parliament, to be encroaching too far, just as we should not encroach too far in the operations of the Executive, so that it is able to achieve its stated mandate and objectives, which it will have promised in its manifestos during its campaign. As the representatives of the people of Kenya, we need this Bill to pass. The people are properly safeguarded in the various clauses. I heard another colleague who referred to the possibility of the chief of this agency being able to issue warrants of arrest.

Mr. Temporary Deputy Speaker, Sir, let us read this Bill comprehensively and not selectively. I have read another section that says that for this to happen, the Chief Executive Officer of that Agency is supposed, first of all, to have applied to the High Court to be allowed to issue warrants of arrests. So, you cannot just wake up one day and think that a certain citizen is in the wrong and proceed to issue warrants of arrest or issue warrants to investigate or search his house or premises. To do this, you have, first of all, to apply according to what is proposed in the Bill; to apply to the High Court to get warrants of arrests.

I want to say that this is a Bill whose time has come especially now that we are on the home stretch towards the next general election. General elections require a lot of intelligence information, checks and balances so that we are, at least, curtailed, safeguarded and aware that somebody is watching and mandated to report on us and to recommend appropriate action on us because we are the same leaders who go out there and go beyond the limits that are allowed.

I support this Bill and thank you.

**Mrs. Shebesh:** Thank you, Mr. Temporary Deputy Speaker, Sir. I will be very brief because I can see that this is an issue which has a lot of interest. Since I had spoken a bit earlier, I am not sure that the Minister wants to keep hearing my voice today. I want to say that this is a very ambitious Bill. When I say that it is ambitious, I am saying that I thought intelligence gathering was just intelligence gathering. I do not know how police work and warrants of arrest come in. This is a very ambitious Bill but we will finish that ambition on the Floor of this House.

Unfortunately, truth be told, the NSIS in this country has become an entourage of the President of the Republic of Kenya. I do not remember during Kenyatta's time - I was very young - or even during the time of President Moi who the head of intelligence service was. This is because they were never seen in public because their work was to gather intelligence. I did not even know that the intelligence gathered by this country could be used to prosecute the same country. I thought that intelligence is to protect its own. It shocked me that during the time of the post-election violence, there was enough intelligence to know who was going where. Instead

of that intelligence being used to stop the violence, it was instead carted off to the International Criminal Court (ICC); to take our people there. The confidence of giving the NSIS the things that have been written in this Bill will not be under my watch. I can tell you that Kenyans all over the world and Kenyans in this country know two things; that anything that goes wrong or you have people leaving one party, it is the NSIS that is responsible; party springing from nowhere, it is the NSIS and if it is grenade attacks that you cannot explain, it is the NSIS. Until you change the perception of the NSIS in this country so that Kenyans can be confident that your work is not to record my conversation so that you can leak it to the media tomorrow; that Mr. Jakoyo bought a suit worth Kshs500,000 because that is the kind of information that you gather, we will not do much. The NSIS will tap our phones in the guise of collecting information. Before phones came, was intelligence not being gathered? Why must you keep tapping everybody's phone? That is not the only way to gather intelligence. We will not be intimidated because we have a new Constitution and we are simply saying, first, change the perception of what an intelligence service is. Let us stop having the kind of incursions we are seeing all over the country. You do not need intelligence service to tell you that there is tension in the country. This is the case and yet there is no report on intelligence so that, that can be forestalled. We want to give this country confidence. We also want to change the way things are being done.

We have reformed the Judiciary and the police is being reformed. If we are reforming the police by giving the NSIS the work of the police, that is not the way to go. This Bill states very clearly, again, that we will be transiting the current members of the NSIS. I want to say, again, without any fear of apology that we have no problem transiting them but they must be vetted. There cannot be anybody in this country who is above vetting when we are vetting everybody and anybody for any job. So, they can continue with the job but they must be vetted so that Kenyans can have confidence in their security agencies because at the end of the day, Mr. Minister, we must be secure in this country for us to have peace and prosperity.

I support the Bill.

**Mr. Keynan:** Thank you, Mr. Temporary Deputy Speaker, Sir. In developed parliamentary democracies, normally after the Minister, the second chance goes to the person who chairs the Committee. I hope that we will entrench those rules because that is where we are headed.

*(Applause)*

But that notwithstanding, I want to appeal before I make my comments that this Bill is not for particular groupings. This Bill is for Kenyans and for posterity. This Bill is also for the entrenchment of the rule of law. This Bill is meant to cure any lacuna or deficiencies in the legislation that we have so far erected in as far as security issues are concerned.

Regrettably, I watched with dismay what hon. Wetangula said. I will say this without fear of any contradiction. We are not debating whether or not we will pass this Bill. It is a must that we pass this Bill because we have a constitutional deadline. That is not what is being debated. What is before us as a result of this process is, will we give Kenyans a Bill that will be watertight in intelligence gathering while still remaining within the framework of the Constitution? That is one thing that we must achieve.

Again, we need to understand what constitutes the functions of any intelligence agency all over the world. Let us not confuse between the role of the police and that of the National Intelligence Service. If you look at the history of this critical organization, and I want to go on

record, you will find that there is no Kenya without the NSIS. That is true as far as intelligence gathering is concerned and as far as remaining vigilant is concerned. However, if you go back to our history, you will see that we have had the police, the Special Branch and the formation of the NSIS in 1999. I am here and I served in the Committee on the National Administration and Local Government in 1999. Today, most Members who are contributing - I do not want to use unparliamentarily word--- Look at the title. It is “National Intelligence Services (NIS)”. We have moved from “National Security Intelligence Service” to the NIS. You need to find out what has caused the change of title. Again, because most hon. Members have travelled, I want them to compare. Our Constitution has borrowed a lot from the American example. I want you to compare the role of the FBI and the Central Intelligence Agency (CIA).

Mr. Temporary Deputy Speaker, Sir, if you go to the Criminal Investigation Department (CID) headquarters here, it is possible that you will find an officer in the name of FBI, but you will never know who is serving in CIA. In every jurisdiction, the NIS is expected to remain omnipresent. They are expected to be present at all times. They can recruit you and pay you double salary even as the Speaker and you remain in their payroll while you are still serving Parliament. That is the essence of the NIS.

The kind of description of the NIS we are giving here, we will create a jurisdiction of conflict. I want to report here that over the last three weeks we have engaged the services of the NIS, the different players, the constitutional implementation, Law Society of Kenya (LSK) and the Kenya National Human Rights Commission. We agreed on certain critical amendments. The NIS agrees these amendments are critical for them in order to enhance their position. We will move those amendments at the appropriate time.

Clause 18 deals with the functions and powers of members of the service. Basically, this is a duplication of the Police Act. It is not feasible. For example, an NIS officer arrests a suspect. The individual is taken to court, but the NIS officer is not supposed to be a witness in a case. The information is supposed to be implemented by another agency. This officer is supposed to remain discrete and all over. Therefore, there we have agreed that it is not in their interests. We will legislate this today and tomorrow we will have issues of police brutality and other issues. We will find the Director General of a respectable intelligence agency appearing before the UN Human Rights Rapporteur. Is that the organisation we want to create? We will find the Director of NSIS being called as a witness in a case that involves a criminal element. That is not their role. The work of the NIS is to collect, collate, synthesize and disseminate to the relevant Government agencies for implementation. This is what we must achieve in this Bill.

The Minister and his team and even the NIS are conscious of this. A few weeks ago, we have had very fruitful discussions with the Ministry, the LSK and the CIOC. We interrogated this Bill. We will table comprehensive amendments from Clause 1 to the last. Therefore, the issue of whether we should pass this Bill or not does not exist. We will not only pass this Bill, but we will strengthen it so that it remains relevant and compliant with the Constitution while ensuring that we are protected as a country.

Hon. Members, let us not politicize this Bill although I know there are perceptual issues. But again we must say for us to enjoy and for this institution to be completely free from regional, party, tribal, ethnic and religious perceptions, it must be free from the politics of the day. To ensure that that happens, in certain Acts, we have proposed and they have also accepted that in the next dispensation and henceforth this agency must remain 100 per cent independent and committed to the national course of providing security intelligence to the Republic of Kenya.



Does the Bill provide enough mechanisms for our national security? Does the Bill provide enough mechanisms for counter intelligence because we are in an era of terrorism, militarism and money laundering? These issues must be addressed. Again, that is not within the purview of the NIS alone. We have the Police Service Commission. We also have the Police Service Act. We have the CID. Therefore, within that framework we must solidify the role of the NIS.

Secondly, we should ask ourselves as hon. Members whether this Bill is constitutional or not? I can tell you that quite a big chunk of the Bill is constitutional. The bits where there are typo problems and repetitions of roles, we have again suggested amendments in line with the views of all the stakeholders just to make sure it is constitutional.

Thirdly, is the issue of independence, we do not want to create an entity that will have a jurisdictional conflict with another entity. Hon. Wetangula suggested it is the right of every Kenyan to carry a gun, including the members of the service. But, again, should we be so obvious in this law to allow an NIS officer to carry a gun? No! That is not the way. They have a right to be armed, but it should not be legislated. This is because we are making it so obvious to every Tom, Dick and Harry. We did agree with the way, but we need to be very careful with the *modus operandi* and how this will be implemented.

Mr. Temporary Deputy Speaker, Sir, there is a complete section of civilian oversight. You have to work, but there has to be an element of the Government of the day. That is why there is a role for the Cabinet Secretary who will be in charge of internal security under the civilian component. There are certain elements within the Bill which I would like to address myself to. Clause 37 is on limitation to the right to privacy. It clearly provides for situations where the Bill of Rights can be suspended if, for example, one is suspected to have committed certain crimes. But again you must be subjected to certain procedures. On those procedures, there were issues here and there. We have suggested within the law and they have accepted. Other players have accepted. Therefore, what one hon. Member said will be addressed in that particular amendment.

Clause 66 of the Bill has attempted again to usurp the role of Parliament. Again, after a long debate we realized that what they did was completely unconstitutional. Nobody has a right to think for Parliament. It is Parliament that decides on what they want. Therefore we have also amended that Clause 66. Where they have suggested a committee comprising of informers within Members of Parliament, we are saying that should not be the rule because it should be left to the relevant committee because Parliament at its own time will legislate and decide which committee---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Keynan! I will give you one more minute just to conclude your contribution. You have one additional minute.

**Mr. Keynan:** Mr. Temporary Deputy Speaker, Sir, finally, the issue of parliamentary oversight was not very clear. When you talk of joint services we need to understand what will be the role of the Senate and the National Assembly. Again, the issue of joint committees does not arise. Anything national will be within the party of the National Assembly. We had agreed with them on that. We had also introduced another function of the service at the county level. They must be there to advise the county government on security and intelligence.

I want to appeal to hon. Members, this is our Bill; we must pass it. That is not in question. Let us again make amendments from an informed position, so that we can strengthen for the sake of our country.

Secondly, this is a very important organization and their decisions must be implemented. They have the information, but is the information being accessed? That is the question that we ought to ask ourselves. Let us support the Bill and suggest amendments that will strengthen this institution that will also make sure the rule of law is not violated in this country.

Thank you, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, we have about 15 requests here. Should we reduce the time from ten minutes to five minutes?

**Hon. Members:** No.

**The Temporary Deputy Speaker** (Prof. Kaloki): We will stick to ten minutes.

**Dr. Laboso:** Mr. Temporary Deputy Speaker, Sir, I will keep it brief as possible because the Chairman of the Committee has given us assurances that there will be a lot of amendments to enrich and strengthen this Bill.

First of all, this Bill seems to have given too much power to the Director-General. The Director-General is literally doing and in charge of everything. So, rather than have this Director-General making unilateral decisions on his or her own, recruitment to this agency must be all inclusive. I believe that for us to get this country represented in this agency, we should do recruitment at the county level. Even if it will be done in secrecy as it is expected, let them do their secrets in the county level.

On the same note, even the senior officers in the service must also reflect the regional balance of Kenya. Given the way this body is currently constituted, it is clear that there is no regional or ethnic balance. As I said, we cannot run away from that requirement because it is a constitutional requirement. It is what we have indicated in our Constitution. It is a principle which must be applied in all appointments of public office holders.

Mr. Temporary Deputy Speaker, Sir, on the question of firearms, I am quite gratified to hear what the Chair of the Committee on Administration and National Security had indicated. We are saying, yes, NIS officers can carry firearms, but just for self defence. We do not want confusion in the roles and responsibilities of the various security organs. What belongs to the police should remain with the police. The NIS is just an information gathering body. If we see that there are gaps in the policing structures, then let us strengthen the policing laws to enable officers to carry out their functions properly. So, for purposes of self defence, NIS officers can be allowed to carry firearms.

On the question of limitation of the freedom of speech and freedom of expression, it is even difficult to understand how some of the Clauses can be implemented. For example, Clause 33 is talking about freedom of conscience, religion, thought, beliefs, *et cetera*. Is it possible to police those concepts? So, I hope that this is amongst the Clauses that the Committee has looked at to ensure that they conform to what is provided for in our Constitution.

Mr. Temporary Deputy Speaker, Sir, on the issue of budgetary provision, Clause 72(4), simply states that the Service shall maintain and operate a one line budget. Again, we know what we have gone through in this country. We know all the things that fly around in rumours and propaganda. It would really help if we can be able to unpackage what "one line budget" is. What are the billions of shillings that we passed in this House for this body being used for?

We do not want to be going round and saying that parties are being formed by the NIS, and that candidates are being funded by the NIS. So, let us get a clearer understanding of how the Service is actually being run.

Mr. Temporary Deputy Speaker, Sir, lastly, we seem to be legislating ourselves out of ever being employed again just because of having made the mistake of becoming Members of

Parliament. Is it a privilege to be a Member of Parliament or has it become a curse? It looks like we have legislated ourselves out of ever getting any other job once we become Members of Parliament. So, again, this provision is not necessary, and we should remove this Clause.

With those few remarks, I beg to support.

**Mr. Mureithi:** Mr. Temporary Deputy Speaker, Sir, I thank you for according me the opportunity to contribute to this very important debate on the National Intelligence Service Bill.

Mr. Temporary Deputy Speaker, Sir, I am glad that you lived in a developed country for quite a long time. For that matter, you know that information gathering is a very important aspect of the security of the United States of America (USA). So it is for this country. Information gathering, in terms of the NIS operations, is of paramount importance.

One of the things that must be done is to de-politicize the appointment process of the Director-General and all the other officers of the Service. Once we de-politicize that process, we shall get out of situations similar to what we have seen in the past, where an important organ of the Executive like the NIS would be used by an individual to cause havoc amongst Kenyans. That is why de-politicizing appointments to the NIS will give us a Service which will take care of the intelligence interests of this country within and outside this country.

Mr. Temporary Deputy Speaker, Sir, countries in the developed world even send their intelligence officers outside their borders, so that if there are plans for incursions by militias, like the situation we currently have from our neighbouring country of Somalia, such information can reach the security organs that are required to respond, so that those organs can act proactively.

Clause 48 provides for a process where judges are to be appointed to issue search warrants to NIS officers. However, something must be done by the relevant Committees to protect those judges. We have seen what has happened in countries like Italy, where judges who are, for instances, dealing with cases of drug trafficking, are targeted for elimination.

Mr. Temporary Deputy Speaker, Sir, therefore, since we are providing for a judicial process to enable the NIS officers to go out and search premises of people who are suspected of engaging in money laundering or drug trafficking, the identity of such judges must be kept secret. We have heard of cases where some police officers were trailed and gunned down just because they were responsible for investigations of some cases relating to drugs. So, the operations of this institution must be guarded by the country.

Since the Constitution, in Articles 260 and 132, has authorized the establishment of the NIS, it is necessary that we, as a nation, make sure that the officers recruited to serve in the Service are top notch individuals of this nation. As we have heard, NIS officers are also supposed to understand the perceptions of people of various developments in the country. So, we should recruit people from various academic areas, including psychology, so that NIS officers can even tell when people are planning to act in a manner that may jeopardize the interests of our country.

Mr. Temporary Deputy Speaker, Sir, those of us who have read the Waki Report on Post Election Violence know for sure that he predecessor of the NIS knew way back in June, 2007 that there would be a problem after the general election. The Service reported their findings to the respective Government officers. Justice Waki asked why action was not taken then, so that the security arms of the Government could prevent the incidents that took place after the 2007 general election.

That is why, in the NIS's wisdom, they wanted legal provision for some limited amount of time, so that they can move in and act to forestall a situation like the one of 2007/2008. I hear that the Committee has proposed an amendment to delete this provision from the Bill. Now that

we have decided to delete the provision for the NIS to act to forestall a bad situation, there must be an amendment in the laws, to ensure that the security officers who receive intelligence information regarding such impending situations can be held accountable, if they fail to act appropriately.

Mr. Temporary Deputy Speaker, Sir, whenever we have a problem, we blame the NIS yet the Service gathers information and forwards it to the law enforcement agencies. The lapse, in terms of the time between when the NIS provides information to the law enforcement agencies and the time when the latter act, is what creates a problem.

Therefore, I would like to suggest that even when we are in a transition period, during which a serving President is supposed to be leaving office and a President-elect assuming office, we should not subject the appointment of the Director-General of the NIS to the whims of an incoming President. Let us assume that at that moment, the outgoing President and the incoming President are not agreeable on certain issues. What should happen? They must be subjected to the parliamentary process of selecting because there is a tribunal which is being suggested in this document. That tribunal must go even to vet the remaining Director-General (DG), so that we do not have somebody coming, removing a DG and appointing a DG who will now work at the whim of certain individuals or personalities. Let us involve the personalities from the operation of the DG and his service. The service of the DG is for the sake of this nation and not for the sake of individuals.

Mr. Temporary Deputy Speaker, Sir, I, therefore, want to say: Let that service remain without fear or favour so that we all feel secure that one day, somebody will not be sent to me or to you just because he owes allegiance to one particular person. That is why I feel this Bill has come at the right time when we are going for our elections. Since we are going for elections, we must make sure that we all feel protected. Once we feel protected, that means the information that is gathered either through tapping of the information like it is done in the developed countries, is given for the right use. But we must also respect peoples' freedom such that, that information is not misused.

Mr. Temporary Deputy Speaker, therefore, I would like to say I support this Bill and I would like other hon. Members---

*(Loud consultations)*

Mr. Temporary Deputy Speaker, Sir, please protect me. So, I would like to say that we have brought this Bill at the right time. That way, the country will feel secure once and for all. We will have an impartial National Intelligence Service (NIS). With those remarks, I want to support.

**Mr. Chanzu:** Mr. Temporary Deputy Speaker, Sir, thank you for giving me the opportunity also to support this Bill. I think what we are doing is to visualize the kind of institution that we have in the NIS and the kind of people that will man that institution. In doing this, I think it places a lot of responsibility in the hands of the appointing authority, the Cabinet Secretary and also brings many challenges to this House. That is because once the appointments have been made and then the approval has been done by this House, I think it gives a lot of responsibility and challenges to the House. So, I think it is very important that as we discuss this, we try as much as people to visualize the kind of people that are going to be manning those institutions and the kind of institutions that we contemplate to have.

Mr. Temporary Deputy Speaker, Sir, I have just looked at Clause 15. I am of the view that the qualifications--- Here, it is saying that the NIS will have a DG and then below it says: "A

Division of the Service shall be headed by a Director appointed by the DG in consultation with the Council.” Clause 15(2)(b) says: “A person is qualified for appointment as a Director if the person;-

(b) holds a degree from a university recognized in Kenya or relevant professional intelligence qualifications.”

I do not know whether we have got institutions or universities which are offering degrees in intelligence. I thought this should be specific, so that we can talk about a specific qualification. If we are talking about a degree, the next one should be a qualification which is specific. We should not just say “intelligence” because this could create room for some kind of manipulation.

Mr. Temporary Deputy Speaker, Sir, under Clause 24, I want to commend the drafters for coming out clearly. At least now, we have a code of conduct and ethics which I think is specific. It will try to put some kind of discipline and order in those who are given the responsibility to serve in this body. It states:-

“In accordance with Section 3(9) and Section 5 of the Public Officer Ethics Act, and the law relating to matters of leadership and integrity enacted pursuant to Article 80 of the Constitution, the Director-General may issue and maintain a code of conduct, ethics, leadership and integrity for the members of the Service which may provide for –

- (a) professional conduct;
- (b) political neutrality;
- (c) conflict of interest;
- (d) conduct of private affairs;
- (e) dealings with foreigners; and
- (d) submission of declarations.”

Mr. Temporary Deputy Speaker, Sir, this is very important. I think we really need to have in mind the kind of people we are looking for. I know one of the hon. Members who contributed earlier talked about issues to do with ethnicity and tribalism. The issue of corruption in appointment and performance of duties I think is something that is very critical when you are looking at this.

Mr. Temporary Deputy Speaker, Sir, the people who are appointed here must be people who are patriotic enough with the information they collect and give. It should not be either diluted or compromised in a way. The information gathered must be properly used for the intended purpose and not for anything else. Those must be people who are above board. They must be people who are neutral. I think in those institutions, once those people are put in place, the issue of motivation and how they do their job must be taken care of. That way, they will not look at other places when they are carrying out their jobs.

Mr. Temporary Deputy Speaker, Sir, the aspects of being truthful, honest and other personal attributes are going to be very important in the kind of people that we will employ in that institution. There must be selflessness in the people who are going to do that. We have had intelligence officers in this country, but we still have a lot of crime that goes on. Sometimes, we wonder whether they know about those crimes and then they hide the information or whether giving information to the top is a bit of a problem. So, I think there must be a mechanism - through this motivation - where all this information can come up. I know of a situation whereby a young person who had gone to a bar was beaten and left for dead. He ended up dying. Up to now, nobody has been able to know what happened and yet, he was with some other people. So, we must have people who, once they get information, they are able to pass it over.

Mr. Temporary Deputy Speaker, Sir, somebody talked about anonymous calls. I just imagine when the hon. Member was talking, why it now cannot be necessary that once somebody is making a phone call, apart from the number coming alone, the names of the people holding those numbers must be registered. So, if somebody is calling, it should show the identity of that person, both the number and the name of the person. We need the institution to be very credible and so, we have to look at the attributes of the people that we are going to employ in that institution. I think this is something that cannot be done right away. That is why I am saying that the vetting institutions, whether it is the National Assembly, the Senate or the appointing authorities, must take into account all these factors before they bring us the people who will be appointed and finally approved by Parliament.

So, with those few remarks, I beg to support.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I rise to support the Bill but subject to certain amendments that I will be proposing.

Before I do that, allow me to give my condolences to the residents of Garsen who woke up to find 50 of their own massacred. One died in Ngao Village, four in Kilelengwani and 48 in Riketa. My condolences go to them and I call upon the Minister in charge of internal security, the Mover of this Bill, to do his best to ensure that the place is well protected, so that we do not have retaliatory acts and that peace is brought to those people. One wonders whether there was no intelligence on the impending attack.

As I rise in support of this Bill, I want to echo my colleagues who have called for separation of roles. What is rightfully given to the police by the Constitution and our laws must not be duplicated in this Bill. We support there being the National Security Intelligence Service (NSIS) because it is an important branch of our security apparatus. I support their being fully equipped and also having their own set up through this Act pursuant to our Constitution. The Constitution, and this law, in particular Section 29, calls for the co-operation of the NSIS with other branches of intelligence. If there is that co-operation, they do not need to play their role and also play the role of the police. Through that co-operation, they will be able to get the police service from the police in case of arrests and they will be able to get whatever support they need from other branches of security.

I want to say that when we call for police reforms, we should actually focus on broad reforms of the security apparatus. I think that our NSIS is ill-equipped as far as technology is concerned. There are better methods of gathering intelligence these days, including via satellite. That is the sort of modern NSIS that we would like to see. I have heard a colleague talk about security tenure of the Director General. There are some jobs which, by their nature, we should allow those appointing to also decide whether you continue in service. The buck stops with the President in matters of securing the nation, internally and externally. Therefore, the President must have a free hand in appointing the head of the intelligence service. We have already, through an Act of Parliament, given the police competitive hiring and vetting by Parliament, but for NSIS, due to the nature of their duties which entail constant advice to the President and to the Government, this person should be appointed by the President and vetted by Parliament. We must leave some decisions to the Chief Executive Officer (CEO) of the country. These are the best practices all over the world.

Mr. Temporary Deputy Speaker, Sir, there is something else we must pick from best practices around the world, which is that when a new president is sworn in, we must presume a vacancy in this particular office. Officers that are appointed by the President, when a new president comes in, whether through election or replacement after passing on of a former

president, then we must presume a vacancy when the new president comes in. These positions include the Director-General of Intelligence. An incoming President can confirm or choose to appoint another person who then will be vetted by the National Assembly. The vetting is what brings ownership, because a person of unsuitable character will not pass through vetting. The decision on whom to appoint, I want to ask hon. Members to consider leaving it to the President.

Mr. Temporary Deputy Speaker, Sir, once we pass this Bill, because we will pass it with amendments, the current office holder must be appointed. The appointment must come afresh whether to him or to another, and then vetting by Parliament, just as we have done to other offices. We passed an Act of Parliament here; although we are going to elections, we want an Inspector-General of Police appointed competitively. Whoever is appointed will be vetted here. There cannot be one office we shield from vetting. What fits one, fits all. We grant appointment by the President but vetting by Parliament, because it is an important national office. This is not targeted at any one. This is for posterity. These are foundations that we are laying.

I am glad that these very Bill is proposing to penalize any holder of office or any member of the NSIS who involves themselves in partisan politics. This is a must. We do not want to be hearing of six parties funded by the NSIS, or by the Government. Whether it is a rumour or not, why are we having these perceptions? How have they conducted themselves? This is a wake-up call. You cannot have free and fair elections when people start fouling elections long before. All actions must be contained to intelligence gathering and the things that are set out in the Acts which I will not care to quote.

I heard a colleague worrying about what the intelligence did to avert post-election violence. Even as I ask the Minister today whether there was intelligence in Tana River, in particular in Garsen, where the deaths of 50 Kenyans occurred early this morning, we also must ask ourselves, as leaders, our role. If you have participated in precipitating a situation, it is not enough to blame agencies like the security intelligence or the police. Let us watch our tongues and actions. We too are players in promoting peace in this country. Yes, we should call upon the NSIS and all the security agencies to play their role, but we as leaders must learn to take responsibility and do what is within our powers to ensure that there is peace in this country.

I have seen Clause 37 which is talking of a search warrant. I want to say that, in line with Section 43, the NSIS should never search without a warrant. They can obtain that warrant *ex parte* as provided in Clause 43. They need not tell you that they will be coming to search, but let them go before another entity, a court, and give an affidavit or oral testimony giving the reasons why they want to search somebody's house. Those are checks and balances to safeguard rights. Because they can go *ex parte*, they can even get a judge at night if they like. Nothing will be lost. We are only subjecting them to another check and balance before they enter your house. I am against them being given any power of arrest. They cannot be the intelligence gatherers and also the people to arrest. You can as well give them power to prosecute and to jail you. Let them gather intelligence but the arrests be done by the police. Remember that an NSIS officer is a citizen of Kenya and citizens have power of arrest. So, if they are in dire straits, using the citizens' power of arrest, they can arrest. I advocate that they should bear arms because they need to protect themselves. If ordinary Kenyans are getting firearms, how dare we deny our NSIS firearms? They should not have power of the police to arrest, but they should have firearms. They can then arrest using citizens' power of arrest and not police powers.

Mr. Temporary Deputy Speaker, Sir, I have looked at the schedule, and I am saying that we should delete Schedule A, which is trying to overlap their role with that of the police and

retain Schedule B, which is talking of protecting themselves or another person. This is giving them equal powers to a citizen confronted by danger.

Clause 72 is talking about their source of funding, which can include donations. I want us to be careful. Who is going to donate to our NSIS? Let us fund them from the Exchequer; that is monies passed by this National Assembly. Let us leave donations to other agencies and not to our intelligence service. I think that is a bad design.

**Mr. Temporary Deputy Speaker** (Prof. Kaloki): Just 30 seconds for you, Ms. Karua.

**Ms. Karua:** Thank you, Mr. Temporary Deputy Speaker, Sir. I wish to support this and to disagree with any derogation from the human right to think, to conscience and to belief. That is not justifiable in any democratic society.

I beg to support with those suggested amendments.

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, I rise to support the Bill and support my colleagues who have said that the Bill needs several amendments. Why are we debating this Bill? We are debating this Bill because we want to reform the National Security Intelligence Service (NSIS) into the National Intelligence Service (NIS). Why? It is because in its current form, it oversaw the pre and post elections problems and it did not help. I know for sure that many innocent Kenyans are on trial or are facing trial at home and abroad because of the NSIS. That is because it is playing politics and not gathering intelligence. I want so say this: It takes our people to the gallows and then it comes back and tells the political players: "It is so and so taking you there." They are working with everybody. This is a political force that must be reformed. This cannot be against the current Director-General or current directors. This is a rotten force whose mandate and objectives have been twisted by political forces. It is time to change and I want to plead with the House that if we do not reform this institution and keep it at the level of intelligence gathering; which intelligence their role should only be to give to the Police for enforcement---. We must make sure that this is a non-partisan organization which does not play politics, which does not use public funds to form political parties.

**An hon. Member:** What do you mean?

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, I know for a fact that several people who even today are in offices, both from the Office of the President and the Office of the Prime Minister that if they have functions, people go there with a car and money is loaded in trunks. This is factual and that cannot be the role of NSIS. The institution which we want to establish is an institution whose primary role is to make sure we are safe. We know we have problems of terrorism. We know we have other problems. The billions of monies that we have allocated to that body over the years have not exposed the people who were behind the Kikambala Bombing. They have not exposed even a simple one like the one which happened in Uhuru Park or Garissa. Even today, there are problems in Garsen. But they are giving politicians money. They are spending money to make sure that they control the political environment.

**Dr. Khalwale:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Mr. Midiwo is our Chief Whip. In fact, he is an equivalent of a Minister. He has made a very useful assertion here that he knows that our respected NSIS body is being used to fund certain politicians. He has quoted the Office of the Prime Minister and the Office of the President. Could he substantiate so that Kenya can now know who in the Office of the Prime Minister and Office of the President is being given money? We must, as Kenyans, know! I would like to thank him for that information.

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Midiwo, are you prepared to go with your line of intervention here?



**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, very much so because my colleague who is seeking the clarification, himself, is a product of it. He is now going around selling an NSIS sponsored candidate and it is all in public domain. It is not anything new.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! You just need to continue making your contribution. You are safer that way.

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, he walked into that. But on the power to tap into peoples' phones, our freedoms cannot be surrendered to NSIS. I want a situation where, before you tap Dr. Khalwale's phone, please go to court and give reasons why you want permission to tap Dr. Khalwale's phone. It is not that the NSIS has not been tapping our phones. They tap your phone, including you, Mr. Temporary Deputy Speaker, unlawfully. So now, what we are trying to do is to give them that power in law to keep violating our rights. They will not get that right through this House. It would be the wrong thing to do for Kenyans because you do not know the composition of this force. We want to open it up tomorrow. We will turn it upside down and make it a force that will conform to the aspirations of our freedoms as laid down in the Constitution.

On the issue of qualifications of the seven directors, just about two have up to university degrees. What kind of working environment is that? Let us define qualifications. We must define standards of people who are going to hold classified information. It cannot be every Tom, Dick and Harry. We are going to be proposing clear and stringent qualifications for members of that organization.

**The Assistant Minister for Public Works** (Mr. Kiunjuri): On a point of order, Mr. Temporary Deputy Speaker, Sir. I am surprised that Dr. Khalwale asked for substantiation from Mr. Midiwo, but he did do give it.

**Hon. Members:** He did!

**The Assistant Minister for Public Works** (Mr. Kiunjuri): Mr. Temporary Deputy Speaker, Sir, are you satisfied that the substantiation was okay?

**Hon. Members:** Dr. Khalwale is okay!

**The Assistant Minister for Public Works** (Mr. Kiunjuri): Mr. Temporary Deputy Speaker, Sir, is Dr. Khalwale satisfied that he is also a "project"? Are you satisfied, Mr. Temporary Deputy Speaker, Sir?

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Kiunjuri!

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, you can see how the NSIS's friends are behaving. I am not their friend because I know the damage they are causing to the future of our country.

**Dr. Khalwale:** Are you referring to me?

**Mr. Midiwo:** I am not referring to you, Dr. Khalwale. You are okay; you are my friend. But I want to say that this House must not be involved in the breaking of the Constitution. I mean we must not create a parallel police force which shall paralyze the functions of the police.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Midiwo!

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): On a point of order, Mr. Temporary Deputy Speaker, Sir. I think Mr. Midiwo is making very wild allegations against the NSIS. It is not enough just to mention the name of Dr. Khalwale. He should substantiate who are the people who have been given money, where they were given and who gave it to them.

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Midiwo, if you are not prepared to give specific names, you know what you have to do. So, from this point on now, you have to deal with that issue.

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, I was very specific; according to Standing Orders - and to be fair to me - I mentioned the Office of---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, Mr. Midiwo! Dr. Khalwale is not working for the NSIS. He is a Member of Parliament here.

**Mr. Midiwo:** Exactly, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Prof. Kaloki): Could you then deal with that matter?

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, what I said about Dr. Khalwale is that he belongs to a third Principal, who is also being funded by NSIS. Which part of that is unclear? I reserve that right. Just let me continue!

*(Loud consultations)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Midiwo, there is an issue here; you are talking about some specific characters who are being funded by NSIS - either political parties which normally go there, they are given money at the convenience of the people going there. Are you able to mention them and give specific dates or just withdraw if you are not comfortable dealing with it.

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, the other day, the Minister told Kenyans the NSIS is dishing out money to undermine me. So----

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, hon. Midiwo! There is a point of order from the Minister, hon. Haji. You need to listen to him one more time.

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Mr. Temporary Deputy Speaker, Sir, hon. Midiwo should not take the House round in circles. He should substantiate or withdraw and apologize to the House. It is not enough to just say the Minister said.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Midiwo, I think you are the Government Chief Whip and you can do the honourable thing.

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, the Minister here is from the Provincial Administration. He is a conservative. These are people we are trying to change. I, therefore, withdraw, but it will not change the fact.

Mr. Temporary Deputy Speaker, Sir, this House must not engage in an exercise that will deny the police its powers. We have decided to reform the police.

Mr. Temporary Deputy Speaker, Sir, in fact, the Executive is failing this country. Why have they refused to bring the names of the members of the Police Service Commission? It is because somebody---

**The Temporary Deputy Speaker** (Prof. Kaloki): Order! Hon. Odhiambo-Mabona, do you have a point of order?

**Mrs. Odhiambo-Mabona:** Yes, Mr. Temporary Deputy Speaker, Sir. Is it in order for hon. Jakoyo Midiwo to be harassed into withdrawing what he has already substantiated? He substantiate well. I am saying this because my INT button was on for very long until you made your ruling, but that is what I was going to raise.

**The Temporary Deputy Speaker** (Prof. Kaloki): You have done well, hon. Odhiambo-Mabona. Hon. Midiwo, I think is not harassed.

Hon. Midiwo, if you can push that MIC one more time, please.

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, two more minutes.

**The Temporary Deputy Speaker** (Prof. Kaloki): No, just one minute because of that interruption.

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, I have made my point, which is that the NSIS as we know it is not the organization this country needs. We need a new organization in another form, whose duty will be just to gather intelligence for implementation by the police, period, because there is nothing to hide. We are down this bad road because of that organization. I do not owe anybody any apology.

I support.

**The Minister of State for Development of Northern Kenya and Other Arid Lands** (Mr. I.E. Mohammed): Mr. Temporary Deputy Speaker, Sir, thank you for allowing me to contribute to this Bill. From the outset, I support the Bill. Definitely, Kenya needs a well equipped and well formed intelligence service. There is no doubt about that.

Mr. Temporary Deputy Speaker, Sir, I will not repeat what quite a number of the Members have said in terms of improvement to the Bill. I support quite a number of what they said. I would like to just mention an area that has not been touched and I believe that will improve the Bill.

While our intelligence services have been collecting information, quite often we are told they have provided information in advance; there has been laxity on the part of public officers who are supposed to act on that information. For example, in Northern Kenya, we have more than 100 people who organize themselves. They go to villages and massacre people. If police officers used the intelligence information provided to them, then we would have averted the deaths of many people. We have just been told of the massacre in Tana River.

So, my proposal is if police officers do not act on the intelligence information given to them by the NSIS, then they should suffer the consequences. It is not enough---

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Kiptanui, do you have a point of order?

**Mr. Kiptanui:** Yes, Mr. Temporary Deputy Speaker, Sir. Owing to the fact that many of us are interested in contributing to this Bill, could I be in order that we ask Members to limit their contributions to five minutes.

**Hon. Members:** No!

**The Temporary Deputy Speaker** (Prof. Kaloki): I think Members, there was a similar request from the Chair and Members are willing to do their 10 minutes. Not unless Members, you want to reduce the minutes from ten to five minutes.

**Hon. Members:** No!

**The Temporary Deputy Speaker** (Prof. Kaloki): Alright, I think there is consensus here.

So, proceed, Minister.

### **The Minister of State for Development of Northern Kenya and Other Arid Lands**

(Mr. I.E. Mohammed): Mr. Temporary Deputy Speaker, Sir, as I said, if intelligence information was used properly, then we would have averted deaths in Tana River. Let us use this information properly and we will have peace in those areas.

It is sad that public officers were given intelligence information about the impending post election violence, but they did nothing to prevent it. It is not enough that our intelligence service will gather information to be used in tribunals, foreign courts or anywhere else. We want them to act on that information. If they do not act, they should give a good reason for not doing so.

Mr. Temporary Deputy Speaker, Sir, I agree with those who say this organization should be not be political. We do not want them to take sides. But we also know Kenyans are fond of spreading rumours. We should shield an institution like the Judiciary from politics. But this agency will not work if the other security agencies are not working well. For example, the CIA will not work well, if the FBI is not working well. So, we must support our CID to have the same capacity. In Wajir County, there are four CID officers. None of them speak the local language. How do we expect them to stop crime in that county? So, we need to boost all parts of the security agencies for this particular one to work well.

Mr. Temporary Deputy Speaker, Sir, I understand the worry here that the information will be used wrongly. I just want to respond to what hon. Khalwale said earlier about information of a girl friend somewhere. I think that will be giving the wrong impression. The NSIS's job is not about who is sleeping with who. It is about serious business of protecting this country. I just wanted to correct that impression.

Thank you for giving me that opportunity and I support the Bill.

**Mr. Wambugu:** Mr. Temporary Deputy Speaker, Sir, thank you for giving me a chance to contribute to this Bill. I will make just a few comments.

Mr. Temporary Deputy Speaker, Sir, I do believe that Kenya has come of age to have a unit that is able to gather information towards averting any crisis of any kind in this country. I know most of the people here have concentrated so much on crime. But I believe the versions of this agency, which is going to be the National Intelligence Service is not just to go around following criminals, but they have got the capability to get information related to other issues.

The issues that affect security in a country are many. We can have a situation of a security threat if we have economic sabotage. If we do not get information from such an angle, then despite most of the things that we will be doing in this country, will not be able to propel this country where we want to go, especially economically.

Mr. Temporary Deputy Speaker, Sir, we have very many people coming into these country even to do research. Some of them could even be producing some very dangerous viruses that could affect our people here. That is where we need some of this information and a lot of intelligence, to know exactly what is happening in some of these laboratories. We could be following what happened to somebody when he committed a crime or made a statement which was not good, and then he was followed by the Intelligence Service. He would then come and complain in this House. I know that formerly we used to talk of the National Security Intelligence Service (NSIS). We are now talking of the National Intelligence Service (NIS).

Mr. Temporary Deputy Speaker, Sir, there are other areas where this body could be working; gathering information, especially on the issues that could affect this country, like drought. This is the information we need. The Intelligence Service is not just going to be dealing with politicians, but, definitely, they need to lock on them, so that we can know those people who incite others into violence.

Mr. Temporary Deputy Speaker, Sir, everybody here is talking about the conflict between the Intelligence Service and the Police. It is good to tell the Members to just go through the functions of this Service. Unless otherwise provided, the Service shall not carry out police functions which are already very well defined. The Service shall also not undertake military activities. I think that is where some of us are getting very worried. We need to look deeper into the things that this Service should be doing.

Mr. Temporary Deputy Speaker, Sir, I have gone through the Bill, and it says very clearly that before any arrest or search is made, the officer should get a warrant of arrest from a Judge of a court somewhere. I think that should not worry us. Regarding issues to do with the carrying of firearms, these officers will sometimes be operating in some very dangerous situations, especially in hostile countries or even areas like a battle field. These people require to be armed to the teeth, so that in case anything happens, they can protect themselves.

Mr. Temporary Deputy Speaker, Sir, I think somewhere in the Bill, there is a clause that says that the President should have the powers to fire, especially the Director General (DG). I feel that this is unfair. In case the DG is to be removed from Service, there should be a tribunal that should look into the character of the person. If I could remember that small clause, I could propose that it be deleted. The President should not have the powers to fire the DG at any one time.

Mr. Temporary Deputy Speaker, Sir, the main problem in this country is the other forces that are supposed to be the consumers of the information. I think that is why everybody says that there was fighting or violence. If that information was given to the Criminal Investigations Department (CID) and even the Police and they never acted, I think we do not need to blame our Intelligence Service. What we need to be talking about is that any information that is given out by National Intelligence Service should be given a timeframe for action. A time like now when we are getting close to the elections, there could be very many areas which are being spotted as very hostile and where we can have eruptions at any one time. If the police do not take action, they are the ones who are supposed to be responsible.

Mr. Temporary Deputy Speaker, Sir, I totally disagree with the issue of donations. The National Intelligence Service should be locally funded with our money. This is because if we expose ourselves to other external bodies, then these people can come and infiltrate our Service and even give out some of our very important information.

Mr. Temporary Deputy Speaker, Sir, with those very many remarks, I beg to support.

**Mrs. Odhiambo-Mabona:** Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support. But in supporting, I would want to suggest that there are very many amendments that I am hoping will come through the Committee or some that I will bring.

Mr. Temporary Deputy Speaker, Sir, I think the hon. Members have spoken to the issue of police powers; that this body should not have any, because we know the past of this country. Also, because we are moving towards specialization, there is no reason they should have police powers, when we also have a body that has similar powers. So, you would want to avoid conflicts.

Mr. Temporary Deputy Speaker, Sir, secondly, on the issue of the Bill of Rights and limitations, the way that the limitations are proposed is not as per Article 24 of the Constitution. They derogate from core rights. So, I would also want us to look at that.

Mr. Temporary Deputy Speaker, Sir, the other issue is vetting of the officers. Since we are looking at renewal, everybody has come in with new people whom we are vetting, and there is no reason we should have a different standard. Again, I would want to agree with the hon.

Member who has spoken on funding; that this is a body that we do not want to give funding by outsiders. It should be from Kenyan coffers. Also, on the issue of one-line budget which has been the practice, I do not think that we should legalize it. This is because even if we want to give broad budget lines, we need to know what they are doing.

Mr. Temporary Deputy Speaker, Sir, more specifically, I want to speak to Clause 2, on definitions, especially whether or not we should remove the police powers. Should we not remove them, then we must define what “clandestine” and “deceptive” is. I am also uncomfortable with Clause 2(1)(ii). Some of the activities include activities that are for purposes of affecting socioeconomic, political or Governmental processes. That means that we would be outlawing all activities by most development Non-Governmental Organizations (NGOs).

Mr. Temporary Deputy Speaker, Sir, again, if they have police powers, we must by law define what espionage is, sabotage, subversion and terrorism means. Otherwise, that is an era that Kenyans have come away from.

Mr. Temporary Deputy Speaker, Sir, again, because we are moving forward, we must be cognizant of the fact that we have a Coalition Government right now and the issue of transition must be acknowledged. Therefore, even in terms of appointments and compositions, we must acknowledge that.

Mr. Temporary Deputy Speaker, Sir, I would want to indicate that one of the powers that have been given to these bodies in Clause 5 is to undertaken security of vettable persons. I am very uncomfortable with that because these bodies tend to abuse such powers. Indeed, there is a desperate young lady who had been looking for me and finally found me. She was complaining about a prominent lawyer who has used the same body on a very simple matter. He has made this girl who he was cohabiting with pregnant. He has used this body to go and get all evidence that shows they were in a relationship away from her. He has used this body to remove all the photos and everything and bring up trumped up charges against this young girl. Now, she is actually facing a criminal charge, simply because this person does not want to take care of his baby. If you give this body these powers by law, then these are the kinds of things that you will be seeing them doing. If they are already abusing their powers without the law, you cannot give them the law to continue abusing members of the public.

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

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

I take cognizance of the change of Chair.

Madam Temporary Deputy Speaker, the other issue I want to raise is that of criminalizing Members of Parliament. In every piece of legislation, you say that this person shall not be appointed if they have served as a Member of Parliament. I am wondering if we retire as Members of Parliament or if you are thrown out by the public as a lot of us in this House will be, then what do you do? Very soon we will be legislating that Members of Parliament cannot sell vegetables or cannot do anything! I want to indicate that these are some of those things that we must think of very carefully.

With regard to Clause 9 on the appointment of the Director-General, the Bill states that those seeking that office must be open, transparent, and must be vetted. I spoke to---

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Millie, there is an intervention by hon. Keynan.

**Mr. Keynan:** Madam Temporary Deputy Speaker, on a point of information if the gracious hon. Millie will accept.

**Mrs. Odhiambo-Mabona:** I have accepted.

**Mr. Keynan:** I want to inform her that, in fact, the current Director of CIA is a former Congressman. Therefore, one of the amendments we will consider is to remove that bit that criminalizes a Member of Parliament. So, she is perfectly in order.

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Speaker, I thank the hon. Member for giving me that valuable information. The issue I was talking to in relation to limitations can be found in Clauses 33, 34, 35, and 36. Because of lack of time I will not go into them. However, you will see that one of the wide powers that we have given this body is to search your home and to do a whole host of things – all of them on the broad terminology of “in the public interest and freedom of expression.” This one reminds me of the days when you wanted to read certain things, you would have to hide in the toilet and hope that nobody sees you. So, for me, first of all, they do not meet the threshold of Article 24(2) of the Constitution on limitations. Also they are retrogressive and we must rework them.

Under Clause 38, we are talking about regulations that should be done by the Cabinet Secretary. Because of the importance of these regulations, if done by the Cabinet Secretary, they must be approved by Parliament and if not, then it is Parliament that should do them. Even where the body is allowed to undertake searches, they must have a warrant. It is a practice that is done worldwide in other countries. They must get a warrant. The warrant, as hon. Martha Karua said, you can even do it at night. You can do it in camera and you can also do it under Certificate of Urgency so that you do not give people a warning that you are going to undertake searches.

I would also like to speak to the issue of Clause 52(4) which gives definitions of certain things, for example, what “cruel” and “torture” means. “Torture “means any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for the purpose of---” It goes on to say: “When such pain or suffering is inflicted by or at the instigation of or with consent of a public official or other person acting in an official capacity.” I would like to urge the Committee to take into account even at the behest of a private citizen. This is because the example I have given is a wrongful action that has been done by this body, but at the behest of a private citizen. We should not only limit it to circumstances where it is these bodies that have done it.

Madam Temporary Deputy Speaker, we should delete Clause 60 all together – prohibition of unauthorized access and detention of information. We are putting an onerous burden on members of the public especially on information. That goes especially for Clause 61(3)(e) amongst others, which I cannot mention now because of time. However, what those clauses essentially do is to say that if you have information which you should not have because it is classified information you must either destroy it or inform---

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Millie, there is an intervention by hon. Muthama.

**Mr. Muthama:** Madam Temporary Deputy Speaker, I stand on a kind request, again, to ask my colleague to allow us to debate just for five minutes. It is because the queue is so long and if we are to take 20 minutes each and yet we are 20 here, that means it will take us two hours of debate. It is good that we debate on this matter for five minutes each speaker so that we allow many hon. Members to speak.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members are you in agreement that we reduce the time to five minutes?

Hon. Members, I want to put the Question that we reduce the debate time from ten minutes to five minutes.

*(Question, that the time allotted to each contributor be reduced to five minutes, put and agreed to)*

Millie Odhiambo, you have five minutes!

**Mrs. Odhiambo-Mabona:** Madam Temporary Deputy Speaker, I did not have any warning. That should apply to the next speaker.

**The Temporary Deputy Speaker** (Dr. Laboso): You have spoken for nine minutes!

**Mrs. Odhiambo-Mabona:** Then you let me know, Madam Temporary Deputy Speaker.

In concluding, with regard to protection of classified information and records, we are putting an onerous task on the public. Clause 77(3) refers to, for example, cases where a person innocently comes across classified information which is detrimental or would have effect to national security, that person shall immediately destroy such information.

Finally, I will give some of my other comments to the various Committees and urge hon. Members to come always and be willing to stay in the House until midnight because most of us usually do. Others want to come to limit our time for speaking and they speak for two minutes and then leave. We had stopped speaking to the Bill on integrity---

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Githae!

**The Minister for Finance** (Mr. Githae): Thank you, Madam Temporary Deputy Speaker, for giving me this chance. I stand to support this Bill and in so doing, I wish to say three things only.

One, a big issue has been made here that we are now authorizing the Service---

**The Temporary Deputy Speaker** (Dr. Laboso): Order, Members! Hon. Githae, there is an intervention by hon. Ogindo.

**Mr. Ogindo:** Madam Temporary Deputy Speaker, I thought that the intervention by hon. Muthama was in the context of the remaining amount of time which was under ten minutes. I want to get your guidance on that. The ruling you have just made, does it apply to subsequent debate on this thing tomorrow?

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Ogindo, I hope you are aware that we are proceeding up to 10.00 p.m. There is no question of us moving this debate until tomorrow.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Speaker, as I was saying, I rise to support this Bill and I will only speak on three issues.

A lot of noise has been made on the fact that we are authorizing the officers of the NSIS to carry guns. This shocks me! The CIAs carry guns. The MI7 carry guns. Even hon. Members here carry guns.

Home guards, somewhere in the rural areas, carry guns. So, what is the big issue in allowing these officers to carry guns? How do you expect them to go to dangerous positions to gather intelligence if they cannot carry guns?

**Mr. Hassan:** On a point of order, Madam Temporary Deputy Speaker. I am not intervening on the speaker on the Floor, but I just wanted to seek your guidance. What methodology are you using in selecting the speakers? Some of us have been here for long time.



**The Temporary Deputy Speaker** (Dr. Laboso): Order, hon. Hassan! The Chair has the prerogative to decide who should speak. However, there is a list here and we are clearly following it except in situations where we need to balance gender, religion and party.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Speaker, I was saying that if these officers are going to tackle *Al Shabaab* and *Al Qaeda*, surely, they must be armed.

Let me come to the powers of arrest. A lot of issues have been raised that we are authorizing these officers to arrest. This shocks me. Under our Constitution, a citizen is authorized to make a citizen's arrest. Which is worse between authorizing these officers to arrests or authorizing a citizen to arrest?

**Mr. Keynan:** On a point of order, Madam Temporary Deputy Speaker. Is it in order for my good friend, hon. Githae, to mislead Kenyans and the National Assembly, in particular when he is a very senior Minister? The work of the NSIS is covert and not operational activities in the field. You need to understand the work. If you want to translate the NSIS into a police, then you need to amend the Police Act. The function of the NSIS is to sit down and employ the services of hon. Githae. Even a Minister can work for the NSIS and remain in their payroll.

**The Temporary Deputy Speaker** (Dr. Laboso): Your point has been made, hon. Keynan.

**The Minister for Finance** (Mr. Githae): Madam Temporary Deputy Speaker, if this officer is going to a dangerous place to collect and gather intelligence, surely, he must protect his life. We can protect his life by authorizing him to carry a gun. I have finished with that point.

The other one is on powers of arrest. Citizens are authorized by this Constitution to arrest. What is wrong with giving these officers power to arrest? One Member said here that these officers have done nothing. I am a Member of the Cabinet Committee on Security and I can tell you that these officers have prevented many incidences. It is only that their mandate does not allow them to put it in the newspapers. If they were to announce, they are many.

I support.

**The Assistant Minister, Ministry of State for Planning, National Development and Vision 2030** (Mr. Kenneth): Madam Temporary Deputy Speaker, security cannot be negotiable and I support the Bill.

However, we must be very careful that even as we strive to get internal and external security right, we have spoken about incidences of insecurity that we continue to have in our country with the existing NSIS as it is today. In fact, they normally come after the event. I was going to say, with all due respect to the doctors' profession, it comes in as a postmortem rather than in advance operation. Therefore, we must have an efficient system where surveillance is up to date and we are covered. Even in police States like Switzerland, you do not see people armed or walking around with arms, yet we know they are police States. We have also seen the Home Land Department in the USA emphasizing on internal security without infringing on the citizens' rights.

I have issues, first in the definition clause where we have classification. We need to be sure what we mean by that classification and whether it can be de-classified after 30 years. Secondly, we need to look at the issue of warrants of arrest. One of the basic tenets of the rule of law is arbitrary arrest which is not allowed under the rule of law. That must be very clear because it is part of a freedom that we must never take from anybody else. Thirdly, in terms of being aided to carry out some of these things, looking at forensic, the National Intelligence Service would never be able to use forensic, which is the work of the Criminal Investigation

Department (CID). It must allow the department that is used to it be allowed to use it. I am also uncomfortable with Clause 78. We cannot install the Director General to be above the law, whom I have a lot of respect for. For the future, it is important not to install a person in this country to be above the law. This clause says that he cannot be subject to prosecution and accountability. What kind of law are we talking about? Everybody must be under the law including the President. He is within the law.

Therefore, it is very important for accountability and equal rights for the citizens to ensure that no office is endowed with particular rights. You do not know the kind of Director-General that you will have in future and the kind of operations that he will carry out, for example, arresting people arbitrarily and doing other things and then saying that he cannot be charged while in office. We need to be accountable. Finally, on the issue of firearms, intelligence gathering is the core business of this Service and its officers cannot operate like police officers. You realize that you even need them to wear jeans and tuck in their shirts, so that nobody thinks they are police officers. That is how information is gathered. We must ensure that the core business remains intelligence gathering and not otherwise.

With those remarks, I support.

**Mr. Duale:** Madam Temporary Deputy Speaker, at long last, I caught your eye. I want to put a proposal that transparency and accountability must also be done in Parliament and the screen should be showing the names of Members who have requested to speak.

Having said that, I stand to support this Bill. The National Intelligence Service (NIS) must be at par with their counterparts globally. Intelligence gathering is becoming a global phenomenon. The NIS has grown over the years from Special Branch to what we have today and to where we are heading. We must create a robust organization that will live to its mandate. That is why we are giving it a new mandate today. This mandate is drawn from Article 238 of the Constitution. It must provide our internal security and take care of our external security. It must give the Kenyan people the safety that they deserve. That is why politicians, and I think Members of Parliament, should not have problems with the NIS. It is a partner that this country needs. I will go to particular clauses, some that I support and some that I have issues with.

For the first time, this Bill under Clause 6A is cushioning the Kenyan people from rogue officers. The NIS staff are not angels. So, there will be one, two, three or a number of them, including at the top level, who will be rogue in fulfilling their mandate to the Kenyan people, but a safeguard has been put in place. If you go to the mandate that is given under this Bill, in Clause 6(2)(a) up to (c), these powers are not absolute and the Members need to agree. They will follow the Constitution and the Act. A number of oversight bodies have been created by the Constitution including the civilian authority under this Bill. There are emerging threats locally and internationally that have some bearing on technology. The Members of Parliament should read this Bill and even the wire tapping which they do now illegally is subject to judicial review under this Bill. The NIS must get a judicial okay to do that. A number of Members of Parliament have said that we should not allow that but this is cushioned.

If you come to Section 8, about the appointment procedure of the Director-General as shown in Article 260 of the Constitution, you will see that the appointment procedures have been left to this statute. We need to depoliticize the appointment of the Director-General. We must develop confidence with the appointing authority. I want to support that the President of the Republic of Kenya must have the appointing powers. The incumbent President must have the powers to remove the DG because the NIS is very sensitive and important. In a transition period,

if the coming President feels that the person in office is not right--- Of course, he will do that through parliamentary approval.

I am very happy for the first time that Clause 14 of the National Intelligence Service Bill has publicly given us a number of directorates under the Service. Of course you will remember that during the time of former President Moi, there was the Liaison Department under the Special Branch which dealt particularly with politicians. However, today, we are told that there are divisions namely, internal, external and counter terrorism and this is good. For the first time, Kenyans will know the kind of departments these guys have.

**The Temporary Deputy Speaker** (Dr. Laboso): Mr. Duale, your time is up! Give him half a minute.

**Mr. Duale:** Madam Temporary Deputy Speaker, I want to spent my half a minute on those who passed a Motion in this House in the morning for this House to sit up to 10.00 p.m. but have other fishy business like gold mining and they want to curtail our hours to five minutes. We are telling them that they should spare their time either for their business or parliamentary business. If you have gold business, go and do it. Leave and then we do parliamentary business for Kenyans.

**Mr. Samoei:** Thank you, Madam Temporary Deputy Speaker, for giving me an opportunity to support this Bill. From the onset, I want to join my colleagues in sending my very sincere condolences to the families of the very many Kenyans who have died in Garsen. It comes as we discuss the NIS. It is important for us to realize that we are living in an era where security issues affect development, investments and tourism in the country. Security impacts significantly on economic growth in our country. It is important as we discuss this Bill for us to realize that securing this country and ensuring that there is adequate information for our policemen and for our military wing to ensure that we secure Kenya is a very important and positive development in our country. Therefore, this Bill comes in handy in creating an institution that will ensure that our country is secure so that like other countries, we can begin to grow this economy by double digits so that we can eliminate hunger and deal with poverty in our country. It is important.

I want to support this Bill because it is---

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. William, there is an intervention by Martin Ogindo.

**Mr. Ogindo:** Thank you, Madam Temporary Deputy Speaker. We are all Members of Parliament in this House. Is it in order for the Chair to marginalize some of us just on account of the fact that we have not declared our presidential candidature?

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Ogindo, rest your case. Your name is coming up soon. Just hold on. You are even taking more time by raising points of order.

**Mr. Samoei:** Thank you, Madam Temporary Deputy Speaker. For the information of my friend, Martin, I have been sitting here for the last one hour. That is just for good record. Mr. Ogindo has just entered into this Chamber and he has no business complaining when he has not been here as long as I have been.

Anyway, let me say that it is important that we move this country to the next level. This Bill provides the framework for us to re-engineer national intelligence gathering in our country. This is a very important opportunity because going forward, every institution--- It is important for me to point out that the section of this Bill that has issues is the one that says it will oversight Parliament. We will have to amend this because every institution, whatever responsibility they are charged with ultimately, must be responsible to the people of Kenya through this House.

(Applause)

Therefore, no institution, whatever business they are doing, can be insulated from the oversight role of Parliament, and by extension, the people of this country.

Sections of this Bill give the impression that we live in the former era because if you talk about censorship; that citizens found with documents that are confidential will be locked up for years, which country are we living in, honestly? In fact, it should be turned the other way round, that if officers leak information, they should be held accountable and not citizens who by some means come across this information. We must be careful because if you criminalize the possession of a confidential document, all the NIS will do is to plant secret documents on hon. Letimalo and take him to court.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Ruto, your time is up! Give him a minute to conclude.

**Mr. Samoei:** Thank you, Madam Temporary Deputy Speaker. I really want to say that these are issues that we need to critically look at so that we do not take the country backwards because we must move this country forward. What is important for Kenya today is not the intelligence as we have always known it. The competition in this world is no more about countries gathering political intelligence. All these intelligence officers who are following us in small meetings and rallies should be recalled and taken to areas that can help this country gain advantage in our economy so that we can move this country forward, eliminate hunger and reduce poverty.

Madam Temporary Deputy Speaker, let me conclude by saying the following. The Bill of Rights cannot be compromised by any law. We cannot remove civil liberties or rights of citizens to privacy. I do not think we should allow any institution, unless they go to court. They can obtain from a judge *ex parte* at night or in the morning. They can obtain leave so that they can tap whoever they want to tap.

**Mr. Oyongo Nyamweya:** Thank you, Madam Temporary Deputy Speaker, for giving me a chance to support this Bill.

I want to say from the outset that if this Bill is passed the way it is, it will make Kenya a police state. I want specifically to refer hon. Members to Miscellaneous Provisions which are very mischievous for this country. It says that the Director-General prescribes the procedure for the classification; protection--- This means that he has the authority to destroy documents. What I would propose here is that the Director-General---, whatever information he gets and however sensitive it is, it should not be destroyed. A situation will arise whereby the officers will get any information and destroy it and there is nothing you will do if they destroy it.

Secondly, if we go by the history of the world, countries have been made dictatorial by the security intelligence. The people who will make this country go backwards, is the security intelligence and not anybody else. If they have a view that there is a crime being committed at a particular place, they should inform the CID to take up the role of gathering information and probably ask for the documents required and take the suspects to court. It is not their role to go to court.

Another point that has come out very clearly in this Bill when you read it is that they want to take us to the dark days of *Mwakenya*. During those days, Kenyans were arrested and detained without trial. If a Kenyan was found with a document, he was accused of being in possession of a seditious document. This was treated as a security threat. That was enough evidence to take you to jail for three years.

I find it unacceptable because the gains this country has made can be taken away in the name of creating the National Intelligence Service (NIS). As I have said, their role is to gather information. Whatever type of crime it is, be it economic crime or crimes which are criminal in nature, they should not be allowed to tap our phones.

We all know how the Special Branch made this country ungovernable by killing democracy. Did they have guns? They did not have guns. If you give them guns what will happen? Already people have formed a certain perception towards the NIS personnel. Just imagine this scenario where the police officers, the CID and NIS will come to search your premises. How many officers will search your premises for a particular thing? There will be conflict of roles. It has to be clear here. The chairman has said he will bring various amendments to strengthen this Bill. These amendments will go a long way to help us have a security intelligence which will not interfere with our lives; which will do gathering of information, not to safeguard the interests of a few individuals or people in the Government, but the interest of the country called Kenya.

With those few remarks, I propose the following clauses be amended or deleted. For example, Clause 77(5) be deleted because it calls for a jail term not exceeding three years or a fine of Kshs300,000, or both for a person who obtains or seizes any classified information.

Secondly, Clause 77(1) should be re-looked at and, if possible, some sections deleted.

Thirdly, Clause 77(3) should also be deleted. We want fairness and justice when this body is gathering information. We want them to gather information that can help this nation to move forward. We do not want them to create fear among citizens. Lives have been lost---

**The Temporary Deputy Speaker** (Dr. Laboso): Order, Mr. Oyongo! Your time is up.

**Mr. Oyongo Nyamweya:** Madam Temporary Deputy Speaker, I support.

**Mr. Ogindo:** Madam Temporary Deputy Speaker, I rise to support this Bill with amendments. I want to observe that all the hon. Members who voted for “yes” for the reduction of time have left. The people who are prepared to debate are all here.

Madam Temporary Deputy Speaker, I want to start by saying that I have been a student of Mr. James Orengo who is a constitutional lawyer. Mr. Orengo has professed in this House that the Constitution is arranged in a manner that, in a sense, from the first page to the last page gives a sense of subordination. In other words, Cap.1 is superior to Cap. 2.

Looking at the Constitution clearly you see where the security issues come in. The security issues come in late in Cap.12 or 13. That means the security issues are subordinate to the civil liberties. That is why the liberties come in the early chapters. The whole essence of that is we must not allow the later chapters to undermine the earlier chapters.

Having said that, I must say that the core function of the service is to gather intelligence. We must not reduce again this service to be a “suspect” gatherer instead of being an intelligence gatherer.

By turning the agents into suspect gatherers, you are even exposing the whole service. A person who arrives today shall be known to have been a service agent and will be a marked person thereby endangering his life.

Madam Temporary Deputy Speaker, there are provisions here dealing with classification of information. That is a very delicate area that requires thorough and clear definition. Information would range from written to verbal to electronic. I do not know at what point a verbal piece of information is a classified piece of information. As such, we really need to re-look into those areas of definition so that we are clear on the misuse of classified information.

I also want to concur that, indeed, there is need to provide for de-classification of information. In the past, we saw Kenyans suffering political assassinations. We are sure that the intelligence must have known the perpetrators of these crimes and the motives behind them. At some point in time, we want to get value for our money that, indeed, these were the people who were involved in such kind of heinous activities.

Madam Temporary Deputy Speaker, I must also point out that accountability is very important. No organ shall undertake its responsibilities without accountability. To that extent I would want to suggest that as we move from one line budget, let us proceed to at least a three-itemized budget.

At the end of the year, we want to take stock and see what has been achieved by our intelligence service. This glossing that we are popular with that intelligence must not be opened is normally abused. As we move on to a new age, we must put our service into the spot, so that we become proud of it by virtue of seeing the dividends that we reap from it. If we leave them in the dark, they will be able to get away with negligence, in the sense that you cannot tell whether they performed their functions or not. As such, a mechanism should be put in place to be able to evaluate the performance of the Service.

Madam Temporary Deputy Speaker, last but not least, it is important---

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Ogindo, I will indulge you a half-a-minute to complete your last point.

**Mr. Ogindo:** Madam Temporary Deputy Speaker, I thank you for your kindness.

The Director-General of the NIS is a very important person. He is most important to the President, who is the custodian of the security of the people of Kenya. It is important that we allow the term of the Director-General to run in sync with the term of the President. There are certain countries where presidents have appointed their relatives to the post of director of intelligence. When a new president comes into office, it becomes very difficult for him to work with somebody's sister or somebody's son.

Madam Temporary Deputy Speaker, to that extent, I want to support the suggested amendments.

**The Assistant Minister, Ministry of State for Public Service** (Mr. Sugow): Madam Temporary Deputy Speaker, I thank you for giving me the opportunity to contribute to the Bill, at long last. I filed my request with the Chair the moment this Order was read out today, and I have been seated here since then. I do not want to dwell on that point but I think we should look into the discretion of the Chair in the future.

Madam Temporary Deputy Speaker, any nation that does not have an intelligence service that stands tall to be able to seriously provide the necessary intelligence for its own security is not worth its name. Any nation that does not have an effective intelligence service does not need to exist in today's world.

Kenyans have to sacrifice a lot in order to protect themselves. Let me give an example of the situation in which we are today. We have a lot of problems with terrorism. If you go to a shopping mall today, regardless of who you are in society, you surrender to frisking by the "small" security personnel that you find at the entrance. Why are you doing that? It is for your own safety and for the safety of other people who are patronizing that place.

In the same vein, Kenyans must be prepared to sacrifice a little bit of the rights that have been duly enshrined in our new Constitution to enhance the overall safety and security in this country. It is very important that you and I are prepared to go an extra mile to sacrifice some of our freedoms, so that we can enjoy that very important right of security. Therefore, let us try our

best to stretch this Bill to the extent possible, without infringing on the Constitution so much. We must be prepared to sacrifice some of our freedoms to a certain measure.

Madam Temporary Deputy Speaker, an intelligence service just provides intelligence. It is for other actors to whom intelligence is provided to act. So, where an intelligence service fails is where it fails to provide particular intelligence to a particular user agency. So, the matter that was raised by some of my colleagues here, to the effect that we must have some provisions for follow-up of actionable intelligence that has been provided, if it is not utilized and something happens, as stipulated or as advocated or as forecasted by the intelligence agency; is important, so that we do not have state agencies which are provided with such intelligence but fail to use it and, in the process, compromise national security.

The Service, as it exists today, has been part of society in this country. It has been used during a time when there was dictatorship in this country. It has been used at a time when there was a political transition, and it will continue to transform. We need to continue to transform it to ensure that we make it a modern-day intelligence Service, commensurate with our status, as a country under a new constitutional dispensation. Therefore, we must not dwell on its past, because we are all leaving the past, as a country. We must look forward to ensure that we reform it, so that it meets our expectations, as a nation.

Madam Temporary Deputy Speaker, I very much agree with the proposal that the President should be allowed to appoint the Director-General of the Service. In the same vein, the President should have the freedom to sack the Director-General. We cannot give a right with one hand and take it away with the other hand. I also agree with those who said that we should try and synchronize the term of service of the Director-General with that of the President he or she will be serving. It is only fair that a President is always served by a Director-General he trusts because, at the end of the day, the responsibility of ensuring national security falls on the shoulders of the Chief Executive of the country.

On a light note, I have an intelligence background. I have been trained---

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Sugow, I am sorry, your time is up, but I will give you a minute to conclude your last point.

**The Assistant Minister, Ministry of State for Public Service** (Mr. Sugow): Madam Temporary Deputy Speaker, the point I was coming up with is about the idea of trying to bar those who sat in Parliament to serve in the NIS. I do not agree with that provision. I very much agree with hon. Keynan on the amendment that he intends to bring. Who knows? I might turn up being a Director-General of the NIS one day.

With those remarks, I beg to support.

**The Assistant Minister for Higher Education, Science and Technology** (Dr. Mwiria): Madam Temporary Deputy Speaker, I thank you for giving me the opportunity to contribute in support of this Bill.

In support of this Motion, I would like to say that, even as we talk about intelligence, we need to be aware of other factors outside the NIS that contribute to our having enhanced intelligence, as a country. Firstly, we need to ask questions about our porous boundaries. It does not matter what kind of intelligence Service we have, if our boundaries continue to be porous; if people can easily forge our travel and national identification documents; and if our youth, universities, research institutions and, sometimes, our diplomatic missions and NGOs are infiltrated by persons who are not always thinking about the good of this country. So, those external factors also need to be taken into account because they have a great bearing in terms of what kind of intelligence Service is possible in this country.

Madam Temporary Deputy Speaker, secondly, on the issue of recruitment and training, we need to pay particular attention not only to those at the top, where the President and other people in the Government have the power to appoint, but we also need to think in terms of the junior officers in the rural areas, right to the grassroots; because there are many questions as to whether or not these people have adequate training, in terms of gathering information and analyzing it in a scientific way that reflects the objective reality on the ground, apart from just relying on rumours and using those rumours as the basis for making conclusions that might not be applied across the board.

Also, in terms of securing that information, what kind of support do we need? We need to enhance the security of our security agencies, be it in terms of the computer systems or the software that they use, to ensure that that information is not easily leaked to those who are spying on us or to others who are intent on engaging in criminal activities.

Madam Temporary Deputy Speaker, the issue of what kind of information is being gathered also matters. Sometimes you would be looking for a senior job in Government, and intelligence officers would be sent to your village to interview your mother to find out who your grandparents are, and what their history is. I mean, what does that kind of information have to do with the kind of person that you want to recruit for a particular job? So, sometimes, you waste too much time seeking for information that is not right.

Madam Temporary Deputy Speaker, then, there is the point of being partisan with regard to supporting certain politicians and political parties. I think in this Bill, we need to make it very clear even if it means putting it elaborately that intelligence agencies have no business being involved in politics. They should be objective. They serve all of us and even sometimes, in foreign countries, they will undermine a president who is undermining the interests of the country. So, they should be completely non-partisan because the moment they are partisan, then it is very difficult to have any intelligence system that can be worth its name.

On the issue about reports, I think there are many reports that are gathering dust. What are we doing in terms of acting on those reports? What action are we taking against politicians who have militias that have been used to cause mayhem? There are many reports, but what support do intelligence agencies have in terms of acting on those reports to ensure that the kinds of things that have been reported are not repeated?

Madam Temporary Deputy Speaker, finally, we need to also hold intelligence officers to account. They are very top on intelligence. We need to hold them to account. It is not fair that foreigners like Americans are telling us what to expect before our own intelligence agencies are able to identify anything. It is not fair that we have militias like the *Mungiki* and others for years and we cannot put them to an end when we have intelligence services. Finally, we need to see also how we can empower our communities to appreciate that intelligence is about all of us and that they too can partner with the Government the same way we have community policing to support our intelligence system in terms of bringing out information that people who come from outside the respective communities may not be able to be furnished with.

I support.

**Mr. Kiptanui:** Thank you, Madam Temporary Deputy Speaker. I would like to support this Bill and in doing so, I wish to say that because of what has happened in the past, we need to thank the spy agency. I am one of the people who believe that they have done some good work. The failure has been on the Government. I believe that in 2007 and the years before, we used to have quite a number of tribal clashes in our country, I believe the spy agencies were able to



gather the information and transmit it to the relevant authorities. But this Government failed to act.

Madam Temporary Deputy Speaker, I also believe that in 2007, the spy agency was aware of who won the elections and if they were stolen, they were aware and they know. I also believe that because we have intelligence officers across the country, they can even now predict who will be the next president of this country. I want to believe that we need to empower the spy agency to be able to do its work well. I have seen a section in this Bill which ensures that the spy agency operates within the law. We have put some checks and balances which, at the end of the day, I believe the spy agency will serve this country and the people of this country well. One, the Director General (DG) will be under the watch of the NIS Council headed by the Cabinet Secretary and in forming the Council, if you check at Clause 65(1), it says:-

“There is established a Council to be known as the National Intelligence Service Council which shall consist of –

- (a) The Cabinet Secretary, who shall be the chairperson;
- (b) The Cabinet Secretary for the time being responsible for matters relating to foreign affairs;
- (c) The Cabinet Secretary for the time being responsible for matters relating to finance;
- (d) The Attorney-General; and
- (e) The Director-General.”

Madam Temporary Deputy Speaker, as we talk here currently, if we mention the names of those five people, I believe three come from one region. I want to believe that in future, we need to come up with a system whereby this Council is composed of Kenyans who represent the national diversity in this country.

Secondly, the danger we have with this Bill is that if we give powers to the spy agency to arrest and detain suspects, I want to believe that, that will be conflicting with the role being played by the police. I believe we should give the spy agency its responsibilities and leave the powers to arrest and detain to the Kenya Police.

Madam Temporary Deputy Speaker, I support that we need to arm the spy agency. But the challenge is that as we talk here today, you cannot tell who is a spy and who is not, because they are not armed. I believe we could even be having some spy agents within. But once we arm them, it will be very easy for anyone to notice the spy agents. I think we need to come up with a way of also safeguarding their interest because the spy agents spy on everybody. They spy on the army, police and everybody and once you are identified as a spy agent, how safe are you, especially if you are monitoring the operations of *Al Shabaab* and other illegal groups? Finally, I support that where a DG has not committed any crime, he or she should be deployed to other Government offices to serve.

With those few remarks, I support.

**Mr. Chachu:** Madam Temporary Deputy Speaker, I support this Bill. I think the NSIS plays a very critical role in our security arrangement in this country. For that purpose, I think this Bill is very useful, critical and it tries to enhance our national security in totality. This Bill tries to reform the spy agency and in doing so, it is critical that it becomes very objective, non-partisan and serves Kenyans in a way that will ensure that all of us will feel proud members of this nation.

Madam Temporary Deputy Speaker, I think it is very critical for us to have a viable and useful spy agency that is working effectively to deliver on its mandate. I support our intelligence

officers to be armed with the state-of-the art ammunition that is available in the market. We put them in dangerous situations every day as they pursue *Al Shabaab* and other terrorists who are posing real threats to our own country and to this region in which we live. For us to be able to gather critical and useful intelligence information, I think we must enable our officers to be effective in their mandate.

Madam Temporary Deputy Speaker, it is also important for Parliament to play an oversight role over that intelligence agency. It is important that under Clause 66, there is a position for a parliamentary committee on security and intelligence services. Whether it is in the Bill or not, it is our mandate anyway. It is a role we have to play. It is clearly stated under Clause 66. I think it is critical that where necessary, the intelligence officers working for NIS should have police powers where necessary. I do not think they should have it every other day but, where it is critical and necessary for them to have those powers, I think they should. I think Criminal Investigation Agency (CIA), Mossad and many other agencies in the world have those provisions. But they are carried out with a lot of care and in extraordinary circumstances. I do not think that is at odds or at variance with the spy agencies elsewhere in the world but, again, it should be with a lot of care and under extraordinary circumstances. That is when they should have those police powers. It is important that these officers are hired from all parts of our country. The issue of gender balance should be adhered to as is in our Constitution. We should also ensure that regional balance is considered when the officers are being hired.

It is wrong to criminalize the role of Parliamentarians in this country. Every other day, we are told that if you have been a Member of Parliament you cannot serve in any other capacity in this country. I do not think it is a crime to be a Parliamentarian. We are all professionals and we come from various backgrounds. When we are in this House making laws and policies, we should be able to serve this country in any other capacity. I do not agree with Clause 9 of this Bill which says that if you have been a Member of Parliament you cannot serve as a Director General in this service. I do not think that is right. Elsewhere in the world, people who are qualified, and have the necessary technical training and experience are allowed to serve in other capacities. I do not think it is a crime to be a Parliamentarian.

Madam Temporary Deputy Speaker, as a country we do face many threats, particularly due to terrorism. We are a neighbour to Somalia and many other countries which have had problems over several years. Because of this, it is very important that our officers are well trained by the best services in the world like MOSSAD, CIA and others, so that they can really be effective in ensuring that our security is taken care of.

**The Temporary Deputy Speaker** (Dr. Laboso): Time up, Mr. Chachu! Mr. Affey!

**Mr. Affey:** Madam Temporary Deputy Speaker, this is a very important Bill and I want to support it from the outset. I want to support it because people are saying that the security threats in this country are many. My position is that we politicians are the biggest security threat in this country. That is why you find these officers following you everywhere. If you were not a threat, they would not be following you everywhere you go.

I want to agree with those who have said that the National Security Intelligence Service (NSIS) should be given the power to arrest. In fact, we must enhance their power of arrest. I say this because some of the backgrounds we come from, you cannot come to this House and give us the comfort zones of your own regions. Today, every part of northern Kenya is bleeding. It is bleeding not because the intelligence has failed in its job, but because once they share information, action is not taken. If there was an arm of the Government which had the capacity to arrest, we want that to be NSIS. If they were able to do so, I think we would not be in a crisis

as we are today. So, my view is that they should be given ammunition, they should be armed and we should enhance their power, but they should not use it arbitrarily but with reason.

Madam Temporary Deputy Speaker, this country faces a lot of challenges, especially in matters of security. Therefore, this organization is important. Also it must be run by all Kenyans. The Bill says that appointments should be based on counties, but I want the appointments to be based on all the communities of Kenya, so that all the communities, whether minority or majority, will have an opportunity to serve in the service. If you say the appointment will be made on the basis of counties or regions, there will be danger of over-representation of certain communities.

There is a clause that says that former Members of Parliament should be excluded. I think that is unconstitutional. In fact, I suggest that the next Director General must be a former politician, because they are the ones who know these crimes. They are the ones who go round making silly mistakes. So, in my view, the next director general should be a former Member of Parliament, who knows the kind of crimes the politicians commit.

I just want to stop there but we must empower this organization and rein in those who want to be warlords. Someone wants to be a president, governor or senator, yet he or she is a warlord. Therefore, the NSIS should be empowered to deal with criminals who want to become leaders.

**Mr. Kapondi:** Madam Temporary Deputy Speaker, thank you for finally giving me an opportunity to make a contribution on this very important Bill to this country. From the outset, I want to strongly support this Bill in the sense that the NSIS is a very important component in the governance of this country. Sometime back, the intelligence service of this country was rated as one of the best in Africa. Considering that these are changing times, where crime and gathering of intelligence information is more complex, the service requires streamlining and reforming, so that it is in tandem with the reality of the changing times. This Bill is going to make the NSIS to be more effective, more professional and to be more responsive to the needs of Kenyans.

Madam Temporary Deputy Speaker, about giving the NSIS the power to arrest, I am one person who supports that. We have to bear in mind that the ratio of police to civilians in this country is 1:750, and the international standards require that you have a ratio of 1:450. So, it is a mockery that an intelligence officer who has discovered a criminal has to report to the police, so that they can arrest the criminal. I want hon. Members to appreciate the fact that whatever is happening in our country and in the marginalized areas like Mandera, Garsen, Isiolo and Turkana--- It is no surprise that the intelligence service provided that information earlier to the consumer, but, unfortunately, because of the state of affairs that our police have been subjected to, for instance lack of vehicles or fuel--- There are some instances where the Officer Commanding Station (OCS) gets 12 litres of petrol for patrol in a day. There are also certain instances where an OCS has no vehicles. So, the intelligence service will provide information, but who is going to act? Let us not try to criminalize or condemn the intelligence service for weaknesses which are our own as a country. Let us instead give them what is required for them to become more efficient and serve us better.

Madam Temporary Deputy Speaker, I also wish to comment on the fact that some of the security threats that we have in this country are due to politicians. Politicians are a pillar in terms of having covert meetings, incitement and so on. For instance whatever happened in 2007 can be blamed entirely on the political process of the time. That should not give us an excuse to ask how come that the NSIS' work is to follow politicians. If you are a security threat to this country, you must be followed; whatever we do, we do not do it in good faith.

Those who are messing us up---Politicians cannot exonerate themselves.

**The Temporary Deputy Speaker** (Dr. Laboso): Your time is up, Mr. Kapondi. Maj. Gen. Nkaisserry.

**The Assistant Minister, Ministry of State for Defence** (Maj.Gen. Nkaisserry): Madam Temporary Deputy Speaker, thank you for giving me this opportunity to contribute to this very important Bill. We have talked too much about National Security Intelligence Service (NSIS) without talking about the Bill. This is the Bill which we really need to consider so that, if there are grey areas where we can propose some amendments, we can do so. That is because we cannot give the Committee the responsibility of amending or proposing amendments. So, in this august House, we should be debating about the Bill and, of course, raise issues as regards the Service.

Madam Temporary Deputy Speaker, without security, there is nothing that can happen in any country. There will be no development. There will be nothing else! Totally! Therefore, security is paramount and this Bill gives functions to the NIS. There are several clauses here which require some cleaning. When you look at Clause 10 of the Bill, you will see the term of the Director-General. It reads: “The Director-General shall hold office for a term of five years and shall be eligible for re-appointment for one further term.” The term is “shall”, but suppose the man or woman is not capable? So, we need to make some recommendations. When you look at Clause 7, which is very critical, the Director-General of the service shall be appointed by the President. He or she should be appointed by the President with the approval of this House. That is because the President can appoint a friend. We do not want this House to be a rubberstamp. We want this House to have the teeth to lead this nation.

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

*[Mr. Deputy Speaker took the Chair]*

Mr. Deputy Speaker, Sir, when you look at Clause 15 of this Bill, the division shall be headed by a director appointed by a Director-General. Suppose the DG does not like a very good capable individual in the service? So, the Committee should come up with an amendment to give the NIS Council the power to approve the recommendation of the DG. The DG can recommend and the NIS Council can approve. We cannot give an individual all this power. That is because we are giving a particular individual--- We are not talking about the current DG. He is a fine man. But we cannot allow somebody just to sit down and say: “This person is going to be the director of this division.

Look at Article 16. We are saying that, that fellow - the DG – may, in consultation with the Council, appoint such number of members of the Service as may be necessary for the proper and efficient discharge of the functions of the Service.” So, when I look at this Bill, there is work to be done by the Committee. When you look at Article 79(5) - because I want to rush and talk about other issues – it is very critical. It says: “Except with the prior consent of the Service, a State organ, State department or agency or public entity shall not directly or indirectly engage with, enter into arrangements or otherwise associate with a foreign intelligence or security service.”

**Mr. Deputy Speaker:** Your time is up!

**The Assistant Minister, Ministry of State for Defence** (Maj.Gen. Nkaisserry): Mr. Deputy Speaker, Sir, this is a very important Bill and some of us have experience on this. We really need to chip in. So please, give me a minute.

Mr. Deputy Speaker, Sir, when you look at that, the Military Intelligence Service (MIS) can engage with external foreign intelligence or security service. Like now, we are in Somalia. We have the AU, the UN and we are getting intelligence. You want to tell me that the MIS cannot receive intelligence until you consult the DG or the NIS Council? So, this thing needs cleaning. To conclude – and I can see there are people who requested for time to be reduced to five minutes have just walked out - this is very unfair---

**Mr. Deputy Speaker:** The Chair has given you additional time. Do not belabour it! Proceed.

**The Assistant Minister, Ministry of State for Defence** (Maj.Gen. Nkaisserry): Mr. Deputy Speaker, Sir, thank you! Our intelligence service has done a remarkable job. I know today as I stand here, first of all, before I conclude, I want to pass my condolence to the bereaved families of the late Mrs. Michuki and the late Mzee Shikuku. I think if we can clean this Bill, this can give this country proper security.

With those few remarks, I beg to support.

**Mr. Hassan:** Mr. Deputy Speaker, Sir, thank you. I stand to contribute because I think the NIS is a strategic institution whose functions the security of our nation depends on. History, experience and perception have a lot to do with how we view our national institutions. I think when we look back at our institutions like our police, what we see is a brutal colonial system, a repressive Government and, as a result, we are looking for an opportunity in which we can say that our institutions have been decolonized - like we have done with our Judiciary. I think this Bill is important in the sense that it provides the security agency with the opportunity to shed its past and move forward as a legitimate institution that is supported by its people.

We live in a complex and highly competitive environment and world. For our nation to succeed and become one of the respected and competitive nations, we need to keep our country and our communities safe. We need to have a sophisticated and a superb intelligence agency. That is why I think our intelligence agencies must operate under the law; must be answerable to Parliament and adhere to our Constitution. Those are some of the factors that I am excited about today because I know with our new Constitution which has returned my humanity to me - because it respects my rights as a Kenyan - I want an organization that does not make its decision to investigate me because of my colour, ethnicity, or because of my religion, but because of my behavior and conduct and be evidence-driven.

This Bill is important for this country. It is the first time, if I can remember as a Kenyan, that we are having an open debate about the kind of intelligence agency that we should have and we deserve to have. As I said before, the Bill in some ways allows the agency to re-invent itself and to have democratic oversight.

I support the various amendments that we have made under the various Committees that I have attended. I think, at the end of the day, we will have a Bill that stands up to the Constitution and which Kenyans can be proud of. But I think the agency needs to be innovative, efficient and smart in intelligence gathering.

We have spent a lot of time talking about whether they should be armed or not. That is not necessary. I would have felt that it was more important that we discuss what kind of sophisticated equipment and training that we can give to this agency rather than a gun. I think that is the job of the police.

The agency also needs to be independent, impartial and national in character. Also, it needs its staff members to have a high level of professionalism and earn the respect of Kenyans. By earning the respect and trust of Kenyans, then it can be an agency that can work with other Kenyans and can truly really defend the security of our people and our country. Also, at the international level, it should become respectable, co-operate with other agencies and exchange information that can also help us in our defence and security.

I support the various amendments that will strengthen and make this a very interesting Bill. I support the coming into force of a new intelligence service in our country.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Lucas Kipkorir Kigen! Where are you?

**Mr. Kigen:** Mr. Deputy Speaker, Sir, I was consulting on an issue, but at least, I have got a chance.

Mr. Deputy Speaker, Sir, I stand to support this Motion. By so doing, I want to recognize the important role that is played by the National Intelligence Service. At the very start, I want to say that this is a very important organ of Government and plays a very important role in the security of the nation.

I want to propose that the people that will be employed to carry out this important service should be the very best of our society; the very best in the sense of education, training and experience. The expectation of this country is basically in the hands of these people in terms of making sure that any threat to the nation is brought to the knowledge of the Government for action in good time.

Mr. Deputy Speaker, Sir, many at times, we are told of the impending danger by security agencies of other countries. This, in itself is an indication that we have to do something in terms of making sure that the kind of services we get from our people is of higher quality than even those we hear from outside.

Mr. Deputy Speaker, Sir, the issues that we experienced---, for example, just before the elections, there were messages that were coming out from the intelligence services telling us of the trends that the political process was taking. It is so saddening that, as much as the information was coming forward about where we are headed, the implementing agencies of such reports appear not to have implemented it. Otherwise, we would have averted some of the losses and some of the destructions that were visited upon our people in 2008.

Mr. Deputy Speaker, Sir, those implementing agencies should bear their own cross and not pass on this fault to the NSIS agency. The NSIS did its work. It alerted the country of the impending danger in 2007.

Mr. Deputy Speaker, Sir, I want to say that the Bill tends to suggest that the NIS should be given prosecutorial services. We should not duplicate services that are being offered by other organs of Government such as the Director of Public Prosecutions (DPP). The DPP is charged with the responsibility of prosecuting. Therefore, we should not allow them to arrest and prosecute. This should be left to the organs of Government that are charged with that responsibility.

The staff that will be employed to serve in the National Security Council should represent the face of Kenya. The current National Security Council is not all inclusive. As it is today, it is a real shame to this country. A very important organ like this should not just have people from a section of the society or region. It should reflect the face of the country, so that it can be respected by all Kenyans.

I strongly believe that this body should not be given prosecutorial powers to enter into premises and arrest people. That should be a preserve of the police officers.

With those few remarks, I beg to support.

**Mr. Mututho:** Mr. Deputy Speaker, Sir, I rise to support this Bill with all my heart for the following reasons. Intelligence service has evolved over time. Even here in this country, it has evolved from those dirty days of the Special Branch Unit. We have seen ourselves also grow internationally in terms of intelligence to an extent that today the kind of intelligence we need is home-made and relevant to our needs.

Mr. Deputy Speaker, Sir, before I proceed, I know hon. Nkaiserry has already sent his condolences, but please, allow me to also send my condolences to the family of hon. Martin Shikuku and all other Kenyans who have died recently. I mention Martin Shikuku in particular because I petitioned here in respect to his abuse, on a matter that touched on the Speaker then, who was on the Chair that particular time. That abuse was done by the Special Branch. We do not want the Special Branch to come back again. We would like to have the NIS which will deal with the high cases of cancer in this country. Probably, hon. Members would like to hear this; heavy metal ingestion, which includes lead from petrol and other impurities, consumption of GMO foods, contaminated products, vegetables--- If you want to know whether nduma was grown in a contaminated environment or not, put it in water and leave it there overnight. If it was fetched from a sewage environment, you will know. That is the kind of intelligence we need in this country, so that the Government can act accordingly. That is what we are missing here. Today, if you ask me what the level of food insecurity is and what causes it, I will give you three major reasons. Number one, cartel; number two, cartel; and number three, cartel. These cartels can only be managed by a well organized intelligence service.

I support the view that some intelligence officers may at one point need to use minimum force. In Naivasha during the bad days, we were aware that the intelligence had reports that six hours ahead, something was going to happen. If they had a capacity to use minimum force, at least, the many who died in Naivasha would not have died. I witnessed that myself. Many hon. Members here are armed. Why do we all of a sudden want to behave like them saying that politicians cannot become the DG of the intelligence service? We carry ammunition, but they cannot carry ammunition to do their job. Carrying ammunition comes with responsibilities. I would not have difficulties in allowing these people to use these gadgets even if it means coming to record my conversation with my wife. If it is a matter of me and my wife and I am telling her; “sweet darling, I have brought you these roses from Naivasha” and things like that, that is okay. If the Government has enough money to do so, that is okay.

If the Government has money and time to do that, let it be. But if I am going to plan how I am going to kill a whole section of a society or how to be a tribal king then, of course, somebody needs to hear these stories. It is one thing to sit here and another thing all together when you are out there and require that bit of information that guides you. I owe my life to them. I have to declare this today. This is because one bad night in Naivasha, some people planned whatever they wanted to do; to clear John Michael Mututho Njenga here. The intelligence me alerted and asked me: “Are you in this hotel?” Unfortunately, it was the car which was there, but they were able to say that, surely, something was going to happen. They were able to intercept and I thank them for that. I would be past tense. This kind of intelligence, when availed, the Service should be able to move in and act decisively. I do not think that we need to live in fear. We are civilized people and do our things in the open. We have a wonderful new Chamber here

and everybody is seeing us across the world, because we are streaming worldwide. We talk within the right and without staying on the rights of other people.

Mr. Deputy Speaker, Sir, I beg to support.

**Mr. Gaichuhie:** Thank you, Mr. Deputy Speaker, Sir, for giving me an opportunity to support this Bill.

Mr. Deputy Speaker, Sir, this Bill has come timely because this world is very dynamic. I think our intelligence service was operating on an Act that did not have these dynamics. First, on the matter of firearms, these people should be armed because almost all of us here in this House apply for firearms and we get them. When we want our people to work and they are not armed, we wonder what we are talking about.

Mr. Deputy Speaker, Sir, secondly, the National Intelligence Service should be given powers not to prosecute, but to arrest. This is because when they follow you around and find that you are questionable, before they can get the police to come and arrest you and you are not immobilized, you shall surely not be around. So, the Bill should allow all the National Intelligence Service (NIS) officers to have those arresting powers. When it comes to matters of national security, we know that we are under threat. We have the *Al Shabaab* and other criminals. You do not expect an NIS officer to keep on tracking a drug trafficker and he is not armed. We know that very many people lose their lives when they try to spy on drug traffickers. If these people cannot arrest and are not even armed, they will not have any business following you around, because before they report to the police, you will have disappeared. If you turn against them, they are not armed. So, this Bill should empower them. They should have those guns and the arresting powers.

Mr. Deputy Speaker, Sir, when it comes to the Director-General (DG), he should be an appointee of the President, but should not be brought here for vetting. The minute we bring his or her name to Parliament, if he or she does not belong to the political party that has the majority in this House, they will not approve that name. That means that the DG will only be acting for that political party, and not for the interest of Kenya. If a President takes over power and there is a DG, and he thinks that he cannot work with him, he should not sack him. We should give him powers to redeploy him to another section. This is because it does not mean that if I cannot work with the President, then I am doomed. I should be given other duties instead of sacking me. So, we should depoliticize the work of the DG.

Mr. Deputy Speaker, Sir, this Bill is good because it also gives powers to those officers who misuse their powers. If you misuse the powers in what you do, there are provisions for actions that can be taken against you. So, it safeguards the offences.

Mr. Deputy Speaker, Sir, it is a good Bill because it has also the division of services. If we have an Intelligence Service that we trust, then we should not have other intelligence services apart from the Military, which is somehow unique. But all the other people should rely on that intelligence from that Service. Otherwise, we should not duplicate intelligence from all other powers.

Also, the Director-General (DG) should be protected. He should always have that free hand of giving whatever information to the President and to the country so that we do not have an intelligence service that is given only to the President and not the Commissioner of Police. They need to work together and harmoniously.

With regard to the scheme of service, their salaries should be reviewed by the Salaries and Remuneration Commission. They are not any special. When it comes to their budget, we need to agree that it should be a one line budget. What they do is secret and so they cannot tell us



that they use this money for that. We should give them a leeway by giving them a budget, but always monitor it. We need to know how much we are giving them and monitor it. We should, however, not go ahead to ask them what they did with the money. They should be accountable, maybe, to the Accounting Officer in the Office of the President where they actually report. Otherwise we cannot have them being investigated by a parliamentary committee on what they do. We know that even if we swore the Secrecy Oath, we do not keep secrets. We are actually a security threat ourselves. We will come here and say what they did with the money. So, they should be given the leeway of operating on a one line budget.

With those few remarks, I wish to support.

**Mr. Cheruiyot:** Thank you, Mr. Deputy Speaker, Sir, for allowing me this opportunity to also add my voice on this debate. From the outset, I would like to say that I support this Bill. This is a very important section of our country in the sense that they play a very vital role in the safety and wellbeing of our society.

I am happy about this Bill because we have now kind of tried to describe the role of this particular Service so that we do not end up having an organization that creates fear among Kenyans. I have had the privilege of working with this organization from its days as the Special Branch. It has so many bad names against it, but, of course, nobody talks about the good things they have done for this country by ensuring that general security is observed.

I know that issues like human rights were not taken care of that time, but the system has evolved to a point where we can say that we have a security service which is accountable to Kenyans. It is important that this system be accountable to Kenyans. It should not be accountable to one person called the President. It is important to note that these people can also be charged for treason if they really betray a section of Kenyans or individuals by fabricating information and giving it out. We must be very careful that we do not allow them unfettered authority which has no control.

I have looked at the way they recruit their officers. The DG can resort to what is really expected; that is, looking at documents, bank accounts and so many other things. However, I am concerned that they are also using certain equipment that is outmoded. These are relics from the cold war. Things like the polygraph machine, generally known as the lie detector. It is dangerous if we are going to subject Kenyans to equipment which is no longer used by anybody. I do not think even the CIA use the polygraph. I have an experience of seeing this thing and it is really humiliating for it to be used on Kenyans.

In supporting this Bill, I would like to say that this Service must be accountable to Kenyans and not an individual.

**Mr. Mbadi:** Mr. Deputy Speaker, Sir, the importance of an intelligence gathering unit in a country cannot be overemphasized. We need a full, efficient, and functioning intelligence gathering unit. We have to be very careful, otherwise, we would create a State within a State.

Mr. Deputy Speaker, Sir, if you look at this Bill, which I believe my Committee will bring amendments to change, you will realize that it requires that if any State organ, department or officer, which includes the President, is given information, then the officer must implement the recommendations from the NIS. That is a role that is overriding even the role that is given to the President of the Republic of Kenya. The role of the NIS should be to gather intelligence and give it to the relevant authority. If the relevant authority fails to utilize it, that authority should be held accountable, but we cannot have a situation where you elect a President and even the NIS has more powers than the President to dictate what the President needs to do with the

information that is given to him. Probably, this is informed by what we were told that in 2007, some information came from the NSIS to the Executive to the effect that there would be some chaos, but because someone was negligent or slept on the job at that time should not be an excuse to override the constitutional power of the President.

I notice that in this country, when an institution fails, we try to look for an alternative body to perform the functions of that institution. That is why this Bill, which I believe was majorly contributed to by the NSIS itself, is giving itself powers to prosecute. If we have a Director of Public Prosecution, he should discharge his or her duties. If he fails, then he should go home and we hire someone who is competent to do the job. We should not try to spread and distribute prosecutorial powers to other bodies. We attempted to do it with the Ethics and Anti-Corruption Commission and now we want to give it to the NIS. By the end of the day, everybody, including Commissions, will demand for prosecutorial powers. What then will be the role of the DPP? Even Parliament will start prosecuting. I know the Ugandan Parliament is arresting like the police and prosecuting. We need to be careful and respect institutions that we have established and allow them to perform their constitutional mandate.

I am even concerned that the Civil Society, which has really criticized The Leaders and Integrity Bill, has not come out to condemn provisions in the National Intelligence Service Bill, which is taking away a lot of gains in the Constitution, especially the Bill of Rights. The Bill of Rights is one of those articles in the Constitution which for you to even change or amend, you require a referendum. You find that Clause 60 of this Bill says that:-

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

Just recently, we have some documents - we call them dossiers in Parliament - about the Kenya Airports Authority. The moment we pass this Bill, the NIS can just claim that we have information which we are not authorized to have and we will be dragged to courts and to jail for seven years. Is that what we want for this country? A lot in this Bill needs to be checked carefully. I notice that the NIS, through this Bill, is trying to give itself many powers. We know they need powers to operate, but they cannot take powers which belong to the people of Kenya.

We know that they are the ones who gather information. Again, trying to bring conflicts in this country by engineering propaganda about other individuals is not right. So, the National Intelligence Service is not supposed to get involved in politics. We do not want to hear about the NIS funding certain presidential candidates because that is abuse of office. I think the NIS should be warned that we will not give them a one-line budget. They want us to give them a one-line budget so that they do not account for the money that they give politicians and the money that they use to monitor us around when we are saying nothing.

Mr. Deputy Speaker, Sir, with those very many remarks, I want to support this Bill but there will be a number of amendments, some from my Committee and probably from me.

**Mr. Ruteere:** Thank you, Mr. Deputy Speaker, Sir for giving me this opportunity to contribute on this Bill. But before I do so, with your permission, I also want to join my colleagues in sending sincere condolences to the families of hon. late Mr. Michuki whose wife passed on, the family of the late hon. Martin Shikuku who passed on and the victims of the clashes in Tana River.

I want to support this Bill because the national intelligence is a very crucial information gathering institution. For the country to be stable and to avert external attrition, and for the

country to get rid of traitors and those who can cause treasonable acts, it is important that we have a credible intelligence service that is free of politics. We should make sure that this institution is not politicized and is free from politicians. Therefore, I join those who say that the Director-General should not be subjected to parliamentary approval because if we have elected a President and we have confidence in him or her, then we should give him or her the leeway to get somebody that he or she can trust somebody when he advises the President, because one of the roles of this institution is to advise the President, the President will take that information as genuine and he or she will not take it with any kind of suspicion because it is him who looked upon the necessary provisions of the law for a competent person with integrity that is required according to Article 73.

Mr. Deputy Speaker, Sir, I do not think the rights that they have gained have been taken away because the Director-General is subjected to Article 73. He is subjected to Article 24 of the Constitution of Kenya which retains all the freedoms that have been given.

I do agree that the officers in this service must be armed. They should be armed because how do you go gathering intelligence and when you find somebody is about to commit an act that will be disastrous to the country, you cannot arrest him and you have no powers or way of preventing that action from happening? I believe that they should have powers to arrest and powers to have firearms, but they should not have prosecutorial powers because that is vested on the DPP. Once we hand over whoever has been arrested to the DPP, then the DPP has no option other than to prosecute that person who has been handed over. I think the amendment we should make is such that whoever is handed over to the DPP by these people is prosecuted by the DPP. Otherwise, I also believe this body should be independent of manipulation from any quarters. Therefore, for this to happen, they should have a one line-budget. They do not go about soliciting for votes from the Budget Committee and Members of Parliament. They should get their money and use it for the intelligence of the country. If the organization does not live up to the expectations of Kenyans, then there should be a way of removing them because they are underperforming but we cannot control their budget. Once we control their budget, then we will not be giving them the freedom---

**Mr. Deputy Speaker:** Your time is up, Mr. Ruteere! I will allow you one more minute to conclude your contribution.

**Mr. Ruteere:** Mr. Deputy Speaker, Sir, I am saying that they will not have the freedom to act.

With those remarks, I want to say this Bill is very necessary and crucial and it should be passed.

**Mr. Kathuri:** Mr. Deputy Speaker, Sir, from the outset, I want to make it very clear that I am supporting this Bill for quite a number of reasons.

It is not possible for the current NSIS to deal with the emerging issues. It must be brought in tune with the changes that are taking place in the world. Therefore, it is very important for us to pass this Bill.

The Director-General is expected to serve the President in office. So, let it be very clear that if we have a new President and he feels that he cannot work with that Director-General, then it is only prudent that he replaces him. After all, if he does not have trust in the information that will come from him, then it means that he will also not be able to serve Kenyans diligently.

As much as we know there could be a difference or perception, we should bring in amendments that will allow for transfer of such an officer to another Government department. Where the President feels that the Director-General who was serving before he took over made

mistakes that can lead to gross dismissal, then it is only fair that he sets up a commission to investigate him. If it finds him guilty, then that is the time he can be dismissed. Otherwise, it is only fair that he be transferred from serving as the Director-General to any other Government department because inefficiency does not mean that he is not loyal to the system.

Mr. Deputy Speaker, Sir, on the issue of guns and arrests, I do not know why we want to make a fuss out of it. Even those of us who do not like carrying guns are entitled to be licensed by the Government to carry guns. If an officer serving with the NIS can apply for licence to carry a gun in his private capacity, and get it, there is no reason as to why we should deny such an officer the right to access a gun through his official capacity. He should access a gun and be able to arrest suspects, but the prosecutorial powers should rest with the Director of Public Prosecution. That way, we will be able to deal with matters on time, without having to, later on, regret that a suspect has run away and crossed our borders because an intelligence officer had to contact the police for the police to go and arrest the suspect. If there is need for intelligence officers to arrest somebody, let them apply for a warrant of arrest. It should not be difficult, as long as they effect the arrest at any hour of the day or night.

Mr. Deputy Speaker, Sir, now that we have a good Judiciary, implementing this should not be difficult. Even confidentiality can be maintained. There will be no interference by the Executive. It will not be difficult for the NIS to obtain warrants of arrest to be able to execute their duties.

On the issue of academic qualifications, we should provide for a transition period. As much as academic papers are important, they are not everything. We need to give officers a transition period, so that they can comply with the requirement of whatever minimum qualifications are set for a specific category of officers. However, this should not be forever. There should be a specific timeframe during which officers must ensure that they acquire the minimum qualifications, so that they can also be in tune with whatever other Kenyans are expected to achieve in their various capacities.

Mr. Deputy Speaker, Sir, it is very strange that we are worried about tapping of our phones by the NIS. Why should you be worried if you know that you are clean? The only confidential message that you may be passing on phone could be to your girlfriend or, for that matter, your loved one. Why should you be worried that the NIS will be listening to the sweet nothings that you would be saying to her? If they want to listen to that conversation, let them go ahead---

**Mr. Deputy Speaker:** Hon. Kathuri, you have an additional minute.

**Mr. Kathuri:** Mr. Deputy Speaker, Sir, I would imagine that it would be very important for us to allow the NIS to access information whenever they need it.

On the issue of classified information, I think this is a very disastrous provision. We cannot allow them to plant documents in our pockets and then come back to us and accuse us of having access to classified information. That provision should be deleted, so that we can live in an environment where we do not feel threatened. Do you remember the days of some officer by the name of Mr. Opiyo? I do not know who he was but he really made many of us feel shaky whenever we heard that he was in town.

With those remarks, I beg to support.

**Mr. Konchella:** Mr. Deputy Speaker, Sir, I would like to say on the outset that I support this Bill for a very special reason.

A nation without a proper intelligence network is likely to be in trouble. That is why we were in trouble during previous general elections. Even the terrorist acts that have been happening in our country in the past few weeks were as a result of lack of adequate intelligence.

Mr. Deputy Speaker, Sir, there has been a rise in terms of crime globally, and particularly in our nation. We have a problem of drug trafficking, terrorism and, as we all know, human trafficking. Kenya is a country where most of the human beings who are trafficked from within our region, pass through to other countries in the world.

We have a lot of people who have run away from their countries and they have come to hide in our country. Those people are criminals. We should, therefore, allow our intelligence Service to have the ability to monitor the movement of such people and arrest them. They also know our limitations in terms of corruption. Once somebody knows that he is being followed, he is likely to bribe his way out of the country. With an intelligence Service that is committed to duty, in respect of which nobody knows what they are doing or when they are likely to pounce, we are likely to combat crime in this country.

I do not know why hon. Members are concerned about the issue of power to that organization. Yes, we need to wash, clean it up and reduce it but we have oversight institutions which are going to undertake that. We have, for example, the Parliamentary Joint Committee which is going to address some of the issues. So, this House will have a role in ensuring that they work according to the law. We also have a national council on intelligence which actually monitors and ensures that NIS is able to work the way it is supposed to do. Of course, there is the Complaints Board where any citizen can forward his or her complaint. If there is even one complaint against the Director-General (DG), he or she can be removed.

So, we need to protect our officers to do the job that is required. That is because if we allow them to be harassed instead of doing their job and close all the channels which allow them to work, they will not be able to function. That is because they will fear. So, one of the things that we must do, as a House, is to create a tenure of office for the DG. We have done that with all the Government agencies and departments. Why can we not do so for the DG? Surely, he should not work at the whims of the President. That is because the President will come and go. He is not there to work for the President only. He is there to work for the nation of Kenya. So, when there is a new President, surely, he needs historical background on what is going on in terms of intelligence gathering and the problems so that he can be able to manage them. So, I do not think anybody would just want to come and get a new person who has no idea, and you are the Head of State. You are going to rely on the person with experience and somebody who knows the job. So, let us ensure that we have those officers protected in law.

Mr. Deputy Speaker, Sir, the security of Kenya is very crucial. On the issue of being issued with guns, if an officer gets to a scene where a crime is being committed or is about to be committed, what does he or she do? He or she should do something. We should all be policemen, including all the citizens of Kenya. Even myself, if I meet a crime being committed. I should not just watch. I will have to do something about it. That is because we want security for this nation. So, let us be our own policemen. Let us allow the policemen to do their job without any problems.

Mr. Deputy Speaker, Sir, on the issue of arrest, I agree that they should do so but they should not prosecute. If it is possible, they should carry out the arrest with a police officer in uniform because, sometimes, we want to avoid the issue of imposters. That is what used to cause the problems in our intelligence services. Many people are going to impersonate the intelligence officers but the offences in this Bill have taken care of that. That is because an officer who is

caught torturing a Kenyan ends up in jail for 25 years. That is a big deterrent for wayward officers or anybody else who is trying to be an imposter. The law then provides for punishment for people who are likely to be imposters.

**Mr. Deputy Speaker:** You have run out of time but I will give you have half a minute. Proceed.

**Mr. Konchella:** Thank you, Mr. Deputy Sir, for giving me a minute to conclude.

On the issue of taping of phones, I think it is serious. I have just talked about trafficking. Some human beings are dealing with drugs. They should be taped and followed electronically. But if it is the ordinary citizens of Kenya, they should not. If you want to tap a citizen of Kenya, you must go to court and get a warrant. But they should not go for warrants for people who have come here to commit crimes because we know them. They are not citizens of Kenya. But the citizens of Kenya should be protected through a court process.

Thank you.

**Mr. Lagat:** Mr. Deputy Speaker, Sir, thank you for giving me this opportunity so that I can also support this Bill.

First of all, I want to send my condolences to the family of the late Michuki due to the passing on of his wife, the relatives of deceased families in Tana River and also the family of the veteran politician from Butere, the late hon. Martin Shikuku.

I also want to say that this Bill is very important and we need to support it because we know what the National Security Intelligence Service (NSIS) has done for us. Most of the information that we get is through NSIS. I think this Bill just needs some amendments on some clauses but, otherwise, I want to say that most of them are doing a commendable job. What we need in the recruitment of staff to the NIS is regional balance. That way, out of the 47 counties that we have, every county should get the same share. I think that is very important so that the entire country can work as a team.

Secondly, I want to talk about the Criminal Investigation Department (CID). I want to say that we want balancing. You can go to a place and find that there is one community working there. They may not even come from around or understand the local language. It is also a problem to know what people are discussing. For example in Nandi County, although there are CID officers from other communities, it is also necessary to have somebody from the Kalenjin community who can understand the language of the people there, so that he can assist.

Mr. Deputy Speaker, Sir, I also want to say that we have seen many police officers at road blocks and they carry *rungus* and not guns. We know that most of the criminals are ex-soldiers. How can a policeman fight a criminal using a *rungu* when the criminal has a gun? I want to say that it is necessary for all the security personnel to be armed.

When it comes to the National Security Intelligence Service (NSIS) or National Intelligence Service (NIS), I also recommend that they should be armed. These people should have guns. I have seen at one time robbers go into a bank but there was a CID officer there and he was able to save the situation. If we do not arm the officers, we shall be saying that criminals got away. I also suggest that officers in plainclothes be armed.

Mr. Deputy Speaker, Sir, normally, when robbers are caught, we find that some of them are ex-soldiers. Since we have the best intelligence service in Africa, we also have the strongest or worst criminals, because most of them are ex-soldiers. That is why we need to boost the officers and be ahead of criminals.

Mr. Deputy Speaker, Sir, Clause 37 talks about privacy. Personally, I advocate people's privacy. I am against that clause and it should be amended. If families are exposed, then it will be too bad for us. This clause should be amended to protect families.

Mr. Deputy Speaker, Sir, I also want to plead with the Executive that since we lost the Minister and his Assistant Minister, their replacement should have been done immediately. Right now, we have a Minister who is acting, yet there are very many issues arising. The President should have taken the matter seriously and see to it that the late Minister and his assistant are replaced. We have enough people to be appointed as Ministers. I do not see the reason why the Executive is still delaying.

With those few remarks, I support the Bill.

**Mr. Koech:** Mr. Deputy Speaker, Sir, thank you for giving me this opportunity to also contribute to this very important Bill. This is a very important department in the Republic of Kenya. For any nation that wants to progress, this is the most important service. The NSIS in this country provides a lot of information to various departments, but action is never taken. I want to call upon the Government that it is time they took information from this department very seriously, so that we can have a stable country.

Mr. Deputy Speaker, Sir, regarding the functions of the Service, if the entire service performs these functions to the letter, I believe that we will be able to get very far. One of the functions is to detect potential threats to this country. We have various threats in this country. For example, in the Ministry of Education, there are threats to the Kenya National Examinations Council in form of leakages of examinations, which must be handled very urgently and in time, so that we do not see most of our children, who have been in school for four or eight years, losing their examination results.

Mr. Deputy Speaker, Sir, when you look at the qualification of the Director-General or the other directors, it is not proper to criminalize one of the arms of Government by saying that, if one is and has been a Member of Parliament or has been a county assembly member, he or she cannot qualify to be a director. That indirectly is criminalizing this very important institution. If one has held any office in a political party, he or she is also barred. My understanding is that if my party wins an election, the officials of my party are the most trusted people who can give me information. So, this is an area that requires amendment so that we can ensure that for the post of the DG or the other directors, any other Kenyan can be there.

This is an institution that is supposed to operate in secrecy. It is an institution that is expected to be *incognito* in every part and department. I will not be surprised if one of the Members of Parliament here is one of the intelligence people. That is because it is important that they are present, just like God whom we always say is omnipresent in every institution and department. So, we cannot disqualify them from one arm of the Government.

I have listened to my colleagues and I want to indicate here that vetting is so critical and important to make a service more efficient; to make people more accountable. Therefore, I do not foresee a reason why we fear the President appointing the DG and the name is brought to this House so that we can all approve it. That is because they are serving Kenyans. They are not serving the incumbency alone. They are serving all the departments. This is a spy agency and when we give them powers to arrest, what are we doing? We are telling Kenyans: "Here is the person who is likely to take information from you." That is because we are disclosing them to the public and, therefore, it will not be very easy for them to get that classified information that they require from Kenyans. They need not to be known in certain quarters so that they get credible and important information, especially information that touches on security. But I want to support

the fact that they can be armed. Arresting suspects is the work of the police. In this House, if we think we do not have enough police---

**Mr. Deputy Speaker:** Your time is up! With less passion, take half-a-minute and just conclude.

**Mr. Koech:** Mr. Deputy Speaker, Sir, thank you for that pardon. Lastly, it is important for us to increase the number of police officers, so that they can perform their duties. If need be, the reforms in the police are very important at this time, especially in our country. The reforms will enable them to perform their duties well. We have that clear separation of the roles of those particular people.

With those few remarks, I beg to support.

**Prof. Kaloki:** Mr. Deputy Speaker, Sir, thank you for giving me this particular opportunity to support this Bill. It has come at a time when our country is facing some threats from a neighbouring country, Somalia.

Mr. Deputy Speaker, Sir, I would like to address myself to Clause 4 of the Bill on the composition of this particular Service. If you look at the composition, you will realize that it is lacking in one area; that is, economic affairs intelligence. I would like to propose that we include it within the Service. They can collect the information on it to guide the President on economic matters.

Mr. Deputy Speaker, Sir, also looking at the composition of Service, the Bill talks about two-thirds gender requirements. It also talks about making sure that the Service is reflective of the face of the Kenya. It also considers regional balance. This is a good thing but there is an area where there is a major disconnect. For example, what will happen if the case the Director-General is investigating the police itself and passes the same information to the police or to the CID? That is lacking. We need to come up with mechanisms to make sure that the Service is able to force that particular police department to comply. There could be some other matters whereby the Service could be investigating the Office of the President. We should be able to make sure that, that particular intelligence is adhered to and a particular department dealing with that should be created to make sure that all the disconnects have been removed from this particular Bill.

Mr. Deputy Speaker, Sir, I also want to refer to Clause 37 of this particular Bill on the issue of search warrants. The Service cannot just come to somebody's home or property and begin to search without any warrant. So, getting a warrant from a court of law will be a good a thing, so that all Kenyans can feel protected.

Mr. Temporary Deputy Speaker, Sir, with regard to Clause 65, I would like to propose an amendment whereby we are talking about the oversight bodies. It talks about Foreign Affairs Cabinet Secretary, another body to sit in that particular oversight body, the Cabinet Secretary for the time being responsible for Finance, but leaves out the Cabinet Secretary for Internal Security. I would like to propose that the Cabinet Secretary for Internal Security should be included to sit in this oversight body because he deals with information pertaining to the country such as intelligence and operations of the security. So, having this individual to sit in the body will assist to carry out the mandate.

With those few remarks, I beg to support.

**Mr. Kioni:** Mr. Deputy Speaker, Sir, I want to also join others in condoling the families of the late hon. Michuki, the late hon. Martin Shikuku and also families of Kenyans that we have lost through clashes in Tana River and Mandera.

Mr. Deputy Speaker, Sir, over the weekend, a young man walked to me and told me to my face that I belong to the *Mungiki* sect. Less than a month ago, I witnessed a case along



Parliament Road of another young man who was resisting to be arrested by the police officers. In fact, he wanted to snatch a gun from the officer and members of the public were on his side. This is a young man who was trying to do some bit of pick pocketing from the same members of the public. The question that begs for an answer is: Why is it that Kenyans are now being bold to openly defy the security agents of our country?

Why is it that today we have lost the lives of 14 Kenyans in Tana River and another three in Mandera? Is it because we did not have the intelligence information? I almost can bet that there was intelligence information that had been gathered way before these things happened. It was possible, if we had the correct statutes in place, to have prevented the loss of lives. This House cannot wait for another day for Kenyans to continue losing lives under the pretext of many other things that we have heard people peddle around.

Mr. Deputy Speaker, Sir, this is a very important piece of legislation and I would want to record my support for it, and ask my colleagues that we make sure that even as we debate and look for amendments to it, perhaps, in the course of tomorrow, we should not be guided by fear but by the interests of this nation and the security of Kenyans.

It is important that we also ensure that we do not lose the war on corruption. We have fought corruption from this Floor because we have been able to access documents from Government offices one way or another. We must also make sure that even as we seek to ensure that we do not curtail our ability to fight corruption through the same route, we do not open our country to espionage, where people will walk in and do all manner of things and walk away because we feared so much that we opened windows for them. So, even as we deal with the clauses dealing with access to information, we must be responsible enough to ensure that espionage is not part of what we legislate for in the coming days.

Mr. Deputy Speaker, Sir, equally, it is important that we know that we face imminent threats. It is common knowledge to all of us that we face threats from the *Al-Qaeda* and *Al-Shabaab*. Again, as we legislate and seek amendments to the various clauses that may seem to offend the freedom of Kenyans, we must be awake to that fact; it is important that we keep at bay those who are ready and willing to harm Kenyans at any minute.

The freedom that is in our Constitution must be protected, but it is also important to let Kenyans know that this freedom has corresponding responsibility. As we continue legislating if we do not let Kenyans know that freedom that they and we are entitled to as provided for in the Constitution has responsibility and we have duties as Kenyans; if we do not bear that in mind, we will be hurting this country in the near future.

It is important that even as we seek to curtail or limit, the freedoms that have been provided for, we make sure that we do it responsibly and let Kenyans know that freedom comes with responsibility.

Mr. Deputy Speaker, Sir, I want to join the other Members who have said that it is important that the chemistry of the Director-General and that of the President are seen to go together. In the event that they do not have the same chemistry, the Director-General can give intelligence information that would take the country to one way while the Head of State's stand would take it another way. Eventually, it is we, Kenyans, who would suffer.

I agree that it is not good for this country and for us, as Members of Parliament, to politicize every other appointment. If we subject the appointment of the Director-General to vetting by Members of Parliament, which is okay, we will end up with a political process. We will end up with a head of an intelligence agency who would just be serving the interests of some people because he would be fearful of either not being re-appointed or losing in one way or

another. I believe we would have other issues of other agencies that would come before us. It is important that we keep that in mind.

When you read Clause 8 of this Bill, it is a bit worrying because it has criminalized the profession or career of those who have joined politics. It says that you cannot hold any office within the agency if you have been a politician, or if you hold an office within your political party. I think this is one of the areas that require amendments, because we are now encouraging young men and women to join in the political process of our country, or the leadership of this nation. If they want to join us and then lead this clause, the young people we want to come and help this country will be fearful, because joining politics will be like becoming a criminal. Under Clause 8(2), we are grouped together with those who have committed criminal offences and have been sentenced to imprisonment for a term exceeding six months.

So, we, politicians, and those criminals who have been in jail for more than six months, seem to be sharing the same kind of treatment with this legislation. It is important that we remove or delete that provision to ensure that, that is not the case. We do not want to limit what can be gathered. We have talked about drug trafficking, but we also have human trafficking that is going on in this country. We also need to make sure that it is detected early enough---

**Mr. Deputy Speaker:** Your time is up! I will give you half a minute to conclude.

**Mr. Kioni:** Mr. Deputy Speaker, Sir, thank you for that half-a-minute.

Mr. Deputy Speaker, Sir, I support this Bill, certainly with the amendments that will be brought by the Committee that we sit in. But as I conclude, it is important that we make sure that the Cabinet Secretary or even the Council that we are going to debate hereinafter, does not get involved in the operations of the agency. They should be involved at the policy level, but not in the day to day operations of the agency.

Mr. Deputy Speaker, Sir, with those few remarks, I wish to support and thank the agency for what they have done.

**Mr. Letimalo:** Thank you, Mr. Deputy Speaker, Sir, for giving me this opportunity to contribute to this Bill, which I support.

Mr. Deputy Speaker, Sir, the National Intelligence Service (NIS) is one of the national security organs. Article 242 of our Constitution says:

“The National Intelligence Service is responsible for security intelligence and counter intelligence to enhance national security, in accordance with the Constitution.”

Mr. Deputy Speaker, Sir, certainly to provide the counter-intelligence and promote national security, it means that the NIS has to collect information. This is where I differ with my colleague, hon. Mbadi. I wish he was prevailed upon just to hear my views. This is because when collecting information, certainly, this information has to be classified. This classification has been defined. My understanding here is that if the information has been rated “top secret”, then it means that if it is disclosed to an unauthorized person, it will cause grave damage to the interests of this State. It is also different when you have information that is classified “secret”. The same also applies to “confidential” and “restricted” information. So, it means, therefore, that if we disclose this information, according to the rating, to an unauthorized person, then we are exposing this country to grievous damage or something that is prejudicial to the interest of this country.

Mr. Deputy Speaker, Sir, if you compare that with Clause 52 of the Bill, on the offences that may be committed by members of the Service--- Clause 52 says:-

“A member of the Service shall not subject any person to torture, cruel, inhuman, or degrading treatment.”

If one is found to have committed such an offence, it says that a member of the service who subjects a person to torture commits an offence and is liable on conviction to imprisonment for a term not exceeding 25 years. We used to have the torture chambers where suspects would be treated in a cruel manner. They would be tortured so that they give information. They would be intimidated to give out information. A lot of fear was created. So, if a member of the service commits an offence and is given this kind of punitive punishment, then it is also important that any Kenyan who discloses information that is injurious to the interest of Kenyans, or information that may cause grave damage to the interest of Kenya, then he or she must be punished to that extent, that is, seven years. For me, it is important that we protect the interest of Kenya.

Members of this service, I am of the view that they should be armed. They should have the warrant of arrest. This is because, for one, members of this service belong to the group that we call the disciplined force. These are people who have undertaken various courses to do with security. They have also been trained on how to handle firearms. These are people who have actually put their lives in danger. In many cases they are pursuing criminals and we know that many of the criminals are armed. When trailing a criminal, members of this service are unable to arrest because they have not acquired a warrant of arrest and yet it could be something that is cognizable, that is, it can be seen that he has to take the action otherwise the criminal will run away from the country.

Mr. Deputy Speaker, Sir, I support.

**Mr. Shakeel:** Mr. Deputy Speaker, Sir, I stand to support this Bill. Much has been spoken about counter intelligence, terrorism, subversion, drugs and so on. I think that economic crime, which endangers the interest of this country, is one of the aspects that this service should cover. The civil liberties that have been fought for by veterans like the late hon. Shikuku should not be lost here. The interest of a few people should not overtake the interest of the many.

*[Mr. Deputy Speaker left Chair]*

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

Mr. Madam Deputy Speaker, there is an old saying that unfettered power will corrupt absolutely. So, if we give them unfettered power there is a very good chance that the power will be corrupted. The last thing we want here is KGB type of security service. I am very pleased to say that the NSIS I have known has worked very well. However, they must be accountable. This oblique budgeting and reporting on one line is not just acceptable. We are not going to ask them how they spend money on certain equipment in their development budget or whatever they want. What we want to know are the salaries and remunerations and other aspects. Otherwise, they will start using the money for other reasons. It is the intelligence service that told Moi, the former President, "Mzee, it is now time for you to step down." He listened. It is the same intelligence service that failed us in 2007. It is the same intelligence service that has been telling my brother, the Minister for State for Defence and even the Speaker that their lives are in danger.

**Mr. Chachu:** On a point of order, Madam Temporary Deputy Speaker. Is it in order for the Member to state on the Floor of the House that the NSIS failed us in January, 2008, when its role is purely to advise the Executive and it is upon the Executive to either implement the recommendations or not? Is he in order to state that it failed the State when it had done its job of advising the State?

**Mr. Shakeel:** Madam Temporary Deputy Speaker, I would have liked him to listen. It is the system that failed us and not the NSIS. They had the information, but the system failed us. I support the provision that they should carry firearms. They should also be allowed to arrest situations or persons within the benefits of the Constitution within 24 hours. I do not expect somebody to be arrested and taken past Mandera and locked there. I hope and pray that regional and gender balance will be maintained. We do not want people to start saying that the NIS is biased towards one tribe or one group.

The Administration Police and the CID must work together and I know they will under the new Inspector-General. At the moment, we are misusing the APs and the general police officers. I hope and pray that the NIS officers will never be subjected to being security guards or bodyguards for anybody. That will be a waste. I think that the Director-General must be very well experienced. We have that person right now and we hope and pray that, that gentleman continues to head the NIS.

With those remarks, I beg to support.

**Mr. Kiuna:** Madam Temporary Deputy Speaker, I also would like to support this Bill. Before I make by comments, I want to join by colleagues in sending my condolences to the family of our patriotic father, the late hon. Martin Shikuku and that of our dear mother, Mrs. Michuki. I also wish to send my condolences to the families of the fellow Kenyans who were killed in Tana River and in Mandera.

I want to take this opportunity to say that whatever has happened in Tana River and Mandera is something which we need to take seriously. If we do not take it seriously, I do not think we will go very far. It is good I am making this remark in the presence of the Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security. This is a very serious issue. If the Government does not take it seriously, by the end of this year, my fellow colleagues, maybe, this country will not be where it is. I also take this opportunity to appeal to my fellow politicians that we should be cautious of what we tell our electorate.

You should not think that if you incite one clan or community, you will come back to this august House. Pray your God to give you wisdom to convince them to vote for you. As I said, I rise to support this Bill. I will start by saying that security is paramount to anything else in this Republic. A security issue is something that is supposed to be taken very seriously because without security, we cannot talk about any meaningful development or progress. I do not think we could be seated where we are without security. I also do not think that this nation would have reached where it has reached without security.

Madam Temporary Deputy Speaker, there is one issue I would like to clarify. First of all, the noble duty---

**The Temporary Deputy Speaker** (Dr. Laboso): Mr. Kiuna, there is an intervention by hon. Muthama.

**Mr. Muthama:** Madam Temporary Deputy Speaker, I stood here some minutes ago with the support of hon. Members and requested the Chair to kindly reduce the time for contribution from ten minutes to five minutes. This proposal was accepted. However, I have been waiting and queuing for the last three hours to speak. Due to time factor and reading the mood of the House because no one has objected to this Bill, will I be in order to request that the Mover be called upon to respond so that we can move on to another Order?

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, I hope that the six Members who have indicated are in agreement with us that we have two hours and two Bills to

complete. You will get the first opportunity to contribute in the next Bill if it is in order and acceptable with the other hon. Members. So, could you, Mr. Kiuna conclude?

**Mr. Kiuna:** Madam, Temporary Deputy Speaker, I have aired those sentiments because I know what we went through in my constituency. So, this is an early warning that I am sending to my fellow colleagues. Let us be cautious.

As I have said, it is very important for us, when it comes to employing these people, let us try to recruit the best and let it be very transparent. Let us train them and give them the best knowledge we can so that as they embark on their noble duties, we shall be proud of their work. Why do I say this? I am saying this because we are already aware that many militia groups have invaded our nation. How these militia have penetrated the heart of our capital city is something that the NSIS has informed the relevant Government Department. However, I can say that there is laxity in implementing their information. In this regard, I request that the NIS be empowered to have the right tools because I do not see how they can be sent to a volatile area to gather information from people who are armed and yet this man or woman is not armed. She could be at risk.

Some of them fear to go to those border town areas. So, I would request that our dear brothers and sisters in NIS be well-equipped with the necessary tools, including ammunitions. They should freely access any information because we are aware of threats to our people by *Al Qaeda* and *Al Shabaab* operatives.

Madam Temporary Deputy Speaker, the position of the Director-General will be very crucial in management of affairs of this country. I would urge, therefore, whoever will be appointed to it, be a close confidant to the Head of State because he will be interacting with him on daily basis. The President will be relying on intelligence information from him to run the affairs of this country.

With those few remarks, I support this Bill.

**The Temporary Deputy Speaker** (Dr. Laboso): Hon. Members, I now call upon the Minister to reply.

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Madam Temporary Deputy Speaker, I want to very sincerely thank Members of Parliament for overwhelmingly supporting this Bill, notwithstanding their concerns about certain areas which we will discuss maybe tomorrow in a more detailed manner.

I would like to plead with hon. Members and members of the public to always be alert about the security of this country. We are facing a very critical moment in the history of this country because of the many illegal gangs that are operating here. There is the *Al Shabaab*, *Al Qaeda* and other people who are not interested in the welfare of this country. It is very unfortunate that we, as hon. Members, instead of being cautious about our nation, we are fond of bashing individual officers and security organizations. We paint them very badly in the eyes of other countries. We do this through our media houses and the internet. It is a pity that there is no time we have stood here to congratulate any one of them for a job well done.

During the debate, a number of hon. Members misinterpreted some of the clauses in this Bill. For example, they said the Director-General has power to arrest and investigate. I think that is erroneous because that clause says he has to apply to a judge and not even to a magistrate for such action to be taken. If the judge is satisfied, he will either authorize or not authorize such action to be taken. I think that is a good way of dealing with the security of this country.

Similarly, these officers are dealing with criminals, and I think they have the right to protect their lives. To say that they should not carry firearms is not good. Even under the Act, they are not going to carry firearms because they want. The Director-General has to be satisfied that an officer who is applying to be armed, he is being armed because he is going to attend to a very serious issue.

Madam Temporary Deputy Speaker, due to time constraint, and given the fact that there are two more Bills to do deal with, I beg to move.

*(Question put and agreed to)*

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

**The Temporary Deputy Speaker** (Dr. Laboso): Next Order!

*Second Reading*

#### THE NATIONAL SECURITY COUNCIL BILL

**The Minister of State for Defence and Acting Minister of State for Provincial Administration and Internal Security** (Mr. Haji): Madam Temporary Deputy Speaker, I beg to move that The National Security Council Bill, Bill No.32 of 2012, be now read a Second Time.

Madam Temporary Deputy Speaker, since Independence, the Kenya national security co-ordination has been undertaken through various administrative structures, the main ones being the Kenya Security Committee (KSC), the Kenya Intelligence Committee (KIC) and, currently, the Kenya Security and Intelligence Machinery (KSIM).

The KSIM, which succeeded the KSC and the KIC, was established in the early 1990s with the objective of maintaining and sustaining a steady flow of well assessed intelligence appreciation. Whereas its functions have remained the same, its composition has been reviewed from time to time, in keeping with the existing national security priorities and organisation of the Government.

Madam Temporary Deputy Speaker, currently, the main departments and agency within the Kenya Security Intelligence are the presidency, the Cabinet Office, the Provincial Administration, the Armed Forces, the National Security Intelligence Service, the Kenya Police, the Administration Police, the Foreign Affairs, the Home Affairs, Immigration, Finance and the State Law Office.

The objective of the Bill is to give effect to Article 240 of the Constitution and provide a strong legal framework for co-ordination of national security functions. It is based on the strength of the current KSIM and other existing legislative and institutional frameworks. It also takes cognizance of the fact that national security is a function of the National Government.

Madam Temporary Deputy Speaker, Part I deals with preliminary matters. Part II deals with miscellaneous matters. The Bill was subject to wide consultation and a validation process by a wide range of stakeholders. It also received invaluable input from Members of Parliament during a recent workshop retreat in Mombasa.

With those remarks, I beg to move and request hon. Dalmas Otieno to second.

**The Minister of State for Public Service** (Mr. Otieno): Madam Temporary Deputy Speaker, I beg to second this Bill on the National Security Council. I will just make one important point that, with this and the National Police Service Act in place, the National Intelligence Service Bill to be completed at the same time and, finally, the Kenya Defence Forces new Act, we shall have completed the governance structure of all our security agencies. The point which I wish to emphasize is that let all these agencies be national security agencies of the Republic of Kenya and honour the diversity principle in their governance structures so that we do not end up with a National Security Council of one community. It should be a National Security Council where, when the different officers being appointed to the Council, through the different security organs finally meet, the face of Kenya should be visible. They should all be acting in the national interest. If we do not do that as of now, you will find we are not meeting the national diversity criteria.

With that emphasis, I beg to second.

*(Question proposed)*

**Mr. Muthama:** Madam Temporary Deputy Speaker, I stand to support this Bill and since it will be in operation after the final announcement of the results of the coming general elections, I do not think we should spend a lot of time on it. Therefore, since there is another Bill on the Order Paper which we are going to deal with, I stand to support.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Speaker, again this is one of the pieces of legislation that is required. I can confirm in our meeting with the stakeholders that this is one of the Bills that received the least in terms of input, alterations or changes, except just to underline the fact - and that may come as a surprise to many Members in the House - many wondered why we are passing a law now that will not come into effect until after the elections. Indeed, this strictly is not one of the constitutional Bills. But we decided that for good order, we should have all the establishments and institutional structures. This council will replace what is now the National Security Committee which is more of an administrative committee which you find the President as the chair. The Prime Minister sits in it. The two deputy Prime Ministers, the Ministers for Defence, few other internal security officers and others also sit on it. Within the structures set up in the new Constitution, obviously the Prime Minister and Deputy Prime Minister are not part of it. The Vice-President is part of it now but in the new Constitution, it is Deputy President. So, to synchronise the council as envisaged in the Constitution with the security committee which is in operation now, we obviously realized there was going to be some challenge and on that basis, we agreed that the best thing is to bring this with a sunset that it will only come in after the elections, so that the current committee can continue as it is and then we have a council coming in.

I just wanted to make that clarification so that hon. Members do not wonder why it is not coming in immediately, and why we want it now. But, otherwise, it is a straightforward Bill that we should pass within the minimum time.

With those words, I beg to support.

**Mr. Njuguna:** Madam Temporary Deputy Speaker, thank you for the opportunity to very briefly contribute to this critical Bill. This Council will be expected to make sure that the entire country is secure. It is critical because if you remember, up to now Mingo Island has not been brought back to our country. This is serious development. Our borders must also be very secure.

This council should also make sure that our sea is also secure and no foreign trawlers and illegal fishing will be allowed. Even nuclear waste being thrown into our seas should not be allowed.

Clause 72 gives a warning on military mutiny against a lawful government. This is a provision that I very seriously support. Clause 12 regards confidentiality, and the penalty of seven years, in my view, is very lenient. It should be more deterrent. It should be raised to ten years. Clause 60 talks about spying for enemy countries. This is a new legislation and court marshalling of those who will leak critical information to enemies must be taken seriously. Clause 64 is on cowardice; it talks about our soldiers running away from the battle front, and the punishment of life imprisonment is also very fitting.

I conclude by saying that--

**The Temporary Deputy Speaker** (Dr. Laboso): Order, Mr. Njuguna! You keep quoting clauses, but this Bill does not go to those numbers you are talking about. Which one are you discussing? Is it the one on defence?

**Mr. Njuguna:** Yes, Madam Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Dr. Laboso): You are discussing a different Bill. We are discussing the National Security Council Bill, which is very tiny and does not have the articles you are mentioning.

**Mr. Njuguna:** Madam Temporary Deputy Speaker, I fully support the content of this Bill.

Thank you.

**Mr. Chachu:** Madam Temporary Deputy Speaker, I do support the National Security Council Bill. This Bill will operationalize Article 240 of the Constitution. The council will have supervisory powers over our national security organs. Further, the council will be a forum for us to formulate and also integrate Kenya's domestic, foreign and military policies as far as our national security organs are concerned.

As I conclude, what I like about this Bill is that it will be accountable to the Kenyan people as it requires reporting annually to Parliament. The council will also be responsible for identifying and developing strategies that will enable us to manage threats to our nation, whether internal or external.

With those few remarks, I support the Bill.

**The Assistant Minister for Medical Services** (Mr. Kambi): Madam Temporary Deputy Speaker, let me also join my colleagues in supporting this very important Bill. The National Security Council is a very important organ in this country. As you are all aware, Kenya is a young democracy and decisions have got to be collective and be made by such an organ. In this age of internet and e-mail, everything can be done collectively by this very important organ. This decision-making organ in this country should be reflective of the Kenyan population, and do the will of this country. There is a philosopher who said that if things are not discussed for so long, so many areas can easily go wrong. At this time, we should be able to correct the past in this very great country.

With those few remarks, I support this Bill 100 per cent.

**Mr. Langat:** Madam Temporary Deputy Speaker, I also support this Bill because this is a very good attempt of putting together all the security organs, so that we can have one controller on the matters of security. It is also a very important council in the sense that it is going to ensure that the strategic direction of our security measures will be undertaken by the council. Therefore, I fully support the Bill.



**Mr. Kioni:** Madam Temporary Deputy Speaker, I rise to support this Bill and actually wonder with others why the Government had not brought this Bill much earlier. That is because we are looking at just a few articles and I cannot quite understand how it has taken the Government that long to do 17 articles. If they had done it, perhaps we would not be here at night.

The National Security Intelligence Council (NSC) is a very important organ; an organ that we had missed in the past and we can see that now we have a place where all issues of domestic, foreign and interim policies will be handled by a body that is known and understood by Kenyans. I want to support that and thank the Minister for the work that they did - though a bit late - to bring this Bill to the Floor.

I beg to support.

**Mr. Ogindo:** Madam Temporary Deputy Speaker, thank you. I rise to support the Bill. Like I said before, it is important that we look at this Constitution in a manner that gives seniority to the chapters that precede others. It is important that in establishing the security organs, there is established a NSC which this Bill seeks to operationalize. In the Constitution, it is important for us to appreciate that it is required of the national Government to devolve its functions up to the county level. With the establishment of the NSC, maybe, it would be imperative for there to be established a county security council, so that there is a council at the county level much as we devolve other functions.

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

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

Mr. Temporary Deputy Speaker, Sir, it is also important that we appreciate how the council is going to be financed. The council is supposed to be drawing its finances through the Office of the President. I think it is important for us to point out that, being a State organ; it needs to be funded from the Consolidated Fund. To that extent, it would be important for that to be cleared.

**Mr. Chachu:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is it in order for the hon. Member to demand for a similar organ to be created at the county level, when he knows for sure that security operations are not part of the functions of county governments? Is he in order?

**Mr. Ogindo:** Mr. Temporary Deputy Speaker, Sir, I want to take that as a point of argument because the Constitution says national functions be devolved. After all, there is no part of this country that is not a county.

Mr. Temporary Deputy Speaker, the other thing I want to point out is on Clause 14(1A) on limitation of access to information. It is important that the word "demonstrable" be added, so that we talk about demonstrable protection of classified information. The whole point here is to avoid arbitrary criminalization. Over and above that, I want to point out that security is very important for this country. It is the summation of security in all the counties that result into security at national level. It is on that account that we need to decentralize security functions.

With those few remarks, I support

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Members! Since there is no more interest, I call on the Mover to reply.

**The Minister for State for Defence and Acting Minister for Provincial Administration and Internal Security** (Mr. Haji): Mr. Temporary Deputy Speaker, Sir, as I said from the beginning before this Bill, the Kenya national security co-ordination was being undertaken through various administrative structures. Administrative structures are for the convenience of the services that are supposed to form this committee. The Bill before us this evening will legalize the operation of the various arms of Government, which had been tasked to handle matters of security in this country.

Therefore, I would like to thank hon. Members for their understanding and support that they have given to the Bill.

I beg to move the Bill.

*(Question put and agreed to)*

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

### *Second Reading*

#### THE KENYA DEFENCE FORCES BILL

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Kenya Defence Forces Bill, 2012, be now read a Second Time.

Mr. Temporary Deputy Speaker, Sir, the principal object of this Bill is to give effect to Article 239(6) of the Constitution thus aligning the laws relating to Kenya Defence Forces with the Constitution. Generally, the Bill provides for the functions, organization, administration and discipline of the Kenyan Defence Forces.

Mr. Temporary Deputy Speaker, Sir, allow me to take this opportunity to commend the various stakeholders who have made their contribution to the improvement of the Bill. I particularly wish to commend the Departmental Committee on Defence and Foreign Relations for making a lot of efforts through consultations in order to improve the Bill.

As a Ministry, we have availed ourselves whenever the Committee has requested or required us to be present. At the Committee Stage we will move, in collaboration with the Departmental Committee on Defence and Foreign Affairs, the necessary amendments.

Mr. Temporary Deputy Speaker, Sir, hon. Members should be proud of their defence forces. It is a disciplined force, with a vision to create premier, credible and capable force deeply rooted in professionalism. The Kenya Defence Forces, (KDF) have deterred aggression to our country, and have been involved in very courageous activities, for example in fighting the *Al Shabaab* in Somalia.

Let me correct an impression that was created earlier by a speaker when he was contributing to another Bill, that we are fighting Somalia. I want to correct that impression, and state that Somalia is a friendly country and what KDF are involved in, or have been involved in, is fighting the *Al Shabaab* in collaboration, in fact, with the Transitional Federal Government of Somalia.

Mr. Temporary Deputy Speaker, Sir, currently the KDF have well over 4,600 men and women in uniform, who are now serving in the African Union Mission in Somalia (AMISOM) in a robust peace keeping mission in Somalia. The KDF have in the past provided support to the civil power in maintenance of order when necessary, as it happened in the year 2008. The KDF have also in the past participated during times of disaster. I, therefore, appeal to hon. Members of this House to show their appreciation to the selfless service of our men and women in uniform by supporting this Bill.

I would not, in the interest of time, wish to go through the various features of the Bill, which, indeed, are very well set out in the Memorandum of Objects and Reasons. However, I would like to point out, just for the comfort of some Members, particularly hon. Letimalo as indeed, we pointed out last week here in this House, that in the case of a member of a visiting force who was alleged to have killed a person, in this Bill it is clearly provided in Clause 281 that:-

“Notwithstanding the provisions of section 281 and subject to a treaty or agreement the Kenya Government is a party to, the Kenya civil courts shall have exclusive jurisdiction and primary right to try any member of a visiting force for any civil offence committed in contravention of any Kenyan law, customary international law, treaty or an agreement the Kenyan Government is a party to”.

Mr. Temporary Deputy Speaker, Sir, in collaboration with the Committee on Defence and Foreign Affairs, we meticulously went through this Bill and, as I have already said, we will be proposing certain amendments to further improve the Bill.

With these remarks, I beg to move.

**The Temporary Deputy Speaker** (Mr. Ethuro): Who is seconding?

**The Assistant Minister, Ministry of State for Defence** (Mr. Musila): I request Mr. Kimunya to second the Bill.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I beg to second the Kenya Defence Forces Bill.

Mr. Temporary Deputy Speaker, Sir, I am particularly happy that having sat for a whole day with the team that was discussing this Bill, it gives a very good insight into the operations of our forces and what they can do and cannot do, so that their actions are aligned with the limitations of our new Constitution, especially as it relates to how our forces will behave in the future.

Mr. Temporary Deputy Speaker, Sir, as I second this Bill, I want to pay special tribute to the Minister of State for Defence, hon. Haji. This is because I know that we sat with him during Ramadhan and watched him spend the little energy he still had left. He had to keep on going for his prayers and coming back. He was so determined until we went into the night and everything else. Seeing him with his able assistant, Mr. Musila, continuing with this marathon of Bills, it is encouraging. As a House, it is something that we need to record, because he did this under very difficult times.

Mr. Temporary Deputy Speaker, Sir, as we do this Bill, we must remember our young men and women in uniform, who have spent their time--- We thought that it was going to be a short stint in Somalia, but they have spent the better part of this year and last year in Somalia, liberating that part of the country. I can tell you from where I sit, as Minister for Transport, that one of the beneficiaries of the intervention in Somalia has been the maritime industry. Before the soldiers moved into Somalia, we had ships being captured by the pirates almost on a weekly basis. Since that time, not only have we reduced the incidences of piracy, but even the ransom

money that was being demanded has gone down drastically. Now, we are seeing the ships that had detoured into the Mediterranean and West Coast of Africa, coming back to the East Coast. This is more business for us, in terms of the reduction in the cost of doing business for the region, hence, making it more attractive to do business from this end. So, our thanks are in order from this House, in terms of the efforts that are being put in that area.

Mr. Temporary Deputy Speaker, Sir, this Bill looks huge, but when you dissect and look through it, again, it is very simple. There is already a law that basically, regulates how our people in uniform behave. That is what is being amended. When you go through the Bill, clause by clause, you actually realize that we have a professional force, what is now, the Defence Force. It used to be Armed Forces but we changed it to Defence Forces, to re-emphasize the need for defending our motherland. We have given, obviously through the Constitution and this law, more definitions and clarifications in terms of what they can do within and outside our boundaries. Our military can now be deployed to restore order within Kenya, but more importantly, it also specifies what they can and cannot do. For example, in some places we have heard shopkeepers complain all their businesses have been looted after some military operation. All these things have been taken care of so that no soldier will ever, on the excuse of an operation, end up attacking or looting civilians' property. All these things have been taken care of to ensure that people do what they need to do and not interfere with the others. Obviously then, subordinating the military and civil authority and how that works together has all been done, again in line with the Constitution.

Mr. Temporary Deputy Speaker, Sir, again, I also want to confirm that this is one of the Bills that we spent countless hours on, discussing with all the various stakeholders, in a joint meeting with the Cabinet subcommittee that was looking at this with the Constitution Implementation Commission (CIC), Kenya Law Reform Commission, Defence people themselves and all the other stakeholders who looked through this. I am sure that our own Committee in Parliament has also gone through this and will be bringing the amendments that they have agreed on, for us to consider.

Mr. Temporary Deputy Speaker, Sir, I really do not want to go through the Bill. Like I said, I am privileged to have sat in the meeting and enjoyed learning in-depth into how our military operates and benefited from the discussion that was taking place. I can confirm from the Cabinet position that we have done this--- There may be room for improvement and I believe that, that is why it is here in this House. If there is any amendment, hopefully when we finish this debate today, tomorrow we can then look at it in the Committee and give the Kenyan people the law that will help to regulate our Defence Forces into the future.

Mr. Temporary Deputy Speaker, Sir, with those remarks, I beg to second.

*(Question proposed)*

**Mr. Ogindo:** Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. I am very much aware of the constitutional requirement that there should be a security organ that is in charge of our external security and territorial integrity. It is on that account that I want to support this Bill.

I want to request the Minister to consider amending Clause 37 of the Bill. If he does not do that, at least, I will do it through the Committee so that these treaties that we have in Kenya that create an understanding between our country and other governments on military operations could be ratified or approved by Parliament. The whole essence is that we do not want a situation

whereby somebody unilaterally engages other organizations or governments in allowing them to operate within Kenya. This is because the Constitution says that no person shall be allowed to establish a military or paramilitary or any other organization that purports to guarantee national security except as provided under this Constitution.

Mr. Temporary Deputy Speaker, Sir, we have seen the activities of foreign soldiers in this country. One is left wondering whether as a country we are reaping any benefits from those activities. Some of them if left unchecked could border on treason.

The other thing I want to point out is that traditionally, our military forces have done a very good job. They have represented us in peace keeping missions and even back here at home they are securing our borders. Today they are fighting the *Al Shabaab*. They are doing it with such discipline that at least we become proud of them.

It is important that we make the military open to the ordinary citizen of this country by making the Kenyans see value from these forces. It is important that at this point in time when we are moving from territorial guarding that we engage our military forces on much more civilian activities that promote welfare in this country. This is so that they can enjoy their work and also see the products of what they do. We could engage them in activities like building bridges, dykes, irrigation canals, and so on. That will be very productive of them and I believe that as patriotic sons of this country when they spend time doing that, they are going to be proud of themselves and we will get double dividends from them. We will have our territory protected and we will have them giving value when they are not engaged in war.

With those remarks, I support.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Kioni! I was tempted to give the chance to the Chairman, but he is not requesting.

**Mr. Kioni:** Mr. Temporary Deputy Speaker, Sir, while I may take the position of the Chairman, who has lead our Committee very well, I want to take this opportunity to support the Bill. I also want to thank our Kenya Defence Forces for the splendid work that they have continued to do for our country. As others have mentioned, they are out there in Somalia as we speak and we must thank and encourage them. They have continued to earn respect for Kenya. They are there restoring stability within a country that has remained torn apart for over 20 years; a country that the Americans themselves attempted to put some order only for them to receive some form of embarrassment.

There are many other acts that the military performs and has performed in the recent past that may have escaped many people. I belong to the Presbyterian Church of East Africa and in the last couple of weeks, we were unfortunate to have some members involved in a road accident in Tanzania. The President instructed our military to get over to Tanzania and rescue the Kenyans who had difficulties. That was done and the Tanzanians themselves commended, acknowledged and appreciated that Kenyans and our Army have such respect and can do such a wonderful job to rescue one of their own when in difficulties. It is good to appreciate because that is something that Kenyans do not know it is being done by the Army.

It is just the other day that they were also involved in rescuing people who were under debris in Embakasi. Other agencies had difficulties performing the same exercise, but when they moved there, they rescued lives. This is what our security men should do and help Kenyans when they are in states of distress. May I also take the opportunity to thank the Minister and of course the Government---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Members! I just wish to remind you of the earlier Motion in the day that we have up to 10.00 p.m. Also in the spirit of expediting the business, I would encourage Members not to take more than two minutes.

**Mr. Kioni:** Mr. Temporary Deputy Speaker, Sir, then, my two minutes start now. One of the difficulties that the Kenya Defence Forces will face is the limitation that has been imposed by the Constitution that they cannot be deployed within our borders to maintain peace even in the event that we continue worrying, and I hope we will never do that again, without the approval of Parliament. If Parliament is in recess, then there will be difficulties because we will have to wait and in the waiting, we may lose lives. That is something that we need to ask for.

As I conclude, one of the things that we need to amend in this Bill is subjecting the appointment of those in charge of the forces to Parliament. If we introduce politics within our Defence Forces, I do not think we will achieve what we want. We may lose the professionalism and the discipline that we have seen in the past. It is not useful for us to subject those appointments to Parliament. Finally, I want to thank them for the work they have done at the Indian Ocean on piracy. This has enabled this country to grow economically. It has also enabled tourism to grow.

With those remarks, I support.

**Mr. Keynan:** Thank you, Mr. Temporary Deputy Speaker, Sir. I also want to join my colleagues. As a Committee, we have looked at this Bill critically with other players. This is a good Bill. It is a well intentioned Bill and it captures almost all the issues that our Kenya Defence Forces would have required. However, there are few challenges that, as Parliament, we must be willing to address. Gender equity is one of the issues that are enshrined in the Constitution.

Again, if you go back to the history of our own armed forces, you will find that achieving the one-third aspect as required by the Constitution is a big challenge especially at the top echelons. This is one thing that we need to look at critically because if that will be subjected strictly to the gender issue as enshrined in the Constitution, I do not know how the institution will function. The other bit is what hon. Kiuna has pointed out. As the leadership of this country, we must be prepared completely to delink our armed forces from the politics of the day. They have been professional, are highly respected, have performed well in all international peacekeeping and have done this country proud. Therefore, it will not be in the interest of anybody whether the current regime or any other regime to sink the Kenya Defence Forces into the politics of the day. One of the reasons, and I am sure this will be captured in the amendments that we will bring, is that if that is done, they will continue to respect the civilian and they will not be part of the regional politics or politics of the day. They will be there for national interest and they will always be there to safeguard the national interests. This is one thing we must do as Parliament so that the Kenyan Defence Forces is clearly respected.

The other issue that we need to look at is that our armed forces cannot be involved in assisting the local authority without the approval of Parliament. Again, this is in the Constitution. Other than in instances where there are natural disasters or emergencies.

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Chairman, I have added you time. So, wind up!

**Mr. Keynan:** Mr. Temporary Deputy Speaker, Sir, I will conclude in a minute. This aspect needs to be cured in the long-term because I know that right now, there is nothing we can do because it is clearly stated.

Finally, this is a good Bill. We have looked at it critically. I know that we will be moving a few amendments; that is both deletions and additions which will enrich the Bill. As it is, I think it was a well thought out Bill and I hope that if it is enacted, it will enhance the position and the stature of our armed forces.

**Mr. Letimalo:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to contribute to this Bill. I support the Bill but I have concerns with regard to Clause 31. This is in Part III on page 2082, about cooperation with other authorities. It reads:-

“The Defence Forces shall assist and co-operate with other authorities in situations of emergency or disaster, and report to the National Assembly whenever deployed in such circumstances”.

I am concerned because when you say that the Defence Forces are deployed to carry out operations under circumstances of disaster and thereafter report to the National Assembly, I am particularly concerned because of the experience I have had. In 2009, when the Kenya Police carried out a security operation in Samburu East just because of cattle rustling, they had to get support from the Kenya Defence Forces. They deployed over 20 trucks and three military choppers. Instead of looking for criminals, they went straight to seize livestock from watering points. Those animals were gathered and distributed to other communities. Is that what Kenyan forces are supposed to do? We are proud of them, but we cannot imagine military choppers being used to collect livestock from Kenyans. You know this is what---

**The Temporary Deputy Speaker** (Mr. Ethuro): Order, Mr. Letimalo. Your time is up! Hon. Members, we have only six minutes remaining. We will give Mr. Midiwo one minute and then call upon the Minister to reply.

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, let me rise to support. I hope the Committee will look into the use of the army engineers in doing public work in the Third Reading. The issue of where the army could be used for the good of the public, I think that needs to be in this Bill, so that we can use the army, not as an idle force, but a positive force that assists in development.

The issue of army recruitment is too secretive for Kenyans. Tomorrow, we must find a way of giving Kenyans comfort that this is their force. In fact, it is a volunteer force and, therefore, the recruitment should not be done in secrecy.

I support.

**The Assistant Minister of State for Defence** (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, again, let me take this opportunity to thank the hon. Members for the support that they have shown in the Bill and also appreciating the role that the Kenya Defence Forces are playing in the country.

We have listened very carefully to the contributions that have been made by hon. Members. The chairman on the Committee on Defence and Foreign Relations has said elaborate amendments will be proposed on the Floor. Let me say that I have also appreciated the suggestion by Mr. Midiwo on the use of the army core of engineers in doing public work. We have noted all the issues raised by hon. Members and we will be looking into them.

I only wished that we had time to debate some of them. I want to emphasize that as defence force by ourselves, we cannot do much. We must co-operate with other forces. This issue of visiting forces is so crucial. This will be provided in the amendment that is proposed. It is important to ensure that the members of the visiting force comply with the laws of the land. If any defiance or anything is done to break the law, action is taken.

I beg to move.

*(Question put and agreed to)*

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

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Mr. Ethuro): Hon. Members, it is now time for the interruption of business. The House is, therefore, adjourned until tomorrow, Thursday, 23<sup>rd</sup> August, 2012, at 2.30 p.m.

The House rose at 10.00 p.m.