

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 2nd April, 2015

The House met at 9.30 a.m.

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

PRAYERS

Hon. Speaker: Hon. Members, ring the quorum bell.

(The Division Bell was rung)

Hon. Members, we will now operate.

MOTION

PRESIDENTIAL ADDRESS

THAT, the thanks of the House be recorded for the exposition of public policy contained in the Address of the President delivered on Thursday, March 26, 2015.

(Hon. A.B. Duale on 31.3.2015)

(Resumption of Debate interrupted on 1.4.2015)

Hon. Speaker: Yes, hon. Letimalo, what is your point of order?

Hon. Letimalo: On a point of order, hon. Speaker. There is absolutely nothing out of order. I just want to seek your indulgence.

Hon. Speaker: If there is nothing of order, then you are out of order.

Hon. Letimalo: Hon. Speaker, I want to seek your indulgence and guidance. For the last three sittings, we have been debating the President's speech. I noted that it has been allocated four days. Today should be the fourth day. Some of us who have been here for the three sittings have not had the opportunity to contribute. We do not blame the Chair. I do know that some of us have not had the opportunity to contribute because of the numbers. I seek your indulgence that even before the Mover replies, we are given at least two minutes so that we can also express our gratitude to the President's speech.

Hon. Speaker: Order, hon. Members! Obviously, that is not a point of order. The records show that when the House extended sitting time yesterday, at the time the House

rose, there was no Member in the House desiring to contribute to the debate. Therefore in keeping with our rules---

Hon. Members: It is not true.

Hon. Speaker: Do not argue with me. You must learn to do the basics. When the House adjourned at 8.10 pm, there was no Member desiring to contribute to the debate. It is the record. You were busy addressing newspapers and television cameras. You should contribute here in the Chamber, not out there in Press conferences. That is the record. Those of you who cared to follow the proceedings know that there was no Member still on the queue requesting to contribute.

Therefore, in keeping with our rules, the Mover replies when there is no other Member on the Floor desiring to contribute at the time the Houses rises. We cannot change that merely because some of you decided to take leave and went home early to go and perform other duties of a Member of Parliament. Nevertheless, business must continue. We appreciate that you have other things including addressing Press conferences. What is listed to be done in the House must be done in accordance with the rules. So, the record available, and those of you who cared to follow like me who was following, shows that there was not a single Member requesting to contribute and therefore, the debate ended.

In keeping with the rules, this is the next day and the Mover replies. He has 30 minutes within which to do that. If he desires to donate any of his time in doing so, he is at liberty to do so but we cannot bend the rules merely because Members were not available yesterday. Had they been there then we would have proceeded. Now that there was none, we cannot bend the rules. Therefore, the business is that the Mover be called upon to reply.

Hon. Katoo, proceed.

Hon. Katoo: Thank you, hon. Speaker. Before I say a few words, allow me to donate two minutes each to two Members on that side and two on this side. I will donate the first two minutes to hon. Makali Mulu, hon. Kombe, the hon. Member of Parliament for Mathira Constituency, the hon. Member for Samburu East and hon. Dr. Pukose in that order.

Hon. Speaker: Those are five. We begin with hon. Makali Mulu.

Hon. Mulu: Thank you, hon. Speaker for giving me this chance.

(Loud consultations)

Hon. Speaker: Order, Members! There must be silence.

Hon. Mulu: Let me thank hon. ole Katoo for donating two minutes to me. I will be very brief. I want to register my thanks for the Presidential Address and say that it was a very good one. It actually sets the pace in terms of how Kenya should move forward. I like the statement where the President says that the state of the nation is strong. That statement is very loaded and I am actually very happy because he was able to tell Kenyans some of the areas where the economy is doing very well. However, I just wanted to say that there is an area we really need to look at as Kenyans, even as we move forward and as the economy grows. This is the area of unequal distribution of wealth. It is

important that strategies are put in place by those who are in charge of this area to make sure a majority of Kenyans can feel this growth wherever they live.

I really support the President in the area of fighting corruption. For the first time in this country, we have seen a President who is leading from the front in terms of fighting corruption and it is important we support that move. However, even as we support the move, I humbly request Kenyans to make sure that we do not fight corruption on the basis of rumour-mongering. It will be important that investigations are done thoroughly and Kenyans are accused of corruption matters based on concrete evidence so that we do not appear to be victimising other Kenyans by just rumour-mongering around. People are taken to court or their names are in the newspapers and then they appear like they are corrupt when investigations have not been done.

Hon. Speaker: Hon. Harrison Kombe.

Hon. Kombe: Asante Mheshimiwa Spika kwa kunipa nafasi hii. Shukrani kwake Mheshimiwa Katoo ole Metito kwa kunipa nafasi ili niweze kuchangia Hotuba hii ya Rais. Kwanza kabisa naanza na mambo ya usambazaji wa nguvu za umeme kwa shule za msingi. Ni jambo la busara ambalo limetupa nafasi ya shule takribani 70 katika Eneo la Uwakilishi Bunge la Magarini ambazo zitanufaika na mradi huo. Hali hiyo itaweza kusaidia wakati shule zitakapopata vipakatalishi kama ilivyoahidiwa.

Nikiingia kwa upande wa ufisadi, ni wakati kila mmoja anapaswa abebe msalaba wa matendo yake. Hata hivyo, kuna sehemu zile ambazo zimenyakuliwa. Mashamba yamenyakuliwa. Ingekuwa vyema iwapo hatua zingechukuliwa kwa waliohusika na pia mashamba yale yarudishiwe wenyewe. Nazungumza hususan kuhusu mashamba ya chumvi. Kuna wale wawekezaji wa chumvi ambao walinyakua sehemu zinazomilikiwa na wenyeji. Hivi sasa wamegeuza, badala ya ukuzaji wa chumvi, wanapanda miti kinyume cha wananchi.

Hon. Speaker: Hon. Peter Kinyua.

Hon. Kinyua: Thank you, hon. Speaker. I take this opportunity to give thanks and commend our dear President for an address well made and which was more or less like a strengths, weaknesses, opportunities and threats (SWOT) analysis of the state of the country. He looked at all the strengths that we have, all the gains that we have made in the recent past and at the same time looked at the weaknesses, threats and the opportunities that we have as a country.

In the weaknesses, he highlighted the issue of corruption in which we are solidly behind him in this fight so that we can bring sanity to this country. As highlighted by His Excellency the President on the issue of corruption and the individuals who are mentioned, we want to commend them for agreeing to step aside so that they can facilitate investigations. We request the Ethics and Anti-Corruption Commission (EACC) which is concerned to expeditiously finalise with the investigations and take action. This is because most of the Ministries are affected particularly the Ministry of Transport and Infrastructure. This Ministry is the one which has made the most gains which we can proudly say as a country have taken us to another level in terms of development. We need to finalise the matter so that we do not reverse the gains made in that sector.

Hon. Speaker: Hon. Katoo, did you say the hon. Member for Samburu East or West? Is it Samburu East which is represented by hon. Raphael Letimalo? Is he the one you intended, hon. Katoo?

Hon. Katoo: Yes.

Hon. Letimalo: Thank you, hon. Speaker. I want to commend the Presidential Address and more specifically for the public apology that he has given for the wrongs committed against Kenyans. I am aware that the Truth, Justice and Reconciliation Commission (TJRC) was mandated to investigate historical injustices that were committed against Kenyans from 1963 up to 2008 but it should be noted that these atrocities continued even thereafter. I know in the year 2009, security personnel were deployed in Samburu East where they confiscated over 4,000 head of cattle, transported them in military lorries to the neighbouring districts and distributed them to the communities there. I am happy that the Government is now creating a fund so that the affected communities benefit from it.

Two, I also appreciate that the Government has committed Kshs38 billion on healthcare services.

In the Report, 94 hospitals have been identified in the 47 counties to benefit from that fund. I want to appeal to the Government that there are church mission-sponsored hospitals particularly operating in the rural areas that are supporting the rural communities. For instance, we have Wamba Mission Hospital which serves the entire Samburu County, parts of Isiolo and Marsabit counties. It will be important, because they have adequate facilities, if the Government will consider seconding doctors and nurses so that they can continue providing services.

Lastly, I want to register my appreciation for the concept brought by the Jubilee Government on the annuity financing model on roads which is really---

Hon. Speaker: Your time is up!

Hon. (Dr.) Pukose: Thank you, hon. Speaker, for giving me this opportunity. First and foremost, I want to thank the Majority Whip, hon. Katoo, for giving me the opportunity to contribute. I want to say from the outset that the President rose to the occasion when Kenyans expected him to do this. In his Speech, the issue of fighting corruption and as we know it, many of the corruption cases are not attributed to the Jubilee Government. Majority of these except those that are happening in the counties happened in the previous governments. Therefore, this President is going into record as having fought corruption and as having been in front to put this country in the right track.

My only appeal is to the Departmental Committee on Justice and Legal Affairs especially in relation the Petition that is before this Parliament on the issue of the Ethics and Anti-Corruption Commission (EACC) commissioners. It needs to be expedited and resolved. If this Government has to fight corruption, we need people who are of good integrity within the EACC. The EACC is the organ that will put this country on the right track but if they are not able to perform their duties, then we will be using a wrong organ. Therefore, we need to move with speed so that corruption can be fought and this country be put on the right track.

Thank you.

Hon. Katoo: Hon. Speaker, kindly allow me to donate few more minutes to colleagues. There seems to be a lot of interest. Six minutes are enough for me to reply. With your permission, I would like to donate two minutes to hon. (Ms.) Muhia, Messrs. Melly, Elmi and Manoti, hon. (Ms.) Emanikor and hon. Messrs. Huka and Kiaraho. I will be left with only six minutes.

Hon. Speaker: Very well, in that order. Who was the first one you said?

Hon. Katoo: Hon. (Ms.) Muhia.

Hon. (Ms.) Muhia: Thank you, hon. Speaker. Allow me to thank the Mover for giving me the two minutes. I want to register my thanks to the President. While I believe you do not need to belabor the point on the Speech because it was well articulated, the issues that the President spoke about is what the Jubilee Government has done, although in this country the leader of the Opposition has a duty to always look north while the Government looks south. So, he can, of course, say there is nothing the Government has done.

I want talk about the EACC and encourage the President to stand firm because everyone in this country is behind him. We all want to fight corruption. However, the tragedy in this country is the EACC. I am not sure of the capacity of this Commission. I see a lot of incompetence. Just yesterday, we witnessed the EACC go all the way to Murang'a to arrest a governor for an alleged bounced cheque yet they have 175 cases on their table. Kenyans want to believe that they can handle cases. My worry is that if this Commission is going to lose the battle, thieves and corrupt people will get away with it and they will create a loophole for the thieves who have stolen in this country. It is my prayer that they rise above the occasion and even prove to Kenyans that they have the capacity.

As Members, we need to watch this Commission particularly those who are making the report and see if they have the capacity.

Thank you.

Hon. Melly: Thank you, hon. Speaker. I want to thank hon. Katoo for giving me this time. First of all, I want to say that the Presidential Speech kept the spirit of Kenyans. It gave us hope and direction as a country.

I want to note with a lot of satisfaction that he addressed a number of issues which the Jubilee Government has attained within the last two years. I want to note that in areas of education and rural electrification, in my constituency and county, I have noted with a lot of satisfaction the work that has been done especially on connecting schools, centers and homes. Thousands of people have been connected within a very short time something the previous governments were not able to do in the last 30 or 40 years.

I also want to note the issue of restorative justice especially for individuals who were affected by the post-election violence of 2008 and forest evictees. The Government should give out Kshs10 billion to ensure that those people are settled and live in their homes very well. I also want to note the issue of infrastructure which is very important for the overall economic development of a nation. Nations in the South East Asia and other parts of the world especially the emerging economies have done very well because they have invested heavily in infrastructure which is denoted by the Standard Gauge Railway (SGR) and good facilities especially in areas of road network.

Lastly, on corruption, this is a cancer that is killing this country and we support the President.

Hon. Elmi: Thank you, hon. Speaker and the Chief Whip. I would like to thank the President for an excellent Speech. I am sure I could say many things to challenge some particular issues but I am so happy that the President touched on two things that are fundamental to the existence of a country. One is national cohesion. People talk of

security being a problem. If we have one single major security problem, it is because of the poor cohesion in our country. Therefore, by giving the way forward for national cohesion and asking Kenyans to unite, the President has done great.

On the apology that he gave for all the past governments' mistakes, that is a great thing that has happened. An apology means "never again". On corruption, the thing that is going to bring us down is the EACC. We need urgently to reconstitute the EACC and the commissioners who exist should resign like their colleague. Politics is at the heart of fuelling corruption. Therefore, as Members of this House and the Judiciary, we must stand up and support the President in ensuring that corruption ends in this country.

The House Business Committee (HBC) should prioritise the Truth, Justice and Reconciliation Commission (TJRC) Report now that the President has done the first thing that is required - apologised to Kenyans. All Kenyans must now support the President because he has shown leadership---

Hon. Speaker: Your time is up.

Hon. (Ms.) Emanikor: Thank you, hon. Speaker. I want to thank the Mover for donating two minutes to me. I want to congratulate the President for his Speech, for the milestone in our economic growth. Attaining a GDP of US\$53.3 billion and a per capita of US\$1,246 is good and this has moved us to a middle income country. That has made us one of the fastest growing economies. I want to congratulate the President for that.

Nairobi is ranked the most intelligent city in Africa due to the technological advancement and the migration from analogue to digital which has increased the scope of information and technological innovations. This again goes to the Jubilee Government as congratulation.

In terms of infrastructure, while I laud the LAPSSET Corridor project which will not only connect the East African Community but will also open up the volatile insecure areas, I am concerned about the delay of this project which gives insecurity a chance to flourish. It kills the hope with which we waited for the LAPSSET project. The 10,000 kilometers tarmacked roads are not seen in areas that need them.

The Kitale-Lokichoggio and Nadapal Roads have become killer roads because of the highway banditry, accidents and the deplorable state of the roads. I wish the Government fast tracks these projects.

I want to laud the *Huduma* centres which are one stop services for Kenyans, where you take a few minutes to get your identity card, National Social Security Fund card and the National Hospital Insurance Fund card.

Hon. Speaker: Hon. Huka!

Hon. Huka: Thank you, hon. Speaker, for giving me this chance. I congratulate the Chief Whip for donating these minutes to me.

Let me start by paraphrasing a statement made by Roosevelt, the former President of America that, patriotism means to standby the country and not by the president or public figure. This is a time when we have to stand by our country and this is a time when our country needs us across the divide. The standing ovation we had in this House was the first of its kind and that shows that the President had touched the nerve centre of the country. What is ailing our country is what he articulately mentioned. It is not common for African leaders to apologise and for the President to apologise for the

past crimes against people of this nation and for him to create funds for restorative justice is a move in the right direction which should have been done long ago.

In the education sector, the free examination fee, the free primary education and the promise to do free secondary education is a step in the right direction that is badly needed especially by people from arid and semi-arid areas which we represent.

On insecurity, the Government is doing much but a lot still needs to be done. We regret to share an incident that is going on now in Garissa. Let the Government think so that these things do not keep on recurring.

In terms of development, a lot of flagship projects have been started by the Jubilee Government and they are going to do a lot of improvement in terms of service delivery to the country. As legislators, it is our responsibility to support the Government so that we get the best services delivered to our people.

On corruption, the EACC is not competent enough to do---

Hon. Speaker: Hon. Members, if you have been nominated, log in using your card in the delegate unit. I see one hon. Member who is analogue.

Hon. Kiaraho: Thank you, hon. Speaker. I would like to thank the Chief Whip for donating those two minutes.

I would like to commend His Excellency the President for a well-balanced Speech which articulated the very key issues the Jubilee Government has undertaken to date and it can stand by them. There is the issue of the economy, the energy sector, the infrastructure, Government services, the health sector, the land reforms, security and bilateral level engagements. We know what is happening and more important is unity through the conciliatory tone by the President.

We also have the issue of corruption which I believe His Excellency the President has this time round decided to tackle head on. On the same note, I would like to state that the issue of corruption is a real monster and problem. The faster this issue is tackled, the better. I commend those few people who were mentioned and have courageously stepped aside. As people from outside there know very well, the fact that your name has been mentioned does not mean you are corrupt. Let the law take its course. If you are found guilty, so be it.

With those few remarks, we stand and support His Excellency the President.

Hon. Manoti: Thank you, hon. Speaker. I take this opportunity to thank the Mover for giving me two minutes to join my colleagues to congratulate the President for his very noble Speech. The President means very well for this nation and as leaders we have to support him to develop our country. It means that it has to start from this House, go to other leaders wherever they are and to the common man.

When we talk of roads, those people who are in charge should be seen doing some work. We are going to the third financial year and yet we are not seeing anything happening. We do not know how they will complete the 10,000 kilometres of road which the President has always talked about. They have to wake up and do what is required of them.

Hon. Speaker, you find that some surveys take about three years to be completed for a single road of 10 kilometers. Therefore the Ministry concerned should know Kenyans want roads and the roads are the beginning of development.

We have lost a lot in tourism. When you visit the Coastal region of Kenya where we normally get many tourists visiting our country and they spill over to Maasai Mara, the Western circuit and Nairobi, we are not getting any revenue from tourism. We want the Ministry concerned to do proper sales and marketing in tourism. If we do not have people visiting our country, we are going to lose a lot of revenue and we are not going to get our targets---

Hon. Speaker: Your time is up.

Hon. Katoo: Thank you, hon. Speaker. First of all, let me say that the Leader of the Majority Party is not here because of the very unfortunate terrorist attack that has happened in his constituency. In that regard, I want to take this opportunity to register my sympathies to the people of Garissa Town and Garissa County and send my condolences to those who have lost their lives and wish that the situation will be brought to normal as quick as possible.

Hon. Speaker, this Motion has attracted the highest number of speakers: 138 hon. Members have spoken on it and partially all of them have spoken in support of what the President had said. The President had highlighted his intention and the means to achieve positive results in about eight sectors: security, economy, education, health, the fight against corruption, national unity and national reconciliation, devolution and our relation with other countries regionally and globally.

I want to thank hon. Members for expressing their thanks to what the President said and showing their commitment and support in assisting the President, as a House, in achieving this good intention. I call upon my colleagues in this House that should there be any legislation required for the achievement of the public policy contained in the Presidential Address, we should be the first to support and ensure that we are going to achieve this very positive direction.

With those few remarks, because of time and because hon. Members have really expressed and exposed everything in this Presidential Address, I beg to reply.

Hon. Speaker: Hon. Members, take your seats.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE PUBLIC AUDIT BILL

(Resumption of consideration)

in Committee interrupted on 25.3.2015)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, this is the Committee of the whole House convened on Thursday, 2nd April, 2015 to consider the Public Audit Bill, 2014. As you are aware, we have dealt with the four clauses of this Bill. It is the wish of the Chairman that we finish this Bill this morning. I am asking Members to cooperate as much as possible so that we try to speed it up. The Chairman will be very reluctant to open debates in this session. So, those of you who have preferred amendments and whose amendments are on the Order Paper, please consider them very carefully so that we take the shortest time possible.

When you are moving the amendments, do not expand more because these Members already know the text so that we can step as fast as we can. Alright, let us begin. Let us start with hon. (Eng.) Gumbo. Member for Rarieda, are you in the Chamber? Alright, Member for Rarieda who is proposing the amendment is absent though desiring to move the amendment. The amendment is hereby dropped.

Clause 5

(Proposed amendment by hon. (Eng.) Gumbo dropped)

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, clause 5 of the Bill be amended in sub-clause (1) by deleting paragraph (c).

It talks of the qualifications. I feel that is superfluous. It is already stipulated in the Constitution what the qualifications should be. The Constitution on Article 224 stipulates the qualifications of the Auditor-General. It is superfluous to again purport to be putting on new qualifications where they do not---

The Temporary Deputy Chairman (Hon. Kajwang'): Alright, we follow you.

(Question of the amendment proposed)

Member for Makueni. This is not deliberate on this amendment, is it?

Hon. Maanzo: On this particular one, hon. (Dr.) Simiyu---

The Temporary Deputy Chairman (Hon. Kajwang'): Is this the one that the Member for Tongaren is talking about?

Hon. Maanzo: Yes.

The Temporary Deputy Chairman (Hon. Kajwang'): Will you quickly canvass it? Proceed.

Hon. Maanzo: Hon. Temporary Deputy Chairman, I agree with him because---

The Temporary Deputy Chairman (Hon. Kajwang'): Even if you do not agree, you can agree because the whole House agrees unless you had a divergent opinion.

Hon. Maanzo: Not at all, hon. Temporary Deputy Speaker.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you. Member for Mbooni, do you agree as well?

Hon. Kisoi: I agree.

The Temporary Deputy Chairman (Hon. Kajwang’): If you agree, that is alright. Hon. Chairman, do you have an issue on this?

Hon. Langat: I oppose the amendment, hon. Temporary Deputy Chairman because this is meant to clarify the specific qualifications which the Auditor-General should have. We are simply saying that the Member wants to delete that the Auditor-General should hold a degree in Finance, Accounting or Economics from a recognised university. This is a specific qualification which we should retain.

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

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, clause 5 of the Bill be amended in subclause (1) by deleting paragraph (e) and substituting therefor the following new paragraph—

“(e) is a practising member of good standing of a professional body of accountants recognised by law.”

This is to further clarify that in addition to being a member of a recognised body of accountants, that member must be a practising member. Auditing is a profession. We need people who are practising to take over that position.

(Question of the amendment proposed)

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I want to oppose this amendment. To qualify to be an auditor, you do not have to be actively practising at that time. Practising is a choice. I can be so qualified but I am working in some organisation. I can choose not to practise as an auditor. So, that should not be a qualification to be the Auditor-General. Maybe I have practised for 20 years and I am tired and do not want to practise anymore. For example, if I work in an organisation as an accountant or an auditor and then now I want to be the Auditor-General of this Republic and I have the qualification, why do you condition? Unless I have reasons why I should not qualify and already that is captured in the---

The Temporary Deputy Chairman (Hon. Kajwang’): Alright. Thank you very much. Member for Rongo, you are on a point of order? What is out of order?

Hon. Anyango: There is something that is out of order.

The Temporary Deputy Chairman (Hon. Kajwang’): You want to contribute. Yes please but very briefly.

Hon. Anyango: We need to insist on the practising aspect because other professionals who are not practitioners have not been subjected sufficiently to the code of conduct in practice under the professions. That office of the Auditor-General is one of the institutions that needs to be strengthened not only by practitioners running it but also strengthened by a number of---

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Marakwet West. Let us hear from Member for Marakwet West before we come to a point of order.

Hon. Kisang: Thank you, hon. Temporary Deputy Speaker. I stand to support the amendments brought by the Chairman. I am an expert in Information Technology (IT) but for the last two years I have not been practising. There are things that I have lost. So, I insist that it is important for the Auditor-General to be a practising auditor so that at least--- There are some current things that are going on that you need to appraise yourself by practising.

The Temporary Deputy Chairman (Hon. Kajwang’): What is out of order, Member for Suba?

Hon. Ng’ongo: On a point of order, hon. Temporary Deputy Chairman. I realise that my colleagues are confusing and misleading the House with regard to the difference between practising and being a member of the institute. I can be a member of the Institute of Certified Public Accountants of Kenya, where I am regulated by a code of ethics, but there are certain auditors who are working as public officers. The law does not require them even to practise. It is illegal to be engaged in other gainful employment. Why must you stop someone just because he is not practising yet he has the qualifications to be an Auditor-General? Are we only restricting the Office of the Auditor-General in this Republic to those who are practising as private auditors?

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Although that was not quite a point of order, you have made your case. Member for Ugenya, what is out of order?

Hon. Ochieng: On a point of order, hon. Temporary Deputy Chairman. I just wanted to weigh in on this.

The Temporary Deputy Chairman (Hon. Kajwang’): No, what is out of order? You are on intervention.

Hon. Ochieng: It was not a point of order. It is just that hon. Mbadi wants to invent a new meaning of the word “practice.” Even if you are working in the Government or in a Non-Governmental Organisation (NGO), you are a practising auditor.

The Temporary Deputy Chairman (Hon. Kajwang’): That might be well, but it is not a point of order. You are contributing.

Hon. Ochieng: It was not a point of order.

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Wajir South, are you in the Chamber? Can I call him again? Member for Wajir South, are you in the Chamber? Member for Wajir South being absent though desiring to move an amendment, the amendment is hereby dropped.

(Proposed amendment by hon. Mohamed Diriye dropped)

Member for Rarieda on sub-clause (c).

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 5(1) of the Bill be amended—

(b) in paragraph (c), by inserting the words “and demonstrates a verifiable and logical progression in the attainment of his or her educational qualifications” immediately after the word “Kenya”.

This amendment is very important. The Act says that you should be a graduate. However, recently when we were interviewing some graduates, we found a university professor who did not pass through Form Four or Form Six and there are obvious gaps. In addition to being a graduate, he should demonstrate a verifiable and logical progression in the attainment of that degree, so that you do not just say that you are a graduate and you cannot even tell people when you passed Form Four or in the olden days like those of us who did Form Six, when you passed Form Six. It is just to give us a history of this person’s qualifications, so that you do not become a graduate from nothing.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya, you are first on the queue.

Hon. Ochieng: I support the proposal by hon. Gumbo.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I want to oppose this amendment. I do not understand how you are going to define “verifiable and logical progression”. Are you going to leave this to the subjectivity and discretion of interviewers? Someone would be blocked because an interviewer or whoever is short-listing is not convinced that the person has demonstrated a “verifiable and logical progression in the attainment of his or her educational qualifications”. Once you can demonstrate that you have the minimum qualifications that we have prescribed, it is sufficient. The others should be left for the interviewing panel to decide whether you are qualified for that position or not.

Hon. Langat: Hon. Temporary Deputy Chairman, I also want to oppose. One of the amendments there is superfluous. It is obvious that when you are not of sound mind, you do not qualify.

The Temporary Deputy Chairman (Hon. Kajwang’): No, we are not on the amendment on sound mind anymore. We are now on this verifiable logical progression.

Hon. Langat: I thought he was moving for both 5 (a) and (b).

The Temporary Deputy Chairman (Hon. Kajwang’): No, we passed that a long time ago Chairman. Just go to where we are.

Hon. Langat: On the issue of verifiable and logical progression, I also oppose. We have already said that the person must have a degree and be a practising member. That is sufficient and objective enough as opposed to again measuring how logical it was and how you attained the degree. It is sufficient to say that you must have a degree from a recognised university. We have also stated the specific degree and that he must be a practising member. Before you practise, it is a process.

The Temporary Deputy Chairman (Hon. Kajwang’): Members, I suppose now that you are well inducted, you are ready to take a vote on this. Member for Tongaren!

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, I would like to support hon. Gumbo's suggestion. We have had instances over and over again where we are appointing people based on degree certificates, which have been acquired in a dubious way. When he says "verifiable" it is very important. We are all aware that degrees are being sold out there on the streets.

The Temporary Deputy Chairman (Hon. Kajwang'): Now that Members have understood the subject, we are now ready to take a vote.

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

(Clause 5 as amended agreed to)

(Clause 6 agreed to)

Clause 7

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

THAT, Clause 7 of the Bill be amended in subclause (1) (a) by deleting the words "financial systems of state organs" appearing immediately after the words "and overall" and substituting therefor the words "governance at national and county governments".

This is basically to enhance Clause 7 (1) (a), so that instead of saying that the Auditor-General will give assurance on the overall financial systems, it says "overall governance systems." The Auditor-General, in addition to financial systems, is also concerned with issues of procurement. It is just to expand that mandate.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Members, you understand - and I am addressing the Members for Rarieda and Ugenya and so listen carefully - that if the amendment proposed by the Chairman is carried, then the amendments proposed by the Member for Rarieda on (a) and (b) will be dropped. The amendment proposed by the Member for Ugenya in paragraph (a) will be dropped.

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

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

Member for Rarieda, did you have another amendment other than (a) and (b)? Which is this? Can you lead us to it on the Order Paper? Give us the page of the Order Paper.

Member for Rarieda, we had agreed that if the amendment by the Chairman is carried as it has then your amendments to Clause 7 are dropped.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, they are not the same.

The Temporary Deputy Chairman (Hon. Kajwang’): No. Can we go to the Member for Ugenya? Where are you? On the deletion of paragraph (f), please.

Hon. Ochieng: Thank you very much, hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 7 be amended in sub-clause (1) by-

(b) deleting paragraph (f).

I am proposing to delete paragraph (f) which says:-

“The Auditor-General shall give an opinion on whether the financial statements are adequate and reliable.”

If you look at Article 229 of the Constitution what the Auditor-General is supposed to do goes beyond that. This provision may limit the functions of the Auditor-General. Secondly, what the Auditor-General does is something that is done with finality. It is not done by just giving an opinion. That is why I propose that this should be removed.

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya, have you addressed yourself to paragraph (b) of your amendment? You seem to have gone a little wider than you should.

Hon. Ochieng: Hon. Temporary Deputy Chairman, I am assuming we are in Clause 7.

The Temporary Deputy Chairman (Hon. Kajwang’): No. We have agreed that once the amendment by the Chairman is carried as it has been carried, paragraph (a) of your amendment is now superfluous.

Hon. Ochieng: I am addressing you on paragraph (b), hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): On the deletion?

Hon. Ochieng: Yes, I am addressing you on paragraph (b).

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Thank you very much. The Chairman, I see you on the request list. Do you have something to say?

(Hon. Langat spoke off the record)

Hon. (Eng.) Gumbo: On a point of order, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Unfortunately, I cannot see you on the request list.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I do not see the issue the Chairman of the Committee has with my proposed amendment. It is really enriching the Bill. Why would it---

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, we have analysed the content of the amendments. It is not coming from him, it is coming from the Chair. The Chair is the one harmonising. The Chair is of the view that when the amendment proposed by the Chairman is carried as it has then yours has been taken care of.

Chairman, what do you have to say?

Hon. Langat: I see where he comes from. If you look at this amendment, it is in two parts. There is paragraph (a) which is captured by my amendments and paragraph (b) which is not in my amendments. Maybe that is what he is saying. Hon. Temporary Deputy Chairman, maybe you could consider paragraph (b) of his amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Well, I see where you are coming from. I am sorry about this. I beg your pardon. However, before we go there, because we are already on HANSARD addressing the deletion of paragraph (f) proposed by the Member for Ugenya, let us dispose of it first. We will come back to yours.

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

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Member for Rarieda, I suppose it is part (b) of your amendment, is it not?

Hon. (Eng.) Gumbo: Yes.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Proceed.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I wish to propose that--

The Temporary Deputy Chairman (Hon. Kajwang’): Since we had passed that amendment, please express yourself on the HANSARD as proposing a further amendment.

Hon. (Eng.) Gumbo: I beg to move:-

THAT, Clause 7(1)(a) of the Bill be amended by-

(b) deleting the words “and public entities” and substituting therefor the words “national and county governments, and all public entities, in order to achieve the objects set out in Article 249(1) of the Constitution”.

The essence of this is to achieve the objects of Article 249(1) of the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Chairman, I see you have an intervention.

Hon. Langat: Hon. Temporary Deputy Chairman, I support the amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Suba, are you in support?

Hon. Ng’ongo: I support.

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

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

(Clause 7 as amended agreed to)

Clause 8

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 8 of the Bill be amended—
(a) in paragraph (a) by deleting the words “subject to section 11 of this Act”;
(b) in paragraph (c) by deleting the expression “subject to Article 234(5) of the Constitution”;
(c) in paragraph (d) by deleting the expression “subject to Article 234(5) of the Constitution”;
(d) in paragraph (j) by deleting the words “ and in consultation with the Public Service Commission and the National Treasury,” appearing immediately after the words “relevant laws,”; and
(e) by inserting a new paragraph immediately after paragraph (k)—
“(ka) provide information that may be needed in investigation accordance with the provisions of this Act.”

The object of this amendment, and in recognition of the independence of the Office of Auditor-General, is to remove the provisions that had been put in the Bill that require that the appointment of staff or creation of the structure of the Office of the Auditor-General should be done in consultation with the Public Service Commission (PSC). That Office should be independent. We are deleting anything in that clause that is subjecting the Office of the Auditor-General to the PSC to improve the independence of the Office.

(Question of the amendment proposed)

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

Hon. Kisang: Hon. Temporary Deputy Chairman, I rise to support the amendment proposed by the Chairman of the Departmental Committee on Finance, Planning and Trade. We need that Office to be independent of the PSC so that they can discharge their duties without any interference.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Member for Subukia.

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. As a Committee, we decided that the Office of the Auditor-General is very independent.

The Temporary Deputy Chairman (Hon. Kajwang’): I can hardly hear you.

Hon. Gaichuhie: I am saying that we agreed that the Office of the Auditor-General should be very independent and free from the PSC. That is why we brought that amendment to make them very independent.

Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. Member for Suba.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I also want to add my voice that PSC is also a commission that is subject to auditing by the Office of the Auditor-General. Therefore, if you condition employment or any other human resource structure

to its direction then you are likely to compromise the Office of the Auditor-General contrary to the requirement of the Constitution. So, I support.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, this is a very important amendment. Article 252(1)(c) of our Constitution says:

“252(1) Each commission and each holder of an independent office-
(c) shall recruit its own staff.”

So, when you subject the Office of the Auditor-General to recruit its staff through the PSC, you are violating that provision. Again, we have already set precedent. We have, for example, the Independent Electoral and Boundaries Commission (IEBC) who recruit their own staff. They do not have to depend on the PSC. So, this is a good amendment.

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Ochieng, you can now see the progression of the business, that therefore when the amendment by the Chair has been carried, that may have taken care of (f) (g)(h) and (j), that leaves you with (i). So, can we hear you on (i).

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

THAT, clause 8 be amended-

(i) by deleting paragraph (f)

I thought that paragraph (f) of Clause 8 now is a tautology. Why would he be approving estimates that he has made himself because he is the one who is supposed to prepare the statements to be forwarded to the external auditor? We cannot ask him to approve. Approve from where and made by whom for his approval?

The Temporary Deputy Chairman (Hon. Kajwang’): “Tautology” is a big word. Can you break it down?

Hon. Ochieng: The point is this: These statements are supposed to be made by the Auditor-General himself. So, he cannot be making them and approving them at the same time. He is supposed to make them and the National Assembly will appoint the external auditor who will then look at those statements.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. What the Member is saying because he has used a very big word, “tautology” and you may not have followed, he is simply trying to delete (f). That is on page 3120 of your Bill. That is where we are.

(Question of the amendment proposed)

Let us have the Chair, hon. Member of Ainabkoi. Can the Chair have the microphone?

Hon. Langat: I oppose that amendment. Once you prepare financial statements, like in Parliament, they have to be signed by the head of that institution who is the Clerk of the National Assembly. It is the same with the Attorney General's Office. Those are financial statements for his office. So, he has to take responsibility for purposes of auditing by the external auditor. So, who will then approve those financial statements for audit and therefore take responsibility for his office? So, the hon. Member may not have understood the meaning of that Clause. So, I ask him to withdraw that amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Thank you very much. Let us have the hon. Member for Kipkelion East. We need everybody to participate.

Hon. Limo: I support the Chair of the Committee in opposing the proposed amendment because it is the responsibility of the head of any institution to approve any statement which emanates from his institution and own it. Therefore the Member's proposal to have somebody else sign is not in order.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you. Hon. Member for Subukia, do you have the same view as the hon. Member for Kipkelion? Member for Suba, do you have the same view with the Chair? I want to rush you on this. Are you having the same view with the Chair?

Hon. Ng'ongo: Thank you. I just wanted to add that it is a requirement in accounting standards that the responsibility is with the head of the entity but the external auditor is only expressing an opinion.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. I think Members are ready to vote on this.

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

(Clause 8 as amended agreed to)

(Clauses 9 and 10 agreed to)

Clause 11

The Temporary Deputy Chairman (Hon. Kajwang'): Mover, you will have the first amendment on this. Just resume your seat. I have reflected on it and I have seen that the hon. Member for Rarieda is proposing a deletion and the hon. Member for Tongaren is proposing a deletion but with an insertion. According to the Standing Orders, we begin with the deletion. We will start with the hon. Member for Rarieda who is proposing the deletion before we go to the other one who is deleting and inserting.

Member for Tongaren be very careful because when we carry a deletion, there will be nothing to insert. Proceed hon. Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, clause 11 of the Bill be amended—

(a) by deleting subclause (2) and substituting therefor the following new subclause—

“(2) Where a vacancy occurs under subsection (1), the President shall within fourteen days, by notice in the Gazette, nominate a person to be appointed as Auditor-General and forward the name for approval by the National Assembly in accordance with Article 229(1) of the Constitution”;

(b) by deleting subclause (3);

(c) by deleting subclause (4);

(d) by deleting subclause (5);

(e) by deleting subclause (6);

(f) by deleting subclause (7);

(g) by deleting subclause (8) and substituting therefor the following new subclause—

“(8) The National Assembly shall, within seven days of receiving the nominations,

consider and approve or reject the nominations”;

(h) in subclause (9) (b) by deleting the words “from amongst the candidates forwarded by the Public Service Commission under subsection (6)” and substitute therefor “within fourteen days of receipt of the same”;

(i) in subclause (10) by —

(i) deleting the words “all or” appearing immediately after the words “Assembly rejects;

(ii) deleting the expression “subsections (1) to (7) shall, with necessary modifications, apply ” and substituting therefor the expression “subsections (2) to (3) shall apply”;

(j) by deleting subclause (12);

I am pleading with the House. If you look at Article 229(1) of the Constitution, it says:-

“229. (1) There shall be an Auditor-General who shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.”

This wording is exactly the same wording that is used when the President nominates Cabinet Secretaries. When he does that, they do not have to go to the Public Service Commission (PSC). I think what this clause intends to do is to delete all references to the PSC. The Constitution clearly allows the President to nominate. I do not see why in this instance we should again subject that nomination to the PSC and yet when he nominates the Cabinet Secretaries using the same provisions of the Constitution, he does not have to refer the same to the PSC. I think that provision is superfluous and in my view an unnecessary engagement of public resources which includes human resource when it is clear that once the nomination is done, it is brought here and the process takes its course.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members for Tongaren and Rarieda--- I can hear the hon. Member or Tongaren telling me to be more careful. I suppose instead of me being more careful, the Members for Tongaren and

Rarieda should consult. This is because, the content of your amendments seem on the face value to be the same. You can agree so that we can take one. One sounds more substantive and another sounds on the same thinking. So, I ask you to consult. Okay. Hon. Member for Tongaren, speak to the HANSARD.

Hon. (Dr.) Simiyu: I will forego my amendment and go with hon. Gumbo's amendment. That means I drop mine on the simple reason that the Constitution is very clear on who is appointing the Auditor-General. We have had a habit, for a long time now, of introducing this "animal" called selection or appointing committees. When you look at where the Auditor General is concerned, the Constitution is very clear on who should appoint. I notice that hon. Gumbo is not just deleting, he is also inserting something which is more or less similar to what I was going to insert. It is a constitutional matter.

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you. Will you express yourself on the HANSARD as dropping your amendment of both deletion and insertion so that we deal with the one for hon. Member for Rarieda?

Hon. (Dr.) Simiyu: It is the same.

The Temporary Deputy Chairman (Hon. Kajwang'): I will need you to express it on the HANSARD.

Hon. (Dr.) Simiyu: I have said what hon. Gumbo is doing---

The Temporary Deputy Chairman (Hon. Kajwang'): No. I want you to just say that you therefore drop your amendments---

Hon. (Dr.) Simiyu: I drop my amendments.

(Proposed amendment by Dr. Simiyu dropped)

The Temporary Deputy Chairman (Hon. Kajwang'): Thank you very much. We are back to the question which I have proposed which is that the hon. Member for Rarieda is deleting Subclause 2.

Hon. Gaichuhie: Hon. Temporary Deputy Chairman, I want to urge hon. Gumbo to accept the amendments of the Departmental Committee because we deliberated exhaustively on that issue.

Therefore, I oppose this amendment and urge the House to carry the Departmental Committee's amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, Member for Emuhaya.

Hon. (Dr.) Ottichilo: Hon. Temporary Deputy Chairman, I also agree with the Vice-Chairman of the Department Committee and plead with my good friend, Eng. Gumbo, to drop his proposal, so that we can adopt the amendment of the Committee. The reason is that we need not give the President the prerogative to choose anybody he wants. We want people to apply for the position. We then have a panel that will select names for onward transmission to the President to choose from.

The Temporary Deputy Speaker (Hon. Kajwang'): Yes, Member for Suba.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, I want to also plead with hon. Gumbo; this is not a very good amendment. The Auditor-General is in the public service. His recruitment requires competitiveness. In fact, we even raised the issue of appointment of the Director of Public Prosecutions and it was ruled that the President was wrong in

unilaterally appointing people. The position of the Auditor-General is a professional one. We cannot leave it for the President to appoint the Auditor-General, just like he appoints people to his Cabinet. This is a position for which Kenyans will have to apply and be subjected to public interview, just like we did to the current occupant of that office.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Departmental Committee Chairman.

Hon. Members, I am finishing with people I believe to be on one side of thinking.

Hon. Langat: Hon. Temporary Deputy Chairman, let me thank the hon. Members who have already spoken. There is provision in our Constitution requiring that we give everybody equal opportunity to get appointments in the public service. The provisions that we have made, as a Committee, followed a lot of consultations. Therefore, I urge the Member for Rarieda to withdraw his amendment in favour of the amendment of the Departmental Committee. Our amendment is more comprehensive. It gives Kenyans an opportunity to compete for the position. There are many practising members of the public. We need to give them opportunity to be interviewed and vetted. The President can then choose someone from a list that will be submitted to him.

Therefore, I urge my friend to withdraw his amendment, so that we can move to the Departmental Committee’s amendment, which was done after a lot of consultations.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, I want to ask only one of you to have the second bite of the cherry. There is an intervention from the Member of Tongaren.

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, is the Chairman of the Departmental Committee in order to say something at one point and flop right onto the other side the next moment? He said that they did not want to subject the Auditor-General to the whims of the Public Service Commission (PSC) but now, he wants to create a selection panel comprising of representatives of those organs. Are we not getting into the same situation? The Auditor-General will be auditing those organisations.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, the last on this one is the Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I plead with both the Departmental Committee Chairman and my good friend, hon. Mbadi, to listen to me. The Constitution is very clear that the President shall nominate, and we are talking about public participation. Maybe, they have not read my amendment. I am proposing that where a vacancy occurs under Subsection (1), the President shall, within 14 days, by notice in the Gazette, nominate a person to be appointed as Auditor-General and forward the name to Parliament for approval. This allows for public participation. When we approve nominees of the President for appointment, members of the public are invited to take part.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, as somebody contributes, absorb what he says; analyse it, instead of keeping your fingers on the request button just to have an argument.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, this is an express provision of the Constitution. Are we saying that the PSC is a higher constitutional office than the Office of the President? The Constitution clearly says that the President shall

nominate. Are we saying that by passing it through the PSC, the PSC will still give the President a person whom he does not want to be the Auditor-General?

The Temporary Deputy Chairman (Hon. Kajwang’): I can see that hon. Members know where we are. I want to give people second chances.

Yes, Member for Ugenya.

Hon. Ochieng: Hon. Temporary Deputy Chairman, I also have an amendment which affects this particular Clause. Maybe, you did not see them. The reason---

The Temporary Deputy Chairman (Hon. Kajwang’): I will come to you, Member for Ugenya.

Hon. Ochieng: Hon. Temporary Deputy Chairman, I wanted to pre-empt it by just doing the same thing that I have seen you do to the two Members. I just want to persuade hon. Gumbo on the same matter. Since we came to this House three years ago, we have developed a governance system through which we vet the President’s nominees and approve them for appointment. Right from the Inspector-General (IG) of the National Police Service to members of the Commission, we have said that the President cannot have a blank check in the way he brings nominees to this House. This is a matter on which we have all along agreed, as a House. The spirit of the Constitution is that there should be power sharing. I am very sure that if this method was to be used, the current Attorney-General (AG) would not be there today. Therefore, I plead with hon. Gumbo to allow adoption of a process through which people can apply for the job and get interviewed. That is why I want to drop my amendment in support of the amendment of the Departmental Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): Can you go on record as dropping the amendment that you had proposed on Clause 11?

Hon. Ochieng: Hon. Temporary Deputy Chairman, I go on record that I drop my proposed amendment to Clause 11, in favour of the amendment proposed by the Chairman of the Departmental Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): I am looking at page 211 of the Order Paper. Have you dropped part (a) of your amendment, which relates to Subclause 5? You have parts (a) and (b), which one have you dropped?

Hon. Ochieng: Hon. Temporary Deputy Chairman, I have dropped all my amendments to Clause 11, in support of the amendments brought by the Departmental Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much.

(Proposed amendments by hon. Ochieng dropped)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, I want to put the Question on hon. Gumbo’s amendment.

Member for Suba, you are on a point of order. Please, let me hear you.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, two things are out of order. Firstly, hon. Eseli has misled the House by saying that when we do this, we will be subjecting the process to the PSC. The PSC will have only one nominee in the proposed body. The others will be from professional bodies. Secondly, there is already a ruling---

The Temporary Deputy Chairman (Hon. Kajwang’): First of all, I do not agree with you that the Member for Tongaren has misled the House. He made an interpretation on a point of law. An interpretation on a matter of law cannot be misleading. If it was on a point of fact, it would have been misleading. What is the next point of order?

Hon. Ng’ongo: Hon. Temporary Deputy Chairman I agree with you because misleading the House is misleading the House whether it is a fact or not.

The Temporary Deputy Chairman (Hon. Kajwang’): No, I am making a ruling. I have to do that.

Hon. Ng’ongo: Yes, the Chairman has a prerogative, but I am also entitled to my opinion and I will put it across. On the other one regarding hon. Gumbo, there is already a ruling in this House. Actually, hon. Gumbo should appreciate that when the Constitution allows the President to nominate, we can legislate on the process of nomination. So, there is nothing we are doing which is unconstitutional. We are just telling the President, yes, you can nominate but this is how to nominate.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Gumbo, are you misleading the House? I get his point of order. I have got you, hon. Mbadi, so, please resume your seat. Are you misleading the House to suggest some interpretation of the Constitution when you know very well that there is a ruling in this regard? That is the point of order. So, please, just address yourself to that point of order.

Hon. (Eng.) Gumbo: Mr. Chairman, without doubt, I am not misleading the House at all. I am just looking at the constitutional provisions. I gave an example where the President is allowed by the Constitution to nominate Cabinet Secretaries - He does not have to go through a panel. I have said that if it is a question of public participation, still, the Parliamentary process will allow the public to participate. I am, therefore, not misleading the House.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay, we have been bogged a little now.

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

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Tongaren, can I hear you on sub-clauses 3 and 4?

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, if the initial amendment has not gone through and this other amendment goes through, it will make the whole Article unworkable. If the subsequent amendments go through, then the Article becomes unworkable. It will not be implementable. I believe that Parliament should not legislate in such a manner. So, while I am opposed to it--- The first part did not succeed and so I suggest that we just drop the other proposed amendments.

(Proposed amendments by hon. (Dr.) Simiyu dropped)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, do you have similar opinions on sub-clauses 3 and 4?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, the unfortunate loss of my proposed amendment, obviously spearheaded by my former good friend hon. Mbadi--

(Laughter)

The Temporary Deputy Chairman (Hon. Kajwang’): Did I hear you say “former good friend”?

Hon. (Eng.) Gumbo: Yes, former good friend.

The Temporary Deputy Chairman (Hon. Kajwang’): I see you are entitled to it.

Hon. (Eng.) Gumbo: Clearly, the loss of my proposed amendment makes my other proposed amendment superfluous.

The Temporary Deputy Chairman (Hon. Kajwang’): I heard the Member for Tongaren expressing himself to have dropped those amendments. Could you, please, similarly drop the same amendments on HANSARD? Could you drop the amendments on sub-clauses 3 and 4?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, it is not just sub-clauses 3 and 4.

The Temporary Deputy Chairman (Hon. Kajwang’): No! I will beg your pardon. I want to move clause by clause. So, right now we are on sub-clauses 3 and 4.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I withdraw my proposed amendments on sub-clauses 3 and 4.

*(Proposed amendments to subclauses (3) and (4)
by hon.(Eng.) Gumbo dropped)*

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. Let us go to Sub-clause 5. The reason I am going clause by clause is that your amendments are so intertwined and I need to take out the meat from the bones. Member for Tongaren, what is your view on Sub-clause 5?

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, perhaps, let it be standing that all my amendments to Clause 11 are dropped.

The Temporary Deputy Chairman (Hon. Kajwang’): I will go with you clause by clause, if you do not mind. Member for Rarieda!

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, the consequence of the laws of my proposed amendment is that I now withdraw.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Langat, what is your comment on Sub-clause 5?

Hon. Langat: Hon. Temporary Deputy Chairman, I wanted to move my amendments to Clause 11.

The Temporary Deputy Chairman (Hon. Kajwang’): We are talking about Sub-Clause 5.

Hon. Langat: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 11 of the Bill be amended—

(a) by deleting subclause (5) and substituting therefor the following new subclause—

“(5) The President shall, within fourteen days of the expiry of the period prescribed under subsection (2), constitute a selection panel comprising one representative from—

- (a) the Office of the President;
 - (b) the Ministry for the time being responsible for matters relating to finance;
 - (c) the office of the Attorney-General;
 - (d) the Ministry for the time being responsible for matters relating to the public service;
 - (e) the Institute of Certified Public Accountants of Kenya; and
 - (f) the Association of Professional Societies of East Africa,
- for the purpose of considering the applicants and selecting at least three persons qualified for appointment as Auditor- General:

Provided that for the purposes of selection and shortlisting of the said three persons, the selection panel shall hold its proceedings in public and submit to Parliament a report of the interview proceedings, which should include inter alia, scores of each candidate interviewed by individual members of the interviewing panel together with the criteria used in selecting the names forwarded”;

(b) in subclause (6) by deleting the words “Public Service Commission” and substituting therefor the words “selection panel”;

(c) in subclause (9) (b) by deleting the words “Public Service Commission” and substituting therefor the words “selection panel”;

(d) in subclause (12) by deleting the words “ selection committee convened under subsection (4).” and substituting therefor the words “selection panel convened under subsection (5).”

The object of this amendment is really to create a selection panel which will interview the Auditor-General. I agree with hon. Gumbo that the President shall nominate. However, what we are doing here is giving the procedure for that nomination process. After consultation, we arrived at a conclusion that it should be the President himself to constitute the selection panel and we have listed the membership of that selection panel: Office of the President, Ministry responsible for finance, Office of the Auditor-General, Ministry responsible for matters relating to public service, Institute of Certified Public Accountants of Kenya (ICPAK), and Association of Professional Societies of East Africa. That is basically to remove subjectivity and to give the President the best from which now the President can select.

The other clauses there are just to align the Bill to what we have passed in the other sub-clause 5.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you. I think that is clear enough.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Let us do it this way. Some of you have what you express to be points of order. None of them has ever been points of order! You have just been making your contributions and arguments. I will give

you all the time you have to contribute, but do not clothe your argument in points of order; it does not help any of us. Let us start with Member for Nakuru Town East.

Hon. Gikaria: Hon. Temporary Deputy Chairman, I support.

Hon. Chea: Thank you, hon. Temporary Deputy Chairman. I support this amendment.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, I have only one problem with this amendment that the Chairman of the Departmental Committee could help us understand. The addition of the Association of Professional Societies of East Africa is a good thing because we are adding professionals in the interviewing panel. However, the problem I have is that we are now making the panel to comprise of an even number of six instead of five. You see, when you have an interviewing panel at times there could be a tie in making decisions. It may look tidier if it was an odd number.

The Temporary Deputy Chairman (Hon. Kajwang'): The Chairman of the relevant Departmental Committee could easily do a further amendment to correct that if you persuade him. So, just cross the Floor and do what you must do and consult with him. Probably, he may be persuaded to do a further amendment.

Member for Tongaren!

Hon. (Dr.) Simiyu: I drop my amendment

The Temporary Deputy Chairman (Hon. Kajwang'): No! No! We were speaking to Clause 11?

Member for Ugenya!

Hon. Ochieng: I support.

The Temporary Deputy Chairman (Hon. Kajwang'): Do you support?

Hon. Ochieng: Yes, fully.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Rarieda!

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, much as I support, but with all due respect to the Chairman, I think this is one amendment which has chosen form over substance. A lot of auditing has now become very complicated.

As an engineer, I can say it on record that there is some auditing work that requires specifically the input of engineers. I will be crossing the Floor to propose to the Chairman that he includes the Institution of Engineers of Kenya as part of the interviewing panel.

The Temporary Deputy Chairman (Hon. Kajwang'): We do not have a lot of time. Can you do that very fast as I hear Member for Subukia?

Hon. Gaichuhie: Thank you, hon. Temporary Deputy Chairman. I wanted to make an amendment, but since they are doing it, let them do it in the official way.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Nakuru Town East, you are again on my request list. Order! You are back on my request list. Do not give him a chance again. He was asleep when he needed to make his contribution. Alright, hon. Chair, you must have been persuaded to do something. What do you have to tell us?

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

THAT, sub-clause (5) be further amended by inserting sub-clause (g) after sub-clause (f) to include the Law Society of Kenya.

This will make them seven and hon. Mbadi's fear is over.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us do it this way: Remove the word “and” on (e) and put that word “and” after East Africa and then say “the Law Society of Kenya.”

(Question of further amendment proposed)

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

Let me come back to the Member for Tongaren. I must apologise for coming back to you. It is just that I have to follow the HANSARD procedure. You can now express yourself on all the amendments you have on Clause 11.

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, in view of the debacle with hon. Gumbo’s amendment, then my amendments are made meaningless. So, I drop all the amendments that I had on Clause 11.

The Temporary Deputy Chairman (Hon. Kajwang’): So, hon. Gumbo’s amendments have taken yours to the grave. Hon. Gumbo, again express yourself entirely on all the amendments that you have on Clause 11.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I had proposed the deletion of sub-clauses (6), (7), amending sub-clause (8), but those were consequent upon my proposed amendment to sub-clause (2) being carried. Since it has been defeated, those amendments are now superfluous.

(Proposed amendments by hon. Gumbo dropped)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman, will you move all your amendments on Clause 11 in one sweep?

Hon. Langat: I thought I had already done so. I moved all my amendments wholesale. I also moved the amendment to sub-clause (6), which seeks to delete the words “Public Service Commission” and substitute therefor the words “selection panel”. We are replacing it to ensure that the Public Service Commission is only providing secretarial services. The job will be done by the selection panel. This is just to align those sections to the amendments to sub-clause (5).

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Suba.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I support all those amendments.

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

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

thereof be inserted, put and agreed to)

(Clause 11 as amended agreed to)

Clause 12

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 12 of the Bill be deleted.

I look at Clause 12 as a mischief clause which allows someone to act as an Auditor-General for up to 12 months. That is introducing mischief and should never be allowed. There are clear indications of when the Office of the Auditor-General will be vacant and that is the time a new Auditor-General should be appointed. We should never and have never had that kind of a situation where an Auditor-General is acting for one year. This is mischief. An Auditor-General will be removed when there is somebody behind there who is complaint with the system. The person will be placed there and allowed to act for one year before a proper replacement is done. That is a mischievous statement with ulterior motives. Therefore, it should be deleted in its entirety.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Rarieda, you realise that if the amendment by the Member for Tongaren is carried, yours will be superfluous. I will allow you to support or oppose the amendment by the Member for Tongaren. Let us start with the Member for Emuhaya.

Hon. (Dr.) Ottichilo: Hon. Temporary Deputy Chairman, I want to associate myself with Dr. Eseli. I believe somebody should not act for more than six months. The normal regulation is to act for no more than six months.

Hon. (Ms.) Emanikor: Thank you, hon. Temporary Deputy Chairman. I also want to support the amendment by the Member for Tongaren. The 12 months are against the labour laws. It should be six months or below.

Hon. (Ms.) Wanyama: Thank you, hon. Temporary Deputy Chairman. I also want to support the amendment by hon. Eseli. A period of 12 months is not good.

Hon. Ochieng: Hon Eseli's amendment is sound. I support.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, in essence, I support, but would it not have been nice if we limited the period within which a person can act? My amendment was to strike out Clause 12 and replace it with Clause 8.

The Temporary Deputy Chairman (Hon. Kajwang'): Resume your seat if you do not mind.

Member for Suba, whom do you want to give that information? Hon. (Eng.) Gumbo, do you need some information from your former friend?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, on this occasion, I might need him to inform me although I do not know what he wants to inform me on since I had not even completed what I was saying. Maybe, if I complete what I was saying---

The Temporary Deputy Chairman (Hon. Kajwang’): Just get the information first and then you can finish.

Hon. (Eng.) Gumbo: Let me hear what he has to say although I do not know what he wants to inform me about.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I really wanted to inform my former friend. Anyway, we still remain relatives.

If you look at clause 11 that we just passed, actually, if a vacancy arises the timelines are set within which it should be filled. The timeline is very strict. The President has his days and the panel has 14 days. It is about a month or less. I strongly support that amendment because the timelines are already there.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Gumbo, can you now finish what you wanted to say.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, in my earlier defeated amendment, I was just trying to restrict the time for acting and the time for appointing. However, since my amendments were not carried through and we have what has been provided for, I think this is in order and I support.

The Temporary Deputy Chairman (Hon. Kajwang’): That is very progressive. Member for Ainamoi, you will be the last one on this amendment.

Hon. Langat: Hon. Temporary Deputy Chairman, I have heard how the debate is going on and I request the hon. Members to reconsider this amendment. I want this House to consider an instance where the Auditor-General has been suspended in accordance with the Constitution. For how long can it be? It can take long. What happens during his suspension?

Secondly, where the appointment of a person as Auditor-General is pending, what happens? We have Kenyans who always go to court to challenge anything. As we speak, the recruitment of police officers is pending because somebody went to court and challenged it. We do not know for how long it will be pending. It is good to make this law with information. I am only asking the House to consider the eventuality that somebody challenges this matter in court and it takes time. Do we stay without somebody in that capacity for that time?

Hon. Temporary Deputy Chairman, what if the Auditor-General, for any reason, is unable to perform the functions of his or her office? Somebody can get sick. Do we stay without somebody acting in that office? I have given you the circumstances in which such a thing can occur. We should be creative when we are making this law and anticipate all circumstances.

I oppose the amendment.

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

(Clause 12 deleted)

Clause 13

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda!

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:- THAT, clause 13 be amended by deleting the words “Chief Justice” and substituting therefor the word “President”.

Hon. Temporary Deputy Chairman, I believe that constitutional principles ought not to be what we call ‘sinusoidal’ in engineering. The current Auditor-General was sworn in before the President. I witnessed it. In any case, the Office of the Auditor-General is a very special one. He or she reports to Parliament. It is a small amendment where I propose that instead of being sworn in before the Chief Justice, we continue with the tradition under this current Constitution of swearing in the Auditor-General before the President. The current Auditor-General was sworn in before the President.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Let us have the Member for Ugenya.

Hon. Ochieng: Thank you very much, hon. Temporary Deputy Chairman. Hon. (Eng.) Gumbo is my very good friend but today I do not know what happened. We are trying to horizontalise power by moving it from the centre to other areas. You know that all the commissioners and judges are sworn in before the President. This is an independent office. It is independent from everybody. The President is sworn in by the Chief Justice. This elevates the stature of the Office of the Chief Justice. It makes it what it ought to be; that it is not subject to anybody.

I oppose this amendment and urge hon (Eng.) Gumbo to drop it.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Emuhaya!

Hon. (Dr.) Ottichilo: Thank you, hon. Temporary Deputy Chairman. With due respect to my good friend, I oppose this amendment and agree with what hon. Ochieng has said. This should remain at the Office of the Chief Justice.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Nambale!

Hon. Bunyasi: Hon. Temporary Deputy Chairman, it should remain with the Chief Justice. That is as high as it should get. As has been indicated by my colleagues who spoke earlier, even the President himself is sworn before the Chief Justice.

The Temporary Deputy Chairman (Hon. Kajwang’): I think we should now vote on this Question. Chair, can I lastly hear you on this.

Hon. Langat: Hon. Temporary Deputy Chairman, my comments are the same as those of hon. Bunyasi. Those are some of the good functions of the Office of the Chief Justice. The President was sworn in front of the Chief Justice. So, if the Office of the Auditor-General is special, as he said, even the Office of the President is special. That is why he was sworn in before the Chief Justice.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I am not a lawyer but I wonder if we have a Constitution which applies this way today and another way tomorrow. All I am trying to say is that the current holder was sworn in before the President. This is on record. There was nothing wrong. By saying that we take the swearing in to the Chief Justice, are we saying that that was a problem? In any case, the

Office of the Auditor-General reports to Parliament. So, do we have a Constitution which is this way today and another way tomorrow?

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Rarieda, I am not going to debate this because it is not part of my mandate to do so. However, I am agonising. The President is an embodiment of the Executive. On the other hand, the Chief Justice is the embodiment of judicial authority. Somebody swears before another because that person has the judicial authority. That is why you swear before commissioners for oath, magistrates or a High Court Judge. That is the constitutional thinking in swearing before people. The President has no judicial authority. He only has Executive authority. That is where we are.

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

(Clause 13 agreed to)

Clause 14

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

THAT, clause 14 of the Bill be deleted and replaced with the following new clause—

Development and
approval of
organizational
structure

14. The office of the Auditor-General shall develop an organizational structure for consideration and approval by the Audit Advisory Board.

This is to remove the Public Service Commission (PSC) from approving the organizational structure of the Auditor General and subject it to what we call the Audit Advisory Board. This is to improve the independence of the office of the Auditor General which is an independent commission equal to PSC.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members for Rarieda and Ugenya, you can see the text of your amendments is more or less the same. If the amendment by the hon. Chairman is taken, the deletion and substitution then, therefore, your amendments will be dropped.

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

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

(Clause 14 as amended agreed to)

Clause 15

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 15 of the Bill be deleted and replaced with the following new clause—

Recruitment of the
Senior Deputy
Auditor General

15.(1) There shall be a Senior Deputy Auditor-General who shall be competitively recruited by the office of the Auditor-General and appointed by the Audit Advisory Board.

(2) A person shall be qualified for appointment as the Senior Deputy Auditor-General if that person meets all the qualifications for appointment as outlined in Section 5 of this Act.

Hon. Temporary Deputy Chairman, the idea here is to adhere to Article 252(1) of the Constitution which requires the independent offices to be responsible for appointing their own staff. As it is now in the Bill, we are subjecting this appointment to the PSC which negates the clear provisions of the Constitution.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): All right, hon. Member for Ugenya, the hon. Member for Ainamoi as Chairman and hon. Member for Wajir South, you all see, therefore, that the consequence of hon. Member of Rarieda's amendment is to dispose of your amendments. What he has done is to delete the whole of Clause 15, which is what you had intended to change and he has inserted a different text. Hon. Member for Ugenya, can I hear you on the microphone?

Hon. Ochieng: Thank you, hon. Temporary Deputy Chairman. I support hon. Gumbo's amendment. It is something I discussed with the Chairman of the Departmental Committee on Finance, Planning and Trade. Probably, I needed to have discussed it with hon. Gumbo.

If you look at the text we have just imported to Clause 15, there is some mismatch and that is why I was going to request the Chairman or hon. Gumbo himself that I propose a further amendment on Clause 15. What we have just passed in Clause 15(1) says:-

"There shall be a Senior Deputy Auditor-General who shall be competitively recruited by the office of the Auditor-General and appointed by the Audit Advisory Board."

That text, I think, should be the other way round, so that the recruitment is done by the Advisory Board and the appointment is made by the Auditor-General (AG) himself. That is the way it should read. I want to request hon. Gumbo and the Chairman, if they agree, we amend that clause so that the recruitment is done by the Advisory Board and the appointment is made by the Auditor-General because the Senior Deputy Auditor-General reports to the Auditor-General.

That is what I wanted to intervene on. I discussed it with the Chairman of the Departmental Committee on Finance, Planning and Trade. I want to request ---

The Temporary Deputy Chairman (Hon. Kajwang’): Recruited by the Advisory Board but appointed by the Auditor-General. You need to come closer to hon. Member for Rarieda because if then you persuade him, he is the only one who can proffer a further amendment. Hon. Chairman, yes please.

Hon. Langat: Hon. Temporary Deputy Chairman, I want to agree with what hon. Ochieng has said so that we have the Advisory Board competitively recruit, that is, advertising the position and interviewing the candidates and making recommendations to the Auditor-General to appoint because, if you look at the functions of the advisory board---

The Temporary Deputy Chairman (Hon. Kajwang’): We hear you, thank you. Hon. Member for Rarieda, if you take counsel, what do you say?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, to be honest, that even strengthens my amendments because then, the appointing authority for the Senior Deputy Auditor-General will be the Auditor-General.

The Temporary Deputy Chairman (Hon. Kajwang’): So, can you express yourself on the HANSARD? What you are looking at is to change these words. Look at Clause 15(1), there are the words “recruited” and “appointed.” So, see how you can exchange them.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 15 of the Bill be deleted and replaced with the following new clause—

Recruitment of the
Senior Deputy
Auditor General

15. (1) There shall be a Senior Deputy Auditor-General who shall be competitively recruited by the Audit Advisory Board and appointed by the Auditor-General.

(2) A person shall be qualified for appointment as the Senior Deputy Auditor-General if that person meets all the qualifications for appointment as outlined in Section 5 of this Act.

(Question of the further amendment proposed)

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

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

(Clause 15 as amended agreed to)

Clause 16

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

THAT, clause 16 (1) of the Bill be amended by inserting the words “deputize the Auditor General and” immediately after the words “Auditor-General shall”.

This is basically to clarify that the Deputy Auditor-General shall deputise the Auditor-General in performance of that function.

(Question of the amendment proposed)

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

(Clause 16 as amended agreed to)

Clause 17

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

THAT, clause 17 of the Bill be amended—

(a) in subclause (1) by deleting the words “and the Auditor-General may appoint such staff subject to Article 234 (5) of the Constitution” appearing immediately after the words “Salaries and Remuneration Commission” and substituting therefor “and subject to Article 230 of the Constitution”;

(b) in subclause (2) by deleting the words “under this Act and approved by the Public Service Commission” appearing immediately after the words “the Auditor-General”.

This is to remove the requirement that recruitment of the staff of the Office of the Auditor-General is subjected to PSC. They are actually recruited subject to Article 230 of the Constitution.

This is again to ensure that their salaries are determined on the advice of the Salaries and Remuneration Commission (SRC).

(Question of the amendment proposed)

Hon. (Dr.) Ottichilo: Thank you, hon. Temporary Deputy Chairman. I want to support the Chairman of the Committee. This is a very good amendment. It gives the power to the Auditor-General to determine the type of people he or she wants as staff then they are approved by the Public Service Commission. So, this is a very good amendment.

Hon. Ochieng: Hon. Temporary Deputy Chairman, you realise that this is one of the amendments where I also proposed almost similar amendments. I wanted to rise to support and go on record as withdrawing my own amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): So, are you dropping (i) and (f)?

Hon. Ochieng: That is true.

The Temporary Deputy Chairman (Hon. Kajwang’): All your amendments?

Hon. Ochieng: All my amendments with regard to that particular clause are dropped in support of Chairman’s amendments.

(Proposed amendments by hon. Ochieng dropped)

Hon. (Eng.) Gumbo: This is a very good amendment. It follows from the earlier amendments except you realise that I will have a further amendment to part (e).

The Temporary Deputy Chairman (Hon. Kajwang’): Can you express yourself on (c) and (d)? To be dropping them? Just say that on record.

Hon. (Eng.) Gumbo: Yes, I am dropping in favour of the Chairman’s which are the same. They are the same amendments.

(Proposed amendments by hon. (Eng.) Gumbo dropped)

The Temporary Deputy Chairman (Hon. Kajwang’): Therefore, hon. Member of Rarieda has dropped his amendments on (c) and (d). Hon. Member for Ugenya has dropped all his amendments. We therefore, remain with the Chairman expressing himself. We will come to (e) and we will also come to hon. Member for Tongaren. So let us deal with this for the Chairman first of all.

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

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

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:- THAT, clause 17 of the Bill be amended in-

(e) in sub-clause (3) by inserting the words “and shall comply with the values and principles of public service as contemplated in Article 232 of the Constitution” immediately after the words “marginalized groups”.

This follows from the earlier amendments that we had proposed. It is a constitutional provision. We are just emphasizing and enriching that all these appointments shall comply with the values and principles of Public Service as contemplated under Article 232 of our Constitution immediately after the words “marginalized groups”. It follows from an earlier----

(Question of the amendment proposed)

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

Hon. (Dr.) Simiyu: Thank you, hon. Temporary Deputy Chairman. When you pay peanuts, you get monkeys.

The Temporary Deputy Chairman (hon. Kajwang’): You get monkeys when you do what?

Hon. (Dr.) Simiyu: When you pay peanuts, you get monkeys. I have realized that the Salaries and Remuneration Commission (SRC), of course, is the one that determines remuneration. The Auditor-General's Office needs to be looked at on remunerative terms more favourably, considering that now we have given him freedom to hire the best that he can get. If you subject them to the peanuts that they are paid, they might not perform their work very well. I thought I would open up a bit and allow the SRC to also refer to what similar positions earn not just in the Public Service but in private institutions also. That is the intent of my amendment.

Therefore, I beg to move:-

THAT, clause 17 of the Bill be amended by inserting the following new sub clause immediately after sub clause (1) –

“(1A) The remuneration of such staff should reflect the prevailing remuneration of such staff performing similar duties in the audit profession in other public and private institutions in Kenya”.

(Question of the amendment proposed)

Hon. (Dr.) Ottichilo: Hon. Temporary Deputy Chairman, I want to support the amendment by hon. (Dr.) Simiyu because these positions are highly competitive. If we leave it to the SRC, they may scale down. It is important that we give them a provision for them to compare with other market rates.

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

(Clause 17 as amended agreed to)

Clause 18

Hon. (Eng.) Gumbo: I beg to move:-

THAT, clause 18 of the Bill be amended in—

(a) subclause (2) by inserting the word “be” immediately after the words “an officer of the office and”;

(b) subclause (3) by deleting the words “thirty-six” and substituting therefor “twenty-four”

The import is, of course, in sub-clause 2, to make it grammatically correct. In subclause 3, I just thought that 36 months is too long. I am proposing that it be amended to 24 months.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): It is not in the Standing Orders that the Chairman must be heard on all these issues. I need to speed up these amendments. Once I see that Members have been fully aware of the amendment that they want to propose, we can take that Question.

(Clause 18 as amended agreed to)

(Clause 19 agreed to)

Clause 20

Hon. (Eng.) Gumbo: I beg to move:-

THAT, clause 20 of the Bill be amended by—

(a) deleting subclause (2) and substituting therefor the following new sub-clause—

“(2) The Auditor-General shall submit and discuss the budget estimates before the relevant committee of the National Assembly together with the Cabinet Secretary responsible for finance and agree on the budgetary allocations for the coming year, not later than 30th November each year”;

(b) inserting the following new subclauses immediately after subclause (2)—

“(2A) The budget estimates agreed to under subsection (2) shall be included in the Budget Policy Statement without alterations.

(2B) If changes are made to the agreed budget estimates, the Auditor-General shall inform the chairperson of the relevant committee of the National Assembly in writing not later than the 15th January in every year”;

(c) inserting a new clause immediately after clause (3)—

“(3A) Funds meant for the recurrent expenditure of the Auditor General under this section shall be disbursed to the office in equal quarterly installments.”

With the expanded space of our governance system, we need to give the Auditor-General more resources to audit properly. Therefore, I am proposing that subclause (2) be deleted and substituted to allow the relevant committee together with the Cabinet Secretary responsible for finance to agree on the budget. What I am trying to do here is basically to avoid---

The Temporary Deputy Chairman (Hon. Kajwang’): We hear you.

Hon. (Eng.) Gumbo: Let me just explain. When the Auditor-General’s estimates are reviewed by the National Treasury alone, in my view, it does not ensure the spirit and intention of the Constitution, of independence of the office because the National Treasury is also one of the entities that the Auditor-General is supposed to audit.

(Question of the amendment proposed)

Hon. Lati: Hon. Temporary Deputy Chairman, I oppose this. There are three arms that bring their budget estimates to the Budget and Appropriations Committee. That is the Parliamentary Service Commission, the Judicial Service Commission and the

National Treasury. We should give the National Treasury that mandate as given in the Constitution to look at the Auditor-General's budget in relation to all other budgets.

The Temporary Deputy Chairman (Hon. Kajwang'): Do you oppose or support?

Hon. Lati: I oppose.

Hon. Gichigi: Thank you, Temporary Deputy Chairman. I also oppose this particular amendment. It is very well to suggest that we are giving the Attorney-General independence but when you give them a black cheque to say we need this money and we must be given that money, it means that the other requirements and needs of other arms of Government are not as important as this. This is obviously wrong and we must oppose it.

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Gikaria.

Hon. Gikaria: Hon. Temporary Deputy Speaker, I totally agree with my two colleagues and as hon. Lati has just mentioned, I think there are only three---

Hon. (Dr.) Ottichilo: Thank you, Temporary Deputy Chairman. I want to support this amendment because normally the Principal Secretary for Finance gives budget to the Auditor-General without proper discussion. If we are going to confront the issue of corruption, the Auditor-General must be given proper budget. It is important that he or she is given a chance to discuss, together with the Principal Secretary for Finance and the Committee, before it is put in the Budget.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, I want to oppose this amendment. First, I know that the Office of the Auditor-General requires proper funding but we must also make Committees of Parliament do their work within the current law. Once the Cabinet Secretary gets the Estimates as at now, they will still come to the relevant Committee of Parliament. Therefore the relevant Committee of Parliament, within the law, has the capacity to vary the figures based on discussion but if we make all agencies to be sending their budgets directly to Parliament, we have a problem in that there will be no need for the Executive and Treasury.

I do not agree with this amendment.

Hon. Langat: I also oppose the amendment. I agree that audit of State organs is very important but the resources in this country are limited and in any case all the estimates will find their way to the National Assembly. It is good to discuss the estimates of the Auditor-General with other organs of Government and then bring them to Parliament which will have the final say in the figures which will be given to the Auditor-General.

Hon. Temporary Deputy Chairman, I oppose the amendment.

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

The Temporary Deputy Chairman (Hon. Kajwang'): That has been negated.

Hon. Ochieng: Is hon. Ochieng in the Chamber?

Hon. Member: He is not in the Chamber.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Ochieng, though desiring to move his amendment but absent from Chamber, those amendments are hereby dropped.

(Proposed amendments by hon. Ochieng dropped)

(Clause 20 agreed to)

(Several hon. Members stood on the gangway)

Order, hon. Members! These hon. Members on the gangway, order! I want to recognise the following two clerks of Mombasa County Assembly who are in the Speaker’s Gallery visiting us. They are undertaking a four day attachment programme in the National Assembly. I will ask them to rise so that we can recognize them. Mr. Salim Juma, Deputy Clerk, will you rise wherever you are? Madam Dorothy Auma, Principal Assistant Clerk.

Thank you very much.

Clause 21

Hon. Langat: I beg to move:-

THAT, Clause 21 of the Bill be amended in subclause (1) by deleting the word “may” appearing immediately after the words “the Auditor-General” and substituting therefor “shall”.

This is to strengthen the power of the Auditor-General to call for information from anybody or any person who has custody of that information for the purpose of their mandate.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): I put the Question that Clause 16 as amended be part of the Bill.

Hon. Member: It is Clause 21 not 16.

The Temporary Deputy Chairman (Hon. Kajwang’): Sorry, I think I need a glass of water.

(Laughter)

(Clause 21 as amended agreed to)

Hon. (Eng.) Gumbo: On a point of order, hon. Temporary Deputy Chairman. I think it is important to go on record that I also had an amendment on Clause 21 which is exactly the same as what the Chairperson has proposed. The fact that you have carried the Chair's amendment makes my amendment superfluous and, therefore I need to go on record that I have withdrawn in view of what the Chair has proposed.

(Proposed amendment by hon. (Eng.) Gumbo withdrawn)

Clause 22

The Temporary Deputy Chairman (Hon. Kajwang'): Fair enough. Hon. Chairman, on Clause 22?

Hon. Langat: I beg to move:-

THAT, clause 22 of the Bill be amended in Subclause (3) by deleting the words "What will happen if this is abused?" appearing immediately after the words "information so obtained".

This is just to clear a typographical error in clause 22.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. (Eng.) Gumbo and hon. (Dr.) Simiyu, if the amendment proposed by the Chair is carried, then amendments by the two of you will be dropped.

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

(Clause 22 as amended agreed to)

Clause 23

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 23 of the Bill be amended-

(a) in subclause (1) by inserting the words "and the public service" immediately after the words "of the office of the Auditor-General".

I do not know whether I should go through all my amendments because I also have other amendments.

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, you can move all your amendments.

Hon. (Eng.) Gumbo: Temporary Deputy Chairman, I also beg to move:-

THAT, clause 23 of the Bill be amended-

(b) in subclause (7) by-

(i) deleting the expression "thirty-six (36)" and substituting therefor the expression "twenty-four";

Three years, for me, looks a long time and I am pleading with the hon. Members that we make it two years; 24 months.

Finally, I beg to move:-

THAT, clause 23 of the Bill be amended-

(b) in subclause (7) by-

(ii) inserting a new subclause immediately after subclause (7)—

“(8) Outsourcing of any audit services under this section shall not absolve the Auditor-General of any responsibility concerning the exercise of his or her powers under this Act.”

I think it needs to be understood that even when the Auditor-General outsources these services, the final responsibility must still remain with the Auditor-General.

(Question of the amendment proposed)

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I have no problems with the amendment in (1). However, I have a problem with inserting a new subclause immediately after subclause (7) that outsourcing of any audit service---

The Temporary Deputy Chairman (Hon. Kajwang’): Alright. Just resume your seat. We are going to handle subclauses (1) and (7). I will separate that new clause so that we come to it later and clean this thing.

Hon. Langat: Hon. Temporary Deputy Chairman, I wish to oppose the reduction of time from 36 months to 24 months in subclause (b).

Hon. Ng’ongo: We are dealing with (1) first.

Hon. Langat: That is okay.

The Temporary Deputy Chairman (Hon. Kajwang’): I want to go subclause by subclause so that I am fair to the Member for Rarieda.

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

The Temporary Deputy Chairman (Hon. Kajwang’): About subclause (7), please, give me time. Let us deal with Clause 23 (b)(i). Yes, Chairman, can you say what you wanted to say?

Hon. Langat: Hon. Temporary Deputy Chairman, I wish to oppose that amendment. Members, may I read what Clause (7) says:-

“An officer who previously worked for an organ that is being audited by the Auditor-General shall not audit that organ until after thirty six (36) months from the time he or she ceased working for that organ.”

This is about independence. For example, if somebody who was working for Kenya Airports Authority (KAA) is now an officer in the Office of the Auditor-General, two years is short a time for him to be sent back to audit the KAA. In fact, three months is even shorter, but I propose that we retain it at 36 months so that we remove him completely from what has been happening in that office. So, I want to request my colleague to withdraw that amendment and let us give the person 36 months. After 36 months, we will seriously say the person no longer has any touch with that organisation.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Nakuru Town East, are you still speaking to (i)?

Hon. Gikaria: No, the 36 months. I want to support the Chairman of the Departmental Committee. If I am an auditor somewhere and I leave, then I come back within 24 months to where I was working to start auditing and there are queries about my time in the office there, then I find his argument to be right.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. Member for Narok West, are you speaking to the same thing and supporting that view?

Hon. ole Ntutu: I am. I agree that 24 months is a very short period. We need to provide more time.

The Temporary Deputy Chairman (Hon. Kajwang’): I hear you. That is well taken. Member for Samburu West, are you saying the same thing?

Hon. Lati: I am saying the same thing.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much. Member for Kimilili, are you saying the same thing?

Hon. Kasuti: I support the same thing.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Kimilili, are you in the Chamber? Can you speak to the microphone? How comes your microphone is not showing? Lower yourself so that we can hear you.

Hon. Kasuti: I support the same sentiments by the Chairman of the Departmental Committee.

The Temporary Deputy Chairman (Hon. Kajwang’): What sentiments are you supporting? The microphone is working. You need to talk louder.

Hon. Kasuti: I am supporting the same sentiments of the period of 36 months.

The Temporary Deputy Chairman (Hon. Kajwang’): You are for 36 months or in favour of 24 months? We can take a vote on this now, can we not?

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

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Elgeyo Marakwet, can you express yourself on part (ii)?

(Hon. (Ms.) Chebet consulted loudly)

Order, hon. (Ms.) Chebet! You cannot be chatting and laughing in the Chamber when you are supposed to be on your feet.

Hon. (Ms.) Chebet: Mine is about the previous one where---

The Temporary Deputy Chairman (Hon. Kajwang’): No! No! Please, keep awake and we will be together.

Member for Homa Bay!

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I want to support this amendment. It goes without saying that the Auditor-General should take responsibility for any services that he outsources. However, it does not hurt to spell it out in black and white.

The Temporary Deputy Chairman (Hon. Kajwang’): You are in support of it. Thank you very much.

Member for Suba.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, this is the amendment that I had a problem with.

The Temporary Deputy Chairman (Hon. Kajwang’): That is why I have recognised you.

Hon. Ng’ongo: Thank you, hon. Temporary Deputy Chairman. The problem that I have with this amendment is that so long as the Auditor-General can prove that he outsourced the external auditor who is above board, it is extremely difficult to hold the Auditor-General responsible for mistakes that a professional firm conducts.

The Temporary Deputy Chairman (Hon. Kajwang’): And these people working on his behalf?

Hon. Ng’ongo: Yes, but we are giving him the space to outsource. We know what is involved in auditing. It would be irresponsible for us to make the Auditor-General liable for a commission by a professionally registered auditing firm.

The Temporary Deputy Chairman (Hon. Kajwang’): The Constitution makes him liable for everything that is done under his office.

Hon. Ng’ongo: The outsourcing is happening because we are not able to give the Auditor-General enough staff. We are not able to hire. If we were able to give the Auditor-General enough resources to hire enough staff to carry out auditing, we would not want him to outsource. However, the moment we fail then we tell him to take this route and then we hold him responsible, I think that is going to be bad.

The Temporary Deputy Chairman (Hon. Kajwang’): I hear you. Member for Nambale, contribute very quickly on this.

Hon. Bunyasi: Hon. Temporary Deputy Chairman, in international practice if you outsource, you carry responsibility for quality. Whereas the outsourced agency will deal with the substance before it is accepted by the Auditor-General, he must be satisfied that they meet the requisite standards and quality. We should uphold the insertion of this amendment.

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

(Clause 23 as amended agreed to)

Clause 24

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 24 of the Bill be amended in subclause (1) by inserting a new subclause immediately after subclause (1) —

“(2) The engagement of service under subsection (1) shall be for purposes of ensuring effectiveness in the application of public funds.”

This is reinforcement because we are talking of professional assistance and consultancy. I am emphasizing on the engagement of consultants alone for the purposes of ensuring effectiveness in the application of public funds.

(Question of the amendment proposed)

Hon. Langat: Hon. Temporary Deputy Chairman, I support that amendment.

Hon. ole Ntutu: Hon. Temporary Deputy Chairman, I also support that amendment. It will not add anything.

Hon. Gikaria: Hon. Temporary Deputy Chairman, I did not listen to hon. (Eng.) Gumbo very clearly. However, the addition in Clause 24 does not have any effect. It is not even strengthening the clause.

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

(Clause 24 as amended agreed to)

Clause 25

The Temporary Deputy Chairman (Hon. Kajwang’): We will go subclause by subclause and we will start with Subclause (1). Member for Rarieda, you have an insertion. There is no particular order here. It is just the ranking order that I have started with the Member for Rarieda. I understand that both of you have insertions, which are fairly similar. Let us hear the Member for Rarieda. Just deal with subclause (1)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-
THAT, Clause 25 of the Bill be amended—

(i) in sub-clause (1) by —

(i) inserting a new paragraph immediately after paragraph (a)—

“(aa) the Auditor-General”;

(ii) inserting the following proviso immediately after paragraph (g)—
“Provided that the nominee under paragraph (c) shall not be a member of a professional body provided for under subsection (1)(b), (d) or (e)”;

(j) in subclause (3) by deleting the words “appoint a chairperson from among the persons” and substituting therefor “chair the Board established”.

I propose that the Auditor-General ought to be a member of the Audit Advisory Board. We have precedent where the Chief Justice is a member of the Judicial Service Commission. It is very important. Just like the Chief Justice oversees the operations of the Judiciary; the Auditor-General also oversees the operations of the Office of the Auditor-General. It is extremely important that we make the Auditor-General a member of the Audit Advisory Board.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya, what do you think about this insertion? Does it take care of your amendment?

Hon. Ochieng: Definitely, hon. Temporary Deputy Chairman. I just need to add one thing. The Board being created is not something foreign or away from the Auditor-General’s Office. It is supposed to help the Auditor-General work. However, if you exclude the Auditor-General from it, then you are creating another centre of power and an independent body within the independent Office of the Auditor-General.

I support what hon. Gumbo has said.

The Temporary Deputy Chairman (Hon. Kajwang’): If the amendment proposed by the Member for Rarieda is the same in text with what you are proposing, would you go on the HANSARD, therefore, as dropping that amendment?

Hon. Ochieng: Hon. Gumbo’s amendments and mine are the same word for word. I withdraw mine.

(Proposed amendment by hon. Ochieng dropped)

Hon. Lati: Hon. Temporary Deputy Chairman, this is an Advisory Board. If this Board is supposed to advise the Auditor-General, why should he be there to advise himself?

I oppose the amendment.

Hon. ole Ntutu: Hon. Temporary Deputy Chairman, I hold the opinion that the Auditor-General should not be on that Advisory Board because he is the one who is going to be advised. Why would he be there? I really do not see any reason.

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Mosop, what is out of order? You are on intervention.

Hon. Bitok: Hon. Temporary Deputy Chairman, I would also suggest that---

The Temporary Deputy Chairman (Hon. Kajwang’): Are you on a point of order?

Hon. Bitok: No. I wanted to comment.

The Temporary Deputy Chairman (Hon. Kajwang’): Next time, do not press the intervention button. However, we will hear you all the same.

Hon. Bitok: Hon. Temporary Deputy Chairman, the Auditor-General should not be a member of the Advisory Board. He needs to be independent and should not be part of the advice that emanates from the Board.

Hon. (Ms.) Emanikor: Thank you, hon. Temporary Deputy Chairman. I want to differ with my colleagues. The Auditor-General should be part of this Board, which oversees the work as a secretary. If the word “advisory” is bringing trouble, then we can change it.

Hon. Nakara: Thank you, hon. Temporary Deputy Chairman. My worry is, who would be given the advice while the Auditor is there?

The Temporary Deputy Chairman (Hon. Kajwang’): So, you are in opposition? Member for Homa Bay.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairman, I support the amendment by the Member for Rarieda. You do not necessarily have to be away to be

advised. If you are part of the advisory, it makes more sense. It is not only the Auditor-General, it is the Office of the Auditor-General being advised.

The Temporary Deputy Chairman (Hon. Kajwang’): I have heard you now. We are now ready to vote. Member for Kajiado North, what do you think you have not put in?

Hon. Manje: Hon. Temporary Deputy Chairman, these are two parallel associations. He gave an example of the Judicial Service Commission, but there is a difference between a commission that is operating as a board and an Advisory Board. If this really is an Advisory Board, then the Auditor-General should not be on it.

The Temporary Deputy Chairman (Hon. Kajwang’): Why do we not take a vote on this? Member for Tongaren.

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, we need to be very careful because we could easily introduce mischief, which we will not be able to unravel later on. We are talking about the independence of the Auditor-General to perform his duties. Without anticipating debate, we had already debated the Act. If you go to Clause 27, you will see the functions of that Board. If the Auditor-General is not within that Board, we are actually trying to interfere with his independence. Unless there is a misprint, 21 (a) was not supposed to be the Attorney-General, but the Auditor-General. If there was a misprint, then we can correct it.

Hon. Ng’ongo: Hon. Temporary Deputy Chairman, I really support this amendment and I want my colleagues who are opposing it to listen to me for just a minute. For the Auditor-General to understand the genesis of the advice he is getting, he needs to sit there. This is just a common practice. On most boards, you have the Chief Executive Officer of the organisation sitting there and the boards make decisions and advise the secretariat. The Auditor-General, sitting on the Board, will get first-hand information on why certain actions recommended by the Board should be the way they are. There is no conflict of interest or contradiction. It is just decent for the Auditor-General to sit on this Board.

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

The Temporary Deputy Chairman (Hon. Kajwang’): Let us go to part (ii). Chairman, hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairman, I do not know how we should proceed. I report on behalf of our Committee on Finance, Planning and Trade. We have got a lot of information and it is only fair---

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chair, we need to understand each other on this. My role here is to understand that the Chamber is ready to vote. Do not take a view that the Chair must be heard on every issue before the Chamber.

Hon. Langat: Hon. Temporary Deputy Chairman, that is the practice that we have had. In fact, we should put it in the Standing Orders. We will make a very wrong law.

The Temporary Deputy Chairman (Hon. Kajwang’): Order! That practice is not buttressed by the Standing Orders. When the Standing Orders are clear, we do not go

to practice. That is the parliamentary and Commonwealth practice world over. When the Standing Orders are clear, you do not resort to practice. Can I hear you on the amendment on (ii)? Move the amendment on Clause 25.

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

THAT, Clause 25 of the Bill be amended—

(a) in subclause (1) by —

(i) inserting a new paragraph immediately after paragraph (g)—

“(ga) the Senior Deputy Auditor General who shall be the secretary to the Board and an ex-officio member”;

(ii) deleting paragraphs (e) and (g);

(b) in subclause (2) by deleting the expression “subsection (2)(c) to (g)” and substituting therefor the expression “subsection (1)(c) to (g)”;

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

“(3) The members under subsection (1) shall appoint a chairperson from amongst themselves”.

First of all, I want to inform the House that this is an advisory body. The Auditor-General can take or not take the advice. That was the principle behind leaving the Auditor-General out of the Board. At the end of the day, he is the overall person to make that decision. The Constitution gives him the power to appoint. We have already given him power to appoint his staff.

The Audit Advisory Board will competitively recruit staff and the Auditor-General will appoint the staff. So, the reason was that we should leave the Auditor-General to receive advice which he may take or not take. It is upon the House to decide. If you want him to sit there as the Chairman, then I do not know why we should have that body in the first place. It is a waste of time. If we say the Auditor-General should sit there and become the Chairman then it ceases to be an advisory board because he will be the one advising himself. We could even leave him to sit there alone.

Anyway, the purpose of my amendment is to put the Senior Deputy Auditor-General as an *ex-officio* member who will be the secretary to the Board. The other point is that we wanted to delete the inclusion of a nominee of the Institute of Internal Auditors of Kenya and the Chairperson of the Public Sector Accounting Standards Board as members. It is sufficient to have the Institute of Certified Public Accountants of Kenya (ICPAK) which is all-encompassing. It is an external auditor's job. However, I informed you that the amendments by hon. Gumbo which we passed---

The Temporary Deputy Chairman (Hon. Kajwang’): Chairman, do not go back to what we have passed. Just go ahead. Let us forge ahead.

Hon. Langat: Let me make my point, hon. Temporary Deputy Chairman. Making the Auditor-General the Chairman is like it is not necessary to have that Board anymore.

The Temporary Deputy Chairman (Hon. Kajwang’): Was he the Chairman or part of that Board? I thought that is where we---

Hon. Langat: Yes, out of these amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): Okay.

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

The Temporary Deputy Chairman (Hon. Kajwang'): First of all, let me have order in the Chamber.

(Question of the amendment proposed)

That is where we are now. Yes Member for Ugenya, what is out of order? You realise that I am really dissuading points of order. So, let it be a real point of order.

Hon. Ochieng: The Chairman of the Committee has a lot of say on this. However, when you allow him to start debating things that are not on debate---

The Temporary Deputy Chairman (Hon. Kajwang'): No, I have already ruled on that. That has been passed.

Hon. Ochieng: I support him on this other amendment to subclause (1).

The Temporary Deputy Chairman (Hon. Kajwang'): So, shall I put the Question? Member for Kajiado North.

Hon. Manje: Hon. Temporary Deputy Chairman, if the first amendment went through then there will be no need of appointing the Senior Deputy Auditor-General as a member. This is because the Auditor-General will automatically be the secretary of that Board and the Office of the Auditor-General will be the secretariat. Therefore, it is not the Senior Deputy Auditor-General but the Auditor-General who will be the secretary to the Board.

The Temporary Deputy Chairman (Hon. Kajwang'): Okay. Thank you. Member for Nakuru Town East.

Hon. Gikaria: Going by what the Chairman is saying, I agree with what hon. Manje is saying. At the same time, if we are deleting the nominee of the Institute of Internal Auditors of Kenya, the Chairperson of the Public Sector Accounting Standards Board and introducing the Senior Deputy Auditor-General then we go back to what hon. Mbadi was saying, that is, a six-member team.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Rarieda, lastly on this.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I support what the Chairman has proposed. I would also ask the Chairman to consider the views of the Member for Nakuru Town East. We are going to have an even number of members which is going to render decision-making difficult. He may consider doing something about that amendment in that respect.

Hon. Langat: Hon. Temporary Deputy Chairman, because we have passed the amendment by hon. Gumbo and the effect of that amendment is to, one, introduce the Auditor-General as a member and, two, to make him the Chairman of that Board---

(Hon. (Eng.) Gumbo spoke off the record)

I can read the amendments. He should confirm to the House that the Auditor-General is now the Chairman of that Board.

The Temporary Deputy Chairman (Hon. Kajwang'): Order, Chairman! As I understand it, the effect of the amendment is that the Auditor-General is part of that advisory group, but he is not necessarily the Chairman. That is my understanding.

Yes, Chairman. Please, you are allowed to read. You have the permission. We have not gone to subclauses (2) and (3). We are still on subclause (1).

Hon. Langat: Since it has an effect on the amendment where I am introducing the Senior Deputy Auditor-General, if the amendment by hon. Gumbo has gone through then there is no need to introduce him because the Auditor-General is already sitting there.

The Temporary Deputy Chairman (Hon. Kajwang'): This is what I understood the Member for Kajiado North to be saying. So, how does that sit with your amendment?

Hon. Langat: I am saying since we have introduced the Auditor-General as a member and the Chairman then my amendment to introduce the Senior Deputy Auditor-General will not carry the day. Let me read subclause (3) for the Members.

The Temporary Deputy Chairman (Hon. Kajwang'): No, we have not gone there, Chairman. We are coming there unless your argument is that it is so related to what we are discussing now. Give him the microphone.

Hon. Langat: Maybe I need your advice on what transpired---

The Temporary Deputy Chairman (Hon. Kajwang'): We want to finish with subclause (1) then we go to those subclauses you are talking about.

Hon. Langat: I am seeking your advice on whether all the amendments to Clause 25 which were proposed by hon. Gumbo have been carried.

The Temporary Deputy Chairman (Hon. Kajwang'): We are only dealing with the ones on subclause (1). We are dealing with the amendments to do with the Auditor-General, the other one in which you have proposed to bring in the Senior Deputy Auditor-General and the one in which you are proposing the deletion of paragraphs (e) and (g). That is exactly what you are doing and nothing more than that. Therefore, if you are persuaded, can you go on record as withdrawing paragraph (a)(i) of your amendment to subclause (1)? That is the inclusion of the Senior Deputy Auditor-General. That is where we are.

Hon. Langat: Hon. Temporary Deputy Chairman, if hon. Gumbo's amendment to subclause (1) has gone through then I withdraw mine. The Auditor-General is already in the team.

The Temporary Deputy Chairman (Hon. Kajwang'): Do you withdraw paragraph (a) (i) and (ii) of your amendments to Clause 25?

Hon. Langat: I withdraw paragraph (a)(i) only dealing with bringing in the Senior Deputy Auditor-General as an *ex-officio* member of the Board.

The Temporary Deputy Chairman (Hon. Kajwang'): In other words, your proposed amendment to delete paragraphs (e) and (g) is still on the Floor?

Hon. Langat: Yes.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Therefore, the amendment by the Chairman to insert a new paragraph (ga) is hereby withdrawn.

*(Proposed amendment to paragraph (a)(i)
by hon. Langat withdrawn)*

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

The Temporary Deputy Chairman (Hon. Kajwang’): Let us go to sub-clause (2).

Member for Rarieda, paragraph (g) has been deleted. So, let us just move on. Let us go to your amendment to subclause (2). Paragraphs (e) and (g) of Clause 1 were deleted by the Chairman. Paragraph (g) talks about the Chairperson of Public Sector Accounting Standards Board or his or her nominee while paragraph (e) talks about a nominee of the Institute of Internal Auditors of Kenya. Both of them were deleted.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 25 of the Bill be amended –

- (i) in subclause (1) by-
- (ii) inserting the following provision immediately after paragraph (g)—
“Provided that the nominee under paragraph (c) shall not be a member of a professional body provided for under subsection (1)(b) or (d).”

The point that I had in mind is that among the nominees is a nominee of the Association of Professional Societies in East Africa (APSEA). Can I explain what I am saying?

The Temporary Deputy Chairman (Hon. Kajwang’): Give me a minute I absorb what you are saying. Member for Rarieda, I hear you. You are right except that paragraph (e) has been deleted. So, speak to your amendment without referring to paragraph (e).

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, what I am talking about, and we have this experience in some of the boards, APSEA is the umbrella body. It brings together engineers, lawyers, doctors, quantity surveyors and all other professionals. So, what I am saying is that if you have given, for example, lawyers a place in the Board then the nominee from APSEA cannot be a lawyer. You get it from another profession.

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Hon. Kajwang’): Chairman on Subclause 2.

Hon. Langat: I beg to move:-

THAT, Clause 25 of the Bill be amended—

(b) in sub-clause (2) by deleting the expression “subsection (2)(c) to (g)” and substituting
thereof the expression “sub-section (1)(c) to (g)”;

This is just to clean up. If you look at the Bill it says: “A person shall be qualified to be nominated under subsection (2) (c) to (g) above if such person---” It is supposed to be subsection (1) (c) to (g).

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): There is a problem here. You have already deleted (g). So, subclause (2) will be deleted by deleting the expression “subsection (2) (c) to (g)” and substituting therefore the expression “subsection (1) (c) to (g).” So, you have to do it such that (g) is not part of it.

Hon. Langat: That will just be a drafting issue. It is not a major issue.

The Temporary Deputy Chairman (Hon. Kajwang’): Chairman, before you decide on what is a drafting issue or not please just correct that. We have removed (g). Go up to (f). Just clean up your amendments and go up to (f) instead of (g).

Hon. Langat: I wish to move a further amendment that we replace the expression “subclause (2) (c) to (g)” with the expression “sub-section (1) (c) to (f)”.

The Temporary Deputy Chairman (Hon. Kajwang’): Thank you very much.

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

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

The Temporary Deputy Chairman (Hon. Kajwang’): Sub-clause 3, Chair.

Hon. Langat: I beg to move:-

THAT clause 25 of the Bill be amended-

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

“(3) The members under subsection (1) shall appoint a chairperson from amongst themselves.”

The effect of that amendment is to ensure that the Members will have the right to pick a Chair of that Advisory Board as opposed to--- If you look at the Bill as it is right now, it is the Auditor-General himself as per the Bill who would have appointed the Chairperson.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Member for Rarieda and Ugenya, if the deletion by the Chair is carried, yours will be dropped. So, let us go in the order of your request. Let us have the hon. Member of Ugenya begin.

Hon. Ochieng: I want your guidance on what you have just said. I do not think what hon. Gumbo, the Chair and I are proposing are conterminous. They are not the same. So, one cannot die on the other but my proposal is to make the Auditor-General the Chairman of this Board. I want to say it the umpteenth time now, what we are creating is a body that is supposed to advise the Auditor-General. This House cannot legislate in vain. We cannot have a body where someone is saying that a body that will be advising the Auditor-General can choose to take the advice or not. Then why are you putting up the Board? If you are putting up a board and the Chairman is saying that this board can advise the Auditor-General and he or she can either take or refuse advice, then why are

you establishing the body? The body is supposed to make the work of the Auditor-General better and more effective. Like hon. Wanga has said: Who is better placed to chair? Who is better placed to be in this meeting than the person who is taking the advice? What will happen here is that the Auditor-General will be writing to this board saying that he needs to be advised on an issue. Then it is better he chairs it and gets the deliberations from the horse's mouth.

That is why we are proposing that you cannot create a parallel body from an independent office. This is the point you are making and that is why we are proposing that the Auditor-General be the Chair of this Board. Thank you.

The Temporary Deputy Chairman (Hon. Kajwang'): Okay. We do not want to take long discussions on this. We want to put the Question.

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

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Gumbo, can I hear you on your amendment, which is fairly the same as what the Departmental Committee Chairman was talking about?

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, clause 25 of the Bill be amended-

(j) in subclause (30 by deleting the words "appoint a chairperson from among the persons" and substituting therefor "chair the Board established".

With all due respect, it is not the same. The moment we make the Auditor-General a member of the Audit Advisory Board, he becomes the chairperson. This is not in vain. We already have precedent in the Judicial Service Commission (JSC), which is chaired by the Chief Justice.

An hon. Member :---*(Off-record)*

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, let us not make the National Assembly a heckling House.

The Temporary Deputy Chairman (Hon. Kajwang'): I am sure that the National Assembly is not a heckling House.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, we are a Commonwealth nation. There are other Commonwealth countries which already have audit advisory boards like the one we are creating. India has a body similar to the one we are creating. I am sure that the Chairman of the Departmental Committee knows that the chairperson of that board in India is the Auditor-General.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang'): Yes, Departmental Committee Chairman.

Hon. Langat: Hon. Temporary Deputy Chairman, again, I beg to oppose the amendment.

If you look at Clause 27, you will appreciate that the function of the Audit Advisory Board is principally to advise the Auditor-General. We have listed the issues on

which advice will be given. Making the Auditor-General the chairperson of the Board that is supposed to advise him would be contradicting ourselves. We have even passed an amendment which says that the Audit Advisory Board shall competitively recruit staff to be appointed by the Auditor-General. We are now saying that he is going to be the chairperson of that Board to advise himself. Let us forget about the issue of the JSC because this is not a Commission; it is an advisory body.

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

The Temporary Deputy Chairman (Hon. Kajwang’): Member for Ugenya, can I hear you on your amendment?

Hon. Ochieng: Hon. Temporary Deputy Chairman, my amendment is the same as hon. Gumbo’s amendment.

The Temporary Deputy Chairman (Hon. Kajwang’): No! Do not make those decisions. Just move your amendments.

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

THAT, clause 25 be amended—

(k) in subclause (1) by inserting the following new paragraph immediately after paragraph (a)—

“(aa) the Auditor-General.”

(l) by deleting subclause (3) and replacing therefor the following new paragraph—

“(3) The Auditor-General shall be the chairperson of the Board.”

Hon. Temporary Deputy Chairman, what I am trying to do is making the text better. I am just deleting some text and putting in better text by saying that the chair of the board shall be the Auditor-General.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Members, if you wish to know, the amendment by the Departmental Committee Chairman was negated. The amendment by the Member for Rarieda was also negated. According to the Order Paper, this leaves us with the amendment by the Member for Ugenya, which is found on page 212.

Member for Nakuru Town, what is out of order?

Hon. Gikaria: Hon. Temporary Deputy Chairman, I need your guidance. The Departmental Committee Chairman’s amendment was negative, so was hon. Gumbo’s amendment. Since hon. Gumbo’s amendment was negated, hon. Ochieng’s amendment does not arise.

The Temporary Deputy Chairman (Hon. Kajwang’): No, you understand it the other way. The Departmental Committee’s amendment was negated and paved the way for hon. Gumbo’s amendment, which has also been negated. We have an amendment, which is still alive.

Hon. Gikaria: They are the same amendments.

The Temporary Deputy Chairman (Hon. Kajwang’): Even though they are the same, they have been proposed by different Members.

Hon. Gikaria: Hon. Temporary Deputy Chairman, I thought you have always said that if my amendment is the same as that of the Departmental Committee’s Chairman and my amendment is negated, the Departmental Committee Chairman’s amendment should be dropped.

Temporary Deputy Chairman (Hon. Kajwang’): Unless that amendment is for deletion. If it is for deletion, the other amendment becomes superfluous. If it is not for deletion, even if yours is defeated, the other person’s amendment is still alive.

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

(Clause 25 as amended agreed to)

(Clause 26 agreed to)

Clause 27

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 27 of the Bill is amended in subclause (1) by –

(a) deleting the words “and shall, in particular but without prejudice comprise of the foregoing” appearing immediately after the word “Act”;

(b) deleting paragraphs (a), (b), (c), (d), (e), (f) and (g).

Hon. Temporary Deputy Chairman, given the way Clause 27 has been crafted and talking about the independence of the Auditor-General, the Auditor-General will be in a straight jacket.

(Question of the amendment proposed)

Hon. Langat: Hon. Temporary Deputy Chairman, I rise to oppose the amendment. I want to inform hon. Eseli that there is no way the proposed Board will compromise the independence of the Auditor-General. As I have said, their role is just to advise the Auditor-General. We have already made provisions to make him the appointing authority of his staff members. The Board is advisory to make the work of the Auditor-General better. There should be no fear that the Board will undermine the Auditor-General. The amendments that have already passed or failed to pass sought to give the Auditor-General a lot of say. In fact, currently, the Auditor-General appoints the chairperson of the Audit Advisory Board because the amendment that was intended to make him the chairperson did not sail through. My amendment, which was intended to make the members appoint the chairperson also failed. Therefore, we remain with the *status quo* contained in Bill, according to which the Auditor-General is a member and appoints the chairperson of the Audit Advisory Board. So, he is a very powerful person.

Let us leave Clause 27 as it is because it gives the details of the functions of the Audit Advisory Board.

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Tongaren.

Hon. (Dr.) Simiyu: Hon. Temporary Deputy Chairman, in view of the explanation given by the Departmental Committee Chairman, and looking at the whole scenario, I wish to drop the amendment.

(Proposed amendment by hon. (Dr. Simiyu) dropped)

The Temporary Deputy Chairman (Hon. Kajwang’): Yes, Member for Ugenya.

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

THAT, Clause 27 be amended by deleting subclause (1) and substituting therefor the following new subclause (1)—

“(1) The principal function of the Audit Advisory Board shall be generally to advise the Auditor-General on the following—

- (a) review and advise the organizational development issues;
- (b) recruitment of top management into the office of the Auditor-General;
- (c) consider and approve the estimates for the Office of the Auditor General;
- (d) determine the remuneration and other terms of appointment of the staff of the Office of the Auditor General; and
- (e) give any advice that may be sought by the Auditor General from time to time.”

Hon. Temporary Deputy Chairman, the amendments are intended to re-cast the role of the Audit Advisory Board. Clause 27 talks about three similar roles. Paragraph (d) talks about reviewing audit committee’s recommendations; (e) talks about giving any other advice that may be sought, and (f) talks of provision of counsel on technical issues and any other advice that the Auditor-General may request. These are similar functions. So, I thought it wise to reduce them in the manner that I have proposed.

The role of the Board shall be generally to advise the Auditor-General on those matters. It shall advise on the structure, recruitment of managers, approving estimates, remuneration and any other advice that may be sought. I thought these are more concise than the many that are here and almost mean the same thing.

(Question of the amendment proposed)

The Temporary Deputy Chairman (hon. Kajwang’): Let us be sober about this. As we go to the end of it, the sugar levels come down. You could have been having problems in the earlier proposals because there were other amendments which were in the front pages. However, now that you have come here, look at the pages behind and see what you have already done and make them consistent to each other. If I understand what this Member is trying to say is, he is deleting what was there and recasting them in the manner that he has organized. So, let us start from there.

Hon. Langat: Hon. Temporary Deputy Chairman, the functions are more detailed as it is, but he wants to summarize them. May I tell him that there is no point lost if we

retain the functions as they are in Clause 27 as published. This is also subject to serious stakeholders' contributions; including the Auditor-General himself who did not have a problem having these functions here.

The Temporary Deputy Chairman (Hon. Kajwang'): Member for Ugenya, I can see you are sufficiently persuaded.

Hon. Ochieng: You know he promised that he will allow me another one. I am persuaded.

(Laughter)

The Temporary Deputy Chairman (Hon. Kajwang'): Alright. Member being persuaded, can you, therefore, speak on HANSARD and drop this same amendment?

Hon. Ochieng: Hon. Temporary Deputy Chairman, I, therefore, drop my proposed amendments to Clause 27 of this Bill.

(Proposed amendments by hon. Ochieng dropped)

The Temporary Deputy Chairman (Hon. Kajwang'): With those amendments having been dropped, I remain with the amendment by the Chairman and the one by the Member for Rarieda. I choose to take the amendment of the Chairman of the Departmental Committee. There is no order I am using, but I choose to take him because he is the Chairman of the Departmental Committee on Finance, Planning and Trade.

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

THAT, Clause 27 of the Bill be amended in subclause (1) by deleting the word "generally" appearing immediately before the words "to advice".

This is just to make it good English. We were advised by our legal counsel who advises that the way it appears it is not good English. We were told to make it better. We are just deleting the word "generally" so that it remains thus: "The function of the Auditor Advisory Board shall be to advice the Auditor-General."

(Question of the amendment proposed)

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I think the amendment by the Chairman of the Departmental Committee is correct except, as the Deputy Speaker will bear me witness, that the "advice" to be used there is "advise" of "s" and not "c". We are using "advise" because it is the verb and not "advice" which is a noun.

(Laughter)

Hon. Langat: I have no problem with changing to "advise" with an "s"

The Temporary Deputy Chairman (hon. Kajwang'): I will put it to question. Remember we are doing the amendment by the Chairman of the Departmental Committee. We have not come to the English. Now we are dealing with the amendment by the Chairman.

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

The Temporary Deputy Chairman (hon. Kajwang'): Member for Rarieda! Propose all your amendments once.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, my first amendment, of course, is to further amend the--- The Chairman of the Departmental Committee did not pronounce himself on the issue I raised.

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

THAT, Clause 27 be further amended by deleting "advice" and replacing it therefor with "to advise".

The Temporary Deputy Chairman (Hon. Kajwang'): I will keep to the Standing Orders. Member for Rarieda, I hear you perfectly and the Deputy Speaker acknowledges. However, the problem I have is that you cannot bring a further amendment on this. It is only the Chair who can do a further amendment on this. I am going to be a stickler on this. We are discouraging Floor amendments.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, why can I not then persuade him to make it? It is just a small amendment.

The Temporary Deputy Chairman (Hon. Kajwang'): Alright, I hear you. Proceed.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, here move the word "generally."

The Temporary Deputy Chairman (Hon. Kajwang'): You are now on the other word.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 27 of the Bill be amended in subclause (1)—
(a) by deleting the word "advice" and substituting therefor the word "advise".

(Question of the further amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Member for Rarieda, can I hear you on the rest of your amendments in summary?

Hon. (Eng.) Gumbo: I beg to move:-

THAT, Clause 27 of the Bill be amended in subclause (1)—

(a) by deleting the word "advice" and substituting therefor the word "advise";

(b) by inserting a new paragraph immediately after paragraph (a)—

"(aa) develop, review and advise on organizational development issues";

(c) in paragraph (c) by deleting the words "review and make recommendations on" and substitute therefor "consider and approve the";

(d) by inserting a new paragraph immediately after paragraph (c)—

“(ca) determine the remuneration and other terms of appointment of the staff of the Office of the Auditor-General in consultation with the Salaries and Remuneration Commission”;

(e) by deleting paragraph (d);

(f) by deleting paragraph (f).

If you look at the functions here, at all times, these functions should not undermine the independence of the Auditor-General. So, I am including a new function, which is to develop, review and advise on organizational development issues. In part (c) which becomes part (d), review and make recommendations on the Budget.

(Question of the amendment proposed)

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

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

(Clause 27 as amended agreed to)

(Clauses 28 and 29 agreed to)

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chairman, do I hear you on an intervention? Member for Mumias East, what is out of order?

PROGRESS REPORTED

THE PUBLIC AUDIT BILL

Hon. Washiali: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report progress to the House and seek to sit again today.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

Hon. Kajwang’: Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Public Audit Bill and approved the same with amendments and seeks leave to sit again.

Hon. Washiali: Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

Hon. Waweru seconded.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, the time being 1.00 p.m. this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.