

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 25th August, 2011

The House met at 2.30 p.m.

[Mr. Speaker in the Chair]

PRAYERS

PETITION

IMPENDING DISPLACEMENT OF RESIDENTS OF BUNGOMA NORTH FOLLOWING DAM CONSTRUCTION ON RIVER NZOIA

Dr. Eseli: Mr. Speaker, Sir, I rise to present a Petition on behalf of the electorate of Kimilili Constituency. It reads:-

“We the undersigned, who are citizens of Kenya and farmers in Bungoma North District of Kimilili Constituency in Bungoma County, wish to draw the attention of the House to the following:-

(a) That the Ministry of Water and Irrigation, through the National Water Conservation and Pipeline Corporation, has embarked on a project to build a dam on River Nzoia.

(b) That dam is going to cover over 40 square kilometres and will affect six locations of Bungoma North District; namely, Kabuyekwe, Naitiri, Kimilili, Tongaren, Khakamwe and Soi Sambu locations, leading to displacement of between 30,000 to 40,000 people.

(c) This is the most fertile land in Bungoma County and is the bread basket of the county and other counties in the former Western Province.

(d) That the sheer size of the dam is on the scale of a man-made lake and will irreversibly alter the environment and lifestyles of those who will be affected to their detriment.

(e) Those displaced are not assured of getting similarly fertile land of the same acreage and, hence, may become disenfranchised and deprived of their livelihoods, and future development for themselves and their families will become destitute.

Therefore, your humble petitioners pray that the Parliament of the Government of the Republic of Kenya stops the development of the said dam or substantially reduces the magnitude of the development, so as not to negatively affect the livelihood of so many hardworking farmers who are humble citizens of Kenya, and your petitioners will ever pray.”

Thank you.

Mr. Kioni: Mr. Speaker, Sir, I just want to say that a similar thing happened in Ndakaini in Murang'a. It is important that the Petition from those people of Kimilili be

heard so that they do not go through the same difficulties that those from Ndakaine had. Having said that, it is important that the Committee that will be dealing with the Petition takes it upon itself to ensure that within 21 days or earlier, there is a response to that Petition. That is because we have filed Petitions here that are now running into the sixth month and we have not heard anything yet.

Mrs. Shebesh: Mr. Speaker, Sir, in support of that Petition, it would be good to remind the House that we have also been speaking about environmental conservation and, especially, the interference with ecosystems. Just recently, we debated the issue of the dam that is being built in Ethiopia in relation to the Turkana people. So, this is just a small scale of what is happening there but, in equal scale and equal measure, there must be quick resolution to this Petition that has been brought on behalf of the people of Kimilili.

Mr. Langat: Mr. Speaker, Sir, I also support the Petition. We also have a similar dam which is being constructed between Ainamoi and Muhoroni. The Committee that is going to handle this should ensure that the communities or the people who will be affected by those dams, before they start anything, must be properly consulted. They must be properly compensated. It should be a must so that we do not let the dam to be constructed and the people who are there start suffering.

Mr. Mbadi: Mr. Speaker, Sir, I also want to add my voice to the Petition by Dr. Eseli. I want to urge the Government that even as it tries to bring facilities or services to the people, there is need for consultation. We should be consulting the residents of places where we want to put up those facilities. The other day, I had an issue with the Ministry of Forestry and Wildlife where they decided to extend the forest cover in my constituency and increase it by over 2,000 hectares. That was going to disadvantage thousands of families. So I think it is important that the Government, as it attempts to bring services, also consider people's views.

The Minister for Housing (Mr. Shitanda): Mr. Speaker, Sir, may I support the Petition by the hon. Member and add that, while those projects may be good, it would, indeed, appear like there was no prior consultations with the affected community. Even the magnitude of the project, as the hon. Member has rightly pointed out, is going to displace more than 40,000 people ostensibly to help protect the lives of people affected by floods, who are just about 15,000. Maybe, the intended cost of that project should be re-thought; the money meant for that project should be used to settle the 15,000 people that the project was intended to protect.

Dr. Khalwale: Mr. Speaker, Sir, I support this Petition and I oppose the intention to create the project where it is. That is because it was not well thought out. If it had been well thought out, they would have discovered that downstream after the dam, there are two huge rivers, one called Kipkaren and another called River Kuywa. So, if you dam it upstream, you are not going to stop the water that comes from Kipkaren and Kuywa rivers. The water will still cause havoc in Budalangi. I would like to remind the Committee and the Minister that even before Independence, the colonial government had already thought of resettling the people of Budalangi away from that swampy area. So, the way to go is, one, either to construct the dam below Kipkaren and Kuywa rivers with consultations, or pursue the original plan which was to settle the people of Budalangi away from Budalangi the way it was envisaged. In fact, there was a farm called Manchester Farm that was earmarked for those people. When they were asked to move to

that farm, they refused saying that there was no fishing in that area. They refused to go! So, why should their refusal become a problem to the people of Kimilili? I oppose the project and support the Petition.

Mr. Mwangi: Mr. Speaker, Sir, this is a very important issue in the House because the Government has been constructing dams that have already been planned. I will support the Mover of this Petition because we have a dam coming up in my constituency between Maragwa and Gikegi and when I brought the issue here in the House, the Government was not prepared to cater for the community; even for provision of drinking water. So, I would strongly support the Petition and request the Government to consult widely and cater for the communities that are affected by those dams. The ideas are good but consultations and availability of services to the people affected should be considered in detail.

(Messrs. Bifwoli and Kajwang stood up in their places)

Mr. Speaker: Member for Mbita! I can see Mr. Bifwoli!

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Speaker, Sir, this is not a regional issues; this is a national issue. It is important that we know that this country needs, as of now, more than 5,000 megawatts of electricity and nobody is going to invest in this country unless we can produce that electricity. To produce that electricity, unless we find some nuclear power which we are also afraid of, we must build those dams. Those dams are going to displace some people, definitely, and cause some harm. But the overall effect and overall benefit to the nation will override the harm that some 30,000 or even 50,000 people will suffer. So let us say this: That the dams ought to be built, but the harm must be mitigated and the compensations must be done. I think that needs some kind of consultations. There are several other dams; the Nandi Forest Dam and another one in Kisii and they are going to be helpful in many ways. They will provide power, fishing, irrigation and so many other things that will benefit this country. So, if each village is going to say: “We do not want to be moved and nothing else will go on”, we are going to have a country which will not develop.

So, I oppose.

The Assistant Minister for Lands (Mr. Bifwoli): Mr. Speaker, Sir, I want to support this Petition just because it is not a dam that they want to construct. It is a man-made lake and in our place, God has made enough lakes for us. So, we do not need another human being to make a lake for us. If it is to mitigate floods, then it should be built in Busia where people are being carried away by water and not where we are safe. Why must we be moved at the expense of other people? It is not about electricity! If they want to make electricity, we have Webuye Falls. At Webuye Falls, there is enough water to create enough megawatts. I invite you to come to Webuye and see that for yourself. We have a very big river that can produce enough megawatts instead of removing 40,000 human beings. One time they moved families to create Nzoia Sugar Company, these families are still landless up to today. I think the Government should listen to the voice of the people.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Speaker, Sir, while I appreciate the need for the Government to put up dams particularly to control

flooding, the sentiments raised by the people of Bungoma should be looked into. I support this petition basically because we have had some parts of the country affected by drought and flashfloods. For more than eight years, we have been requesting for dams. I will ask the Minister for Water and Irrigation that if Bungoma is not ready for this dam, Turkana County is ready for a dam and it has been asking for it for the last ten years. Bring that money, we are now ready to control the flashfloods.

If they are still not ready, until when they will be ready, give us the money so that the Turkanas do not suffer the consequences of drought and flashfloods.

Mr. Speaker: Order, hon. Members! I direct that this matter is referred to the Committee on Lands and Natural Resources and that the Committee should inquire into the matter and file a report in the House within the next 21 days from today.

Next Order!

PAPERS LAID

The following Papers were laid on the Table of the House.

Report of the Constitutional Implementation Oversight Committee on the Elections Bill (2011)

(By Mr. Abdikadir)

Report of the Departmental Committee on Finance, Planning and Trade on the appointment of Mr. Edward R. Ouko as the Auditor-General.

(By Mr. Okemo)

Mr. Speaker: Next Order!

NOTICES OF MOTION

ADOPTION OF REPORT ON APPOINTMENT OF MR. EDWARD R. OUKO AS AUDITOR-GENERAL

Mr. Okemo: Mr. Speaker, Sir, I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the approval for appointment of Mr. Edward R. Ouko as the "Attorney-General" laid on the Table of the House on 25th August 2011.

Mr. Speaker: Order, Chairman of the Committee on Finance, Planning and Trade! Is the Report on the appointment of the Attorney-General or Auditor-General?

Mr. Okemo: Mr. Speaker, Sir, that was a slip of the tongue. I just talked to the Attorney-General before I came here. It is the Auditor-General!

Mr. Speaker: Order, Chairman of the Committee on Finance, Planning and Trade! You must withdraw the words, "Attorney-General" and substitute with the words "Auditor-General"!

Mr. Okemo: I oblige, Mr. Speaker, Sir. I will withdraw the word, “Attorney” and substitute with the word “Auditor” so that what I am seeking here is the approval of the House for the appointment of Edward R. Ouko as the Auditor-General.

Mr. Speaker: Member for Nambale, why are you being futuristic? You have said you “will” withdraw. I have directed that you withdraw now!

Mr. Okemo: Mr. Speaker, Sir, I withdraw now!

Mr. Speaker: Next Order!

QUESTIONS BY PRIVATE NOTICE

SHORTAGE OF FERTILIZER/SEED MAIZE IN WESTERN KENYA

Mr. Pesa: Mr. Speaker, Sir, I beg to ask the Minister for Agriculture the following Question by Private Notice.

(a) Is the Minister aware that farmers in Western Kenya, especially in Migori County, are planting without DAP fertilizer or have not planted at all due to lack of subsidized fertilizer and maize seeds at the National Cereals and Produce Board (NCPB) depot in the region?

(b) When will the Ministry avail sufficient subsidized fertilizer and maize seeds at the NCPB depot in the region?

(c) What long term plans does the Ministry have in place to solve the acute shortage of fertilizer, which has contributed to a decline in production of cereals?

The Minister for Agriculture (Dr. Kosgei): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that farmers in Migori are planting without DAP fertilizer from the NCPB depot due to slight delay in transportation. However, I want to assure the hon. Member that DAP will be available in the NCPB depot in Migori and the region by Friday next week.

However, I am not aware of maize seed shortage for the Migori region as the region requires medium to low altitude varieties that is H513 and PH4, which have not been in short supply at all in the region or in the country. There has been a temporary shortage of DH04 which is for dry lands but will be delivered on Monday the 29th in those areas.

(b) As already mentioned, this will be on the 2nd of September 2011. That is next week on Friday.

(c) There is no constant or acute shortage of fertilizer. We are currently covered to the end of the short rains season, that is in December and a little bit more for January. We expect stabilization funds for the main planting season in March anytime soon, from the Treasury.

In the long run and as has been debated in this House and passed, we expect and are planning for Kenya to have a fertilizer plant so that we do not have these delays caused by transportation by sea or inside the country.

Mr. Pesa: Mr. Speaker, Sir, while I appreciate the answer given by the Minister, I want to remind her that this is not the first time I am bringing such a Question in this House. Earlier this year in January, I had to complain to the Minister because of the same problem of delays in supplying fertilizer in Migori, in particular. Could the Minister tell

this House or undertake that in future, she will be more prepared before farmers start planting their fields?

Dr. Kosgei: Mr. Speaker, Sir, I was well aware that I was answering a Question which I had adequately answered on the 28th of March. Nevertheless, I thought that it was better to answer it once more. The short answer to this is that we always endeavour to make sure that fertilizer is in the country on time. However, a lot of this is dependent on what is happening in the high seas and sometimes the local transport. Therefore, if I am telling you the fertilizer is in the country and will be at the depot on Monday the 29th I think I am doing quite well.

Mr. Kioni: Mr. Speaker, Sir, I appreciate that western Kenya is part of the food basket for this country. However, when it comes to issues of subsidy and especially for farmers, it is important that all farmers receive equal treatment. What is the Government doing to ensure that this product at subsidized rate is available to other farmers across the country who also grow maize? We do it in Ndaragwa.

Dr. Kosgei: Mr. Speaker, Sir, the subsidized fertilizer is for the whole country. If for some reason there are some depots where it has not arrived, we need to know so that we can supply. It is not for western Kenya only. It is for the whole country.

Mr. Koech: Mr. Speaker, Sir, farmers in this country have been frustrated by the delay in the release of farm inputs or the availability of the maize seeds and the cost of the same. Could the Minister tell us the cost of buying fertilizer this year and the maize seed for farmers to prepare for the next planting season?

Dr. Kosgei: Mr. Speaker, Sir, if he wants the price for fertilizer, it has not changed for the last four years. It is the same. We have not increased it and I can give you statistics if you want. As for the seed, you will have to give me time to bring you that answer.

Mr. Langat: On a point of order, Mr. Speaker, Sir. I think the Member for Mosop is asking a specific question that; what are the prices of fertilizer this year and what are the prices for the seeds? The Minister is saying that they have not changed and she is not mentioning the prices.

Mr. Speaker: Order! I think that is a good answer in my assessment. If the Member for Mosop knew the price two years ago or a year ago, the price is the same today! That is a good answer.

Mr. Outa: Mr. Speaker, Sir, while I appreciate the Minister's effort to bring DAP fertilizer to our farmers in this country, I would like to ask her if she is also planning to bring sulphate of ammonia (SA) for the rice farmers in this country.

Dr. Kosgei: Mr. Speaker, Sir, that will be done on request, but at the moment the funding we have is for the fertilizers that I have mentioned. I suspect that the rice farmers have not come to us because they are entitled to buy what we have at subsidized price. I cannot give the hon. Member the figures because I did not come with them. I was not requested to do so. However, I can supply them on request.

Mr. Pesa: Mr. Speaker, Sir, I would like to ask the Minister to confirm to this House that the amount of fertilizer to be delivered to Migori from this Friday is adequate for the local demand in that area.

Dr. Kosgei: Mr. Speaker, Sir, it is absolutely positive. It is adequate and you can quote me on that.

REHABILITATION OF MOSORIOT-CHEPTERWAI ROAD

Mr. Koech: Mr. Speaker, Sir, I beg to ask the Minister for Roads the following Question by Private Notice.

(a) Is the Minister aware that Mosoriot - Chepterwai Road is currently impassable due to heavy rains and, if so, what immediate steps will the Minister take to ensure the road is motorable?

(b) Is the Minister also aware of the promise by the Government in 2007 to improve the road to bitumen standards and, if so, why has the same not been fulfilled?

(c) When will the road be improved to bitumen standard and how much has been set aside for tarmacking of the road?

The Assistant Minister for Roads (Mr. Kinyanjui): Mr. Speaker, Sir, I beg to reply.

(a) I am aware that the Mosoriot-Chepterwai Road is in urgent need of repair due to the heavy rains currently being experienced in the region. My Ministry, through Kenya Rural Roads Authority (KeRRA), has disbursed Kshs10 million for spot improvement and gravelling of the road. A contractor was procured towards the end of last month. However, due to the ongoing rains he could not commence the works.

(b) I am also aware that the Government had promised in 2007 that the road would be upgraded to bitumen standard. However, no tender was awarded for the construction of this road because the prices of the quotes submitted by the tenderers were above the engineers estimates.

(c) the road has been programmed for improvement to bitumen standard in the 2011/2012 Financial Year and the advertisement of the procurement of the works will appear in the newspapers by the end of August, 2011. The road has been allocated Kshs80 million to start the project and is available for immediate use.

Mr. Koech: Mr. Speaker, Sir, while I thank the Assistant Minister for the answer, this road is very important to the farmers of Mosop. In Kabyet, for example, 25,000 litres are supposed to be delivered to Eldoret everyday and because of the bad road, it has become impossible. In 2007 the Government said, and this was done by His Excellency the President at Mosoriot, that this road would be improved to bitumen standard and the tender was actually advertised the same year but to date nothing has been done. The Assistant Minister has promised to start these works this financial year. He has also indicated that the advertisement will be in the newspapers at the end of August. Could the Assistant Minister confirm and, indeed, indicate to us that, that will start immediately? Could he also tell us where he will get the extra funds given the fact that he has only allocated Kshs80 million towards this end?

Mr. Kinyanjui: Mr. Speaker, Sir, as I have indicated, we plan to have the advertisement by the last week of August which is essentially the coming week. Once we have tendered, it will follow the normal procurement procedure which is 60 days for the tenderers to respond and an evaluation is done. As soon as we award the works to a contractor, we expect him to take one month to be on site. I want to assure the hon. Member that although the amount allocated is Kshs80 million, we will require far in excess of this. However, what we require for certain will be available through the Supplementary Budget.

Mr. Ochieng: Mr. Speaker, Sir, I also have a road by the name Sondu-Kusa Road D218 which has not been tarmacked for quite a number of years despite several promises. Could the Assistant Minister tell us the criteria they use to identify the road that they are supposed to tarmac? We have realized that in some areas even roads classified “E” have already been tarmacked.

Mr. Kinyanjui: Mr. Speaker, Sir, I am sure you have realized that that is an entirely different question. However, I want to assure the hon. Member that we have come up with the Road Sector Investment Programme that clearly outlines the roads that are to be prioritized in the next five years, and I am sure his road must be one those that have already been considered. However, there are a number of roads that are due for tarmacking within this financial year and at an opportune time, we will be able to table that so that the hon. Member together with the rest of the Members can be able to interrogate that.

Dr. Kones: Mr. Speaker, Sir, this Assistant Minister is fond of giving very sweet promises here and yet nothing is happening on the ground. Sometime last year, I came up with a Question and he promised that he will tarmac one of the roads in my constituency in the same manner he has promised to do in Mosop. Could he undertake that this time round he will do that road in Mosop and the road in my constituency which he promised to tarmac?

Mr. Kinyanjui: Mr. Speaker, Sir, every undertaking that we have made in this House is backed by information from officers on the ground. However, as you may be aware, the procurement process is sometimes tedious, and even after the promise has been made it may take slightly longer than hon. Members would appreciate. However, I want to assure the hon. Member that we will be able to complete the procurement process and the work will begin as scheduled.

Ms. Leshomo: Bw. Spika, ningependa kuuliza Waziri Msaidizi juu ya barabara ya Maralal-Baragoi kwa sababu haipitiki. Hii barabara iko katika hali mbaya na hata chakula cha msaada hakiwezi kupitishwa ilhali watu wanakufa njaa. Kama ni mambo ya barabara, afadhali angalie barabara zote.

Mr. Kinyanjui: Bw. Spika, ninatambua kwamba barabara hiyo iko katika hali mbaya lakini tutafanya kila tuwezalo kuhakikisha kwamba chakula ambacho kinaenda kusaidia Wakenya walio na njaa kinafika. Kupitia ofisi yetu, nitahakikisha kwamba mpango wa dharura umefanywa ili kutengeneza sehemu hiyo ya barabara.

Mr. Koech: Mr. Speaker, Sir, I want to be very optimistic and wait for the end of next week to see the advertisement because the people of Mosop have been waiting and we hope that the legacy of His Excellency the President, as promised will actually take place. As indicated, the road is completely impassable as we speak today and the Assistant Minister has indicated that they have awarded a tender of Kshs10 million for repairs. How can he communicate to the people so that they are aware that there is such information, and more importantly, could he confirm that that money is available and immediately the rains subside work on the road will start?

Mr. Kinyanjui: Mr. Speaker, Sir, when we award money for repairs or upgrading of any section of the road, we do not commence procurement until the funds have actually been remitted to the regional offices. In this case, we have already done the procurement, the money is available and the contractor for the benefit of the hon. Member is Zalco Enterprises. As he may be aware, we have a gravel problem in Mosoriot

in the sense that it has to be hauled from quite a distance. Therefore, when the roads are not good it becomes a bit of a problem to have that done within the short-term. However, I wish to assure my colleague that we will be able to complete the process as soon as the rains subside.

INVASION OF LUANDA MARKET BY GAMBLERS/
MENTALLY ILL PERSONS

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

(a) Is the Minister aware of the many persons with mental illnesses in Luanda Market in Emuhaya District who have become a security risk to the public due to their erratic and violent behaviour and that one of them brutally killed one Glory Ahono (a standard five girl) at the market on 8th August, 2011?

(b) Is the Minister also aware that the market has been invaded by dangerous gamblers posing as vigilante groups, who are pickpockets and extort money from traders as well?

(c) What urgent and stern measures is the Minister taking to rid the market of mentally ill persons and gamblers?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I beg to reply.

(a) I am aware of a few mentally ill persons in Luanda Market. As concerns the killing of Glory Ongoche Okemo, a Standard Five pupil aged ten years on 5th August, 2011, one mentally ill person, Joseph Atenda, attacked her with a piece of wood as she walked to Luanda Market to visit her mother who is a businesswoman in the market. The police received information about the attack and rushed to the scene and found that the victim had been rushed to Equator Hospital for treatment. However, her condition was found to be critical and was referred to Aga Khan Hospital, Kisumu, where she was declared dead on arrival. Members of the public beat up the suspect but the police managed to rescue him and rushed him to Yala Sub-district Hospital where he was admitted under police guard. A murder file Emuhaya, Criminal File No.944/236/2011 was opened and the suspect will be charged with the offence of murder once he is discharged from the hospital.

On 13th August, 2011, the police with the assistance of the local Member of Parliament, hon. Wilbur Otichilo, mounted an operation to raid the market of the mentally ill persons. Five of them were arrested and their relatives traced. They were all handed over to them and they promised to take them for treatment. There has never been any other violent attack by a mentally ill person before.

(b) Mr. Speaker, Sir, I am also aware of an invasion of the market by dangerous gamblers posing as vigilante groups in Luanda. However, on 5th August, four suspected gamblers namely Jackson Asikoye, Agnes Asiko, Rita Maria and Harrison Aganga, who were found gambling in the market, were arrested and taken to court where they were sentenced to serve under Community Service Order for one day. Since then, there has never been any other case of gambling within Luanda Town.

(c) The few suspected mentally ill persons were arrested and handed over to their relatives, while the few gamblers, who had invaded the market, were arrested and

charged before court. The police will continue conducting regular patrols and operations to ensure that such people do not infiltrate the market in Emuhaya and elsewhere in the country.

However, while the police normally arrest mentally ill persons and take them to hospital, it is important for relatives to be advised to handle such people humanely and always seek medical care early to prevent them from developing erratic and violent behaviour. That is the advice we can give to the public.

Dr. Otchilo: Mr. Speaker, Sir, please, allow me to thank the Assistant Minister and the Officer in Charge of Luanda Police Station and the Administration Police Commandant for Emuhaya for the good job they have done so far. However, this problem is still there. I would like to know from the Assistant Minister the action he has taken to ensure that the people who sell bhang and *chang'aa* in the market are apprehended, so that we do not have many mad people in the market.

Mr. Ojode: Mr. Speaker, Sir, it is illegal to sell *chang'aa* and bhang within the market or elsewhere. If there are assistant chiefs who are not manning their areas properly, we have no alternative but to dismiss them from their jobs. I want to give instructions that the assistant chiefs and the Administration Police (APs) should go and check what is happening within the markets. We have gathered intelligence that this market has gamblers, vigilante groups and people who sell *chang'aa*. However, it is the duty of the chiefs and Assistant Chiefs to make sure that their areas of operation are well guarded and managed.

Mr. Njuguna: Mr. Speaker, Sir, acknowledging the reply given by the Assistant Minister, there are erratic cases in other towns. What has the Ministry done to reduce these cases and at the same time guarantee the safety of those affected by mental illness?

Mr. Ojode: Mr. Speaker, Sir, the police and APs will be patrolling together with the chiefs and assistant chiefs within the markets and those who are mentally ill will be rounded up and taken to hospitals for treatment. The vigilante groups or those who are gambling within the markets and cause chaos will be arrested by the police and taken to court.

Mr. Olago: Mr. Speaker, Sir, it is embarrassing to be talking about bhang, *chang'aa* and mad people in relation to the home constituency of the hon. Speaker. But having said that, there are mad couples in Luanda. About a week ago, I was passing through Luanda at about 6.00 a.m. and there was a crowd of people who were shouting. When I stopped to check, I found that it was a mad man who was beating a mad woman and he was shouting that, that was his wife who had just come back in the morning; she slept out. These are sick people. What is the Ministry doing to ensure that there are sufficient facilities to treat them and not to punish them?

Mr. Ojode: Mr. Speaker, Sir, I have said that we will round up the mentally ill persons. You know very well that I am not in the Ministry of Medical Services, but we will round them up and take them to hospital for treatment. It is also illegal for any Kenyan to peddle bhang or sell *chang'aa*, and the law is very clear on that. My officers will arrest those who sell *chang'aa* and those who peddle bhang; the so called *cannabis sativa*.

Mr. Speaker: Last question, the Member for Emuhaya!

Dr. Otchilo: Mr. Speaker, Sir, based on the answer I have received from the Assistant Minister, gambling has become a rampant activity in Luanda. Worse enough,

even women have become gamblers, like Agnes Asiko and Rita Maria. When these gamblers are taken to Maseno Magistrates Court, they are only sentenced to one day community service and then they go back. What will the Assistant Minister do, so that these people, when they are arrested and taken to court, are given punitive sentences?

Mr. Ojode: Mr. Speaker, Sir, you are aware that I have no control over the courts. However, I want to assure this House that I will arrest those gamblers again if they go back to the market and take them to court. That is within my jurisdiction. However, I cannot force the court to give punitive sentences because that is not within my docket.

Mr. Speaker: Order! Mr. Assistant Minister, you certainly can do better than that. If you did speak to Mr. Kajwang who is not very far from you, Mr. M. Kilonzo behind you and Mr. Olago opposite you, they will tell you that you can give instructions to your prosecutors to give facts after conviction, such that the sentence is commensurate with the facts. So, you can do something about it.

(Applause)

Mr. Ojode: Mr. Speaker, Sir, I believe that I am talking to a lawyer. The Chair is also a lawyer. We have to give trumped up charges. Trumped charges means something that goes to---

Mr. Speaker: Order, Mr. Assistant Minister! You have not got the gist of what I told you. If, after this Question Time you can sit next to hon. Otieno Kajwang, he will give you little more detail on what you need to do. However, for the time being, you have not understood the import of what I said to you.

Mr. Ojode: Mr. Speaker, Sir, I would like to say, without seeking the advice of Olago Oluoch or any other Member, with reasons known to me, that we will try and do exactly what you have advised us to do.

Mr. Speaker: Very well.

Mr. Ojode: Mr. Speaker, Sir, we will see what will happen.

Mr. Speaker: It will make a difference.

Mr. Ojode: Mr. Speaker, Sir, Mr. Otieno Kajwang is not practising, you know that.

BRUTAL ATTACKS ON GATUNDU TOWN RESIDENTS

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

(a) Is the Minister aware that five people were brutally attacked in Gatundu Town, a few metres from the Administration Police Post, on 16th August, 2011?

(b) What measures is the Minister taking to ensure that the residents of the town are safe from the gang that has been terrorizing them for the past few months?

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, I beg to reply.

(a) Yes, I am aware that on 16th August, 2011, at about 9.00 p.m., an unknown number of gangsters attacked the following people within Gatundu Town. Sammy Ngugi, aged 30 years, who sustained serious injuries on the head and right hand, is admitted at

Kenyatta National Hospital. John Thiong'o, aged 30 years, sustained minor injuries on the right shoulder and was treated at the Gatundu District Hospital and discharged. Maxwell Kigali, aged 30 years, sustained minor injuries on the head and was treated at the Gatundu District Hospital and discharged. David Kigamba, aged 32 years, sustained injuries on the right hand and was treated at the Gatundu District Hospital and discharged. A report was made at the Gatundu Police Station where the incident occurred, and the following suspects were arrested:-

Charles Mwangi Kagiri and Moses Wafula Francis were charged before Senior Resident Magistrate Court, Gatundu vide Gatunde File No.264/340/2011 and Court File No.381 of 2011 with the following offences: Being members of an organized criminal group contrary to Section 3(n) as read with Section 4(1) of the Prevention of Organized Crimes Act, No.5, of 2010, malicious damage to property contrary to Section 339(1) of the Penal Code and assault causing actual bodily harm contrary to Section 251 of the Penal Code.

(b)The police have put in place measures to ensure that there is security for the residents of Gatundu, its environs and other areas in the country. One, patrols have been enhanced. Crackdowns, arrests and prosecution of members of organized criminal gangs have been enhanced. Regular *barazas* are being organized through the Provincial Administration to educate residents on the importance of passing information regarding such organized criminal gangs to the police. Following enhanced surveillance on such criminal gangs in the month of August, 2011 alone, a total of 17 suspects have been arrested and charged before a court of law.

Mr. Kabogo: Mr. Speaker, Sir, I thank the Assistant Minister for that very elaborate answer. You have heard him talk about the arrest and prosecution of the youth. The following night, I happened to visit Gatundu. All those who were rounded by the police, picked and put in *Mariams* - the vehicles that the police use - were released after they were asked for bribes of Kshs2,000 each. Is the Assistant Minister satisfied that what he has done about the security in Gatundu will sustain and give members of public security?

Mr. Ojode: Mr. Speaker, Sir, I have said - and I want to repeat it in this House - that police officers do not ask for bribes, neither do they take bribes. I have said that those are speculations. You are aware that they have badges with their names and numbers. I want to challenge the hon. Questioner to provide me with the name and the number of that particular police officer. That is because we cannot just condemn the whole police fraternity and say the fellows are taking bribes. Police officers do not take bribes and they know the consequences if they are found.

Dr. Nuh: Thank you Mr. Speaker, Sir. The Assistant Minister has given hope to Members in this House that, indeed, perceived criminals are facing charges in a court of law. However, many a times, the courts drop cases because of insufficient evidence or failure by the police because, probably, at the initial stage, they did not want to prosecute the culprits. Could the Assistant Minister assure us that he will be in a position to furnish this House with the reports once the convictions are done, so that we can know justice was attained?

Mr. Ojode: Mr. Speaker, Sir, I have no problem with that. Once the court rules, I can give that.

Mr. Speaker: Will you do so?

Mr. Ojode: Yes.

Mr. Waibara: Thank you Mr. Speaker, Sir. Is the Minister aware that Gatundu does not have enough patrol vehicles and those that are there have broken down?

Mr. Ojode: Mr. Speaker, I have said in this House that we are lacking some vehicles. It is this House that approved some funds for us to purchase some vehicles. I said that we are in the process, although it takes some time so purchase vehicles and after the purchase, we will give the vehicles to the various police stations. We will start with those stations which do not have vehicles at all. In areas where we have stations with vehicles which are still serviceable, we will not give them new vehicles. However, I would like to assure you that for Luanda or Emuhaya, I will give a new one if the one that is there is not serviceable.

Mr. Kabogo: Mr. Speaker, Sir, the Assistant Minister will not get away with this one. If you look at his answer, you will see that in part (i), he has said that patrols have been enhanced and yet, there are no vehicles to patrol. On the second bullet, he has talked about a crackdown. I have told him about the bribes and he said that policemen are not bribed. If you live in Kenya and say that policemen do not receive bribes, it is like saying that there is no water in the ocean.

Finally, my last question is this: He has talked about *barazas* by the Provincial Administration. I am aware that the Speaker watches television. A few days ago, the District Commissioner of Gatundu was being interviewed on television, and he could hardly speak because he was totally drunk. We have a DC who is completely drunk and yet, he is in charge of security. Is the Assistant Minister aware of that? What is he going to do if the district security is charged to a DC who is a drunkard? What will he do to that DC who is always drunk?

Mr. Speaker: Mr. Assistant Minister, you have one question here. Concentrate and answer the question only.

Mr. Ojode: Mr. Speaker, Sir, this is the first time I am hearing that a District Commissioner was drunk. What I know is that we have a DC within Gatundu District who does not drink alcohol. So, we want to know what is happening here.

Mr. Kabogo: Mr. Speaker, Sir, this is not a laughing matter; it is a serious matter of security. It was on television.

Mr. Speaker: Indeed, Member for Juja. So that we do some useful work, when is it that you saw the DC on television drunk? Which date?

Mr. Kabogo: Mr. Speaker, Sir, I think it was on the 18th. I could get you a clip if you so ask for it.

Mr. Speaker: Very well. Please, do so. Get me a clip and furnish the Assistant Minister with the same clip. After that, monitor what action he will take.

Mr. Kabogo: I will certainly do that, Mr. Speaker, Sir.

Mr. Speaker: Very well!

Mr. Ojode: Mr. Speaker, Sir, I do agree with your ruling. Let us not generalize that the DC was drunk. These are Government officers. Furthermore, you are aware that my friend here is from the other side, not from Gatundu. Nevertheless, let us wait for the clip. If, indeed, there is something like that, I will definitely take action.

Mr. Speaker: Very well! I think the Assistant Minister has heard in that regard. Let us save time, Member for Juja---

Mr. Kabogo: I am not a foreigner!

Mr. Speaker: No, you are a Kenyan! You are a Member of Parliament representing the interests of Kenyans. So, you have every right to question.
Next Order!

MINISTERIAL STATEMENT

BUSINESS FOR THE WEEK COMMENCING TUESDAY
29TH AUGUST TO THURSDAY 1ST SEPTEMBER, 2011

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I wish to take this opportunity to make the following Statement with respect to business for the week pursuant to the provisions of Standing Order No. 36(4).

This week in a show of collective determination and patriotism by Members of this House, we managed to cover most of the ground towards achieving the 26th August, 2011, deadline for passing critical Constitution implementation legislations. This gesture gives me confidence to assure Kenyans that this House will be able to dispose of all the scheduled business by the close of tomorrow's special sittings.

However, should there be any pending Bills or pending business arising from the Bills on the Constitution which are currently before the House, we shall give it the first priority in the schedule of House Business for the next week.

Mr. Speaker, Sir, the following Bills are scheduled to be read the First Time next week: The Water Amendment Bill (Bill No.18 of 2011), the Energy and Communications Law (Amendment) Bill (Bill No.29 of 2011), the Kenya School of Government Bill (Bill No.30 of 2011).

Similarly, the following key Bills are expected to be read a Second Time: The Capital Markets Amendment Bill (Bill No.13 of 2011), the National Drug Control Authority Bill (Bill No.16 of 2011) and Public Service Superannuation Bill (Bill No.24 of 2011).

The House will also deliberate on the following Bills at the Committee Stage: the Unclaimed Financial Assets Bill (Bill No.7 of 2011), the Public Appointments Parliamentary Approval Bill (Bill No.3 of 2011) and the National Construction Authority Bill (Bill No.4 of 2011).

The House will also consider two Private Members' Motions. I wish to thank hon. Members for having donated their time yesterday morning. We will be back on Wednesday morning with Private Members' Motions. The Motion scheduled is the Motion by Mr. Ekwee Ethuro to the Ministry of Water and Irrigation. The Motion is urging the Ministry to allocate 10 per cent of its budget to all the constituencies in equal proportion and another 10 per cent of its budget to all constituencies in northern Kenya and in ASAL areas.

There is also the Motion by Mr. Ababu Namwamba to the Ministry of Agriculture urging the Government to avail a grant of Kshs2 billion to the Agricultural Finance Corporation (AFC) to provide relief to crop and livestock farmers affected by the current drought in all the 47 counties in Kenya.

Mr. Speaker, Sir, it is also expected that the Committee of Supply for the Fiscal Year 2011/2012 will be dispensed with by Tuesday, 30th August, 2011.

Finally, the House Business Committee will meet on Tuesday 30th August to consider business for the rest of the week.

Thank you, Mr. Speaker.

POINTS OF ORDER

Dr. Khalwale: Mr. Speaker, Sir, I have two points of order.

DELAYED ISSUANCE OF STATEMENT ON SITUATION IN PUMWANI MATERNITY HOSPITAL

Last week, you directed that a Statement I had requested from the Minister for Medical Services be answered today. However, I have talked to the Minister and he has said his Ministry has forwarded the same matter to the Ministry of Local Government. So, I would like to request that this be put on record so that the Ministry of Local Government can preferably come next week on Tuesday.

Mr. Speaker: What is it about? What is the matter about?

Dr. Khalwale: Mr. Speaker, Sir, it was about the Pumwani Maternity Hospital.

Mr. Speaker: Very well. It has been referred to the Ministry of Local Government. Do we have a Minister from the Ministry of Local Government? Deputy Leader of Government Business, could you assure the House that the Minister will bring the Statement and when will he do that?

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, next week on Wednesday will be a public holiday. So, he can deliver it on Thursday, next week.

Mr. Speaker: Thursday, next week. It is so directed.

DEATHS OF JOHN KAMURI/PETER IRUNGU/KENNETH WATWIKA

Mr. Mwangi: Mr. Speaker, Sir, you directed that the Minister of State for Provincial Administration and Internal Security gives a report on a question I raised. Up to now, he has not. He was supposed to do it this afternoon.

Mr. Speaker: What is it about?

Mr. Mwangi: It was about the cases of death of John Kamuri, Peter Irungu and Kenneth Watwika. The Minister was here.

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Mr. Speaker, Sir, you will remember that this Question was dealt with exhaustively by my substantive Minister. He was supposed to come and give the details of what was left of it. However, it looks like he has not reported. Could you give me some time so that I check where he is and report to the House?

Mr. Speaker: We will defer it to Thursday, next week. Is that fine for you, Member for Kiharu?

Mr. Mwangi: Mr. Speaker, Sir, it has always been fine every other week. Could he commit himself that the Thursday coming, is Thursday next week and not next month?

Mr. Speaker: I have directed that it comes on Thursday, next week.

Mr. Mwangi: Thank you, Mr. Speaker, Sir.

Mr. Speaker: Mr. Assistant Minister, will you, please, comply?
The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): Yes, Mr. Speaker, Sir.
Mr. Speaker: Is there anything else relating to Statements?

APPOINTMENTS OF MINISTERS
AND ASSISTANT MINISTERS

Dr. Khalwale: Mr. Speaker, Sir, I rise on a point of order to seek for your direction on a constitutional matter which, in my view, I think is of national importance. We all know that this House is a critical organ for the implementation of the new Constitution. Unless otherwise stated, once the new Constitution has prescribed, my understanding is that no one can then attempt to bypass this House.

Mr. Speaker, Sir, I would like to invite the Chair to look at the transitional and consequences provisions Article 262 of the Sixth Schedule of the new Constitution.

I would like you to look at this in respect of 12(2)---

Mr. Speaker: On what page of the Constitution?

Dr. Khalwale: Mr. Speaker, Sir, it is on page 197. I will also take you to page 203, 29(1) and 29(2).

I am citing these particular sections of this Constitution in respect of the appointments of Assistant Ministers and Ministers that was made yesterday by the President. My understanding is that these transitional and consequence positions require that after the President has consulted with the Prime Minister, he should then present those names to this House to seek approval of this National Assembly. That is the gist.

So, if you look at 12(2) it states as follows:-

“The persons occupying the offices of the Vice-President and Deputy Prime Minister or holding positions in Cabinet or as an Assistant Minister immediately before the effective date, shall continue to serve in accordance with the former Constitution until the first general elections held under this Constitution, unless they vacate or are removed from office in accordance with the former Constitution and National Accord and Reconciliation Act of 2008.”

Mr. Speaker, Sir, this has been satisfied because in my reading, it preserves old officers. Having so preserved them, we then go to the new appointments in Section 29. Under the new appointments, the President and Prime Minister have done very well because Section 29(1) reads:-

“The process of appointment of persons to fill vacancies arising in consequence of the coming into force of this Constitution shall begin on the effective date and be finalized within one year”.

The President and the Prime Minister have done very well. For all the vacancies that have arisen--- You have seen what has been going on for every job. Names have come here and they have not attempted to bypass Parliament. Section 29(2) reads-

“Unless this Schedule prescribes otherwise, when this Constitution requires an appointment to be made by the President with the approval of the National Assembly, until after the first elections under this Constitution, the President shall, subject to the National Accord and Reconciliation Act, appoint a person after consultation with the Prime Minister and with the approval of the National Assembly”.

Mr. Speaker, Sir, it is Section 29(2) that I was all the time leading to. This, to my reading, means that the President, having appointed these hon. Members yesterday, he must now act in accordance with Article 29(2) just the way he has been acting in accordance with Section 29(1) and bring these names here, so that each one of them is vetted and approved by this National Assembly.

Mr. Speaker, Sir, finally, I want to request the Chair to uphold that this House, as an organ of the implementation of the Constitution, cannot be bypassed, and direct in the normal manner that those names be brought before the House for us to commence the approval process. Thank you.

Mr. Lessonet: Mr. Speaker, Sir, I was reading the Constitution when hon. Dr. Khalwale was submitting. Just to emphasise what he has said, this Constitution only preserves those who were in office at the time when it was promulgated; every new appointment, including that of the Attorney-General, must be processed through this hon. House. I, therefore, seek your view and direction that Section 29(2) must be implemented; these names must be processed through this House. If possible, these names, in the spirit of this new Constitution, should even be vetted. We can even have a special committee to look at and vet them in the spirit of this Constitution, so that this country can continue moving together in the same direction. I seek your opinion..

Mr. Speaker: Very well, hon. Lessonet. Since you stood to support Dr. Khalwale and, therefore, you are making an effort to reinforce the point of order by Dr. Khalwale, I would like you, even as you read out Section 29(1) of the Sixth Schedule, to respond to this: Do these vacancies, which have been filled by the President, in consultation with the Prime Minister, arise in consequence of the coming into force of this Constitution? I want you to speak to that.

Mr. Lessonet: Mr. Speaker, Sir, I want to thank you for that challenge. Section 29(1) is independent of Section 29(2). We have been told in this Constitution that coming into force of this Constitution, there shall be no vacancies which shall be filled within one year, as per Section 29(1). Section 29(2) refers to any other new appointments by the Executive. They are totally different. Section 29(2) is independent of Section 29(1).

Mr. Speaker: A good attempt, but as to whether or not I am satisfied, we will leave that for another day. Minister for Justice, National Cohesion and Constitutional Affairs!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I have a lot of admiration for hon. Dr. Khalwale, and I truly enjoy debating with him whenever the opportunity occurs.

I want to kindly request you to look at page 95 of the Constitution, which deals with Part III – Cabinet. I understand the point that was raised to relate to Cabinet Ministers. You will notice that, that is where the Cabinet is described. Article 152(2) says: “The President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries”. First of all, they are not called Ministers but Cabinet Secretaries.

Mr. Speaker, Sir, secondly, allow me to take you now to page 192 of the Constitution. Section 2 of the Transition Clause draws your attention to Section 2I, Articles 129 to 155---

I am so surprised that hon. Khalwale is not listening to me; I am not doing any magic. I just want him to hear me. He could, kindly, listen to me because these are not tricky answers. This is the reality.

On page 192, Section 2I says: “Articles 129 to 155 of Chapter Nine, the provisions of the Chapter relating to the election of the President shall apply after the first general election under this Constitution”. This means that these articles are suspended. They are not in force. Therefore, Chapter Nine starts from Clause 129 – Principles of Executive Authority; at this point hon. Khalwale is suggesting that the Executive authority in Chapter 9 of the Constitution on the appointment of Ministers is subject to parliamentary approval. Chapter 9 is actually suspended until after the next general election, provided that the election of the next President shall be under this Constitution.

Therefore, the articles dealing with appointment and/or approval of Ministers are under suspension. Do you know why? I am happy to see hon. Khalwale now looking at me very keenly. On page 193, the reason why they are suspended is that Section 3(2) says: “ Sections 30 to 40, 43 to 46 and 48 to 58 of the former Constitution, the provisions of the former Constitution concerning the executive, and the National Accord and reconciliation Act, 2008) (No.4 of 2008) shall continue to operate until the first general election is held under this Constitution, but the provisions of this Constitution concerning the system of elections, eligibility for election and the electoral process shall apply to that election”.

So, what I am trying to tell you with very deep respect, because I know you know these things, is that Sections 15 to 22 relate to the Executive under the old Constitution as protected by the National Accord and Reconciliation Act. Therefore, what my good friend was trying to say that Article 29 can be split into two, Article 29(1) is independent of Article 29(2), again, I think, probably, through selective reading, he has forgotten to read the words, if I may read, Section 3---

(Ms. Karua consulted the Speaker)

Hon. Karua, please, if you could stop interrupting the Speaker--- Should I continue? If you look at the last three lines of Section 29(2) that hon. Khalwale is relying on it says: “Subject to the National Accord, and Reconciliation Act”. Therefore, I am happy to remind this hon. House that we passed the National Accord and Reconciliation Act unanimously. There was no dissenting vote. There was no abstention. The National Accord and Reconciliation Act recognized that the two sides of Kenya’s political establishment could not govern alone, but they had to come together into a national accord that is still in enforce. I rest my case and I suggest you find the point of order raised by hon. Khalwale has not substance.

Ms. A. Abdalla: Thank you, Mr. Speaker, Sir. As you heard the hon. M. Kilonzo say *makofi kwake*. Much as I would have liked to be convinced by what he has stated, I would have preferred if he had risen at the time you made a ruling that despite the fact that Chapter 9 is suspended, the President was not going to do a State Opening, but he was going to make an address to the House.

So, as you make the ruling on the questions raised by hon. Khalwale, we also need to deal with that precedent that we have already set.

Mr. Speaker: The contribution from the hon. A. Abdalla is very interesting. We would have wanted to hear your view, but that notwithstanding, I have heard you.

Mr. Olago: Mr. Speaker, Sir, with a lot of respect for the point of order by hon. Khalwale, I wish to say categorically that his understanding of the Constitution in a matter of this respect is actually erroneous. I wish to agree with the hon. Minister for Justice, National Cohesion and Constitutional Affairs. His position in law is the correct position.

Mr. Speaker, Sir, there are those of us in this House who may have wished that the appointment to the Cabinet made yesterday, should have passed through the House. However, the law does not allow that. The law does not envisage that. I urge you in making your ruling on this point of order, to address your mind very carefully to transitional consequential provisions, particularly Clause 3(2) which the hon. Minister has quoted. It points to the order completely. There is nothing left in doubt.

Mr. Speaker: Member for Budalangi! That ought to be the last one really.

Mr. Namwamba: Mr. Speaker, Sir, let me just draw your attention to Article 259(1) of the Constitution. It says:-

“This Constitution shall be interpreted in a manner that—

- (a) promotes its purposes, values and principles;
- (b) advances the rule of law, and the human rights and fundamental freedoms in the Bill of Rights;
- I permits the development of the law; and
- (d) contributes to good governance.

Mr. Speaker, Sir, I am particularly keen on 259(1) (a) which says “promotes its purposes, values and principles.” One of the purposes that is clear in this Constitution is to provide a platform that would protect the Coalition Government that takes due cognizance of the special circumstances that brought it into being. It appreciates the critical role that that unique arrangement, that very special, almost one of the arrangements of the Coalition Government, has in transiting this country from that arrangement to the new order contemplated by this Constitution. I, therefore, would wish to invite you to take keen interest in Article 12, of the Sixth Schedule. In advancing the due cognizance of the special place of the Coalition Government established in accordance with the National Accord, proceeds to state specifically and expressly save that Coalition agreement.

Mr. Speaker, Sir, permit me to read Article 12(2) of the Sixth Schedule.

“The persons occupying the offices of Vice-President and Deputy Prime Minister or holding a position in the Cabinet or as an Assistant Minister immediately before the effective date shall continue to serve in accordance with the former Constitution until the first general elections held under this Constitution unless they vacate or are removed from office in accordance with the former Constitution and the National Accord and Reconciliation Act, 2008.”

Mr. Speaker, Sir, when the Constitution talks about vacation and removal in the terms of the former Constitution and the National Accord, it also contemplates replacement. There can be no vacation or removal without replacement. If this Constitution at that Article contemplates vacation or removal in accordance with the former Constitution and the National Accord and Reconciliation Act, it can only contemplate replacements in view of that vacation or removal in terms of the former

Constitution and the National Accord. Therefore, Article 29 deliberately and the Constitution maker was not using words idly and without reason, is then deliberately titled: “New Appointments”. Applying the standard in Article 259 on construing this Constitution, it is erroneous for the hon. Member for Eldama Ravine to argue that Article 229(2) can be construed exclusive of 29(1).

Mr. Speaker, Sir, the whole Article 29 is titled: New Appointments”. Therefore, 29(1) and 29(2) are in respect of the title of that Article which is new appointments. These are exciting times. We are not only Constitution makers, but we also have an opportunity to address our minds to the weighty matters of constructing the intent, spirit and soul of the Constitution.

Therefore, I do wish to persuade the Chair to find that any removal, vacation from Cabinet can only be in terms of the former Constitution and the National Accord. Any subsequent replacement, therefore, can only be in terms of the former Constitution and National Accord. That is true whether you are promoting an Assistant Minister to a full Cabinet position or whether you are removing and replacing outright.

With due respect, I submit.

Mr. Speaker: Order, Member for Budalangi! Before you sit down, maybe you would help me. Are you by any chance saying that the appointments made yesterday by His Excellency the President in consultation with the Prime Minister are not new?

Mr. Namwamba: Mr. Speaker, Sir, nothing could be clearer from the construction of Article 12(2) of the Constitution which contemplates vacation or removal. Whether you want to look at them as new appointments, they must be seen as positions that arose out of an Executive act of removal. That is what is contemplated in Article 12(2). The Constitution did contemplate that the Government is an exercise of human actions. Circumstances would arise, where the Cabinet would run into instances of vacation or removal.

The operating word in Article 12(2) is “removal”. So, whether a Member wishes to engage in semantic summersaults and debate whether this is a new or an old appointment, what is critical here is to look at it as an appointment occasioned by removal as contemplated in Article 12(2) of the Constitution.

Mr. Speaker: Yes, Member for Budalangi, like a good lawyer, yes, you have done well. You want to leave it to the judge, but note that the emphasis to the word “new appointments” has come from you and not from the Member for Ikolomani much as you say he may want to engage in semantics or intrigues. That emphasis is yours.

Mr. Namwamba: Mr. Speaker, Sir, with your indulgence, the construction that I have applied to Article 12(2) and Article 29 of the Sixth Schedule, in my humble view, is that the Cabinet is not being constructed a new. The Cabinet already exists and any vacation or removal of any Member of that Cabinet that results in replacements would not properly fall under the contemplated new appointments in Article 29 of the Sixth Schedule.

Mr. Speaker: Thank you for providing that nexus. Otherwise, it was clearly missing. What is it, Member for Ikolomani?

Dr. Khalwale: Mr. Speaker, Sir, it is just a very small point which I think is important. Already, a precedent has been set. The Attorney-General, hon. Wako, who is a Cabinet Minister has been removed or has vacated.

Hon. Members: No! No!

Dr. Khalwale: You will have your time! In his place, a new appointment is now being done and Prof. Githu Muigai is going to be subjected to the process of approval by this National Assembly. So, if that precedence is already there, why should you subject it to the Attorney-General who is a Cabinet Minister, just like the other Ministers who were appointed yesterday and deny them---

Mr. Speaker: Order, Member for Ikolomani! It is precisely for that reason that I put the question to the Member for Eldama Ravine and I thought you will speak to it. The office of the Attorney-General is obviously a vacancy arising in consequence of the coming into force of this Constitution. Do you understand that? I thought, really, you will speak to that, but I am satisfied with the points raised and I will make my directions on this matter on Thursday next week at 2.30 p.m. I am adequately guided.

COMMUNICATION FROM THE CHAIR

DEFERMENT OF COMMITTEE STAGE: THE ELECTIONS BILL

Mr. Speaker: Hon. Members, before we move to the Order No.8, I wish to give the following directions with respect to business at Order No.13. You will be aware that we transacted and completed Order No.13 (iv), so did we, Order No.13 (v) and Order No.13 (vi). So, those are spent. We will, this afternoon, proceed when we get to Order No.13 to transact Order No.13 (i) and (iii).

With respect to (ii), that will be deferred because the processing of amendments has not been completed until this time that we are in the plenary. So, I will defer that to tomorrow morning. Be guided accordingly.

PROCEDURAL MOTION

WAIVER OF REFERRAL PERIOD OF BILLS

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

THAT, this House orders that the referral period of the Commission on Revenue Allocation Bill (Bill No. 42 of 2011), the National Government Loans Guarantee Bill (Bill No. 43 of 2011) and the Contingencies Fund and County Emergency Funds Bill (Bill No.44 of 2011) to the relevant Departmental Committees in accordance with Standing Order 111 be waived.

These three Bills were read the First Time this morning and I wish to thank the House for having reduced the publication period. They can only get into the Second Reading once the Members agree that we waive this requirement to have them committed to the Committees first. I also want to confirm that the Departmental Committee on Finance, Planning and Trade is already seized with this matter and as I speak, the Committee is meeting on these very Bills and have promised to complete its review later this afternoon and bring its report. So, we are not losing anything by not committing them through the normal procedure so many days to the Committee. The Committee is already

meeting to facilitate the process of us going to Second Reading and we get them through the Committee Stage and Third Reading tomorrow.

Again, going by the spirit of the House, I do not want to belabor the point. This is a Procedural Motion and I wish to ask the Minister for Justice, National Cohesion and Constitutional Affairs to second.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Speaker, Sir, I thought after bowing to you I have seconded the Motion, but I now do second the Motion.

(Question proposed)

(Question put and agreed to)

BILLS

Second Reading

THE COMMISSION ON REVENUE ALLOCATION BILL

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Speaker, Sir, I beg to move that The Commission on Revenue Allocation Bill, 2011, be now read a Second time.

Mr. Speaker, Sir, Article 215 of the Constitution establishes the Commission on Revenue Allocation and provides for the nomination of the Chairperson and Members of the Commission and their subsequent appointment by the President. Article 216 goes on to outline the functions of the Commission, particularly with regard to the sharing of revenue between the national and county governments, amongst the county governments as well as other matters concerning the financing of county governments.

Article 262 of the Constitution, under transitional Clause 25(1), requires that the Commission on Revenue Allocation be constituted within 90 days of the effective date of the Constitution. The Commission has since been constituted, in accordance with the Constitution. The Commission on Revenue Allocation Bill, 2011, is intended to provide the legal framework for the Commission's operations.

Mr. Speaker, Sir, with exception of the post-election period, Kenya's real GDP recorded robust growth over the last eight years. The growth has been broad-based and has contributed to the lowering of poverty levels and towards attainment of the Millennium Development Goals (MDGs). Despite this progress, much remains to be done to lower poverty on a sustainable basis and to achieve the MDGs.

Kenya's long-term development blue print, Vision 2030, seeks to transform Kenya into a newly industrialised middle-income country, providing a high quality of life to all her citizens in a clean and secure environment. The Vision 2030 rests on the principle of equity and the distribution of wealth. Indeed, it states that no society can gain social cohesion if significant sections of it live in abject poverty.

Mr. Speaker, Sir, this principle is well entrenched under Article 201 of the Constitution, which states that the public finance system shall promote an equitable

society where the burden of taxation, public debt; revenue raised and spending should be both fair and equitable.

Again, under our Constitution, enactment of legislation is essential to enable the Commission perform functions and exercise powers in addition to the functions and powers conferred to it under Article 216 as a body corporate. It is important that administrative and financial architecture of the Commission on Revenue Allocation is, therefore, consistent with the international best practices. The additional functions and powers prescribed by the Bill seek to facilitate the efficient and effective functioning of the Commission.

Mr. Speaker, Sir, the Bill has four main parts, the salient features of which are found in each part. Part I basically relates to the preliminary provisions of the Bill. It names the proposed Act and defines words and expressions used in the Bill. Part II of the Bill relates to the composition of the Commission and begins by outlining the powers of the Commission in addition to those stipulated under Article 253 of the Constitution.

It also outlines functions of the Commission, which are in essence aimed at complementing those outlined under Article 216 of the Constitution. Clause 5, for example, provides for the procedure of the nomination of the chairperson and members of the Commission, while Clause 6 provides for their requisite qualifications. Clause 8 provides for the circumstances under which a vacancy arises in the Commission, while Clause 9 outlines the manner in which the vacancy shall be filled.

Clause 10 outlines the additional functions of the Commission to complement those prescribed under Article 216 of the Constitution, while Clause 11 provides the terms and conditions of service for the chairperson and members of the Commission. Clause 12 empowers the Commission to establish committees for the better administration of the affairs of the Commission, while Clause 13 provides for the procedures of the Commission.

Mr. Speaker, Sir, Clauses 14 and 15 provide for the appointment and qualifications of the Secretary to the Commission and the circumstances under which the Secretary may be removed from office. Clause 17 provides for the custody and seal of the Commission, which shall, indeed, be kept in accordance with the directions of the Commission.

In Clause 18, the Bill provides for the protection of the members, officers, employees or agents of the Commission from personal liability for anything done in good faith while in the course of their duties.

Mr. Speaker, Sir, Part III basically contains financial provisions in relation to the Commission. It outlines the monies that will constitute the funds of the Commission and provide for the financial year of the Commission. Clause 21 outlines the manner in which the annual estimates of the Commission shall be prepared and submitted to the Cabinet Secretary responsible for finance for submission before the National Assembly.

Clause 22 imposes an obligation on the Commission to keep proper books and records of accounts submit them to the Auditor-General within three months after the end of each financial year.

Mr. Speaker, Sir, Part IV contains miscellaneous provisions with regard to the Commission. Clause 23 specifies the content of the report to the Commission with respect to each financial year, while Clause 24 makes it an offence to obstruct, assault or

threaten a member of staff of the Commission, or to submit false information, or to misrepresent or mislead a member of staff of the Commission.

The First Schedule contains the Oath of Affirmation to be taken by members of the Commission, in line with Clause 7 of the Bill. The Second Schedule outlines the manner in which meetings of the Commission are to be convened by the chairperson of the Commission and conducted. It prohibits a person who has personal or fiduciary interest in any matter before the Commission from participating in a meeting in which the matter is to be discussed, and it makes it an offence when a person contravenes this provision.

Mr. Speaker, Sir, in view of the important constitutional mandate that is bestowed upon the Commission on Revenue Allocation and the duty placed on the National Assembly to ensure that legislation is enacted to give full effect to these constitutional provisions, I wish to request hon. Members to support this Bill.

With those remarks, I beg to move and request hon. Kimunya to second the Bill.

The Minister for Transport (Mr. Kimunya): Mr. Speaker, Sir, I rise to second this very important Bill, arising out of the need to have proper shares of revenue between the national and county governments. We have had opportunity to look at this Bill in depth at Committees and in Cabinet. It has been subjected to a lot of participatory interactions with the various stakeholders.

As hon. Members would be aware, the Commission on Revenue Allocation was the very first one to have been appointed and passed by this House. So, this Bill is really ratifying and giving effect to what this House did in terms of the appointment of the Commission. The Bill captures all the steps that we took and further defines how the Commission will move on to the future. The Bill also deals with some of the issues they need to address in their day-to-day performance of the important functions that we have given them, as a Commission. So, when one looks at it in many ways, this is coming when we have already done the job. So, we have had the benefit of the experience in the appointment of the Commission for Revenue Allocation (CRA). We have seen them working and now we hope with this law, we will hold them to account for all their actions in accordance with the law.

Mr. Speaker, Sir, the matter is straightforward and I really do not want to take a lot of valuable time for this House because, like we said, in our wisdom, the House already appointed this. There was no Senate to do it and so, we took on the job of appointing both what the Senate would have appointed and what we, the National Assembly, were to do. We have been vindicated by the way the Commission has been performing and we wish them well as they continue. Against that background, I do not want to belabor a point that is very clear, and I wish to proceed and second the Motion.

(Question proposed)

Ms. Karua: Mr. Speaker, Sir, I stand in support of the Motion. I notice that like all other new institutions, we are saying the salaries of the members of the CRA shall be determined by the Salaries and Remuneration Commission (SRC), which begs the question: What is the Executive waiting for? We need members of the SRC appointed. Otherwise, all salaries that are being negotiated are actually irregular under the Constitution, so long as they are not sanctioned by the SRC. I want to draw the attention

of the House to Clause 18 of this Bill, which is giving protection from liability to members of the Commission. It is a standard protection given to all public bodies. It better be known that a public officer is only protected from personal liability if the things or acts done are in good faith. So, if you are on a frolic of your own and you are not on official business or you are not following the law, this clause does not protect you from liability. This is something that all those working in the Public Service should know: Not every act is protected by the law. I have looked at the provisions of this Act; they are standard and coming with the hindsight of the other Acts that we have passed, it is an Act that we should, in my view, endorse.

With those few remarks, I beg to support.

[Mr. Speaker left the Chair]

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

Mr. Bahari: Madam Temporary Deputy Speaker, I stand to support the Motion. Issues of revenue allocation are very key to this country and, particular, as we move on to the next dispensation. As part of the criteria, the issue of under-development has been listed in the Constitution as one of the criteria for CRA to use in determining what recommendations they make. But the point I want to make is that this country has had large disparities in terms of development and, therefore, as opposed to the emphasis, perhaps, on population, the level of under-development must be given a lot of attention. I am not saying this from the blues because in countries that have enjoyed federation and have in place commissions like this, the emphasis has been on how under-developed a particular locality has been. Therefore, it is important that, as we move forward, this issue be given serious significance.

In this Bill, Clause 5(2) says: “The Chairperson, members of the Commission may, pursuant to Article 25(5) of the Constitution, serve on a part time basis.” I think it is high time that we decided whether we really want them to work on part time or full time basis. If the feeling is that, perhaps, this Commission may not have a lot of work, then we should decide that it should be part time. I know there is such provision, of course, in the Constitution, but this looks to me, unless it is clarified, like we are not decided. We cannot have a Commission where, perhaps, some of them will be part time while others are full time. So as to avoid this kind of mix up, we need to come up very clearly that they be part time or be full time. We should not say “may” because that is already provided for in the Constitution. In the case of the Independent Electoral and Boundaries Commission (IEBC), we decided that the Commissioners will be full time Commissioners; they will not be part time. There was a push for them to be part time, but we decided deliberately that they be full time. In this one, I do not think we are very clear and that aspect needs to be looked at.

With those few remarks, I beg to support.

Mr. Mbadi: Madam Temporary Deputy Speaker, I also rise to support this Bill and I want to be very quick. I just have two issues to raise. The first one is that, while it is true that we are coming up with this law after we have already appointed the Commissioners, I think the Commissioners were appointed based on the Constitution. So,

there is no need to worry about it. However, the Bill now sets out clearly the procedure to be followed. I am in support of the procedure to recruit the Secretary to the Commission. It should be competitive and transparent as much as possible. I think we need to limit the number of Commissioners. This idea of having nine commissioners, we should start lowering the number to less than that because the Constitution provides for three to nine. So, we should, as a country, try to reduce the cost of the commissions that we set up.

There is an observation in Section 21 and I see this with many of the Bills that are coming with regard to preparation of annual estimates. The annual estimates of the Commission shall be prepared and submitted to the Cabinet Secretary. But it is not clear. It says before the end of the financial year. But we need to be definite about the time. Otherwise the Cabinet Secretary in charge of finance would be waiting for the estimates from this Commission until the last day of the financial year. That will leave the Cabinet Secretary or the Treasury with limited time to put together the budget. I suggest that under Section 21(3), we make it three months before the end of the financial year or beginning of the next financial year. That way, we are clear that the Commission needs to forward the estimates in good time for the Cabinet Secretary responsible for finance to put it together with the other estimates from other Government departments and Ministries and produce the final budget estimates.

Finally, I am happy that we have saved the Commission which has already been constituted. I think this Bill is a small one in content; it is a Bill that we can approve and dispose of. Thank you.

With those few remarks, I beg to support.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Madam Temporary Deputy Speaker, may I support and just say that this Bill is the foundation on which devolution will rest. The members of that Commission will be expected to do one hell of a job. I can say that if they do not do their job properly, then devolution will suffer. If they do their job well, then Kenyans will be happy that they passed a good Constitution. That is because, as a matter of fact, there is no devolution without some finances. That is the reason why some of us supported devolution. In the areas we come from, we had a strong feeling that public resources were not reaching us and nobody was remembering us. Until the Constituencies Development Fund (CDF) came the other day, some planners were planning about toilets in beaches in Mbita Constituency from the headquarters in Nairobi. Imagine if you are planning for toilets in Mfangano Island and you are sitting in Nairobi. It is not a very beautiful job. My sister Martha Karua was in Mbita and she knows how far away it is. However, it is also a very beautiful place.

Madam Temporary Deputy Speaker, what devolution has done is that we are going to think about Mbita from Homa Bay which is much nearer. We expect the revenue to come. If that revenue does not come, of course, you will expect a lot of revolt.

However, let me say something about the qualifications of appointment of the chairperson and members which is in Clause 6. We have provided that the person shall be qualified for appointment as a chairperson or a member if that person holds a degree from a university. I think that was good because we expect that the people who will be dealing this thing will be people who are knowledgeable in matters of finance, taxation, audit, law and economics. We know that they will be using a lot of data. They will also be using

a lot of statics. This will be complex equations which need mathematicians. I think they will be hiring proper people even as they sit as commissioners themselves.

Madam Temporary Deputy Speaker, there is something added there that generated some of my thinking, that either a university degree or an equivalent professional qualification recognized. You know you either have a degree or you do not have. There is no equivalent to a degree. There may be something nearer to a degree but it can never be a degree. Because I have one, I am very proud and I protect it. A degree is a degree and a diploma is a diploma. I think I do not know what will happen to that section when it comes to---

Mr. Mbadi: On a point of information, Madam Temporary Deputy Speaker.

The Minister for Immigration and Registration of Persons (Mr. Kajwang): I will accept your point of information.

Mr. Mbadi: Madam Temporary Deputy Speaker, I wanted to inform *waziri* that this is really mysterious. There were times when some individuals who did CPA - I did CPA and I am very proud of it – said that CPA (K) was the equivalent of a degree. This was at a place where I was working. But when we accepted that, they lowered it to CPA II. So this equivalent thing should be removed.

I agree with you.

The Minister for Immigration and Registration of Persons (Mr. Kajwang): Madam Temporary Deputy Speaker, you know when my brother started explaining that there were some people saying that a degree is equivalent to a CPA, I thought he was going to say so. I am glad that he has said a degree is a degree and a CPA is a CPA.

Madam Temporary Deputy Speaker, of course, there is need for professional experience in financial and economic matters for at least 15 years. These are very qualified people. They also need to have a distinguished career in their respective fields or whichever field it is and, of course, meet the normal requirements of Chapter Six.

Now, this is the issue; a person shall not be qualified for appointment as a chairperson or a member if he is a Member of Parliament or of a County Assembly - I think that is obvious. If he is a member of a governing body of a political party - I think that is obvious because they will bring a lot of politics in this matter. If he is an elected member of a local authority – that is also obvious because he is a politician. If he is discharged of bankruptcy – of course it does not mean that if you were bankrupt one time and you had already been discharged you cannot then qualify.

Bankruptcy is not a permanent sin. Even sin is forgiven by the blood of Christ. So, I think if you are already discharged, then you qualify. In fact, there was an argument that if you have been convicted of some offence, you should not qualify but I think it was removed for good reason. When somebody was convicted of some offence, he had already served a sentence and has become a good citizen, there is no reason to put that load on his neck for a life time. Lastly, a person is also not qualified if he or she has not met his or her legal obligations relating to tax and other statutory obligation.

This is a very grey area because I am not so sure that it can be used against very good people. You may be almost appointed or just appointed and then somebody says that you have not paid Kshs1 billion of your taxes. You will, of course, dispute it and then go to court. By the time you clear yourself, you will have lost this position. It is something which can be very subjective. I think we could look at it one more time.

Madam Temporary Deputy Speaker, there is something about the number of times this commission should be meeting. I think it will not be very busy. It will be busy for some time when working on the parameters and formulae which they will be using for distributing these resources. Most of the time they will not have a lot of work and I hope that they will use the time they have meaningfully and for the benefit of this country so that we do not argue and fight over something which we think the law has now settled; that is sharing of resources in this country in a very equitable manner.

There is one other thing which will require a lot of work. There is something called Equalization Fund. I know my brother from Turkana is looking at me carefully because he expects that he will get sufficient resources from this Equalization Fund more than the rest of us. I can tell him that Suba and Turkana are not different. If statistics are used properly, I will expect this Commission to do thorough work on equalization. We do not want to hear that all the money from the Equalization Fund has gone to Mathare Valley and has not gone to Suba, Gwasssi and Turkana.

Thank you very much. God bless you. I support.

Mr. C. Onyancha: Madam Temporary Deputy Speaker, I rise to support the Bill with a few comments.

First one is on Clause 6(1)(a), I believe the way it has been set out is the right one. It says, “or an equivalent” but I would have said, “or a professional qualification”, without the word “equivalent”. Certain people pursue a course in accountancy as all accountants might know, without necessarily going through the university for a first degree like members of the Institute of Certified Accounts of England and Wales and others.

Madam Temporary Deputy Speaker, on Clause 21, I would have thought there would be a period of maybe three months which would be provided as the necessity to provide the annual estimates before the year ends.

Lastly, on the Second Schedule (iv) it says:-

“No member or staff of the Commission shall transact any business or trade with the Commission”.

I thought we could include in this clause the words, “or a spouse or an organization that is related or owned by a member of the Commission”.

With those few remarks, I beg to move.

Mr. Wambugu: Madam Temporary Deputy Speaker, I also rise to support the Bill.

I would also like to add my comments and sentiments on Clause 10(a) on the Equalization Fund. We feel that a few people might be trying to believe that this Fund should go to the so-called marginalized areas which are normally interpreted as hardship areas. There are very many areas in this country which can be considered to be pockets of poverty and these areas have been neglected for a long time. We have an example of one area where I come from called “Mathioya”. We do not know what happened with the allocation of funds for infrastructure and water. This is because that constituency has not benefitted at all. It is my request that before this Commission starts its work it should go round the country and identify the areas which have been marginalized for a very long time. I heard one of the hon. Members talk about Suba, Turkana and others but there are some areas in Central Province which are even worse than that.

Recently, when we were going through the Budget, we had a chance to go round the country to get views from *wananchi* on the contents of the Budget. When I go through the Bill, there is no guideline on how the public would participate through this Commission. I propose that after the Commission tables their estimates, there will be a stage where there will be public participation. That is where the public can come and give their views on what they would like and what they think should be funded within their county or in their constituencies.

With those few remarks, I beg to support.

The Assistant Minister for Higher Education, Science and Technology (Mr. Kamama): Thank you, Madam Temporary Deputy Speaker, for giving me the chance to support this very important Bill. This Bill intends to operationalize Articles 215 and 216 of the Constitution. I think we are duty-bound to support this Bill. I have issues with Clause 10 on the Equalization Fund to marginalized areas. We want this Commission to come up with the best formula possible in the region to determine the population and poverty indices that will be used to allocate funds to Arid and Semi-Arid Lands (ASALs) or marginalized areas. As we speak right now, we have statistics that are very doubtful and immediately we operationalize this Bill and the President assents to it, we want that Commission to come up with the best formula to help those areas that are marginalized. When you hear people in Mr. Kajwang's place saying that they are more marginalized than the former North Eastern Province and the Turkana, Pokot and Borana regions--- I do not mind about Suba because I know that they have been marginalized for some time but the areas that we know have been marginalized are all in the ASALs.

As I finish, I want to request this House to assess what we have done before. This Commission is already in place. I do not know, is it a question of the egg or the chicken? Which one comes first? Is it the Commission or the Bill? This is because the Commission is already there but in the spirit of wanting this Constitution to work properly, we want to support it and we hope that this Commission will deliver the best services to Kenyans and not undermine them.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Madam Temporary Deputy Speaker, I also join to support this essential Bill. I totally agree with Mr. Kamama that basically this House should not have appointed the Chairman and the Commissioners of the Revenue Allocation Commission before the Bill came here. I think this is a mistake that we will learn from so that we can always know how to put the horse before the cart.

I want to make one comment relating to Clause 4 which reads:-
“The headquarters of the Commission shall be in the capital city but the Commission may establish branches at any places in Kenya.”

I am more interested in the second part of that Clause “at any places in Kenya” and relating this to the functions that have been provided by the Constitution to this Commission. I want to make reference to Article 216(2) which provides that the Commission shall also make recommendations on other matters concerning the financing of and financial management by county governments as required by this Constitution and national legislation. Article 216(4) says that the Commission shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalized areas for purposes of Article 204.

In implementing this function then Clause 4 of the Bill should not just say that the commission shall open branches at any place in Kenya. It should be branches at all the 47 county headquarters so that whatever we are doing and whatever national Government and commissions are doing, there is consistency because there are two levels of government; that is the national Government and county government. Basically, the headquarters of this Commission should be at that level and it is at that level that they can consult very closely with the county government for them to effectively deliver on their mandate.

Thank you, Madam Temporary Deputy Speaker.

The Minister for Education (Prof. Ongeru): Madam Temporary Deputy Speaker, I also want to add my voice to this very important Commission because it is all about revenue allocation. No nation would make any development without the adequacy of resources to be able to exploit the natural potential and other areas of development that would engage its citizenry at the county and national level. I take cognizance of the fact that one of the fundamental roles that the Senate will play--- Clause 10(b) says:-

“Upon request from the Senate, make recommendations on the basis for allocating among the counties the share of national revenue that is annually allocated to the county levels of government.”

Obviously, there is a disconnect between now and the next Parliament after 2012 elections. I believe that function would be performed by this august House. It is my plea at this stage that even though there are areas that may have been considered by others to be favourably more developed than others, there is sometimes a misconception. For instance, if you go to the County of Kisii or Nyamira, there is a perception that water is available in plenty but if you look at the terrain which is mountainous, you will find that it gives misery to the old ladies and young girls going to fetch water from the rivers down the valley. One of the criteria which should be used by this Commission is the ability to be able to get life supporting services like water. Does the area enjoy abundance of water? Is that water available to the communities and population staying around that region? This is because we have difficulties without water. As part of its criteria, the Commission should allocate sufficient resources to regions where water may be a major problem both for the animals and human consumption. I think that is a very important feature that we need to take into account. This is also an area that can promote development and what one would consider from county to county as good county relations, peace and tranquility. When everybody is satisfied, you can expect peace. However, if everybody is not satisfied, we are creating a lacuna for problems to arise. We have particularly seen what is happening between us and our neighbours in Ethiopia – the Merille tribe – where people are fighting over pasture and water. Again, I emphasize the need on how we should allocate these resources.

Madam Temporary Deputy Speaker, I am not quite clear what will happen, but I leave it to the wisdom of this House and the Constituencies Development Fund (CDF) Committee. This is because once this Commission is in place, it will appear that Parliament’s role will only be to signal whether or not that allocation has been done in accordance with the law. Therefore, we need to think seriously. In my opinion, I think that the CDF has been a bridge to close the development gaps that have existed in various parts of this country. It is a very popular feature and I do not know how it will be treated when the allocation process and the Commission is in place. I think we need to clarify

that point, even though they will have the overall mandate under the Constitution to distribute these resources.

I think this is an area that we are all in agreement that we will once again see a level playing field being applied to all. The infrastructure which we all laud and accept is the vehicle of development and opening up of the vast land and areas that have not been hitherto served with effective infrastructural development---Therefore, these resources will be earmarked to help other areas that have not been able to come up with infrastructural development do so with speed and without any delay.

Madam Temporary Deputy Speaker, with those few remarks, I beg to support this Bill.

Mr. Mwangi: Thank you, Madam Temporary Deputy Speaker. I rise to support the Bill, but I want to make a few comments.

Madam Temporary Deputy Speaker, on the composition and administration under Clause 4, the headquarters of the Commission shall be in the capital city. I request that the other part of the statement be definite. Let us be specific and not say “any other.” Since we are talking about devolution, why do we not say that we establish branches at the right place, and the right place other than the headquarters of the country should be at the county headquarters? That should be clarified or corrected because devolution means getting to the communities, and the communities have decided the centres which will be their county headquarters. So, there is no need of leaving it open for the Commission to decide where any other branch could be created.

Madam Temporary Speaker, the other point I would like to make is on Clause 10, where we are talking about the Equalization Fund. We need to have a new definition of marginalized areas. The arid and semi arid areas for a long time have had considerable funding from the Central Government and other friendly donors. Some of the areas that may be regarded as developed in this country, have pockets that have been forgotten for a long time because of the generalized coverage of developed areas. What criteria or parameters will be used? Will the Commission consider population, area or the infrastructure development in these areas? We need to be clear and the Commission should take time and define what is “marginalized.” We have had times when teachers are considered for hardship allowance in one location in hardships areas, while those of a neighbouring location are left out and yet it is within the same geographical area. So, when we talk about the Equalization Fund a lot of care needs to be taken, so that the areas that have been left out in the past are considered when it comes to revenue allocation.

Madam Temporary Deputy Speaker, with those few remarks, I beg to support the Bill.

The Assistant Minister for Nairobi Metropolitan Development (Ms. Ongoro): Madam Temporary Deputy Speaker, I rise to support this Motion. I also want to add my voice to Clause 4 of the Bill, which gives the Commission an option to either establish other offices or not. I think we should change this to compel them to decentralize in capturing the spirit of devolution in the new Constitution. This is a very critical aspect of the new Constitution; the devolution of funds. I think it is important that the Commission takes it upon itself to ensure that it devolves its services and opens up offices, not just in any place in Kenya, as was mentioned by the hon. Member, but in all the 47 counties within the Republic.

Madam Temporary Deputy Speaker, I have issue, though, with Clause 18, which protects members of this Commission from personal liability. It is my opinion that anybody who transacts any business in good faith, within the mandate of his or her office, should not be afraid to take up the responsibility of defending their position or decisions. When we give a blanket protection to commissioners or members of an entity, we provide a platform for abuse of office. So, that should be looked into.

Clause 2 under the Second Schedule talks about conflict of interest. I think that is a very good provision. Maybe we only need to fortify it so that it is not only when somebody declares willingly conflict of interest. However, if that is also discovered by other bodies that you kept quiet though it can be confirmed that there was conflict of interest, then your decisions during those deliberations should not be taken into account because it should be deemed that they were not objective enough.

Madam Temporary Deputy Speaker, lastly, this is one of the most critical Commissions that we will have because it will be in charge of revenue allocation. We, therefore, cannot leave the handling of such a big matter to chance by indicating in Clause 6 that any person who holds a degree from a university or an equivalent professional qualification---- This can be contested by anybody. What do we mean by “equivalent professional qualifications”? Not only should we insist that the person holds a degree, but we should also be specific on the relevant degree that this person is supposed to hold, which will then convince us that the person has got the provision as contained in part “(b)” of having relevant professional experience.

Madam Temporary Deputy Speaker, with those four issues that I have looked into, I beg to support Bill.

Mr. Mungatana: Madam Temporary Deputy Speaker, I just have two quick points.

Madam Temporary Deputy Speaker, it is my humble opinion that the real meat of this Bill is on the actual functions of this Commission, which is the recommendations by the Commission on the matters dealing with the financial issues.

Madam Temporary Deputy Speaker, these recommendations are supposed to have come mainly from the county governments so that they can assess the needs from the facts presented to them by the various county governments in future. But we have not provided any avenue for them to receive these views. So, in terms of recommendations, there must be, from the Minister’s amendments, an avenue where the Commission can receive the recommendations from the county governments. So, I propose that some added powers must be given there in black and white.

The second point I want to make is in terms of the proposed Clause 10. This is to the Minister again. In terms of the recommendations which are being given, there is no time line that is being proposed for purposes of implementation. So, effectively, that means that even if the Commission makes certain recommendations, for example, for appropriation of money out of the Equalization Fund, there is no law that says that, that must be done within a certain periods of time. That leaves this Commission without any real push except mere recommendations. It is the same thing when they get requests from the Senate to make recommendations on the basis of allocation amongst the national revenue and the counties. Again, the timelines in terms of them to effect have been omitted. That, therefore, makes the Commission not able to push for any of the things that they are saying. That is because recommendations can be made this year and they are

told that, that will be practicable next year and so on. Therefore, I feel that the Minister must find a way in which these recommendations can be put into effect. If they are not put into effect in terms of time lines, then the Commission becomes another talking shop that consumes money from the public. So, with those two recommendations, I beg to support.

Mr. Baiya: On a point of order, Madam Temporary Deputy Speaker. In view of the mood of the House - there is nobody who is opposing - would I be in order to propose that the Mover be called upon to reply?

The Temporary Deputy Speaker (Dr. Laboso): Is that the feeling of the House?

Hon. Members: Yes.

The Temporary Deputy Speaker (Dr. Laboso): Hon. Minister, could you respond to the Bill?

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Thank you, Madam Temporary Deputy Speaker. I take this opportunity to thank all Members who have contributed to this particular Bill and, indeed, continue to emphasize the importance of this Bill in terms of dealing with issues of equity in the country. We believe that this is a critical part, as indeed, has been stated, of devolution. A number of issues have been raised, for instance, the issue regarding Salaries and Remuneration Commission that was raised by hon. Karua. Again, this is something that we agree with. We think that the sooner that Commission is put in place, the faster we will harmonize all public officers salaries and remunerations. I think that was a good point.

Various other issues were raised. There is a need for a deadline, for example, for submission, which should be three months before the end of the financial year. That is a positive addition and we think it could help. With regard to the issue of the need to ensure that CRA establishes divisions or offices in all 47 counties, I think the provision, as already provided for in the draft law, is adequate, given the fact that it is a national body. The need for them to be in every county is not necessary. That would be a huge cost burden on the Exchequer which I do not think will be positive necessarily going forward. There is also need for them to have additional powers to receive views from counties. That is something that can be possibly looked at.

Lastly, with regard to the issue of provision of timelines, when we have the Overall Public Financial Management Bill brought before this House, Members will see that timelines are provided for. Timelines have been provided for the various Commissions. So, there will be a provision for time lines for all the Commissions to ensure that there is a deadline that will be met. The Commissions will begin working on fixed data early enough to meet the provisions of the Budget or the time limits of the Budget as we go forward.

With those few and brief remarks, I thank hon. Members for their contribution.

I beg to move.

(Question put and agreed to)

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

Second Reading

THE KENYA CITIZENS AND FOREIGN NATIONALS
MANAGEMENT SERVICE BILL

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Madam Temporary Deputy Speaker, I beg to move that the Kenya Citizens and Foreign Nationals Management Service Bill be read a Second time.

This is an Act of Parliament to establish the Kenya Citizens and Foreign Nationals Management Service to provide for the creation and maintenance of a national population register and the administration of laws relating to births, deaths, identification and registration of citizens, administration of laws relating to marriages and for connected purposes.

Part one is the preliminary part with the short title and the interpretation section. The more substantive one is Part 2 that deals with the establishment and composition of the Service. Part 3(1) establishes the Kenya Citizens and Foreign Nationals Management Service, which shall be a body corporate with perpetual succession and a common seal. Of course, that gives them the power to sue and be sued, borrow money, lend money, charge fees, enter into contracts and perform all the things that a corporation may perform.

The functions of this service are on page 1278, Clause 4(1). It states as follows:-

“The Service shall, under the general supervision of the Cabinet Secretary, be responsible for the implementation of policies, laws and other matters relating to citizenship and immigration, births, deaths, marriages, identification, registration of persons, issuance of identification, travel documents, foreign nationals management and the creation and maintenance of a comprehensive national population register.”

Madam Temporary Deputy Speaker, the departments that fall under the Ministry of State for Immigration and Registration of Persons are departments that actually deal with the registration of persons, but of different category. For example, we have the Civil Registration that deals with the registration at birth. We have the Registration of Persons. We call it the National Registration Bill which deals with the registration of persons at 18 years and above. We also have a department that deals with immigration. We also have a department that deals with refugees affairs where we also register them.

Recently, we created a department that deals with National Population Register; that is, all registrations have an umbrella body that keeps the data of every citizen. We have asked the Attorney-General and he has accepted that the other registration that was not under our docket; the registration of marriages and divorce, because it is a very important data when you want to know who is the child of who and the mother and father of who, it is important that that register can also be incorporated into the entire national register. So, what we are seeking here is to create a corporate body that will deal with all registration matters under the general supervision of the Cabinet Secretary with respective departments, but working together. If you have a question on a matter of registration, then you have a one stop shop where you go and you get the details of the individual.

The other reason why we thought this is necessary is because sometimes, they are managed from different Ministries and departments. It is very difficult to co-ordinate the national register. However, if they are under one service, then all of them will be reporting to the leadership of that service. Therefore, if you want to be sure whether this

person is a Kenyan, you go there. If you want to be sure that this person has been registered, you go there. If you want to know whether this person died, you get that information there. It will be beneficial for the efficiency in management of data of individuals in this country.

Madam Temporary Deputy Speaker, the other reason why this was necessary is that right now, I have been late as the whole country knows on matters of identification. I did not have sufficient resources in time. I do not have sufficient officers on the ground. I cannot do as much as I should do because I am limited in terms of resources and personnel.

This service may charge fees for some work that it does. It may borrow money. The Government may also give it resources. Therefore, it will have sufficient resources to do the work that we have been unable to do for a very long time.

In fact, I can promise you that when this service is created, nobody will ever complain that there were no officers in his area, that some people have not got identification cards, and that some people are about to turn 18 years of age and have not got their passports in time. We will have very efficient management of registration and data management in this country.

Let me mention who will manage this. We are establishing a board as stipulated in Clause 5 which states as follows:

“5(1) There shall be a Board of the Service which shall be the governing body of the Service.

(2) The Board shall consist of:-

(a) the chairperson to be appointed by the President on the recommendation of the Public Service Commission (PSC);

(b) the principal secretaries or their representatives appointed in writing in the Ministries for the time being responsible for matters related to-

(i) Immigration and Population registration;

(ii) Foreign Affairs;

The Ministry of Foreign Affairs will be involved because we deal with immigrants a lot. The Ministry of State for Provincial Administration and Internal Security will also be involved because this is a security matter. The Director-General will be the *ex-officio* member. The secretary to the board will be appointed by the board who shall be an *ex-officio* member.

The other five will be appointed by the Cabinet Secretary. They will be people with expertise and experience in matters related to this Act, provided that the Director-General and the secretary to the board shall be of opposite gender. That is to be responsive to this important provision in our Constitution.

The Board then will have power to create committees. The tenure of the Board will be five years. Termination will be as provided for in the other Acts of Parliament. It is now almost standard. Meetings of the Board will be as provided for in the Second Schedule. Also, confidentiality will be as provided for in all other matters that relate to management.

What will happen when these Board starts managing these affairs and we already have these departments running? We have said that the Service shall, not later than four months before the end of any financial year, prepare an estimate on the income and expenditure of the Service for the next financial year. The annual estimates shall make

provisions for all estimated expenditures of the Service for the financial year and in particular provide for salaries, acquisition and construction, maintenance of buildings, pension, proper maintenance and repair and replacement of equipment and creation of reserve funds.

Madam Temporary Deputy Speaker, Clause 21 talks about the Service keeping or cause to be kept proper books and records of its income, expenditure, assets and liabilities. Then there is the vesting of assets. All assets whether moveable or immovable, registered in the name of or otherwise belonging to any of the departments referred to in the Acts of Parliament set out in the First Schedule or in the Act repealed by any of the Acts referred to in the First Schedule shall upon coming into effect with this Act vest in the Service.

What will happen to the staff? Until the Board is constituted and it has competitively recruited for all the positions in accordance with this Act, the staff of any department or public officer employed by the Government for the purposes of providing the services under the laws specified in the First Schedule immediately before the commencement of this Act shall continue to provide such services in their previous positions on previous terms and conditions of employment. So, no employee should worry that they may lose their entitlements.

Lastly, the Cabinet Secretary, in consultation with the Board, may make such regulations as shall be necessary for the better carrying out of the provisions of this Act.

Just to urge you one more time that this is a good Bill. We have thought about it. We have benchmarked for it. Most of the countries have now gone this direction. South Africa is going in this direction. Tanzania, next to us, is going in this direction of creating a service. Uganda has created one, Pakistan has created one. Many countries have gone this direction because it is a specialized service that will be of benefit to the country in terms of efficiency and management of data.

I beg to move, and I ask Mr. Orengo to second this Bill.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Speaker, I think the Minister has to be commended for the work he has done. It is important to note that part of the objective of this Bill is to bring the various statutes that were applicable to matters of citizenship, immigration, registration of persons and all that to be managed under a service; the objects are quite clear, as contained in the preamble to the Bill.

Madam Temporary Deputy Speaker, now that it will become a service, just like the other services and commissions that we are establishing, the point about it is to provide and deliver services more efficiently, and to make Kenyans feel that they belong somewhere, because once you are a citizen, you have rights that are spelt out not just in the Constitution, but also in the Bill that the Minister moved yesterday.

So, without further ado, I beg to second.

(Question proposed)

Ms. Karua: Madam Temporary Deputy Speaker, Sir, I rise in support of this Bill, which is timely, but which has one or two things that the Minister needs to focus on. You will realize that this Board that is being created to manage and maintain the population register, administration of all laws relating to births, deaths, identification, registration of citizens, marriages and administration of all laws relating to that, is such a crucial Board.

Therefore, members of this board, except where there are offices of government, must be approved by the National Assembly. We must know these men and women, whom we are entrusting the entire nation to because we will know who is a citizen by registration by this Board. The job is too important to be left to appointment by the Cabinet Secretary. I propose that later on, it be amended to include approval by Parliament. I am also thinking that this Board should only be managing at policy level, so that the Director-General is the day-to-day person. Where we have failed to specify that, we have seen turf wars between chairmen of boards and the day-to-day officers.

Madam Temporary Deputy Speaker, I am also suggesting that instead of having the Government officers and then five other persons, why not reduce them to three other persons, so that the entire Board will be seven people instead of nine? We would even prefer fewer, but because these will be Government offices, let us have three others. We must really learn to have lean and mean organizations rather than bloated ones. We are coming from a Cabinet of 40 to one of 24. Let us not go to No.9. Let us try to restrict ourselves to small numbers as much as possible.

The other issue I have already mentioned. If you look at Clause 7, I am saying it should be clear that the Board will be only for purposes of policy. Where the Board has been given the power to determine issues of citizenship and approval of anything to do with registration, let us not operate by committees. The moment you give individuals discretion, you create an opportunity for rent seeking. This Board should come up with a criteria that is very clear on how these matters should be processed; then the officers of this particular Service under the Director-General will apply those policies and the criteria. The Board can then be auditing their work from time-to-time. Too much discretion leads to too much corruption.

Madam Temporary Deputy Speaker, the other point I have seen in this Bill is that we must create offences. These people are going to be privy to such vital information. They are going to manage such sensitive affairs of the nation. We must have a clause that creates offences relating to deliberate flouting of the Constitution, or written laws, by members of this Service in relation to the information they will acquire by virtue of their office. We must also stop them from abusing their office, and allowing personal interests to cloud their work.

Other than that, I think it is a Bill that will be of great benefit to this country. I beg to support subject to those suggested amendments.

The Assistant Minister for Education (Prof. Olweny): Madam Temporary Deputy Speaker, I stand to support the Bill. We are creating a system which we feel will help the Minister in managing all the relevant data about Kenyans. The Minister has indicated here, and it is true, that he has been having problems in registering Kenyans who have not been registered yet, or who lost their registration documents; that is the identity cards. For more than a year today, we have had problems with pupils and students in schools. We are forcing them to have birth certificates, so that they can be registered for national examinations. You see, it should be noted that Kenyans are being born and their births are not registered, yet every Kenyan who dies, their death is registered. This is unbelievable. The assistant chief in the village will tell you who died yesterday or last year. He or she has all the records of the people who have died, yet they do not have records of people who are born. For people who are born in the village, the

assistant chiefs, the administration, can help in registering births. They know which woman was pregnant and which woman has given birth today.

Madam Temporary Deputy Speaker, if we can issue a birth certificate, why should the number in the birth certificate be different from the one in the identification card? Let us have the same in the birth certificate, identification card, voter's card and in the death certificate, so that you can be traced all the way to your grave.

Madam Temporary Deputy Speaker, in this country, we have too many people from outside this country doing jobs that Kenyans can do. They work in some of these supermarkets. In fact, so many people from Asia are doing simple work that we can do. This should not be allowed. Mr. Minister, once this Bill is finalized, let this service management ensure that we do not have such people around. The work that can be done by Kenyans should be left for Kenyans.

Thank you and I support.

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro):
Madam Temporary Deputy Speaker, I rise to support this Bill.

I only have two issues. I want to draw your attention to Clause 14 on the removal of the Director-General from office. This is a very interesting provision that the fate of certain important office holders could be left in the hands and decision of a Cabinet Secretary. As usual, when two people work together over a period of time, sometimes issues arise. Clause 14(g), in my opinion, gives a window for the Cabinet Secretary to possibly just frustrate and remove Director-General from office. I would actually request that we delete subclause (g), because this is an open window; a blank to the Cabinet Secretary. He can justify removal from office of this person by citing anything that could be qualified as sufficient and lawful cause.

Mr. Temporary Deputy Speaker, secondly, I draw your attention to Clause 24. It says:-

“The Cabinet Secretary, in consultation with the Board, may make such regulations, as shall be necessarily for the better carrying out of the provisions of this Act.”

Mr. Temporary Deputy Speaker, Sir, I would like us to fortify that that provision, or paraphrase the sentence to ensure that this will not be abused by the Cabinet Secretary and the Board. They should not create avenues or platform of abuse, or attempt to water down the very good provisions that have been contained elsewhere in this Bill.

With those few remarks, I beg to support.

Mr. Noor: Madam Temporary Deputy Speaker, I want to congratulate the Minister for this important Bill. I feel this is one of the most important Bills that will address issues of our nationhood. We have suffered for a long time due to lack of identification documents. We have gone through a lot of pain looking for identification documents. This will give us a chance where we will be able to get the correct and proper identification.

Clause 7 says the Board is supposed to establish a Citizenship Advisory Committee. As people from Northern Kenya, we have experienced this. We have had a vetting committee in Northern Kenya. It has been vetting our people when it comes to the issuance of national identity cards. This committee had good intentions. However, it has abused its powers. They have mistreated our people. They have even given identification to people who were not qualified to get those documents. They have subjected a lot of

sufferings to the people of this nation. So, my proposal is that we must put some strong recommendations to tighten up the Advisory Committee. The Board must consist of people who are conversant with issues of policy. Honestly, we must treat our visitors as visitors. We must welcome them. We need them because they will bring income to this country. We must treat the people of this country well because they are loyal. This is the only place they know. They do not know any other place. We must capture that.

My other concern is the issue of penalty. We must put some penalties in this Bill. If in future, somebody abuses the powers that are provided for in this Bill, they will be held accountable in some way or the other.

The other thing that is giving me a problem is the source of funding of this Committee. Here, we are talking of grants, donation and endowments received by the Board on behalf of the Service. That can be abused. Anybody who has an interest can donate money to the Board. That may give compromise to the Board's functions. I call upon the Minister and the Committee to look at it, so that grants and donations are not misused or used to compromise the Service. It is open and it can be subject to abuse.

With those few remarks, I beg to support.

Mr. Wambugu: Madam Temporary Deputy Speaker, I also rise to support the Bill.

This is a good document. However, I want to comment on Part II about the headquarters and the offices. They said the headquarters shall be in Nairobi and the Service may establish branches at any place in Kenya to ensure reasonable access.

Madam Temporary Deputy Speaker, I think the issue of registration is very serious and important to the citizens of this country. I would be proposing that other than just being left open that they "may", we should say the Service, "shall" establish branches at the lowest level of locations. If you heard right, the deaths registration is done even by the sub-chiefs. I do not see any good reason as to why we cannot take the same service, even the registration of persons and birth down to that level. Most Kenyans have suffered for a long time trying to look for registration officers who are placed all over the country. When you go there, you get long queues of people and you never get your documents in order. I think it is the high time we started harmonizing our documentation of persons. There is no need of having a birth certificate with a particular number. An identity card with a different number, passport with a different number and death certificate most likely will be under a different number, NSSF number different and even a pin number. I think through this Service, we need to look for a way of harmonizing all these documents. I believe one document should be enough to identify an individual. It is my prayer that the new ID card will contain all information relating to an individual. Be it voter's card and so forth. That one can help this country a lot.

With regard to population management data, if this body will be utilized properly, some of these issues like population figures which are varying can be a thing of the past. All these information can be captured as early as possible. However, if we wait until after ten years to do a census, I think that is where things go wrong. With that, we can balance and see which figures could be right even when we do the census after ten years.

With those very few words, I beg to support.

Mr. Mungatana: Madam Temporary Deputy Speaker, again, I want to agree with all those hon. Members, who have spoken to this Bill before me.

I want to bring to the attention of the Minister to Clause 13. In all the laws we have passed where we have given an office a single term of six years and above, these offices have very important. An example is the Director of Public Prosecution. For this Director-General to hold office for a single term of six years and his appointment method to be just through an appointment by the Cabinet Secretary, we are reducing this office which is very important to a smaller level than the way the Minister had envisaged. I do not blame him because it appears there was a complete rush in drafting this Bill but still we will not let this mistake pass. This is an office that must be approved through Parliament. I would request the Minister to consider an amendment that will bring the approval process through the relevant Parliamentary Committee.

Madam Temporary Deputy Speaker, Clause 13 deals with the Director General and his appointments. Again, it makes a very generic statement that to qualify to be appointed as a Director General, you will possess a degree that is relevant to the functions of the Service and any other qualifications that the Board may prescribe. Again, this is hurried drafting. One cannot fail to see the pressure under which the Minister must have been to make sure he delivers on this draft. We cannot leave it to pass the way it is. I am asking the Minister to do the right thing. There is no law that we have passed, in my recollection, that leaves a Board to just prescribe generic qualification like is being done.

Madam Temporary Deputy Speaker, let us set the qualifications because when we leave discretion unchecked, even in a board, then this discretion becomes an avenue for rent collection. So, I would request the Minister to come with appropriate qualifications at the Committee Stage. Let us have standards. Let us have the ten years' experience that we have said before. Let us have a degree mentioned and not just say a relevant degree. As we know, what has been happening in Kenya all the time when it comes to important positions, people tend to position their own. Even boards have been known to favour certain candidates. They tailor qualifications for certain candidates.

Finally, on Clause 23, and I wish the Minister would listen to this one. I want to talk about the transition of the staff. We have come very clearly on the Floor of this House on the Second Reading that it is not going to be wholesale for the Kenya Anti-Corruption Commission to transit all the staff. The same procedure that was used there must surely apply here. We have to have uniformity and a sense of single standard for all Commissions and the new systems that we are setting up. I would not go to the lower levels, but the higher levels, the staff of the Commission must be subject to some vetting. They may not necessarily come to this House, but there should be some procedure for them to be vetted, so that competence matters at this point. Also, those other things that the Constitution has talked about, namely, regional and ethnic balancing, must be considered so that we can have a Service that we will all be proud of. We can say that the senior officers have met the criteria of regional and ethnic balance and have competently and competitively been recruited. We are also saying that the Director-General himself or herself should be a person who has undergone the rigorous process of vetting through the relevant Departmental Committee of this House. If we get it right with the staff in this Bill, then we will have a very good Service that will take us another level.

With those remarks, I beg to support.

Mr. Oyongo Nyamweya: Madam Temporary Deputy Speaker, thank you for giving me a chance to contribute to the debate on this Bill.

This Bill is quite in order. It is timely, but when I go through it, its main function is to provide security for our identification, namely, the birth certificates and the national identity cards. I do not see the emphasis on how the Service will be funded, so that it can get enough money to provide central data for all Government agents, so that there is no duplication of a person's data like hon. Oyongo-Nyamweya getting two identification cards. We need to have a system with better security.

I would like to ask the Minister to look at the functions at the Committee Stage. We need to come up with a clear system of central information which can be used by the Ministry of Lands, the police and any other Government agent. It should be used by the banks, so that there is no fraud.

As far as I am concerned, we need to bring amendments to this Bill at the Committee Stage to give teeth to what we intend to achieve. We need to give teeth to this Bill, so that there is no abuse whereby people get title deeds using fake names. We need to have a system which can go beyond what I am seeing here. As far as I am concerned, this Bill can be better and help this country to avoid duplication and forgery and more importantly, improve the security of this nation. We should not have people getting identity cards when they do not qualify to get them. I believe that if we get a system where we register people using the family tree - because everybody has got a father and a mother - we should be able to create a system whereby banks will not bother to take the individual's data.

Madam Temporary Deputy Speaker, the Ministry of Lands should not bother to establish its own data. The central system will be cheap. Unless we do so, we will have an organization like the one that we have. Probably, here we have only restructured the administration. When you look at the Chief Executive Officer, he does not have the independence that he needs and people will ask him to give so-and-so a passport, a visa or an identity card. We need to have a better system.

If we want to have this Authority established, we need to have a better system to register our people and from birth, you can track somebody. If he has bought land or taken a loan from the bank, you can track him. This information should be very clear.

With those few remarks, I beg to support.

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

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

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, for the chance also to contribute very briefly to the debate on this Bill. Let me start by thanking the Minister for bringing this Bill to the House, which is long overdue. I want to extend my appreciation for the commitment the Minister has shown in his Ministry.

This is the first time that we are getting a Service after 47 years of Independence. This is a law that is going to liberate Kenyans from the very poor services they have been getting. This Board is going to have borrowing powers. On this, there must be an indication to the limits.

With regard to purchasing, this is where the Government has lost massive resources through misappropriation and embezzlement of resources. Therefore, this new Board will be expected to start on a clear footing to fulfill the expectations of the Kenyans.

Services must be devolved to all the counties in the country. That is why Kenyans overwhelmingly voted for this Constitution. Therefore, the Minister must be given adequate funds to establish offices in the entire country. This Board will again address some of the major concerns that recently have affected the lives of Kenyans. We have seen old men and women walking long distances without food or even bus fare to go and look for identity cards and birth certificates. With proper management of this Board, some of these concerns will be addressed. A major concern that has really affected and to some extent damaged the image of this country is the issuance of fake birth certificates, identity cards and passports. It should be the responsibility of this Board to address some of these concerns.

Mr. Temporary Deputy Speaker, Sir, on dual citizenship, we have seen that our people in the Diaspora have started investing a lot of their resources. Therefore, this country is geared to better economic performance. Kenyans will start enjoying better services with the establishment of this Board.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, since there is no other person interested in contributing, I call upon the Mover to reply.

The Minister of State for Immigration and Registration of Persons (Mr. Kajwang): Mr. Temporary Deputy Speaker, Sir, I will be brief. I can tell you that the qualifications for the post of Director-General should be higher than we have provided for in this Bill. We have suggested a qualification of a degree, which should be relevant. In this case, several disciplines are involved, amongst which are law, economics, data, ICT, and so many others. It was going to be very difficult for us to put all this in the Bill, but I take the point that has been raised.

Secondly, the day-to-day management of this Board will be the duty of the Director-General, and not that of the Board. The Board's functions will have to do with policy issues and oversight. So, the Board cannot, by itself, manage. Somebody said that it should be smaller. We actually reduced it. After a lot of bench-marking, we came up with 13 members. We cut it down to what we now have, which we think is lean enough.

Mr. Temporary Deputy Speaker, Sir, on the issue of offences, we have created serious offences in the main body of the Bill that we passed yesterday. In fact, there are offences which attract a fine of as much as Kshs10 million. So, we took a lot of interest in making sure that those who occupy these offices do not use those offices to hurt other Kenyans.

The reason as to why we want this in place is to make sure that all the other Government and private agencies can use the data that we will generate. We will create a secure database which will also generate electronic registers that will make it more efficient for us to issue birth certificates and identity cards. We will move to counties. We will definitely move to constituencies and districts as well as to the locations to make sure that births and deaths are registered as they happen.

Mr. Temporary Deputy Speaker, Sir, we may not even need a census in future, if this is done properly. It will be cheaper to do it this way than to use the other method of counting people after every ten years.

We have provided for a single term of six years because we thought that the person who will occupy the Office of the Director-General will be quite senior, a person who should be retiring at the age of 60 years. So, if we give you this job when you are, say, 54 years old, by the end of your six year-term, you should be ready to retire. This is an active management job. It is not like a chairman's job. The chairman will be more likely a retired person.

Mr. Temporary Deputy Speaker, Sir, we should not transfer all staff randomly. The staff will have to convince the new Board that they can deliver. Some deadwood will have to go. That is a good suggestion that we can take.

I want to support every hon. Member who has supported this Bill. I have taken the comments that have been made. We will be able to work together during the Committee Stage to produce a better law for Kenya.

With those remarks, I beg to move.

(Question put and agreed to)

(The Bill was read a Second Time and Committed to a Committee of the Whole House tomorrow)

THE NATIONAL GOVERNMENT
LOANS GUARANTEE BILL

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I beg to move that The National Government Loans Guarantee Bill be now read a second time.

As we are all aware, the Constitution of Kenya, under Article 212, provides that a county government may borrow only if the national Government guarantees the loan. The Constitution also provides, under Article 213, that an Act of Parliament shall prescribe the terms and conditions under which the national Government may guarantee loans. It further provides for the period within which the national Government, up to the end of the financial year, shall publish a report of the guarantees that it will have given during the year.

Mr. Temporary Deputy Speaker, Sir, under the Fifth Schedule of the Constitution, legislation to govern loan guarantees is expected to be enacted within one year from the effective date of the Constitution. This Bill seeks to make provisions for:-

(i) the national Government to provide loan guarantees in a transparent, prudent and equitable manner;

(ii) terms and conditions under which the national Government shall guarantee loans, in accordance with Article 213 of the Constitution;

(iii) an overall loans guarantee limit;

(iv) the manner in which the national Government can assume responsibility in the event of default by a national Government entity or the county governments; and,

(v) reporting requirement to Parliament after the end of each financial year.

Mr. Temporary Deputy Speaker, Sir, in view of the importance of this Bill, I wish to request hon. Members to support it.

With those very few remarks, I beg to move and ask hon. James Orengo to second.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I beg to second and commend the Deputy Prime Minister and Minister for Finance for the work he has done. There are many Bills which are required in the financial sector. The importance of this Bill is that in the process of implementation of the Constitution, we need to have a law enacted by Parliament for the purpose of loans for which the national Government is required to give guarantees.

That being the case, I will follow the footsteps of the Deputy Prime Minister and Minister for Finance, second the Bill and urge hon. Members to support it, as it is important.

With those remarks, I beg to second.

(Question proposed)

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I thank you so much for giving me the opportunity to contribute to this Bill. I thank the Deputy Prime Minister and Minister for Finance for bringing this Bill to the House.

As small as this Bill may look, it is probably the most important Bill as far as money issues are concerned with regard to county governments. One of the problems we have had in this country is parity in sharing national resources. A loan is a national resource. The national debt is also a national resource.

Mr. Temporary Deputy Speaker, Sir, this Bill does not say how the Cabinet Secretary responsible for finance will ensure there is parity in the guaranteeing of loans that will be spread across the county governments. There must be a clause that states clearly that the loans that the National Government is going to guarantee must have parity as far as is possible and practicable with regards to county governments. The Minister can look into how this will be done. I will, however, do it in my way at the Committee Stage. Maybe he can do it with the help of experts. The main reason for this would be, if the National Government is taken over by somebody from a certain area, there is a high chance, like we have seen in the recent appointments, where the Executive is sharing appointments just in their own areas. We want the money if it is being guaranteed to be sure that the Executive will not abuse that opportunity to guarantee only capital investments in their home county governments. Therefore, one of the requirements that must be in this Bill is that there must be parity and as far as practical, there must be that clause. We have to emphasize it in many ways so that this law must benefit Tana River County as well as it benefits any other county. That is the only point I want to make. It is a very big omission. This is still a central Government kind of drafting that is not devolved thinking.

I pray that the Minister will tell his people to come up with something that will give that power to this Parliament to make sure that nothing goes in a skewed manner; that loans are not guaranteed only for certain county governments and other county governments are being told, "Ooh because you do not have the capacity to pay, because you are so far flunged, you will not get these guarantees". There must be parity.

Thank you.

Mr. Shakeel: Mr. Temporary Deputy Speaker, Sir, I stand to support this Bill. However, I want to support Mr. Mungatana on the issue of borrowing by county governments. Of course, county governments will have strategic plans and the capital development plans.

In Clause 4(2), it clearly says that:-

“The Cabinet Secretary shall not guarantee a loan under this subsection unless-

(a)The loan is for capital project that is revenue generating, the revenue to be generated will be sufficient to service the loan repayment;

(b)The borrower is capable of repaying the loan, and paying any interest or other amount payable in respect of it”.

It appears the way you have left it here, if there is a capital project like a top quality hospital is put up in Bondo or wherever, it will not be able on its own way to show revenue income as a project. However, the county will have income elsewhere. I think (a) should not be the sole requirement or stand on itself. It should say, “The Cabinet Secretary shall not guarantee a loan, unless (a) or (b). (b) meaning that they have income from elsewhere to guarantee revenue to repay the loan.

Mr. Temporary Deputy Speaker, Sir, I think it is very important at this moment in time because we have 47 counties. Each of these counties wants top quality hospitals. They will all want the Thika Highways and have all the needs. We will not be able to come to the National Government with our demands. The National Government must be able to ask: “Are you able to pay for it?” If you are not able to pay for it, how should we guarantee it?”

Clause 4 (3) says:-

“A House of Parliament may approve a draft loan guarantee document as provided by subsection---“

Just come back to the House. The only comment I was going to make in this respect is that the House includes the Senate.

Finally, there must be a limit on the loan guarantees. Right now, it is Kshs200 billion. I do not know how we are going to do this but we must have some sort of guarantee limits.

That is all. Thank you very much.

The Assistant Minister for Nairobi Metropolitan Development (Mrs. Ongoro):
Mr. Temporary Deputy Speaker, Sir, I stand to support this Bill.

I want to draw the attention of this House to the objective of this Bill which reads in Clause 2:-

“The object of this Act is to ensure that the authority conferred on the National Government to guarantee loans is exercised in a transparent, prudent and equitable manner, consistent with Article 213 of the Constitution”.

In view of this, I do not find the provision then contained in Clause 4 consistent with the object of this Bill.

It states:-

“Subject to subsection (2), the Cabinet Secretary may guarantee the loan of a borrower on behalf of the National Government”

We cannot confer such an important decision to the will power and the vision of one man in the person of a Cabinet Secretary. I am of the opinion that there should be a board that should undertake this kind of decision.

Mr. Temporary Deputy Speaker, Sir, similarly, I find Clause 7(2) very contradictory to the objective of this Bill.

It states:-

“If the Cabinet Secretary considers that the debt is more likely to be recovered if the borrower is allowed to pay the debt over time, the Cabinet Secretary may enter into an agreement with the borrower to pay the debt over such period and at such intervals and subject to terms and conditions as may be specified in the agreement”.

Mr. Temporary Deputy Speaker, Sir, I feel we are allowing the Cabinet Secretary too much powers, first, to make a decision unilaterally on whether somebody or an entity or a county qualifies for a loan. Secondly, after all, that they can all sit together at some point and then he will give provisions on how the loan is supposed to be repayed. This is a very big opportunity and platform for abuse of office. You only have to appeal to the Cabinet Secretary and you will be given soft conditions. If those issues are looked, I will have no problem.

I beg to support.

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, while I support this Bill, I have concerns that I would want to raise. First of all, it is important to note that national resources belong to the people of Kenya. Therefore, people need to be part of resource management, and guaranteeing a loan is part of resources of this country. This Bill should set out clearly how people will be involved in that guarantee. I can see it says that the Cabinet Secretary will report 14 days after. I wonder why that report cannot be made before the guarantee is done. This is because the people of Kenya have the final and supreme authority. The people of Kenya want to participate through their elected representatives. I would love to see a situation where the Cabinet Secretary reports to Parliament that the Government intends to guarantee loans to such and such entities and provide the profile of those entities to determine whether they have the capacity.

Secondly, once the guarantee is done, if the decision is made by an individual or a particular office, how will we ensure that the guaranteed loan is beneficial to the entire country? As I have said, guaranteed loans are part of the resources of the country. So, the whole country should be sure that they stand to gain from the guaranteed loans. If we are guaranteeing loans to entities, how will we treat those entities with substantial private ownership because that has been a big issue? We have been guaranteeing loans even to KenGen which has substantial private ownership. This, therefore, means that we are transferring public resources to private hands because the Government has shares but there are also other individuals who will benefit from the profit accruing as a result of the investment which the entire country has invested in. So, we need to be very clear as to what will happen to those entities that the Government will guarantee loans to but have substantial private ownership. If you look at Clause 6, you will find that it is okay that any amounts payable under guarantee shall be a charge and payable out of the Consolidated Fund without further appropriation than this clause. As I said earlier on, there is need for Parliament to be involved before this guarantee is done.

Mr. Temporary Deputy Speaker, Sir, there is an issue that I wanted to raise on Clause 4(c) about the fact that the Cabinet Secretary shall not guarantee a loan under sub-

section 1 unless the financial position of the borrower over the medium-term is likely to be satisfactory. As an accountant, I have a problem with the word “likely”. A financial position need to be satisfactory. The word “likely” cannot be defined in any way. I can argue that the financial position is likely but to another person, it may not be likely. So, I think we need audit report guaranteeing the fact that the going concern of that entity is probable. So, if we are employing financial terms, let us use financial terms because this is not just a legal document but also a financial document because it is going to guarantee loans. So, the words like “likely to be satisfactory” need to be amended.

Another provision says that the borrower complies with the conditions imposed by the Cabinet Secretary in accordance with the regulations. Who sets the regulations? It is the Cabinet Secretary. Does it mean that the Cabinet Secretary will just sit down and do regulations? I still feel that the people of this country need to be involved. They need to know what the conditions are. They need to know the regulations required for the Government to accept to guarantee a loan. That can only be done through the two Houses. The two Houses need to be involved because when we are guaranteeing a loan--- In this country, we are treating the county government like we are donating resources to them but it is not true. The resources of this country belong to all over us. There is no resource that belongs to the national Government and the county government. Even the resources like guaranteed loans, the people in Suba or Homa Bay County have equal say. So, we need to have a clear way of involving the people of this country through the National Assembly and the Senate. The Senate will guarantee that the county government is involved.

Mr. Temporary Deputy Speaker, Sir, I am talking about the approving conditions. It is not an individual thing like it has been put here. I know the Cabinet must have approved this and they are feeling a bit jittery when I make those comments contrary to what is here. Please, bear with us and if there is need for amendment, you do them.

In summary, what I find deficient in this Bill is the involvement of the people in the guaranteed loans. It should be very clear, categorical and unequivocal that members of the public are participating in the guaranteeing of loans. I want to say here that those of us who have been going through the accounts of state corporations, we have cases where the Government of Kenya has guaranteed loans which have never benefitted the people of this country. We need to avoid that. That is why I think the people who drafted the Constitution felt that it was necessary to have legislation on guaranteeing of loans by the national Government.

Thank you, Mr. Temporary Deputy Speaker, Sir. I support this Bill.

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, I stand in support of this Motion. I think that we need to appreciate that when a loan is guaranteed, it is a liability conferred upon all the citizens of Kenya. So, if the loan will be guaranteed and Parliament is going to be informed afterwards, then I do not see the need of even informing Parliament. Therefore, Clause 5 ought to be amended so that the authority of Parliament be sought first and then when the guarantees are done, Parliament be appraised of the National Debt. What is happening around the world today is that quite a few nations including the most powerful nation are so overburdened by debt that their repayment of interest is higher than the repayment of the principal amount. A country can go broke just like individuals do go broke. This is about how we shall manage our national liabilities. Yes, we must borrow because we must improve our lives,

infrastructure and such like but Parliament needs to approve before that event. We need to have proper criteria which will let us know for which projects the nation can guarantee. What is making everybody uncomfortable is that the guarantees so far given, many of them to parastatals, have never been met. In Kenya, we have this culture, even when we take loans for our own businesses and farming, we come back to Parliament for write off. So, we never really get a sense of which loans should be guaranteed and which burden should be transferred to the state.

I think the Act is necessary for the development envisaged under the devolved governments but we need clarity on our side so that we realize that a county or a government borrowing is like an individual. You should have a business plan that makes sense and shows that the money borrowed is likely to be repaid so that at the end of the day, we do not transfer burdens to the future generations of monies we borrowed and squandered.

I beg to support.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill which, as hon. Members will be aware, again, is one of the Bills that are required by Article 213 of the Constitution. The Bill should be passed within the first one year. It will basically provide and present the terms and conditions under which the national Government may guarantee loans.

Mr. Temporary Deputy Speaker, Sir, the first thing to be emphasized is how the national Government may guarantee loans. Without attempting to even respond to any of the Members, because the Minister will be responding, for clarity, I think it is important to appreciate the fact that we are not talking about how the Government or counties will borrow. Who can borrow and who cannot and who can be lent and who cannot is covered in a different legislation. We are talking about how, when that entity wants to borrow, the national Government will be called upon to guarantee that borrowing.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I did not intend to rise on a point of order to stop my friend, but---

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Mbadi! Go straight to the point!

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, is it in order for the Minister to mislead this House that the guaranteeing is not borrowing and yet it is similar to borrowing? When you guarantee a loan, you are saying that if the entity fails, the Government of Kenyan will pay. So, indirectly, the Government is borrowing.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I am not sure what was out of order, but I wanted to give the hon. Member a very basic example.

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Minister! That is a valid point of order. Indeed, if you look at Clause 7(1)(a) of the Bill---

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, just to remove the confusion from the hon. Member and any other Member who might be trapped into that situation, I want to give a very basic example. When hon. Members of this House intend to borrow a loan from the Bunge SACCO, they need two or three people to guarantee that loan. It only becomes a contingent liability on the guarantor if the person who borrowed fails to pay but it does not become a loan.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, let us not argue on this matter. I think I have been in the field longer than Mr. Mbadi and I will give him a tutorial after this for free.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Speaker, Sir. I think we are entitled to statements of fact. This Bill, which I am sure the Minister has gone through, Clause 7 says very clearly that money paid by the Cabinet Secretary under guarantee, including any expenses incurred by the Cabinet Secretary, shall be a debt due to the national Government. These are loans!

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, in fact, that is what I said. A guarantee is a contingent liability and not a borrowing. So, should the person default, it then becomes a debt. I will give the hon. Member that lesson later on.

Mr. Temporary Deputy Speaker, Sir, the point I wanted to make here is that even as we talk about what the national Government can borrow, because there is confusion in this matter, and we might confuse people who are listening to us in the counties that the national Government will only be borrowing some things for certain areas, every county government has the capacity to borrow and nobody is stopping that. This law is about: Should a county government or parastatal or one of the Government agencies want to borrow, under what mechanisms would the Government then come to Parliament to say, yes, we, as a Government, are prepared to take the risk of guaranteeing this loan being borrowed by a certain person? The onus of proving the viability of the loan is on the entity borrowing to prove that viability to the lender. If, for example, Nyandarua County was to go to the World Bank or the African Development Bank (ADB) and say: "We would like to borrow so much money to construct Nyandarua County Council Headquarters," the first thing that will have to happen is that Nyandarua County Government would have to, first of all, go through an assessment by the lender. You go to the national Government for sovereign guarantee once you satisfy that criteria. This will address the issue that Ms. Karua has very eloquently addressed, that parastatals have ended up borrowing in the past without proper financial analysis and the debt has then been forced on the national Government. The national Government will do its secondary analysis of that loan to. It will say that this entity has satisfied the lender, but are we, as a Government, satisfied that it will be able to pay that in future? I do believe that the whole issue about "likely to be sustainable" comes into play because, obviously, the matter is futuristic.

Mr. Temporary Deputy Speaker, Sir, I also wanted to mention something because it has also been in the public domain. This Bill has had extensive consultation. I am saying that because I have been party to those consultations, including one meeting which was held last Monday in the Prime Minister's Office. In attendance was the Commission on the Implementation of the Constitution under the Chairmanship of Charles Nyachae and the Commission on Revenue Allocation, with Micah Cheserem. Indeed, as we were discussing the wider Financial Management Bill, they asked: "Why do we not extract these two and have them discussed separately?" They had copies. When I heard out there in some media that there had not been consultation, I actually got surprised because I attended that meeting, we were all there, we agreed that we fast-track these two Bills and bring them here. I think that should help the people to rest knowing that there have been adequate consultations on this matter. It is an urgent matter because we do not know

when we might need to borrow. It could be next week or the week after, and the earlier we get this law the better.

Mr. Temporary Deputy Speaker, Sir, with those clarifications and few remarks, I beg to support this Bill and welcome Mr. Mbadi for a session where we can discuss these matters later on as professional accountants.

(Mr. Mbadi stood up in his place)

The Temporary Deputy Speaker (Mr. Ethuro): Order, Mr. Mbadi! The Chair will come to your defence.

Hon. Kimunya, longevity does not confer wisdom to an hon. Member. The specifics of the same Bill you seem to be advocating, in both Clause 6 and 7 indicate that in the unlikely event that the guarantee will not be paid by the borrower, then it becomes a debt. That is the bottom-line and it is chargeable directly to the Consolidated Fund.

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I was only wondering aloud whether since Mr. Kimunya left the Finance docket, he might have forgotten most of the financial aspects.

(Applause)

I just want to be very brief because I am not well versed with matters of finance. However, when it comes to money matters, because we speak for constituents who at a later date might be the beneficiaries of such a law, we need to raise our concerns.

Mr. Temporary Deputy Speaker, Sir, I think it has been said by Mr. Mungatana and Mr. Mbadi that when we are giving such powers, sometimes even to determine the feasibility of such repayment to the Cabinet Secretary, sometimes because of how public officers might have acted in this country before, we are a bit worried and scared that some of the counties which are not well endowed and may not have the benefits of having such Cabinet Secretaries and powerful people in high offices, maybe disadvantaged. Even at a time when they are able to prove to the lender that they have the capacity to repay, a Cabinet Secretary may decide that this county government is not feasible enough because it does not have the financial management and is not likely to repay, especially when it comes to far-flung counties, like Tana River and Turkana. In such an instance, if a Cabinet Secretary is of the view that a certain borrower cannot be guaranteed because according to his or her perception or assessment that party is not endowed financially or might not meet the criteria of repayment, there has to be some recourse of appeal within this Bill, even if it is a Committee of the House or the National Assembly.

That is because, sometimes, a public officer may say, out of bias: You are not competent enough and that the National Government cannot guarantee you because according to my own assessment, you are not a character of good financial standing. You may leave the Government in debt.” For that kind of an instance, there has to be a window where such an entity can appeal; either to a Committee of the House, the National Assembly or to the Senate and say: “I have proved with all documentation and with all the facts, even to the lender, that I am capable of repaying the loan. The Cabinet Secretary does not have that information. I think that window has to be left open. That is the concern I wanted to raise.

I support the Bill.

Mr. Ngugi: Thank you Mr. Temporary Deputy Speaker, Sir, for giving me this chance to support this Bill. The reason why we raise some of these points is so that the Bill can be improved. We are guided by what has happened in the past where the Government has guaranteed.

According to me, there are two clauses here that I think can be improved. One is Clause 5 where the Cabinet Secretary has to sign the guarantee and later report to this House. I think that clause is just like locking the stable after the horse has bolted. I think the Cabinet Secretary should come here to, first, get the authority and then go and sign. The second one is Clause 8(5) which says that if a House of Parliament does not make a resolution, either approving or rejecting any regulations within 15 sitting days, then it will be assumed that the approval has been given. I think that is wrong and that is holding this House to contempt. A Cabinet Secretary can time this House when it is on leave and just present it. Then after 15 days, it is assumed that the House has approved. I think that can be improved by deleting that clause.

I think it would be good financial management because of our past experience, for this Bill to provide for a counter guarantee. If you look at the definition of this Bill, you will see that it refers to a borrower as a person to whom a loan has been given and it includes a county government. The national government cannot go on guaranteeing people who default and then get away scot-free. There ought to be a clause in this Bill which provides for a counter guarantee, so that the money can be recovered.

With those few remarks, I support.

Mr. Wambugu: Thank you, Mr. Temporary Deputy Speaker, Sir. I rise to support the Bill. I think it is a good piece of work. However, there are various issues which have been raised and which have been of concern to me. First and foremost, I am finding the country getting into a situation of over-borrowing because if we get all the counties coming with their requests, we could get to a situation where so much has been borrowed and being guaranteed by the Government. In case something goes wrong, the whole burden will go to the national Government and all Kenyans will be responsible for that. I would propose that we have a limit of how much the Government can guarantee. We could have a total sum nationally.

Clause 4 raises a concern that all Members who have spoken before me have highlighted. It would not be right to let the Cabinet Secretary transact all the business and then come to report to this House. I would propose that Clause 4(1), subject to Clause 2, should read: "The Cabinet Secretary may guarantee the loan of a borrower on behalf of the government with the approval of Parliament." He should not get into any transactions unless Parliament is involved. Clause 4(2)(a) says that the loans should be for capital projects. It should be a revenue generating project. I believe that if we go towards that direction, projects like roads will not necessarily be revenue generating but, in the long run, they will enhance revenue generation. I feel that Clause 4(2)(a) should state that the loan should be for capital projects, and that is all. The other conditions of repayment should remain.

With the experience that we have had in this country, the national Government has entered into loans without involving Kenyans. I believe that is why the livelihood of Kenyans has become very expensive. We have to repay back loans which we do not have knowledge about.

I will also be proposing that before a county presents the request to borrow any funds, there should be enough consultations or public participation at the county level, so that the people can be advised that the county will be getting into an agreement of borrowing so much money for a particular project. I say that because some officials at the county level could get into financial agreements and say that they want to fund some projects in some areas of that county and yet, they are not beneficial to all the members of that county. The other members will be left behind to repay that loan. I propose that all members of that county should be involved in various consultations, so that they can be advised on the type of loan to be taken and what it will be used for, even before the proposal comes to the House. The Cabinet Secretary should be satisfied that enough consultations and public participation has taken place.

Under Clause 5, which is bringing a lot of heat in this House, my proposal would be that three months before the Cabinet Secretary enters into any agreement of any kind, that request should be brought to this House. My proposal would be three months before a guarantee is entered into, the Cabinet Secretary should publish and submit to Parliament the guarantee which, if approved, the county should enter into.

With those few words, I beg to support.

Mr. Chanzu: Mr. Temporary Deputy Speaker, Sir, I would like to support this Bill. However, I want to make reference to some of the experiences we have had, particularly with the devolved funds where the intention was very noble. For example, we came up with LATF in a rushed way. We ended up having CDF and Constituencies Roads Funds, among others. I was imagining that because of the problems that we have had in the past. We do not want to keep on talking about them here because it is a mistake that we made here. We passed laws and ended up double-counting. I rarely see what LATF money does. However, they are fond of talking about what CDF does. The local authorities are using that money to run some of the affairs that were not intended. What has made the councils have problems is that kind of thing. Senior officials in a local authority may meet and agree to implement a given project. They take it to the Minister for ratification. If he does not ratify it within a given time, they implement it without his knowledge. That is why most county councils in the country have incurred a lot of expenses which they cannot sustain. We need to look at Clause 17 very carefully. It says:-

“If a House or Parliament does not make a resolution rider approving or rejecting any regulations within 15 sitting days after the submission to it for approval, the House shall be deemed to have approved the regulations.”

Mr. Temporary Deputy Speaker, Sir, I am just foreseeing a situation whereby this can pass and then we make a lot of commitment to *wananchi*. This should be taken into account and be looked at afresh. We do not want to see where a commitment is done by single person.

With those few remarks, I beg to support.

Mr. M’Mithiaru: Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me the opportunity to support this Bill.

I have gone through this Bill and I can see that it clearly sets out the procedure of how the Cabinet Secretary will guarantee the loans on behalf of the national Government. Unlike the Guarantee Loans Act which is being repealed, this one is coming more transparent and equitable.

As has been mentioned earlier on, the Cabinet Secretary is obliged to report the execution of the loans within two weeks to Parliament. I would wish that an amendment be initiated to this Bill, so that the Cabinet Secretary will actually give Parliament a statement of intent of all the loans that the Government has been approached to guarantee not necessarily for Parliament to take any action, but for notation, so that we do not stifle the operations of the Executive. After the two weeks upon execution, then the Cabinet Secretary will file a report to Parliament of all the loans guaranteed. He should also file, not only the loans guaranteed, but also those loans that could not be guaranteed and the reasons why the guarantee has not been executed. This will cure any possible mischief of refusing to guarantee a loan of, say, a particular county for personal reasons.

The other bit that I want to allay any fears, and I remember my friend here, Ms. Ongoro, talked about it, is where the Cabinet Secretary is supposed to enter into an agreement if he sees clearly that if the borrower is given more time to repay the loan, he will be able to pay. To me, this is really a prudent way of looking at things provided that the terms are properly agreed and it is clear that if there is any extension of time with any additional conditions, the borrower will pay the loan. To me, that is really a good action to take.

I support the Bill because the recovery procedures for the loans are clearly spelt out. This is really a good piece of legislation.

I support.

Mr. Mwachugu: Mhe. Naibu Spika wa Muda, naomba kuunga mkono Mswada huu wa Sheria za Udhambi wa Hundi za Dharura za Kaunti.

Katibu Mkuu amepewa mamlaka ambayo akiyatulia vibaya yanaweza kuathiri wenzake. Utawala uliopita ulidhihirisha jinsi mamlaka yanavyoweza kutumiwa vibaya. Kuna sehemu fulani za nchi zilizopendelewa na zikaendelea sana kuliko sehemu nyingine. Sehemu hizi hazikubaki nyuma kwa kuwa hazikuwa na rasilimali, bali ni kwa sababu ya watu fulani mamlakani walitumia vyeo vyao vibaya. Sehemu hizi zina rasilimali ambazo zinaweza kusaidia kaunti. Lakini ni ugawaji wa pesa katika nchi hii umekuwa na mapendeleo. Kwa hivyo, napendelea kuwa kipengee hiki cha nne kibadilishwe ili kiangazie sana mamlaka haya. Mamlaka haya ni lazima yapunguzwe ili kila sehemu ipate haki yake. Ikiwa kaunti fulani itaomba mkopo kutoka shirika fulani la fedha, ni lazima Bunge hili liunge mkono mkopo huo.

Mwisho, sio kila wakati kuwa kaunti ikiomba fedha au mkopo ni lazima idhihirishe uwezo wake wakulipa. Inaweza kuwa wakati huo kaunti haina uwezo wa kulipa mkopo huo lakini ina rasilimali ambazo zikitumiwa vizuri zinaweza kutumika kulipa mikopo hiyo. Kwa hivyo, ni muhimu katibu huyo aangalie hayo.

Kwa hayo machache, ninaomba kuunga mkono.

Mr. Abdikadir: Mr. Temporary Deputy Speaker, Sir, in view of the sentiments we have already heard, would I be in order to call upon the Mover to respond?

(Question, that the Mover be called upon to reply, put and agreed to)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I want to take this opportunity to thank again hon. Members for the contributions that they have made to this particular Bill.

From the very onset, I would like to put it across that a number of the issues that have been raised by hon. Members are actually already well taken care of in this particular Bill. If it is a question of the limit, it is this House that shall set the limit. The Cabinet Secretary does not have the power to exceed in terms of the guarantees that it gives. The limit is, first and foremost, set by this House. So, therefore, at every stage, this House has a role to play.

The second issue that has been raised is the issue of the possibility of the national Government crowding out the county governments. Again, this Bill in Clause 2(d) makes it very clear that the terms of the guarantee must comply again with the fiscal responsibility principles and financial objectives of the national Government. What does this mean? This means that as per the requirements again of the new budget law that we have incorporated in the new Constitution, the Cabinet Secretary must present before the House the Budget Policy Statement.

That Budget Policy Statement must clearly indicate the programmes that the Government intends to initiate over that period, including basically the guarantees that it intends to give. So, again, this House will be given and will have the opportunity, as a representative of the people, to interrogate and to ensure that the principle of equity, especially, is adhered to.

Mr. Temporary Deputy Speaker, Sir, with regard to regulations, many of the issues that are raised will be in regulations. They will be illustrated clearly in the regulations. The regulations will once again be subject to approval by this House. This House will have the opportunity to go through those regulations, and ensure that those regulations are once again in accordance with the spirit of equity. It will ensure that the guarantees will not be given for reasons that will be outside the programmes or projects that this House itself has already approved.

There was the issue that was raised on Clause 4(2)(b), which is the question of the borrower being capable of repaying the loan. The reason we have left it like this, and we have not stated that there should be an audit of the accounts or anything like that, is because we took into account the counties once again. Many of the counties will not have had a three or four year track record. As hon. Mwangi has said, looking into the future, they will be able to pay. Now, if we then say that they will be subject to three years previous accounts, for example, we may be denying chances to people who will have the potential to benefit from these guarantees as a result of future incomes. That is why it is left the way it is. This is to ensure that counties are able to get guarantees on the basis of assets that they may have, and that they will seek to exploit. We use the word "likely" because we had previously taken three years previous audited accounts, but it was felt strongly by the Cabinet that we will be dealing with new counties that will not have had a track record, and that will look at the future. That is why the Bill is framed as it is.

Mr. Temporary Deputy Speaker, Sir, there was the question of whether social projects will be there. Every loan that will be guaranteed is going to be given by somebody. That person will have their terms and conditions to which we will put a number of things. What this seeks to ensure is that the public debt is not burdened or overburdened by people taking guarantees, as the hon. Martha Karua said, and then turning around and failing to pay. So, we are actually trying to ensure that whoever will be given guarantees will, first of all, have to show that they have the capacity, first and

foremost, to pay, explain what the project will be for, whether there will be social benefits, or public good, that will be intended to be served by the particular guarantee sought to be given.

Again, there is the issue, I think hon. M’Mithiaru has answered it very well, that was raised by hon. Ongoro with regard to Clause 7(2) – the issue of whether the Cabinet Secretary considers that a debt is more likely to be recovered if the borrower is allowed more time to pay. This is actually not giving the Cabinet Secretary more power. What it is saying is that maybe a county, or a public entity, may have taken a loan and the terms and conditions of that loan are maturing and the loan has not been paid. Rather than automatically saying that that loan is now transferred to public debt, you are saying that the Cabinet Secretary can engage the borrower or lender to see if that particular loan can be restructured to enable that county or that public entity to pay. That way, a loan will not necessarily be automatically transferred to the national debt. Again, I think this is just giving leeway to ensure that all debt is not just accumulated onto the overall public debt. There is room to negotiate to ensure that maybe the entity or the county, is given more time to pay.

Mr. Temporary Deputy Speaker, Sir, so, many of the issues that Members have raised are actually well catered for in this particular Bill. I would plead with hon. Members that we proceed to approve this particular Bill. I am certain, as has been stated severally by many Members, that we will ensure that we are able to achieve our development objectives both at the national level and at the county levels within a framework of proper accountability and prudence. Ultimately, we will ensure that we maintain proper macro-economic stability in the overall economic governance of our country.

With those few remarks, I beg to move.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Mr. Ethuro): Next Order!

Second Reading

THE CONTINGENCIES FUND AND COUNTY EMERGENCY FUNDS BILL

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Contingencies Fund and County Emergency Funds Bill be now a read a second time.

As you are aware, the Constitution of Kenya, under Article 208, establishes a contingency fund whose operation will be in accordance with an Act of Parliament. It further provides that again within two months after the first withdrawal of money, the national government shall seek the approval of Parliament for any spending funded from the Contingency Fund. However, the Constitution does not provide for contingency funds at the county level.

Mr. Temporary Deputy Speaker, Sir, under the Fourth Schedule of the Constitution, disaster management is a shared function between the national government and the county governments. It is, therefore, necessary to establish a similar fund at the country level, which we are referring to as the County Emergency Funds to enable county governments to appropriately respond when faced with unforeseen developments that require urgent county government intervention. An example is the ongoing drought in the northern part of Kenya. This amplifies the need for such an emergency fund at the county government level.

The Contingencies Fund and County Emergency Funds Bill, 2011 seeks to make provisions for the national Treasury and the relevant county treasuries to administer the contingency fund and county emergency funds respectively. Flexibility will be necessary in appropriating monies for the contingency fund and the county emergency funds to reasonable amounts, basically not exceeding 2 percent of the most recently audited revenues for the national government and the county governments respectively.

Mr. Temporary Deputy Speaker, Sir, the Cabinet Secretary and the County Secretary are to make payments from their respective funds if they are satisfied that there is an urgent and unforeseen need for expenditure has arisen. The national government will be reporting to Parliament and seeking parliamentary approval for replenishment of contingency funds as per Article 223 of the Constitution. The county representatives will be reporting to the County Assembly and seeking the County Assembly's approval for the replenishment of the relevant county emergency funds.

Mr. Temporary Deputy Speaker, Sir, lastly, the reporting formats by both the National Government and county governments to the Auditor General and the format for such financial statements.

Mr. Temporary Deputy Speaker, Sir, before I conclude, I would like to say that this Bill and the one we have just gone through on the Loans Guarantees, there has been extensive debate and deliberation, especially with the Commission on the Implementation of the Constitution. We have incorporated views that they have made to us. Therefore, what remains now is for this House to do its duty and go through this Bill making whatever recommendations they may have and ultimately, passing it, so that we are able to meet our own respective constitutional deadlines.

With those few remarks, I beg to move. I ask hon. M. Kilonzo to second.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, first of all, I want to thank and congratulate the hon. Deputy Prime Minister and Minister for Finance and his team for an enormous amount of work in the preparation of this Bill.

Mr. Temporary Deputy Speaker, Sir, he has elaborated on the need because it is expressly provided for in Article 208 of the Constitution. But in this extensive consultations because I have been part of them--- In fact, I have been in all the consultations that have occurred between Cabinet sub-committee and the two Commissions; the Commission on Revenue Allocation and CIC. This matter has been very well interrogated. In fact, the Bill is lifted almost word for word from the enormous consultations that have occurred and that were intended to be brought together in a Consolidated Bill under Chapter 12.

Mr. Temporary Deputy Speaker, Sir, I beg to second this Bill and recommend it to this House. I would also like to call the attention of the House that this is one of the

most critical Bills in the country. This country is now facing enormous challenges of drought and famine. We always have challenges of this nature.

With those few remarks, I beg to second.

(Question proposed)

The Assistant Minister for Nairobi Metropolitan Development (Ms. Ongoro): Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. I want to draw the attention of the House to the objects of the Bill contained in Clause 2. Bearing that in mind, I want us to look at Clause 5(2b). It talks about the responsibilities of the Treasury in relation to the contingencies fund. It states that they will be required to pay from the Fund without undue delay all advance made under Clause 6. It is further subjected to Clause 7. Without overstating, this implies a lot of bureaucracy. I also want to emphasize the fact that there is a critical need to fortify this statement and completely make it impossible for the Treasury to starve the county government of funding, or delay the release of their funding unduly.

We all recall that one of the pillars of the new Constitution was the spirit of devolution. Kenyans voted overwhelmingly for the new Constitution because of a devolved system of governance and creation of county governments. However, that was the easy part. The difficult part is sustaining county governments until such time that they are able to stand on their own. Just like in the process of child bearing, conception is not the very difficult part, or bringing forth. However, the most critical part is actually taking care of a child until such time that they are able to stand on their own. So, if we are not very strict with the Central Government and the Treasury to ensure that, at least, critical moments, that the county governments will receive their funding on time without any obstacle or delays, so that they stand on their own, then we will be negating the whole spirit of the new Constitution.

Let me also draw your attention to Part III on County Emergencies and Government Emergency Funding. Clause 10(2) says:

“The purpose of an emergency fund is to enable payment to be made in respect of a county when an urgent and unforeseen need for expenditure arises for which there is no specific legislative authority.”

I want to draw a parallel between this provision and the provision that we have in the CDF Act on the expenditure of emergency funds. If we are not careful and leave all this to the decision of the Cabinet Secretary, that he or she must be convinced beyond any reasonable doubt that there is need for an emergency, when a County Assembly has already seen that need, then it might negate the entire system. We need to have either annexure or fortify that statement to ensure that we are not giving this important decision to one person who might then negate the whole system.

Lastly, I want to draw your attention to Clause 15 on page 1328, Clause 15(1). It says:

“Within two months after a payment from the County Government Emergency Fund is made under Section 13, the County Secretary shall seek the approval of the County Assembly for payments”.

Mr. Temporary Deputy Speaker, Sir, I find this quite contradictory. Why would you seek authority for expenditure when expenditure has already taken place actually two

months later? This statement must either be paraphrased or he gives us a further explanation to the justification of this kind a move. Either that authority must sought before expenditure, or completely done away with.

With those few remarks, I beg to support.

Mr. Mbadi: Mr. Temporary Deputy Speaker, Sir, I rise to support this Bill. I think many a time we get faced with urgent and emergency situations. Therefore, as a country, this is something we live with everyday. Therefore, legislating on how we can set contingency fund and how it can be spent is a welcome idea. I am approving the fact that the Cabinet Secretary will be satisfied that the issue to release funds for is actually urgent and unforeseen. I want us to look for a way of making sure that those issues that we appropriate funds to are urgent and unforeseen. What I notice in this country is that many times, we spend money from the Contingency Fund. These are things which could have been foreseen.

Mr. Temporary Deputy Speaker, Sir, we need to come to terms with the fact that we can stop this careless lack of planning on the part of the Executive. It is a welcome idea that the Cabinet will approve the emergency situations and the expenditure from the Contingency Fund before it is done. I do not want to agree with hon. Ongoro when she says that the approval after two months is not necessary. To me, it is necessary because the county executive had already approved and if it is at the National Government, the Cabinet Secretary had already approved. So, what the Cabinet Secretary is doing is just to report to Parliament or county assembly that they spent those funds on particular projects. The way it is in the Bill is welcome and that is the only way. If you put expenditure from the Contingency Fund to be approved by Parliament before you spend, you are putting the county at risk because if there is famine and Parliament is on recess, you will have to recall Parliament and before they organize themselves, people will be dying. I think it is important that we allow sometimes the Executive to make decisions especially where we have set aside funds for expenditure from the Contingency Fund.

However, I am just concerned about some mistakes in this Bill, which I do not know whether they are typographical, but the Minister can go through this with me.

Clause 13(2)(a) states that:-

“For the purposes of sub-section (1), there is an urgent need for expenditure if in the opinion of the Cabinet Treasurer—“

This are county government emergency funds. I do not understand that Cabinet Treasurer. I think it should be county secretary. It is the county secretary who is standing in place of the Cabinet Secretary at the county level. Even the county treasurer on Clause 16 needs to be changed to country secretary.

Mr. Temporary Deputy Speaker, Sir, I have two final issues which I want to raise which I think are also mistakes. One is not a mistake, but I really do not see the value of this in Clause 17(4) under the miscellaneous provisions that:-

“The Cabinet Secretary may make regulations not inconsistent with this Act”.

Certainly, you cannot make decisions which are inconsistent with the law. Why do you have to repeat “not inconsistent with this Act”? That is superfluous and should be left out. I am making this comment on Clause 17(3) in relation to the Bill that we passed. If you look at this Bill, it says that:-

“regulations made under sub-section (1) shall not take effect unless approved by a resolution passed by each House of Parliament”.

That is very good. Why did we not do it for the Government Loan Guarantee Bill? That is why we were insisting that even for the other Bill, you need to subject these regulations to approval or Parliament. The way it is done here is the way I would have expected it to be done in the earlier Bill that we disposed of.

I beg to support.

Mr. Njuguna: Thank you, Mr. Temporary Deputy Speaker, Sir. I take this opportunity to contribute very briefly to this Bill.

This Contingency Fund is very important. If it was there, it would have addressed---

The Assistant Minister for Foreign Affairs (Mr. Onyonka): On a point of order, Mr. Temporary Deputy Speaker, Sir. Given the mood of the House, I do not think there is any time for us.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Onyonka has not said anything that the Chair is supposed to dispose of.

Proceed, hon. Njuguna!

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, this Bill is timely. I thank the Deputy Prime Minister and Minister for Finance for introducing this Bill to this House.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): On a point of order, Mr. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Mr. Ethuro): What is it, hon. Onyonka? You better say something that the Chair will dispose of.

The Assistant Minister for Foreign Affairs (Mr. Onyonka): On a point of order, Mr. Temporary Deputy Speaker, Sir. Given the mood of the House, would I be in order to request the Chair to ask the question?

Hon. Members: No, for the Mover to reply!

The Assistant Minister for Foreign Affairs (Mr. Onyonka): For the Mover to reply. My apologies!

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Onyonka! The Chair will not allow you an opportunity to learn while speaking. So, we will wait for another Member who can do it better.

Proceed, Member for Lari!

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, this Fund---

The Assistant Minister, Ministry of State for Provincial Administration and Internal Security (Mr. Ojode): On a point of order, Mr. Temporary Deputy Speaker, Sir. It is true you have seen that the Members have exhaustively dealt with this Bill and I would request that the Mover be called upon to reply.

The Temporary Deputy Speaker (Mr. Ethuro): Well, hon. Ojode, except for exhaustively, let me allow two more Members and then I will put the question.

Mr. Njuguna: Mr. Temporary Deputy Speaker, Sir, I am satisfied that the House is ready for the Mover to be called upon to reply.

The Temporary Deputy Speaker (Mr. Ethuro): Hon. Members, you will assist yourselves if you confine yourselves to an argument or two.

Mr. Mungatana: Mr. Temporary Deputy Speaker, Sir, I am not going to take long.

In Clause 14, the county governments have a limit of 2 per cent in terms of withdrawal. If you look at a county like Turkana or Tana River where I come from, the

kind of emergencies that we had, obviously, the county treasury will not be able to handle them. Yes, there is the National Government and this is why I am here, but the problem is that there is no nexus between the emergencies at the National Government and the ones at the county governments. So, I wanted to propose, if the Minister can take it, that apart from the two provisos under Clause 6 where in the opinion of the Cabinet Secretary it cannot be delayed, we add another proviso that says that if in the event that a county government has surpassed its emergencies, then the consideration for its application will be prioritized in the Cabinet Secretary's opinion. So, we find a way of fixing it there.

The second and final point that I was proposing is that we must create a nexus between the National Government and the National Emergencies Authority. The opinion of the Cabinet Secretary is going to be formed on what basis? I know, for a fact, that we have emergency authority units in Government departments. If we could have a nexus so that there is a basis upon which the opinion is formed, I would be happy, so that it is not left just as arbitrary decision. If there are two of those, I will be happy.

I beg to support.

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Thank you, Mr. Temporary Deputy Speaker, Sir. Mine is just a small clarification. I support the Bill and in supporting, I wanted something to be very clear from the Minister. We establish the Fund in Clause 10 and then we give a limitation of 2 per cent when the Fund has been set up. So that when you read Clause 14, it is as if the amount of money in the Emergency Fund is more than 2 per cent. So, we are limiting the release. The limitation is on the release. So, if we are releasing 2 per cent, what are we establishing as the amount of funds in the Emergency Fund? My suggestion is that we do the limitation at the establishment of the Fund, so that we allow flexibility of spending. The problem that we need to deal with is how much is going to go to this Emergency Fund. What is the maximum allowable percentage so that counties can go for it? If we say that it is 2 per cent, then we must establish the Fund itself at 2 per cent. We cannot establish a lower percentage than what we expect to be released. When we say that you are allowed to release only 2 per cent, it means that you are allowed to provide more. What is the difference going to be used for? That is what the Minister should clarify or re-write, so that it comes out clearly.

With those remarks, I beg to support.

*(Several hon. Members stood
up in their places)*

The Temporary Deputy Speaker (Mr. Ethuro): Order, hon. Members! I had said that I would give a chance to two more Members, and two hon. Members have spoken.

I will give the last opportunity to hon. Ngugi.

Mr. Ngugi: Mr. Temporary Deputy Speaker, Sir, I just want to support this Bill and say that this is the kind of financial management discipline that we look forward to seeing prevailing in the counties.

Under Part III of the Bill, the funds that will be administered by the Cabinet Secretary will have to be approved by the county executive. This is the kind of financial discipline we look forward to having in the counties.

With those few remarks, I beg to support.

(Question, that the Mover be now called upon to reply, put and agreed to)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, again, I thank all the hon. Members for their contribution.

The real purpose of this Fund is to ensure that we have the capacity, as a nation, to deal with emergencies as and when they occur. Enough hon. Members have clarified the matter. Hon. Mbadi has clarified to hon. Ongoro that, as a Contingency Fund, it is basically the same as a supplementary fund. The Constitution allows the Government to spend without prior approval of Parliament and seek approval of Parliament two months later, because the whole purpose of this Fund is to deal with emergencies. We must be able to deal with such emergencies. I take cognizance of the fact that, maybe, Parliament will not be sitting when such emergencies occur.

Mr. Temporary Deputy Speaker, Sir, there is the issue raised by hon. Mungatana. I do not know whether he feels very strongly about that particular point, but ultimately, the key thing that we need to recognise is that all emergencies are national emergencies. So, whether there is an emergency in Turkana or Tana River, it does not matter.

The counties will have their own funds, but that emergency is also going to be catered for just as it happens currently under the National Fund. Maybe, what we can do is to work through the regulations, so that we can establish the link between how county governments will relate to the national Government in terms of dealing with emergencies.

Mr. Temporary Deputy Speaker, Sir, in the same breath, I would suggest that even the issue relating to involvement of the various agencies can be spelt out in regulations, because ultimately it is the Cabinet Secretary who will--- The Cabinet Secretary himself must consult with the Cabinet. Maybe in the regulations, we can say how they will relate with other emergency-related organizations and reach the stage of declaring a national emergency.

There was the question raised by my new colleague in the Cabinet. Maybe, I need to understand her a little better before we make a recommendation. I think what she was talking about is already catered for. If not, we shall look at it.

Mr. Temporary Deputy Speaker, Sir, on the issue of the corrections, we recognized those as errors by the Attorney-General's Chambers. They will be in the Order Paper tomorrow for amendment during the Committee Stage.

With those few remarks, I beg to move.

(Question put and agreed to)

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

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we are now in the Committee of the Whole House. We shall be dealing with two Bills; The Ethics and Anti-Corruption Bill (Bill No.36 of 2011) and the Employment and Labour Relations Court Bill (Bill No.37 of 2011).

We will begin with The Ethics and Anti-Corruption Bill.

THE ETHICS AND ANTI-CORRUPTION COMMISSION BILL

Clause 2

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 2 be amended in the definition of “chairperson” by deleting the expression “Section 7” and substituting therefor the expression “Section 6”.

This is essentially aligning the definition of chairperson as expressed in Section 6 as opposed to Section 7.

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

(Clause 3 agreed to)

Clause 4

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 4 be amended-

(a) in Subclause (1) by deleting the word “eight” and substituting therefor the word “four”

(b) by deleting the Subclause (2).

I know there is a proposal to have an amendment to that amendment. However, our proposal is to amend from nine commissioners to five commissioners; one chair and four Commissioners.

(Question of the amendment proposed)

Ms. Karua: Madam Temporary Deputy Chairlady, I wish to propose a further amendment to the amendment. This is to reduce the number of commissioners to three.

This is an investigatory Commission and the fewer the number of the people, the better for purposes of moving forward. Since they will be on policy and on day to day issues, there will be the secretary, I move that we further amend to three commissioners; the chair and two commissioners.

Mr. Abdikadir: We support, Chair.

(Question of the further amendment proposed)

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I support this very strongly. The number of commissioners that we are having in this many commissions may turn the Government into a government by commissions in numbers and in decision-making. I think this will send the right signal. The Constitution talks about three to nine commissioners. So, I think the number three is a good number.

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

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

Mr. Abdikadir: Madam Temporary Deputy Chairlady, just for clarification, we are also carrying an amendment to Clause 4(b) which we are deleting because it will be handled later.

The Temporary Deputy Chairlady (Dr. Laboso): When we move an amendment on each of the clauses, you move all the amendment and then we move on.

Mr. Abdikadir: I appreciate, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Therefore, are you saying that that has already been carried?

Mr. Abdikadir: Yes, Madam Temporary Deputy Chairlady.

(Clause 4 as amended agreed to)

(Clause 5 agreed to)

Clause 6

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 6 be amended-

- (a) in Subclause (1) by deleting paragraph (i) and substituting therefor the following new paragraph-
 - (i) the Association of Professional Societies of East Africa.
- (b) in Subclause (5)-
 - (i) by deleting expression “Subsection (3)” appearing in paragraph (a) and substituting therefor the expression “subsection (4)”,
 - (ii) By renumbering the second paragraph numbered as paragraph (e) as paragraph (f);
 - (iii) by deleting the word “ten” appearing in the renumbered paragraph (f) and substituting therefor the word “seven”;
 - (iv) by deleting the word “under” appearing in paragraph (g).
- (c) in Subclause (6) by deleting the expression “sub-section (4)” and substituting therefor the expression “Subsection (5)”;
- (d) in Subclause (7) by deleting the expression “Subsection (5)” and substituting therefor the expression “Subsection (6)”;
- (e) in Subclause (11) by deleting the expression “Subsection (9)” and substituting therefor the expression “(10)”;
- (f) In Subclause (12) by deleting the expression “Subsection (10)” and substituting therefor the expression “Subsection (11)”;

The first amendment is by deleting Subsection 3 appearing in paragraph (a) and substituting thereof Subsection (4) because of wrong numbering.

The second amendment deals with renumbering the second paragraph numbered as “e” to read as “f”. If you look at the end of that page, you will find that both of them are “e”. The third amendment is deleting all the way to the end which has to do with renumbering.

(Question of the amendment proposed)

Mr. Mbadi: Madam Temporary Deputy Chairlady, I support this amendment but I wanted to propose further amendment in Subclause 5(2) so that instead of having seven, we reduce it to four because we have reduced the number of commissioners to three.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Mbadi, you have not given us a written proposal on your amendment.

Mr. Mbadi: Madam Temporary Deputy Chairlady, based on what has just been carried here, I think it is important that we move a further amendment to this.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Mbadi, there is a procedure that we follow on further amendments.

Mr. K. Kilonzo: Madam Temporary Deputy Chairlady, going by the precedence which has just been set here and taking into account that we have asked for the leave of the House that if there are further amendments, we can also move them on the Floor of the House, just the way we have agreed on three commissioners which has just been proposed here, I would like to support the amendment by my good friend, Mr. Mbadi, that we to reduce the number to four commissioners.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, there is a procedure that we follow. If you will move an amendment, we have to have it written

here so that we are aware. Secondly, we would like to dispose of every amendment before we move to the further amendment.

Mr. Midiwo: On a point of order, Madam Temporary Deputy Chairlady. In that case, could you suggest the way forward because Mr. Mbadi's amendment is a consequential one? It is an amendment which is arising because of an amendment which has been carried. Could you give us the way forward because the Bill is rather big?

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Mbadi, what is your amendment about?

Mr. Mbadi: Madam Temporary Deputy Chairlady, we have reduced the number of Commissioners from our proposed five to two other Commissioners, excluding the Chairman. If we will give the appointing authority seven names to pick two, it will be watering down the whole essence of the interview. So, I would rather we reduce also the number to give to the appointing authority from seven to four. This is because the "seven" was envisaging that we would have a Commission of five. The further amendment is necessary to amend this and reduce the number to four.

Mr. Bahari: On a point of order, Madam Temporary Deputy Chairlady. In view of that suggestion which seems to attract a lot of attention from the rest of the Members, would I be in order to ask hon. Mbadi now to quickly put the further amendment in writing, so that we can proceed?

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, because of time and the fact that we can decide and make the rules ourselves here, can I propose that where amendments automatically affect another clause, we do not necessarily have to do it in writing as is being done? For example, if you delete a particular clause, automatically, there have to be amendments on the numbering of the clauses. So, where it is consequential, we do not have to insist. Again, because of time, we do not have to insist on writing.

The Temporary Deputy Chairperson (Dr. Laboso): That is in order, Mr. C. Kilonzo. However, you should not have said that it is consequential, because we did not know whether Mr. Mbadi was going to say "five, two or four." He has to make that amendment in writing, so that we can move forward.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, with your permission, I have a very small amendment on Clause 6. The amendment is in writing. I want to amend Clause 6(1)(e) so that we replace "Kenya National Human Rights---

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Minister, could you just allow us to dispose of this amendment and then you move your further amendment?

Mr. Mbadi: Madam Temporary Deputy Chairperson, I beg to move:-

THAT, Clause 6(5)(3) be further amended by deleting the word "seven" and replacing it with the word "four."

I have actually explained why I feel four is necessary.

(Question of the further 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 Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Chairperson, mine is a very small amendment to Clause 6(1)(e). If you recollect, the Kenya National Human Rights and Equality Commission has been restructured. So, we wanted that to be replaced by the Commission responsible for human rights.

The Temporary Deputy Chairperson (Dr. Laboso): Mr. Minister, you were not dealing with Clause 6(1)(j), which was what you had put forward, because that has been taken over by the proposal by the Committee.

(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 6 as further amended agreed to)

Clause 7

Mr. Abdikadir: Madam Temporary Deputy Chairperson, I beg to move:-
THAT, Clause 7 be amended in sub-clause (2) by deleting the word “part time” and substituting therefor the words “full time”

We do not want the commissioners to be on part time but on full time basis.

(Question of amendment put and agreed to)

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

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

(Clause 7 as amended agreed to)

(Clauses 8, 9 and 10 agreed to)

Clause 11

The Minister of Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chair, I beg to move:-

THAT, Clause 11(1) be amended by deleting sub paragraph (g)

This paragraph gives the Commission powers to supervise codes of ethics of professional bodies which are already covered in separate Acts of Parliament.

(Question of the amendment proposed)

Mr. Abdikadir: Madam Temporary Deputy Chairperson, we support the amendment by the Minister so that enforcement of professional standards may be done by the professional bodies themselves.

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

Mr. Abdikadir: Madam Temporary Deputy Chairperson, I beg to move:-
THAT, Clause 11 be amended-

(a) in subclause (1) by-

- (i) inserting the word “by” immediately after the word “ethics” in paragraph (c)
- (ii) by deleting the words “private bodies” appearing in paragraph (j)
- (iii) by inserting the words “subject to Article 31 of the Constitution “ before the words “monitor” appearing in paragraph “(j)”
- (b) by deleting Subclause (3)
- (c) in Subclause (6) by deleting paragraphs (f) and (g)
- (d) in Subclause (7) by deleting the word “and” appearing immediately after the word “meet”
- (e) by inserting the following new sub clause immediately after sub clause (i)-
(1A) A person who contravenes section 11(1) (j) commits an “offence”

I will seek your indulgence. This Commission is being set up under Chapter 6 of the Constitution that deals with public entities and State officers. Part (j) of Clause 11 deals with monitoring the practices and procedures of public and private bodies. That is not a subject of that Chapter and we propose deletion. With respect to monitoring, so that, that is not misused, we subject that to Article 31 of the Constitution which safeguards privacy.

Finally, in the misuse of that power, we create a criminal offence for those who commit an offence under Clause 11(i) (j).

(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)*

Mr. Kapondi: Madam Temporary Deputy Chairperson, I beg to move:-

THAT, Clause 11 of the Bill be further amended-
(a) in Subclause (1) by deleting the proviso appearing in paragraph “d” and,
(b) in Subclause 2 by deleting the words “investigations and prosecution” and substituting therefor the word “investigations”

This is basically meant to avoid a clash between this Commission and the Director of Public Prosecutions (DPP) who has the sole powers of prosecution and further to avoid a situation whereby---

(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 inserted in place
thereof be inserted, put and agreed to)*

The Temporary Deputy Chairlady (Dr. Laboso): I would like to note that Mr. Mungatana had a proposal.

Mr. Mungatana: Madam Temporary Deputy Chairlady, in view of the amendment which has just been passed, I wish to withdraw my amendment.

(Proposed amendment by Mr. Mungatana withdrawn)

Mr. K. Kilonzo: Madam Temporary Deputy Chairlady, I beg to move a further amendment in conformity with what is shown on page 2--

The Temporary Deputy Chairlady (Dr. Laboso): Is this a further amendment?

Mr. K. Kilonzo: Yes, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): Then let us follow procedure. Mr. K. Kilonzo, explain your further amendment.

Mr. K. Kilonzo: Madam Temporary Deputy Chairlady, in the same spirit where we have deleted the word “prosecution” I am proposing the same on k(2) because it talks of investigation and prosecution. We should also delete the word “prosecution” so that there is conformity.

Mr. Chepkitony: On a point of order, Madam Temporary Deputy Chairlady. The amendment being proposed by Mr. K. Kilonzo had been proposed by Mr. Kapondi. He proposed that Clause 11(d) be delete and he also proposed the word “prosecution” in Clause 11(k) be deleted. It has been taken care of by Mr. Kapondi.

The Temporary Deputy Chairlady (Dr. Laboso): Thank you for that clarification, Mr. Chepkitony. So, Mr. K. Kilonzo’s amendment has been taken care of by what we have just passed.

Mr. Mbadi: Madam Temporary Deputy Chairlady, I think we need to be clear here. The Ethics and Anti-Corruption Commission can co-operate with other bodies for prosecution. They can co-operate with the Director of Public Prosecutions. When the Director of Public Prosecutions is instituting prosecutions then they have to co-operate with the Ethics and Anti-Corruption Commission. So, I think this co-operation in my

view is not prosecuting, but it is co-operating with the Director of Public Prosecutions for prosecution.

I oppose the amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Kapondi just for clarity, did you capture the amendment that Mr. K. Kilonzo is trying to propose?

Mr. Kapondi: Exactly. What we are trying to avoid here is anything called prosecution.

The Temporary Deputy Chairlady (Dr. Laboso): So, it is captured in what we have passed?

Mr. Kapondi: It is captured.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. K. Kilonzo, I hope you have satisfied. It is captured.

Mr. K. Kilonzo: Just for the clarity of the House, what I am saying is that under K(2) the Commission may co-operate and collaborate. We want the word prosecution to be left out. When this Commission finishes investigation, it must hand over to the other organ. That is why we are saying we want it deleted to be in conformity with what Mr. Kapondi proposed.

Dr. Kones: I think it is just some confusion. There is no K(2). The sub-clause he is referring to is sub-clause 2. There is no Clause K(2).

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, let us not go round in circles because it is very clear that hon. Kapondi's amendment captures what has been said; it says "In Sub-clause 2 amend by deleting the words "investigation and prosecution" and substitute therefor the words "and investigation". So, let us move on in the interests of moving on.

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

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

(Clause 11 as amended agreed to)

Mr. K. Kilonzo: On a point of order, Madam Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Dr. Laboso): That has already passed, hon. K. Kilonzo.

Mr. K. Kilonzo: Madam Temporary Deputy Chairlady, it might have passed but we also need clarification; under (k) somebody is saying this is (l) but if you look at it carefully it is (i) and this is (ii). It is here unless you are using a different Bill.

The Temporary Deputy Chairlady (Dr. Laboso): Please, hon. K. Kilonzo, just get the clarification. I think we have dispensed of that clause. We are now moving on to the next clause.

(Clauses 12, 13, 14 and 15 agreed to)

Clause 16

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT Clause 16 be amended-

(a) in sub-clause (1) by deleting the word “Parliament” and substituting therefor the words “National Assembly”.

(b) in sub-clause (5) by deleting the words “where the Commission does not intend to re-appoint the Secretary.”

This is because “Parliament” means both Houses of Parliament. It will be extremely onerous for both Houses to vet the Secretary; so we amend it by deleting “Parliament” and substituting therefor “National Assembly;” in sub-clause 5 we delete “where the Commission does not intend to reappoint the Secretary” because in the subsection before, the Commission Secretary has one term of six years and so there is no reappointment.

(Question of the amendment proposed)

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

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

(Clause 16 as amended agreed to)

Clause 17

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 17 be amended by deleting Subclauses (3), (4), (5) and (6).

I will seek your indulgence to clarify this. The Secretary to the Commission is an employee of the Commission. This section purports to give the Secretary security of tenure by purporting to indicate that in the event that the Secretaries be fired, there will be a tribunal set up by the Chief Justice. That is a very onerous process. There is actually no need for it. In any event, the Commission hires and fires. It is a constitutional process.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I just want to add this point because I think it is very important. You cannot give somebody security of tenure while the Constitution does not give it. That is a very important point that the chairman is making.

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

(Clause 17 as amended agreed to)

Clause 18

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 18 be deleted.

It deals with the appointment of Deputy Secretary. This is again linking this process to the former Commission which had Deputy Directors. This is a Commission. All the Bills we have handled deal with the Secretaries, the rest is for the Commission. I do not think we should over-legislate. We should let the Commission handle its work.

(Question of the amendment proposed)

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

(Clause 18 deleted)

Clause 19

Mr. Abdikadir: Madam Temporary Deputy Chairperson, I beg to move:-
THAT, Clause 19 be amended by deleting Subclause (3)

This Section says the employees of the Commission shall be appointed on such terms and conditions as may be recommended by the Salaries and Remuneration Commission. The Salaries and Remuneration Commission deals with Constitutional Office holders; State Officers, not public servant. If the Commission wanted broad advice from the Salaries and Remuneration Commission, that is fine. But asking it to employ each of the staffers on terms that are approved is too onerous and is not necessary.

(Question of the amendment proposed)

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

(Clause 19 as amended agreed to)

(Clauses 20, 21 and 22 agreed to)

Clause 23

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 23 be amended by in Subclause (2)-

- (a) by inserting the words “to the National Assembly” immediately after the words “disclosed”.
 - (b) By inserting the words “before use” immediately after the words “public.
- This Clause deals with the funds of the Commission. We are indicating that where the Commission gets funds in terms of grants or commissions or endowments,

those funds should be public for accountability and should be utilized only after they are made public. So, we are bringing in the amendment that any funds donated or gifts made to the Commission shall be disclosed to the National Assembly and made public and utilized only after that fact.

(Question of the amendment proposed)

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

(Clause 23 as amended agreed to)

Clause 24

Mr. Abdikadir: Madam Temporary Chairlady, I beg to move:-
THAT, clause 24 be deleted.

I would seek your indulgence. This clause states that the administrative and other expenses of the Commission, including salaries, allowances, gratuities and pensions of the members and employees of the Commission shall be a charge on the Consolidate Fund. Again, this is equating Constitutional officers with normal members of staff and charging normal expenses to the Consolidated Fund. We are deleting that so that the normal expenses go through normal appropriation through the House.

(Question of the amendment proposed)

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

(Clause 24 deleted)

(Clause 25 agreed to)

Clause 26

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 26 be amended by inserting the words “at least three months” before the word “Before”.

We want the Minister or the Secretary to have enough time and be in accordance with the Constitution.

(Question of the amendment proposed)

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

(Clause 26 as amended agreed to)

(Clauses 27, 28 and 29 agreed to)

Clause 30

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 30 be amended by deleting Subclause (2).

Again, if you indulge me, this is the independence of the Commission. Clause 30(1) says:-

“Except as provided in the Constitution and this Act, the Commission, shall, in the performance of its functions, not be subject to the direction or control of any person or authority”.

That is sufficient and (2) is superfluous because it says the same thing in many words.

(Question of the amendment proposed)

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

(Clause 30 as amended agreed to)

Mr. Keter: On a point of order, Madam Temporary Deputy, Chairlady. There is a new Clause 30(A)!

The Temporary Deputy Chairlady (Dr. Laboso): The new clauses are considered at the end!

(Clauses 31, 32 and 33 agreed to)

Clause 34

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-

Regulations THAT, Clause 34 be deleted and replaced with the following new clause-
34. The Commission may make regulations for the better carrying out of this Act, with respect to-

(a) the appointment, including the power to confirm appointments of persons, to any office in respect of which it is responsible under this Act;

(b) the disciplinary control and termination of appointments of employees of the Commission; and,

(c) the practice and procedure of the Commission in the exercise of its functions under this Act.

The Constitution requires that when Parliament donates powers to make rules, that power must be donated in a very limited and specific version. We are narrowing it down to those three areas so that we do not have general rule making.

(Question of the amendment proposed)

(Question, that the words to be left out be

left out , put and agreed to)

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

(Clause 34 as amended agreed to)

(Clause 35 agreed to)

Clause 36

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 36 be amended in Subclause (1) by inserting the words “other than the director and Deputy Director” before the words “shall at the commencement of this Act”.

The purpose is quite clear, so that all the other staff will be subjected to the requirements of Clause 36.

Mr. Abdikadir: Madam Temporary Deputy Chairlady, we had a proposal which is similar in the sense that we were going to delete everything after Clause 36(2), but if the Minister’s amendments cover what we had covered, we would be willing to go with that. Could he re-read his amendment for clarification, so that we can know where the director and the deputy directors appear, because they are four of them?

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, I just want to know whether what is in the Order Paper is the amendment by the Minister or by the Committee.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, that is why we said that we start with the amendment by the Minister, and then move to the amendment by the Committee. If the two amendments are similar, as the two hon. Members claim---

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, that is what I am asking. Whose amendment is it?

The Temporary Deputy Chairlady (Dr. Laboso): The Minister is supposed to clarify what the Chair has just alluded to.

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, I am getting there. What the Minister has proposed is not what is on the Order Paper. That is why I am asking whose amendment it is. Is it the Committee’s amendment or the Minister’s amendment? He has included only one part. Under Clause 36(1), the words “subject to subsection 4” are also deleted. Could we have a confirmation from the Minister?

The Temporary Deputy Chairlady (Dr. Laboso): What we have on the Order Paper is the amendment by the Committee, but the Minister has given us a written amendment. So, it is just a question of the order as to who is coming before who.

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, it appears that our Chairman has changed position, because that particular Clause is providing for the vetting of all members of staff whereas the amendment, as it is, provides for only two officers to be vetted. So, I would like this clarified.

The Temporary Deputy Chairlady (Dr. Laboso): Can we get that clarification from both the Committee Chairman and the Minister?

Mr. Abdikadir: Madam Temporary Deputy Chairlady, with your indulgence, I will give a little bit of explanation. This Clause deals with transiting the staff of the Commission. The Commission has four types of human resource categories. It has the Board, the Director and Deputy Directors, contract employees, and seconded Government officers.

The view of the Committee earlier on was to save the Board and the contract employees, return the seconded Government employees to their Departments and send home the Director and the Deputy Directors. The Minister's amendment is a no-vetting proposal for the contract staff. So, the Minister's proposal takes on board the Committee's proposal on the Director and the Deputy Directors, but wishes to retain the Government officers, subject to vetting. I have no problem with that proposal.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, that is exactly the way it is. It is very clear.

The Temporary Deputy Chairlady (Dr. Laboso): Minister, I thought you were going to read out your amendment just for clarity purposes.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, those hon. Members who have copies of the Bill may look at Clause 36, Subclause (1), the fourth line from the top. It reads as follows:-

“Subject to Subsection (4), a person who immediately before the commencement of this Act was serving on contract as a member of staff of the Kenya Anti-Corruption Commission, other than the Director and Deputy Directors, shall, at the commencement of this Act, be deemed to be an employee of the Commission for the unexpired period, if any, of the term---”

The other provisions then follow, for vetting. They are vetting us. So, we want everybody to be vetted.

An hon. Member: Put the Question now!

The Temporary Deputy Chairlady (Dr. Laboso): Hold your horses! I will now propose the Question.

(Question of the amendment proposed)

Ms. Karua: Madam Temporary Deputy Chairlady, I agree with the amendment. Initially, I thought there was just bad blood for removing the Director and Deputy Directors; having looked at the other provisions of the Constitution, I realised that this is a different structure of a Commission that is now being created. While the other one has an Advisory Board, this one has Commissioners. Whereas the other one has a Director, this one will have a Secretary.

So, I support.

Mr. Mbadi: Madam Temporary Chairlady, I support the amendment but I am just concerned because it will take some days for the Commission to be in place. In the interim period, how are we getting the staff from the Kenya Anti-Corruption Commission

(KACC) to the new Commission? Are they getting the job without being vetted or are they getting in before the Commission is put in place? Who will vet them?

An. Member: They are already there!

The Temporary Deputy Chairlady (Dr. Laboso): I think that has been answered that they are already there.

Minister, do you want to---

The Minister for Lands (Mr. Orengo): Madam Temporary Chairlady, I just wanted to point out this, which I think is a very important point. One of the purposes of this Commission is to ensure compliance with Chapter Six of the Constitution; to subject everybody to integrity, vetting and all that. It will, therefore, be wrong if we can subject judges to vetting and there is a Commission that is going to vet all of us that for their purposes they are not being vetted. I think that would not serve the purposes of the Republic. Therefore, the proposal by the Minister makes a lot of sense. I commend him for that.

The Temporary Deputy Chairlady (Dr. Laboso): Mr. Kilonzo, I hope this is the last bit on this.

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, I am of a different view. We must agree on which caliber or level of management because we are talking about the entire staff. It is not just everybody. I would have suggested that we go by the amendment of the Committee which does not include everybody. We are talking about transfer of the staff of the KACC. Do you want to vet all the staff?

Hon. Members: Yes! Yes!

Mr. C. Kilonzo: Even the messenger?

Hon. Members: Yes! Yes!

Mr. C. Kilonzo: That is where the question is. I would have really stuck on the managerial level.

Mr. Bahari: Madam Temporary Deputy Chairlady, I support the amendment. However, I want a clarification. Now that the Directors are going to be new and they are going to apply afresh, it is going to be open. The manner in which Government employees have been seconded there is not clear. You are now transferring them over and giving this burden to the new Directors who want to move at a different speed and what have you. Can this be clarified?

Mr. Abdikadir: Madam Temporary Deputy Chairlady, may I clarify. In Clause 36(3), it says:-

“Notwithstanding subsections (1) and (2) and before appointing or employing any member of staff of the Kenya Anti-Corruption Commission who wishes to work for the Commission, the Commission shall:-

(a) require such a person to make an application for employment or appointment to the Commission; and,

(b) using criteria determined by the Commission vet such persons to ensure that he or she is fit and proper to serve in the position applied for as a member of staff or a Commissioner.

Therefore, we will transit all of them, but subject them to this procedure.

The Temporary Deputy Chairlady (Dr. Laboso): Do you still have any clarifications?

The Assistant Minister for Public Works (Mr. Kiunjuri): Madam Temporary Deputy Chairlady, my only worry is one; yes, we should vet them because that is very important. However, in the process, we must know that the Commission that will be exiting already had some work it was doing. It will also be important to know for sure that as they transit, there is somebody to take custody of property and assets including exhibits. We have to be careful that the Commission that is coming in must be able to come and do its work without delay. It should not take forever for the Commission to recruit these officers.

The Temporary Deputy Chairlady (Dr. Laboso): Could the Chairman clarify on that issue?

Mr. Abdikadir: Madam Temporary Deputy Chairlady, if you look at the definition of the Kenya Anti-Corruption Commission (KACC), it means the Kenya Anti-Corruption Commission established by the Act. This Commission is linked to the old Commission. This is a successor body. So, by operation of the law this body has the legal authority to take over the assets of the old Commission. The fear that somehow the files will disappear or the property will get lost is misplaced, in my opinion because the staff will remain. We hope to transit the board so that it remains. I think it is important that we understand that this is a legal body that is transiting to a new body.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, I hope that ends the clarification. Mr. Chairman, have you now dropped your amendment? Is that the position?

Mr. Abdikadir: I have now dropped my amendment and I wish to give assurance that no pending prosecution will be lost because of this transition.

*(The proposed amendment to Clause 36 by
Mr. Abdikadir withdrawn)*

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

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

(Clause 36 as amended agreed to)

(Clauses 37 and 38 agreed to)

Clause 39

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 39 be amended by inserting the words “save for Part IIIB, for ninety days or until the Commission comes into place whichever comes earlier” immediately after the expression “Part III”.

Clause 39 repeals Part III of No.3 of 2003. It repeals Part III which deals with the Commission and the Advisory Board. We are proposing Part IIIB for ninety days or until

the Commission comes into place whichever comes earlier, immediately after the expression of Part III. That is the transit of the Advisory Board.

(Question of the amendment proposed)

Ms. Karua: Madam Temporary Deputy Chairlady, I want to propose a further amendment to the amendment. The object of my further amendment is so that we safeguard the integrity of the investigation files, exhibits and records, pending hand over.

I beg to move:-

THAT, Clause 39 be further amended as follows-

(a) Part III of the Anti-Corruption and Economic Crimes Act, 2003 shall stand repealed within 90 days of the assent to this Act or upon the appointment of the Commission under this Act, whichever is early

(b) The functions of the Commission under the Anti-Corruption and Economic Crimes Act, 2003 pending the appointment of the Commission under this Act, shall be limited to safeguarding the integrity of the investigation files and exhibits or records and assets of the Commission for hand over to the incoming Commission.

This means that they will not investigate or go on with their normal business. They will only be there as custodians and as soon as the new Commission is appointed, they will hand over. The reason is that if we do not do that, there may be cartels larking in the dark, waiting to destroy files when there is no Commission. You will recall that the Advisory Board has nothing to do with the day to day running of the Commission. The amendment by the Committee is only safeguarding the Advisory Board and yet this Board is not the custodian of the documents. We need to safeguard the Commission for handover of records and assets of the Commission.

(Question of the further amendment proposed)

Mr. Abdikadir: Madam Temporary Deputy Chairlady, just one clarification. We have just transited all members of staff except the Director and the four Deputy Directors but I personally have no problem with the amendment that is being proposed.

Mr. Keter: Madam Temporary Deputy Chairlady, I just want to oppose that amendment in the sense that the Directors are the ones to leave and we have the staff intact. If they have the files they should have submitted them to the Director of Public Prosecutions (DPP) or other organs of the Government. Alternatively, if they have the files now, they can still destroy them as we speak now. To, me the safeguards are there. There must be an inventory of what they have been doing before because there must be continuity in that office.

I oppose that amendment.

Mr. C. Kilonzo: Madam Temporary Deputy Chairlady, I think the intention was good, but since we are still maintaining the staff, it will not be necessary--- In any case, it is only the five people who are going and it does not mean that without them things cannot run or that files will be burnt.

I oppose.

Mr. Kioni: Madam Temporary Deputy Chairlady, I want to support that amendment. The essence of our dealing with this thing is to create a new Commission as

provided for under the Constitution. We must clear any doubt in people's minds that we are trying to cover up cases that may have been under investigation. Even if it is for no value, it is important that we state it and let the world know, that we are not out to cover up any investigation that was going on there.

I support the amendment.

The Assistant Minister for Public Works (Mr. Kiunjuri): Madam Temporary Deputy Chairlady, I want to support the amendment. The reason we are bringing in the new Commission is not that we are here witch-hunting and wanting to throw those in office out of the office. There must be continuity and proper handing over. Even today when a Minister or Permanent Secretary leaves office---

Mr. Outa: On a point of order, Madam Temporary Deputy Chairlady. We are here as hon. Members. Is it right for an hon. Member to insinuate that we are witch-hunting in this House, and yet we are trying to make laws that will protect Kenyans?

The Assistant Minister, Ministry of Public Works (Mr. Kiunjuri): Madam Temporary Deputy Chairlady, I said that we should not be seen to---. The truth of the matter is that we all support these amendments, but there must be a handing over process. Even if you want to remove a Permanent Secretary or Minister from office, there must be a process. So, what we are asking is that there must be safeguards, so that there is proper handover. Already, we are removing five senior officers from that Commission. So, there must be a way of making sure that we protect what was there for proper continuity.

The Minister for Transport (Mr. Kimunya): Madam Temporary Deputy Chairlady, I wish to support the amendment by Ms. Karua but not for the reasons she gave; that there will be cartels going out there, wanting to expunge the evidence. If that is the reason, then we are basically saying that the people we have at the Kenya Anti-Corruption Commission (KACC) are so corrupt that they will actually entertain those cartels to expunge the evidence and go with them. In this case, it will be unfortunate even to retain those members of staff who will entertain those cartels to expunge the evidence.

The amendment is superfluous but does not make any harm. When the Kenya Anti-Corruption Authority was disbanded by the courts in 2000, all the records were maintained until the successor, the Kenya Anti-Corruption Commission was established again by law. There is a process in Government where all the records and documentation are preserved for the minimum time required.

I support the amendment but for the opposite reasons from what was given by Ms. Karua.

The Temporary Deputy Chairperson (Dr. Laboso): Mr. Minister, I think your point has been made. Please, it is not debate time; this is the Third Reading.

Yes, Mbadi!

Mr. Mbadi: Madam Temporary Deputy Chairlady, I oppose this amendment. Let us be honest. When we felt that the electoral body misbehaved, we took them home. Let us accept that the reason we are transiting all staff and not the Director and Deputy Directors is because they have mismanaged. The moment this Bill is assented to, let these people go home. Whether you call it witch-hunt, I do not mind witch-hunting somebody who has failed to perform his duty and talks aimlessly. That person should go immediately the President assents to the Bill and the records will remain there. If he wants to take away some records, so be it.

The Temporary Deputy Chairperson (Dr. Laboso): Mr. Mbadi, your have made your point.

Yes, the Chairman of the Committee!

Mr. Abdikadir: Madam Temporary Deputy Chairperson, with your permission, we have already transited all the staff members and the board. There is no problem in transiting five people until we get the Commission in place, if it will give more confidence to the country because of the perception being created. There is absolutely no problem in my opinion.

Mr. K. Kilonzo: On a point of order, Madam Temporary Deputy Speaker, Sir. The Chairman should come out clearly and make up his mind. Initially, he proposed the amendment and assured everyone that the staff would take custody of the files. Now, he has changed his position. It is imperative that he makes up his mind.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Kiema Kilonzo, if my ears serve me well, and they do, I thought the Chairman clearly said that he did not have a problem with the amendment that Martha was proposing?

Mrs. Shebesh: On a point of order, Madam Temporary Deputy Chairperson. I also believe that hon. Martha Karua is a Member of our Committee. Therefore, the position of the Committee, which was well thought out, was that the transition of the Advisory Board and the 200 plus staff is enough to safeguard the Commission records. Three people cannot be enough for safeguarding. With due respect to Martha Karua, she is a Member of this Committee and I think the Chair must be clear on what she meant.

Ms. Karua: On a point of order, Madam Temporary Deputy Chairperson. I am very sad that hon. Rachel Shebesh can give an incorrect position. Yes, I am a member of the Committee. However, she knows that I did not sit in that particular sub-committee. We divided ourselves and I was in the one handling the Electoral Bill. I, therefore, never supported any such thing. I discussed it with the Chairman and I have proposed an amendment with the support of the Chairman.

I beg to support.

Mr. Midiwo: Thank you Madam Temporary Chairperson. I would like to support the amendment by Martha Karua. We know, for the reasons advanced by hon. Kioni, that what we are trying to establish is a new Commission. We need order as we do it so that we do not appear as if we are after something when we are not. I want to support her.

The Temporary Deputy Chairperson (Dr. Laboso): Hon. Members, I think we have ventilated enough on this matter. I will now put the question.

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

Hon. Members, we are now back to the amendment by Mr. Abdikadir. I will put the question.

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

(Clause 39 as amended agreed to)

Clause 40

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 40 be deleted.

Madam Temporary Deputy Chairlady, we are proposing amendments ranging from Clause 40 all the way to Clause---

The Temporary Deputy Chairlady (Dr. Laboso): You have to propose each Clause.

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I agree with you. However, if you could allow me a bit of time to explain. The sections appearing from Clause 40 are insertions into sections of the existing Act, the Kenya Anti Corruption and Economic Crimes Act, No.3 of 2003.

This area has quite a number of Acts that rule. This is one of the Acts that will be one of them. The other is the Anti-Corruption Commission Act. The other is the Public Officer Ethics Act. The other is the Money Laundering and Proceeds of Crime Act. All those Bills need harmonization. The Bills we are dealing with introduce new or extra penalties which require co-ordination with all those Acts.

The considered opinion of the Committee is that we suspend these sections until we have all those Bills properly handled. We propose deletion of Clause 40.

(Question of the amendment proposed)

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I want to agree with the Chairman of the Committee. Offences under the Constitution must be clearly defined. We have situations where these insertions are including offences which makes it like a “catch all” situation.

I am just giving this as an example; on page 2090 of the Bill, there is an offence there which is titled “misuse of donor funds or property.” It says:-

“A person who dishonestly appropriates anything whether property or otherwise--
_“

That “otherwise” in a criminal offence leaves a lot of things in doubt.

“which has been donated to himself or any other person in the name of or on the benefit of Kenya.”

All that would cause a lot of confusion. I agree with the Chairman that this entire part which includes certain new offences should be deleted. It would be dangerous to pass this part of the Bill without proper scrutiny. As a criminal lawyer, I know that some of these offences will not meet the standards set out in the Constitution.

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

(Clause 40 deleted)

Clause 41

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 41 be deleted.

(Question of the amendment proposed)

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

(Clause 41 deleted)

Clause 42

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 42 be deleted.

(Question of the amendment proposed)

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

(Clause 42 deleted)

Clause 43

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 43 be deleted.

(Question of the amendment proposed)

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

(Clause 43 deleted)

Clause 44

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 44 be deleted.

(Question of the amendment proposed)

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

(Clause 44 deleted)

Clause 45

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 45 be deleted.

(Question of the amendment proposed)

Ms. Karua: Madam Temporary Deputy Chairlady, I oppose this particular amendment. If you look at it in the Anti-Corruption and Economic Crimes Act, it is about protection of public property and revenue. Why would we want to delete a clause that protects public property and revenue during investigations? To that extent, I oppose this particular amendment. I totally oppose the deletion of that clause.

The Temporary Deputy Chairlady (Dr. Laboso): Could the Chairman give us a little bit of explanation?

Mr. Abdikadir: Madam Temporary Deputy Chairlady, this is an amendment to that Act by replacing Section 48 of the Act. Section 48 still remains law. This was just to improve it. Because it is a whole section we want to handle all these together, but the section that provides for the penalty, or the substantive law, still remains in the Act.

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

(Clause 45 deleted)

New Clause 30A

Mr. Abdikadir: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, the following new clause be inserted immediately after Clause 30-

- 30A. (1) A state officer commits an offence if that state officer:-
- (a) Opens, operates or maintains a bank account in a foreign country; or
 - (b) Opens, operates or maintains a bank account in a foreign country through nominees, agents or business associates
- (2) Subsection (1) shall not apply to bank accounts opened, maintained or operated by state officers who work in diplomatic missions abroad or those authorized to be on study leave or official business outside the country, or in any other case provided for in an Act of Parliament.
- (3) In addition to any penalty imposed under sub-section (1), the court shall order repatriation of monies held in such account to Kenya.

Madam Temporary Deputy Chairlady, if I could just do some explanation; you realize we had said that all the offences that were indicated earlier, the majority of them were already contained in the other Act, but this was a new thing brought in by the new Constitution. It is the new Constitution that brought in the issue of state officers not having accounts in foreign countries. We are creating an offence, so that we provide the incentives for state officers not to do that, and if they have done it, to bring back their money. So, the idea is to create that offence, so that such accounts are closed.

(Question of the New Clause 30A proposed)

(New Clause 30A read the First Time)

*(Question, that New Clause 30A be
read a Second Time, proposed)*

Mr. Baiya: Madam Temporary Deputy Chairlady, I rise to support. Section 76 (2) of the Constitution clearly states that: “A state officer shall not maintain a bank account outside Kenya except in accordance with an Act of Parliament.” This provision is now being made to give effect to the provisions of the Constitution. So, it is really in keeping with the Constitution; I, therefore, support.

Mr. Keter: Madam Temporary Deputy Chairlady, I wish to oppose this amendment. The Constitution is very clear that there will be an Act of Parliament to operationalise this; but what we are doing now is that we are making a law which will punish some people. What about businessmen? You can be a State Officer and do business; or, you can even have your children outside this country. You can open an account and operate it for them outside the country. So, sub-clause (2) does not cover this. It covers only those who work in diplomatic missions and those who are on study leave. What about the students who will go abroad, and whose parents will open accounts for them? To me, this provision will really punish a lot of people, and so I oppose it.

The Minister for Transport (Mr. Kimunya): Madam Temporary Chairlady, much as I appreciate the efforts of the Committee to try to operationalize the requirements within Chapter Six of the Constitution, I believe for the same reasons as we have deleted all those new crimes coming in Clauses 41 and 42, by saying that they are in the wrong statutes, this is also being introduced in the wrong statute.

Madam Temporary Deputy Chairlady, it is important to note that Chapter Six of the Constitution is about ethics. We have a law that governs public officer’s ethics which is scheduled to be amended to define all manner of ethics and circumstances under which a public officer and State officer may operate a bank account outside the country. It is important we appreciate that bank accounts are not opened for purposes of siphoning money out of the country. We must take into account a civil servant or a councillor or MP who has a child in school in Uganda, which is a foreign country---. I am using Uganda as an example because many Kenyans have sent their children in primary and secondary schools there. That child cannot operate a bank account. So, the parent opens a bank account there, and gives the child the pin number to access the money from Uganda. By criminalizing that, we are basically criminalizing the rights of that child to be supported by the father.

So, let us be very clear between money laundering which is a crime and opening of bank accounts. Let us come with a comprehensive law that captures all those things, within the Public Officer Ethics Act.

On that basis, I would like to urge the Committee to withdraw this and bring it within the comprehensive law. In any case, we are saying in sub-clause 2 that operating a bank account outside the country will be provided for in an Act of Parliament. Which other Act Parliament will be providing this? Why do we not provide it all within one

comprehensive Act of Parliament in terms of how public officers and State Officers can operate bank accounts inside and outside the country?

With those few remarks, I beg to support.

Mr. Langat: Madam Temporary Deputy Chairlady, I want to oppose this amendment. If you look at the way it is drafted, it actually criminalizes, in a blanket way, the opening of accounts.

We should bring this matter in the relevant law. In the Constitution, it is not criminal to open an account by State Officer outside the country. It only says it has to be done within some legislation. Therefore, we expect that legislation to come so that it can explain how to open an account outside the country. It is not a crime for State Officers to do business.

Eng. Maina: Madam Temporary Deputy Chairlady, I rise to oppose this amendment.

Madam Temporary Deputy Chairlady, we need to be careful not to be doing things either for punishing or with unnecessary anger. There is money laundering and there is money which is earned genuinely. If we are talking about free enterprise, there is nothing to stop you from putting your money wherever you want in this world, in order to do business. Therefore, I find this clause not to be in good order.

Madam Temporary Deputy Chairlady, let us also be careful. We have allowed dual citizenship. By allowing dual citizenship, what do we mean? We mean you can be a citizen in many countries and own money in those places. Therefore, I find this not to be well-meant. I actually wonder the source of this clause and it should never appear in any of our laws.

Ms. Karua: Madam Temporary Deputy Chairlady, I beg to support and reiterate Article 76 (2) of the Constitution which is in force right now. It says: "A State officer shall not maintain a bank account outside Kenya, except in accordance with this Act." This Act is, therefore, an Act of Parliament which we are now enacting. Those who are saying they are waiting for legislation, this is such legislation. I want to say this---

(Loud consultations)

Madam Temporary Deputy Chairlady, would you protect me from hecklers!

(Laughter)

The Temporary Deputy Chairlady: Order, hon. Members! Order!

Ms. Karua: Madam Temporary Deputy Chairlady, I will withdraw and apologize because I want to finish my contribution. It will be noted that almost all State officers or a majority of those who have bank accounts abroad have come by their money through abuse of their offices. Most of the scandals in this country are by State officers who are in positions of authority. Whether it is Goldenberg, Anglo-leasing; any scandal is by State officers. This is meant to protect Kenyans from those who are fiddling. Those who are having money abroad, especially State officers, it is not about their children. It is about hiding money. That is why we are having cases, including cases of extradition.

I beg to support.

The Minister for Transport (Mr. Kimunya): On a point of order, Madam Temporary Deputy Chairlady. Is the Member for Gichugu in order to insinuate that all people who have bank accounts outside the country have opened those bank accounts using money that has been siphoned from this country? I want to declare that I opened a bank account in the UK in 1990 which I have maintained and has no proceeds of any siphoned money from anywhere. In 1990, I was not in the Government. I only joined the Government in 2003 and I am one of the examples of people who have operated their accounts and matters without recourse to public funds as the Member for Gichugu would like to convince our electorate out there, that anyone who has money has got it wrongly.

The Temporary Deputy Chairlady (Dr. Laboso): Your point of order is challenging Ms. Karua to substantiate her assertions.

Ms. Karua: Madam Temporary Deputy Chairlady, unless hon. Kimunya is not in a position to fully appreciate the English language, I said “almost all” and I said that all scandals in Kenya have State officers as their chief architects. This is how money has been siphoned. If that is how he is challenging, then I can tell him that even the cases pending for extradition are about State officers. Anglo Leasing and Goldenberg are cases about State officers. There is nothing to withdraw. I said “almost all”. Anybody with better statistics than mine can lay them on the Table and I will withdraw.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we really need to rest this case.

The Minister for Energy (Mr. Murungi): On a point of order, Madam Temporary Chairlady. We cannot let hon. Karua keep on proceeding with Anglo Leasing. This is a song in this House. I am one of those who have been investigated and over-investigated about Anglo Leasing and I am a public officer. Could hon. Karua substantiate that I have any account abroad?

Ms. Karua: Madam Temporary Deputy Chairlady, he seems to suggest that he has, because I had not named any names. I hope there will be a further suggestion in the case of Triton.

The Minister for Energy (Mr. Murungi): On a point of order, Madam Temporary Deputy Chairlady. We cannot allow Members to continue insulting others using the privileges of this House. Hon. Karua has to apologize because she has not done what I requested that she does in accordance with the rules of this House.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Karua, you have been asked again to substantiate your assertions or withdraw and apologise.

Ms. Karua: Madam Temporary Deputy Chairlady, I would want you to go to the HANSARD to see clearly that I said “almost all”. I did not name any name. There is an English saying that “the guilty are afraid”. I have not named a single soul because I actually do not know who has an account and who does not have. So, I have said that in almost all scandals, actually all, State officers are involved. If there is a State officer who knows something about it, we are happy to know.

The Temporary Deputy Chairlady (Dr. Laboso): Shall we leave this matter?

(Several hon. Members stood up in their places)

The Temporary Deputy Chairlady (Dr. Laboso): Order! Order! Hon. Orengo was on the Floor.

Hon. Orengo, please, continue.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady---

Mr. Ethuro: On a point of order, Madam Temporary Deputy Chairlady. Is it in order for you to allow my very good friend, hon. Martha Karua, to get away with this one, especially when she is wondering about our level of understanding of the English language. She has said “almost all”. So, it could be “almost” or it could be “all”.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Ekwe Ethuro, as far as Martha has explained, she has not mentioned a single person’s name. She has only mentioned scandals, all of which are in the public domain, without naming names. Therefore, I do not know to whom you want hon. Martha to apologise.

Hon. Orengo, proceed.

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I want to oppose this further amendment to the amendment for a very good reason. Article 79 of the Constitution actually gives a command to Parliament, that the law we are making should ensure compliance, which means that it is not about punishment, but rather about providing a legal framework for state officers to behave well.

If we go particularly to Article 76(2), we will see that it is not a prohibition. It is not saying that you cannot have an account. It says you will have an account but in accordance with an Act of Parliament. So, the best thing we will be doing, as Parliament, is to look at this carefully and have a legal framework for state officers to have bank accounts. This is for a very good reason, because if you go out there, carrying a wad of cash, nobody will accept that money.

With those remarks, I beg to oppose.

The Minister for Education (Prof. Ongeru): Madam Temporary Deputy Chairlady, as the Minister for Education, I am privy to many issues and problems of students who must get money from their parents and, invariably, because of the way students are, it is very risky for parents to send a lot of money to them. Therefore, they are required to open accounts, into which parents remit money at the end of every month. So, if we do this under this law, we will be criminalizing the opening of an account. Therefore, I would go for the opting of having a comprehensive law which domesticates the section that requires us to operate accounts outside the country.

With those remarks, I beg to oppose the amendment.

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, let us move from this amendment. I want to put the question.

*(Question, that the new clause be read
a Second Time put and negatived)*

Hon. Members, we shall not go to Third Reading of the new clause since the question has been negatived.

(First Schedule agreed to)

(Second Schedule agreed to)

Third Schedule

Mr. Ethuro: Mr. Temporary Deputy Chairlady, I beg to move:-

THAT, the Third Schedule be amended in paragraph (3)-

- (i) by renumbering the second paragraph numbered as paragraph (2) as paragraph (3);
- (ii) by inserting the following new paragraph immediately after the renumbered paragraph (3)-

“(4) No member or member of staff of the Commission shall transact business with the Commission directly or indirectly”.

I do not need to explain that.

(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 inserted in place thereof be inserted, put and agreed to)

(Third Schedule as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Ethics and Anti-Corruption Commission Bill (Bill No.36 of 2011) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairlady (Dr. Laboso): Hon. Members, we are now going to consider the Employment and Labour Relations Court Bill of 2011.

THE EMPLOYMENT AND LABOUR RELATIONS COURT BILL

Clause 2

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 2 be amended-

- (a) by deleting the definition of “Court” and substituting therefor the following definition-

“Court” means the Industrial court established under section 4;

(c) by deleting the definition of “federation” and substituting therefor the following new definition-
“federation” means a registered federation of trade unions or employers’ organizations”;

(c) in the definition of “trade union”, by deleting the word “an” appearing immediately before the word “association” and substituting therefor the words “a registered”.

(Question of the amendment proposed)

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

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

(Clause 2 as amended agreed to)

Clause 3

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT Clause 3 be amended-

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

“(1)The principal objective of this Act is to enable the court to facilitate the just, expeditious and proportionate resolution of disputes governed by this Act”.

(b)in Subclause (3) by deleting the word “principle” and substituting therefor the word “principal”.

(Question of the amendment proposed)

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

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

(Clause 3 as amended agreed to)

Clause 4

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-

THAT Clause 4 be amended in Subclause (1) by deleting the words “Employment and Labour Relations Court” and substituting therefor the words “Industrial Court”.

Question of the amendment proposed)

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

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

(Clause 4 as amended agreed to)

Clause 5

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT Clause 5 be amended-
(a) in Subclause (1) by deleting paragraph (b) and substituting therefore the following new paragraph-
“(b) such number of judges as the President may, acting on the recommendations of the Judicial Service Commission, appoint.”;
(b) in Subclause (3), by deleting the word “less” and substituting therefor the word “more”;
(c) in Subclause (5), by deleting the word “members” and substituting therefor the word “Judges”.

Question of the amendment proposed)

Mr. Bahari: Madam Temporary Deputy Chairlady, the new Clause 5---
The Temporary Deputy Chairlady (Dr. Laboso): We are not yet there. If it is a new clause, we will do it at the end.

(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 5 as amended agreed to)

(Clauses 6 and 7 agreed to)

Clause 8

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 8 be deleted and replaced with the following new clause-

8.(1)The Judicial Service Commission shall appoint the following officer of the Court-

- (a) the Registrar;
- (b) the Senior Deputy Registrar, one or more Deputy Registrars and one or more Assistant Registrars, as the administration of justice requires;
- (c) such officers of the Court as may be necessary for proper functioning of the Court.

(2) The officers of the Court shall perform the administrative functions of the Court under the supervision and control of the Registrar.

(3)The Senior Deputy Registrar, Deputy Registrar or Assistant Registrar of the Court may perform such other functions of the Registrar as the Registrar may delegate generally or specifically.

(4)The Senior Deputy Registrar, Deputy Registrar of the Court or if there is more than one, the most senior Deputy Registrar shall act as Registrar of the Court whenever-

(a) the Registrar is for any reason, temporarily unable to perform the functions of the Registrar; or

(b)the office of the Registrar is vacant.

(5)The Registrar may delegate his or her administrative function to any member of staff of the Court.

(Question of the amendment proposed)

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

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

(Clause 8 as amended agreed to)

(Clause 9 agreed to)

Clause 10

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 10 be amended by deleting Subclause (2) and substituting therefor the following new Subclause-

“(2) The Registrar, the Senior Deputy Registrar, the Deputy Registrars, Assistant Registrars and other officers of the Court shall exercise such powers and perform such duties as are conferred upon them by this Act, the rules of the Court or any other written law.”

(Question of the amendment proposed)

(Question, that the words to be left

out be left out put and agreed to)

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

(Clause 10 as amended agreed to)

Clause 11

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 11 be amended in Subclause (3) (vii) by deleting the word “two” and substituting therefor the word “three”.

(Question of the amendment proposed)

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

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

(Clause 11 as amended agreed to)

(Clauses 12 and 13 agreed to)

Clause 14

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 14 be amended by deleting subclause (5) and substituting therefor the following new subclause-
“(5) In exercise of its power under this Act, the Court shall be bound by the national wage guidelines on minimum wages and standards of employment, and other terms and conditions of employment that may be issued from time to time by the Minister for the time being responsible for finance.”

(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 Chairlady (Dr. Laboso): Mr. Magwanga, you have a further amendment.

Mr. Magwanga: Madam Temporary Deputy Chairlady, I have a slight amendment. I propose a further amendment to the amendment to Clause 14, Sub-section 5; to substitute the word “shall” with the word “may.” Given that it is just an alternative resolution, it should not be a must. We agreed in the Committee that we use the word “may.”

(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 14 as further amended agreed to)

(Clause 15 agreed to)

Clause 16

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 16 be amended-

- (a) by numbering the existing clause as sub-clause (1);
- (b) by inserting the following new sub-clause immediately after the newly numbered sub-clause (1)-

“(2) An appeal from a judgement, award, decision, decree or order of the Court shall lie on matters of law only.”

(Question of the amendment proposed)

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

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

(Clause 16 as amended agreed to)

(Clauses 17 and 18 agreed to)

Clause 19

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 19 be amended by inserting the following sub clauses immediately after sub clause (3)-

“(4) For the purpose of dealing with any matter before it, the court may, by order in writing signed by or on behalf of the Court, require any person to-

- (a) furnish in writing or otherwise, such particulars in relation to such matter as it may require;
- (b) attend before it;
- (c) give evidence on oath or otherwise; and,
- (d) produce any relevant documents.

(5) An order made under Subsection (4) may include a requirement as to the date on which or the time within which the order is to be complied with.

(6) An order purporting to be signed by or under the authority of the judge conducting the proceedings of the Court shall be presumed, until the contrary is proved, to have been given by the Court.

(7) A person who –

- (a) without reasonable cause fails to comply with an order duly given under subsection (4); or
- (b) is required by an order made under subsection 4 to furnish information, to make any statement or furnish any information which the person knows, or has reasonable cause to believe to be false or misleading in material particular, commits an offence and shall on conviction be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both.

(8) If an order made under subsection (4) is directed to a –

- (a) firm or to a body corporate, every partner of the firm, and every director and officer of the body corporate shall comply with the order;
- (b) trade union, employers’ organisation or federation, every official or officer of the trade union, employers’ organisation or federation shall comply with the order.

(9) Where an offence is committed in respect of any order made under subsection (4), every partner, director, officer or official concerned shall be guilty of the offence unless they prove that-

- (a) the offence was committed without their consent or connivance; and
- (b) they exercised all due diligence to prevent the commission of the offence.”

(Question of the amendment proposed)

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

(Clause 19 as amended agreed to)

Clauses 20

Mrs. Noor: Madam Temporary Deputy Chairlady, after consultations with the Committee, we have decided to drop that amendment.

(The amendment was, accordingly, withdrawn)

(Clause 20 agreed to)

Clause 21

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 21 be deleted and replaced with the following new clause-

Representation
before the Court

21. In any civil proceedings before the Court or a subordinate employment and labour relations court, a party to the proceedings may act in person or be represented by a legal practitioner, an office bearer or official of that party's trade union or employers' organization and, if the party is a juristic person, by a director or an employee.

(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 Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I want to propose a further amendment to Clause 21. The Clause says: "In civil proceedings before the court."

I beg to move:-

THAT, the word "civil" be deleted and replaced with the words: "In any proceedings before the court".

(Question of the further amendment proposed)

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

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

(Clause 21 as further amended agreed to)

(Clause 22 agreed to)

Clause 23

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 23 be amended-

(a) in paragraph (b) (iv) by-

(i) deleting the words "one person" and substituting therefor the words "two persons";

- (ii) deleting the words “with a national character”;
- (b) in paragraph (b) (v) by-
 - (i) deleting the words “one person” and substituting therefor the words “two persons”;
 - (ii) deleting the words “with a national character”.

(Question of the amendment proposed)

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

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

*(Clause 23 as amended
agreed to)*

Clause 24

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 24 be amended in Subclause (1) by deleting the word “five” and replacing it with the word “seven”.

(Question of the amendment proposed)

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

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

(Clause 24 as amended agreed to)

(Clause 25 agreed to)

Clause 26

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 26 be deleted and replaced with the following new clause-

**Powers of the
Chief Justice.**

26. (1) The Chief Justice may, in consultation with the Committee, make rules for regulating the practice and procedure of the Court.

(2) without prejudice to the generality of subsection (1), such rules may provide for –

(a) regulating the sittings of the Court and the selection of judges for any

- purpose;
- (b) prescribing forms and fees in respect of proceedings in the Court and regulating the costs of and incidental to any such proceedings;
 - (c) prescribing the time within which any requirement of the rules is to be complied with ;and
 - (d) Any other matter required under this Act or any other written law

(Question of the amendment proposed)

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

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

(Clause 26 as amended agreed to)

(Clause 27 agreed to)

Clause 28

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-

THAT Clause 28 be amended by inserting the following new subclauses immediately after subclause (2) -

“(3) the Chief Justice may, by notice in the Gazette, appoint certain magistrates to preside over cases involving employment and labour relations in respect of any area of the country”;

(4) subject to Article 169(2) (a) of the Constitution, the magistrates appointed under subsection (3) shall have jurisdiction and powers to handle-

(a) disputes relating to offences defined in any Act of Parliament dealing with employment and labour relations;

(b) any other dispute as may be designated in a Gazette notice by the Chief Justice on the advice of the Principal Judge.

(5) Appeals on matters relating to employment and labour relations from the designated magistrate’s courts shall lie with the Court.”

(Question of the amendment proposed)

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

(Clause 28 as amended agreed to)

(Clauses 29 and 30 agreed to)

Clause 31

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:
THAT, Clause 31 be deleted.

(Question of the amendment proposed)

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

(Clause 31 deleted)

Clause 32

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 32 be amended-

- (a) by numbering the existing provision as Subclause (1);
- (b) by inserting the following new subclauses immediately after the newly numbered subclause (1)-

“(2) The persons who at the commencement of this Act are Judges of the Industrial Court shall be deemed to have been appointed under this Act.

(3) The persons who at the commencement of this Act are members of the Industrial Court shall be deemed to have been appointed under this Act.

(4) Every person who at the commencement of this Act is an employee of the Industrial Court not being under notice of dismissal or resignation shall on that day and subject to this Act, be deemed to be an employee of the Court.”

(Question of the amendment proposed)

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

(Clause 32 as amended agreed to)

Clause 33

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, Clause 33 of the Bill be deleted.

(Question of the amendment proposed)

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

(Clause 33 deleted)

(Clauses 34, 35 and 36 agreed to)

New Clause 5A

Mrs. Noor: Madam Temporary Deputy Chairlady, after thorough consultations with the members of this House and other stakeholders, the Committee has decided to drop its New Clause 5A.

(New Clause 5A dropped)

New Clause 7A

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move_ THAT, the following new clause be inserted immediately after Clause 7-
7A. (1) The remuneration and benefits payable to or in respect of Judges shall be a charge on the Consolidated Fund.
(2) The administrative expenses of the Court and other expenses of the Court in the discharge of its functions shall be paid from the Judiciary Fund established under Article 173 of the Constitution.

(Question of the New Clause 7A proposed)

(New Clause 7A read the First Time)

(Question, that New Clause 7A be read a Second Time, proposed)

(Question, New Clause 7A be read a Second Time, put and agreed to)

(New Clause 7A was read a Second Time)

(Question, that New Clause 7A be added to the Bill, put and agreed to)

New Clause 25A

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:- THAT, the following new clause be inserted immediately after Clause 25-25A. Subject to the provisions of this Act, the Committee shall, in consultation with the Chief Justice, make rules to regulate the conduct of proceedings in the Court and the subordinate labour and employment relations court, including, but not limited to-
(a) the process by which proceedings are to be brought before the Court and the content of that process;
(b) the period and process for noting appeals;

- (c) the taxation for bill of costs;
- (d) the fees payable and costs and expenses allowable in respect of the services or execution of any process of the court and the tariff of costs and expenses that may be allowed in respect of execution; and
- (e) all other matters incidental to performing the functions of the courts, including any matters not expressly mentioned in this sub-section that are similar to matters about which the Rules Committee of the Judiciary may make.

(Question of the New Clause 25A proposed)

(New Clause 25A read the First Time)

(Question, that New Clause 25A be read a Second Time, proposed)

The Minister for Lands (Mr. Orengo): Madam Temporary Deputy Chairlady, I find that new clause superfluous. If you look at Clause 26, which we have just passed, it says that; “The Chief Justice may in consultation with the Committee make rules for regulating the practice and procedure of the court”. Now, this one says: “The Chief Justice will make rules to regulate the conduct of proceedings in the court”. It is one and the same thing; the functions are exactly the same as in Clause 26. In fact, the provision in Clause 26 is broader, because it is about the entirety of the practice and procedure. That includes almost everything.

Dr. Khalwale: Madam Temporary Deputy Chairlady, we have listened to hon. Orengo, who is a senior advocate in this country; therefore, we do not see any problem and we shall accept his view. We, therefore, support his proposal that the new clause be withdrawn.

Mrs. Noor: Madam Temporary Deputy Chairlady, I accept the proposal; we have accepted the withdrawal the new clause.

(New Clause 25A withdrawn)

Schedule

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Schedule be amended-

(a) in paragraph 1(3) by inserting the words “ for reasons given in paragraph 2(b)” immediately after the word “organization”

(b) in paragraph 2(3) by deleting the word “five” and substituting therefor the word “seven”

(c) in paragraph 3 by inserting the following proviso at the end thereof-
“Provided that one member from the most representative employers’ organization and one representative from the most representative workers’ organization is present to form the quorum”

(Question of the amendment proposed)

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

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

(Schedule as amended agreed to)

Title

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, the title of the Bill be deleted and replaced with the following new title: "The Industrial Court Bill, 2011"

(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)

(Title as amended agreed to)

Clause 1

Mrs. Noor: Madam Temporary Deputy Chairlady, I beg to move:-
THAT, clause 1 of the Bill be amended by deleting the words "Employment and Labour Relations" and substituting therefor the words "Industrial"

(Question of the amendment proposed)

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

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

(Clause 1 as amended agreed to)

The Minister for Labour (Mr. Munyes): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Employment and Labour Relations Court Bill, 2011, and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*(The Temporary Deputy Speaker
(Dr. Khalwale) in the Chair]*

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, we have two Bills to report. So, we will start with the one on the Anti Corruption Commission.

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE ETHICS AND ANTI-CORRUPTION COMMISSION BILL

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the Whole House has considered the Ethics and Anti Corruption Commission Bill, Bill No.36 of 2011 and approved the same with amendments.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir---

The Temporary Deputy Speaker (Dr. Khalwale): Order, hon. Orengo! You must learn to catch the eye of the Speaker! Because hon. Orengo was the lawyer for the Chair in his Petition, he will give him that space.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, is this not the Third Reading now?

The Temporary Deputy Speaker (Dr. Khalwale): No, I thought you were on a point of order.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Ethics and Anti-Corruption Commission Bill, Bill No.36 of 2011, be now read the Third Time.

The Minister for Transport (Mr. Kimunya) seconded

(Question proposed)

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, first of all, I want to congratulate the House for the time it has spent on this particular Bill and gone through it with a tooth comb. I just wanted, as a matter of record, to say that the manner in which we have handled this Bill is in the spirit of the new Constitution. This

was to ensure that any legal processes that are undertaken by any Commission or Authority must be in line with the new Constitution. We abhor any attempt that would want to make Kenya a police State. That bit we got over it last year on 27th August, 2010. The spirit of the new Constitution is that there must be a dispersal of power and authority, so that even the President of this country cannot be the Speaker of this House. The President of this country cannot be the President of the Judiciary. So, Clause 11 of this Bill is in the spirit that there must be a dispersal of authority and, therefore, the investigatory authority that is donated to this Commission cannot be accompanied by another jurisdiction which empowers it to prosecute. Those two must be distinct. We have an office of the Director of Public Prosecution and all prosecutions should go there.

I beg to support.

Ms. Karua: Thank you, Mr. Temporary Deputy Speaker, Sir. While congratulating the Minister, I want to lament that the House has passed a much weaker statute than the one we had before. This Constitution is supposed to improve governance and the capacity of this country to fight corruption and impunity. This House has fallen short of the threshold in the Constitution. We have even failed to adequately provide for the transition and to ensure that the investigation files and all records are intact and passed on to the next Commission. It is sad that sometimes we are doing legislation and we are not allowing ourselves to, perhaps, be guided by the best interest of the country.

I beg to comment.

Mr. Kioni: Thank you, Mr. Temporary Deputy Speaker, Sir. I do not have to agree with hon. Karua, but I do agree that we have a weaker legislation. In my opinion, this House has enabled this country to have a Bill that will help fight corruption in a much fairer manner. For the record, it is important to note the fact that the attempt to ensure that there is a provision that the files that are under investigation were carried in the Bill, does not mean in any way that those files will not be handed over to the new Commission and work will continue.

It is important to clear the air that we are not here to try and cover up for the files that are already under investigation. Ideally, we were trying to put a law in place that will ensure that those files are investigated thoroughly and fairly without anything else by the side.

Finally, this afternoon, we had the occasion of hosting a delegation from the Netherlands which is here visiting. This delegation visited the Departmental Committee on Defence and Foreign Relations. One of the questions that were put to us, and it is important for the House to hear this, is that they were wondering whether the bug from the Middle East has caught up with us because the Members of Parliament have refused to pay taxes. We mentioned to them that, that may be that is the position that has been put across by the civil society. Earlier on in the day, we passed The Power of Mercy Bill. Let me warn this House that even after passing about nine Bills in a day, and setting a record which will be difficult to break in future, we should not expect any mercy from the civil society because of that record. They will continue bashing us, but we are now comfortable with it.

Thank you, Mr. Temporary Deputy Speaker, Sir.

Mr. Mututho: Mr. Temporary Deputy Speaker, Sir, I wish to join my colleagues in congratulating the Minister, who has, indeed, proved his critics wrong, in the sense that he has been able to deliver much faster and more efficiently than anybody ever imagined.

On this particular matter, we should have gone even deeper, to make sure that even cleaners, sweepers and everybody else in that building was “evacuated,” and then screened to see if they can pass the acid test, as anti-corruption officials. It is wrong for some people to climb into ivory towers and assume that they control corruption, while in their back yard people know that some officers there, some as senior as the Director, are more corrupt than corruption itself.

Mr. Temporary Deputy Speaker, Sir, in that respect, this law is timely, and the Minister should move expeditiously and have it applied faster than any other law, so that he can send home those officers and have genuine officers who are going to control this monster without political inclination.

I want to differ with hon. Martha Karua because she sat there. I can say without fear or favour that she personally issued instructions for certain persons who never agreed with her politically to be fixed. It is wrong for her to now come here and try to paint a different picture. It is a fact that this body is itself riddled with corruption. Therefore, it should be disbanded as soon as possible for a new one to be established, to ensure that it meets the required standards.

With those remarks, I beg to support.

Mr. Keter: Mr. Temporary Deputy Speaker, Sir, I also wish to join my colleagues in supporting this Bill, which we have passed. When I was out there watching news, I was a bit surprised to see the Vice-President of the Republic of Kenya saying that Parliament is plotting to kick out Lumumba. I wish the Vice-President was here, so that he could make those comments here. It is really sad for Members of Parliament to go out there and comment on what is happening in this House.

So, I believe that the Vice-President owes this House an apology. He should have been here so that, like hon. Martha Karua, he could air his sentiments on how Parliament is plotting to kick out Mr. Lumumba. We want people who can work and talk less. We have been hearing of five “hot” files due for action next week. We are waiting for next week to come.

Mr. Temporary Deputy Speaker, Sir, what we have done today is timely. We are sending the Director and the Deputy Directors packing, so that we can have new people who can work more and talk less. We have other officers there, who will be subjected to vetting. We want the five “hot” files to be forwarded to the Director of Public Prosecutions, so that he can act on them.

With those few remarks, I support.

The Temporary Deputy Speaker (Dr. Khalwale): Let us have the latest Member on the Back Bench, hon. William Ruto.

(Laughter)

Mr. Samoei: Mr. Temporary Deputy Speaker, Sir, I rise to join my colleagues in congratulating this House for what I think is a job well done. The House has made history in its discharge of the responsibility assigned to it by the Constitution. The House has actually taken its responsibility with the gusto and passion that is required of it.

Any gaps that may exist between what exists now as a Commission and what will exist after the signing into law of this Bill can be taken care of in regulations. The Minister concerned can issue regulations on how the old Commission is going to transit

into the new Commission. We should not divert the attention of the public that, indeed, there is any gap between the new Commission and the old Commission. This is because there are measures that can be taken which are perfectly within the law that will provide for that bridge between the old and the new.

With those few remarks, I beg to support.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, we will now receive the Report of the Employment and Labour Relations Court Bill (Bill No.37 of 2011).

THE EMPLOYMENT AND LABOUR RELATIONS COURT BILL

Dr. Laboso: Mr. Temporary Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the Employment and Labour Relations Court Bill (Bill No.37 of 2011) and approved the same with amendments.

The Minister for Labour (Mr. Munyes): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo) seconded.

(Question proposed)

(Question put and agreed to)

The Minister for Labour (Mr. Munyes): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Employment and Labour Relations Court Bill be now read the Third Time.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo) seconded.

(Question proposed)

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, once again I want to congratulate the House for having worked tirelessly since morning and this afternoon and cleared so many Bills. I do appreciate their hard work. It is well past 9.30 p.m. and I really want to thank Members for their endurance and for the quality of work that has been put in doing these Bills for the Kenyan people. I also ask that we recharge our batteries for tomorrow when we do the final phase between morning and afternoon, finish and give the Kenyan people the Constitution and enabling laws that they deserve so that we can celebrate together the anniversary of the promulgation of the new Constitution. I also want to thank our families who are waiting for us until past midnight and who also worry into the night about what will happen. I just want to thank

them for their patience and their commitment in supporting the hon. Members so that they can do justice to the legislation that we have before us.

Mrs. Noor: Mr. Temporary Deputy Speaker, I feel very happy that we were able to do justice to this Bill. I want to take this chance to thank the Minister, my Committee Members, other hon. Members who came and helped us to do justice to this Bill and other stakeholders who were involved in improving and adding value to the Bill. I believe that this Bill will improve industrial justice in this country.

Thank you.

(Question put and agreed to)

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

ADJOURNMENT

The Temporary Deputy Speaker (Dr. Khalwale): Hon. Members, I wish to reiterate the Speaker's announcement that refreshments are being served at the Lounge. So, do not rush to your house the way Mr. Kimunya has proposed.

Hon. Members, that concludes the business on the Order Paper. Therefore, the House stands adjourned until tomorrow, Friday, 26th August, 2011 at 9.00 a.m.

The House rose at 9.40 p.m.