

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Thursday 23<sup>rd</sup> February, 2012

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

### PRAYERS

### COMMUNICATION FROM THE CHAIR

#### BURIAL ARRANGEMENTS FOR THE LATE MINISTER FOR ENVIRONMENT AND MINERAL RESOURCES HON. JOHN NJOROGE MICHUKI

**Mr. Deputy Speaker:** Hon. Members, I have the following Communication to make. Following the passing on of hon. John Njoroge Michuki, the Minister for Environment and Mineral Resources, I wish to inform the House that the following burial arrangements have been made:-

1. On Monday 27<sup>th</sup> February, 2012 there will be a requiem mass at the Consolata Shrine Catholic Church, Westlands, beginning at 2.00 p.m.
2. On Tuesday 28<sup>th</sup> February, 2012, burial service for the late Minister will take place at Kangema Stadium followed by interment at his farm in Kangema, Murang'a.

Hon. Members are in particular encouraged to attend the requiem mass at the Consolata Shrine Catholic Church in Westlands, Nairobi to pay last respects to their departed colleague.

### PETITION

#### NON-ACCREDITATION OF ENGINEERING STUDENTS OF MASINDE MULIRO/KENYATTA/EGERTON UNIVERSITIES BY KENYA ENGINEERS REGISTRATION BOARD

**Dr. Khalwale:** Mr. Deputy Speaker, Sir, I rise to present a petition on behalf of the students of engineering at Masinde Muliro University of Science and Technology (MMUST), Kenyatta University (KU), and Egerton University.

In this petition, the students are seeking to address the issue of failure of accreditation by the Kenya Engineers Registration Board (KERB). They raise the issue of lack of enough qualified lecturers and lack of workshops, equipment and laboratories for learning. The petitioners pray as follows:

1. They would like to get accreditation by the KERB.
2. Their colleagues who were trained, examined and qualified in these universities be allowed to sit the KERB exam so as to be found to be fit or otherwise to practice engineering in Kenya.

3. The universities be compelled forthwith to employ qualified and fit lecturers.
4. The universities be equipped with laboratories and workshops in line with the specifications and directives of the KERB.
5. Through the Speaker of the National Assembly, the KERB be compelled to set a clear criterion and standard of training module for the purpose of vetting graduates of engineering for admission into the Board in line with other professional boards like the Law Society of Kenya (LSK) and the Kenya Medical Practitioners and Dentists Board (KMP&DB).
6. That the Commission for Higher Education (CHE), the Joint Admissions Board (JAB) and the Permanent Secretary, Ministry of Higher Education, Science and Technology be compelled to ensure that all universities offering engineering meet the minimum quality assurance for training, examining and qualifying engineering students.

The petitioners will forever pray.

They have signed this Petition, 198 of them from the three universities. I pray on their behalf.

**Mr. Koech:** Mr. Deputy Speaker, Sir, I want to sincerely thank hon. Dr. Khalwale for bringing this petition to this House. Indeed, the affected students who have graduated from MMUST, Egerton University and KU are over 500 in number. The Board has refused to recognize them. They have also appealed to my Committee and we have set 21<sup>st</sup> March, 2012 as the day when we have invited the KERB, the CHE, and MMUST to come and clearly shed light on the sufferings of these many Kenyans. Some of them even have First Class degrees, but they cannot practise because the KERB has not recognized them. It is unfortunate to note that the said universities continue offering the same courses yet the students are not being registered. Many parents have spent a lot of money. We require them for the development of this country. I pray that this august House listens to their petition.

**Mr. Imanyara:** Mr. Deputy Speaker, Sir, I rise to support the Petition and also thank hon. Dr. Khalwale for bringing it. At a time when this country is employing foreign engineers and at a time when we are crying about the unemployment situation of our youth, it is really a pity that the boards which are charged with the responsibility of meeting our professional standards are sleeping on the job. It is not just the KERB, rather other professional bodies are behaving the same way.

This Petition provides a good opportunity for them to learn that this Parliament will stand to intervene on behalf of the students and against organizations or professional bodies that do not meet their national obligations of ensuring that this country does possess a cadre of young people who are professionally qualified.

I support.

**Mr. Mwangi:** Mr. Deputy Speaker, I stand to support the Petition. It is saddening that graduates, especially from Maseno University have been moving around seeking hearing from the body that is supposed to register them, but the Ministry concerned has not taken any step to help them. These Kenyans are, therefore, suffering. I recall the MP for Kandara raising an issue here of foreigners being given jobs without their qualifications being questioned. They are offered jobs in this country and yet our young graduates are suffering. I hope the Minister for Higher Education, Science and Technology is also listening.

There is one university whose constituent college is in Kisii. The JAB has admitted students to do law and yet the college is not qualified to offer law. These issues are there. Our young students are suffering because the relevant bodies are not taking the right action. Could we

have the Government take appropriate action to save our young graduates who are suffering and who should be guided appropriately?

I support.

**Mr. Deputy Speaker:** Because of the constraints of time – you people understand the amount of substantive business that we have to do – I will only entertain two more contributions and then we proceed on.

**Mr. Mututho:** Mr. Deputy Speaker, Sir, I would like to thank hon. Dr. Khalwale for bringing this Petition. It seems there is a big problem facing over 200,000 students who are in our universities. This petition raises the issue of quality of equipment, professors, and ultimately the failure to register graduates in their respective professional bodies. These issues should not stop at the engineering faculties, but should spread to other professions, including the legal fraternity to ensure that the people graduating in this country do not end up in a situation similar to the Indian model where they will be good on paper, but not employable anywhere as far as their profession is concerned.

**The Assistant Minister for Foreign Affairs (Mr. Onyonka):** Mr. Deputy Speaker, Sir, I would like to thank hon. Dr. Khalwale for having raised such a weighty matter. This matter needs to be looked at by the relevant Ministry and departments to make sure that there is a comprehensive approach in solving this problem. The truth is that even though hon. Dr. Khalwale has raised the plight of the engineering students, many universities need to be given their own charters. Kisii University Campus has been in operation for the last 15 years. Why it has not been given its own charter is very unfortunate. The Ministry of Higher Education, Science and Technology needs to have a comprehensive approach of coming up with a way of solving this problem so that many of the outstanding issues including the Petition that has been presented by hon. Dr. Khalwale are sorted out.

**Mr. Keynan:** Mr. Deputy Speaker, Sir, I would like to thank hon. Dr. Khalwale. Education is a very important issue in the realization of development in any country. This country was recently voted the best in human resource capital in Africa. What this petition purports is that there must be some sort of disconnect between the policy makers, professionals, and the institutions that are charged with this. As a country, we must be prepared to solve this problem. For us to realize the kind of technological development that we aspire to reach as a country, we need to understand that this is the group that is going to be the backbone for any technological development. As leaders, we must stand firm with them. We must ensure that the relevant institutions are prepared to assist these young Kenyans.

**Mr. Deputy Speaker:** Fair enough. The Petition is committed to the relevant Departmental Committee which I presume is the Committee headed by hon. Koech.

### **PAPER LAID**

The following Paper was laid on the Table:-

The Compliance Report in form of quarterly economic and budgetary view for the period ending 31<sup>st</sup> December, 2011.

*(By the Minister for Nairobi Metropolitan Development)*

### **QUESTION BY PRIVATE NOTICE**

**Mr. Deputy Speaker:** Hon. Members, because of the times that we are going through in the sense that we have a lot of business to transact, I am going to limit any Question to a maximum of three supplementary questions.

Proceed, Dr. Munyaka!

#### CAUSE OF DEATH OF MR. CHARLES MAKAU MUTHOKA

**Dr. Munyaka:** Mr. Deputy 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 there is tension in Machakos town due to the unresolved cause of death of Mr. Charles Makau Muthoka while in police custody on the night of 31<sup>st</sup> January, 2012?

(b) Is the Minister further aware that the deceased has not been buried to-date awaiting police report on the cause of death?

(c) Why has the Police failed to arrest the council *askaris* who are alleged to have beaten and severely injured the deceased before booking him into Machakos Police cells where he died?

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

(a) I am not aware of the tension in Machakos Town. However, I am aware that on 31<sup>st</sup> January, 2012, a Mr. Makau Muthoka passed on while undergoing treatment at Level Five Hospital. The circumstances under which this occurred is that the Machakos Municipal Council *askaris* under the command of Sergeant Johannes Mutua arrested five alleged touts namely Willy Ngila, Makau Muthoka, Patrick Mutinda, Kyalo Kithome and Musendi Kilili. While escorting them to Machakos Police Station, the deceased escaped and was chased by the same council *askaris*. He was re-arrested and escorted to Machakos Police Station. While he was being booked, he complained that he had fallen down and was feeling unwell at that particular time. At around 10.10 p.m. of the same day vide OB No.78/31/1/2012 the deceased further complained that his condition was worsening and was rushed to Machakos Level Five Hospital where he was pronounced dead on arrival. Immediately, investigations commenced and statements were recorded. The post-mortem on the deceased was performed on 2<sup>nd</sup> February, 2012 but the family members were not satisfied with the outcome. Thus a second one was performed on 8<sup>th</sup> February, 2012. The outcome of the two differed prompting a third one which was performed by the Chief Government Pathologist on 13<sup>th</sup> February, 2012. I wish to table copies of the three post-mortem reports which were done on the late Makau.

(b) I am aware that the family of the deceased has not taken the body for burial. However, they have been informed that they are free to take the body for burial as the post-mortem has been conducted but they have declined for unknown reasons.

(c) Investigations into the incident have been finalized and the case file forwarded to the Director of Public Prosecutions for perusal and advice.

I have also instructed the Police Commissioner to go ahead and arrest the municipal council *askaris* and charge them in the court of law. That is what it is as at now. So, the rest can be done at any time with those council *askaris*.

**Dr. Munyaka:** Mr. Deputy Speaker, Sir, first of all, I want to thank the Assistant Minister for ordering the police to arrest the three council *askaris* who have been accused of causing the death of the victim. However, I want to disagree with him that there is no tension in

Machakos Town. There have been two serious demonstrations which have actually brought business in Machakos Town to a standstill. So, I want him to be informed that there is a lot of tension because of this death.

I would like the Assistant Minister to tell this House and Kenyans whether council *askaris* have the necessary training to do any arrests anywhere in the country.

**Mr. Ojode:** Mr. Deputy Speaker, Sir, as far as I am concerned, municipal *askaris* do not fall under my docket but if any reinforcement officer arrests anybody for contravening any by-law, the only thing they need to do is to ask the regular police, the administration police or any other disciplined force to do the arrest. This has been a trend in majority of the councils and I want to say that they are not allowed to arrest anybody. They are also not allowed to beat anybody who has been arrested! That is why I am going to arrest these council *askaris* to show the public that they contravened the law! In fact, the arrests will be done before Monday!

**Eng. Maina:** Mr. Deputy Speaker, Sir, the Assistant Minister has said that he intends to arrest the *askaris* and he says that things are underway to arrest them. This matter occurred on 31<sup>st</sup> January, 2012. So, it is surprising for him to come to the House to say that he has plans to arrest the *askaris*. How certain can this House be that you will arrest them when you are just talking about plans? When can you confirm to this House that the *askaris* would be arrested? Could you confirm that they will be arrested today? **Mr. Ojode:** Mr. Deputy Speaker, Sir, this is a very sensitive issue because it involves death. So, due process must also be allowed. We need to know who those *askaris* are. Now that we have identified them, I have instructed the Police Commissioner to do the arrest. I want to assure the Questioner that those *askaris* are going to be arrested before Monday. I know, now that you have brought the Question here, they are going to hide or go underground but the Government will make sure that they are arrested and taken to court.

**Mr. Deputy Speaker:** The last supplementary question, Dr. Munyaka!

**Dr. Munyaka:** Mr. Deputy Speaker, Sir, my interest is only to find out why the police had to book in this suspect when he had said that he had been injured and was unwell. Why did they have to book him in instead of taking him to hospital?

**Mr. Ojode:** That is a good question. Any arrests done outside by anybody else other than the police must be booked when they are taken to the police station and that is why we have an OB number. He was not taken into the cells. When he complained, the police took him to Level Five Hospital but we must book all those who are arrested.

## ORAL ANSWERS TO QUESTIONS

### *Question No.1192*

#### WATER SHORTAGE FOLLOWING CONSTRUCTION OF RAGATI DAM

**Eng. Maina:** Mr. Deputy Speaker, Sir, I beg to ask the Minister for Water and Irrigation the following Question by Private Notice.

(a) Is the Minister aware that since the construction of Ragati dam, the River Ragati has dried up and residents lack water for domestic and commercial use?

(b) Could the Minister state how the dam was designed resulting in the above situation?

(c) What urgent measures will the Ministry take to solve the problem of water shortage in the area?

**The Assistant Minister for Water and Irrigation (Mr. Waititu):** Mr. Deputy Speaker, Sir, I am aware that River Ragati is experiencing considerable low flow due to the long dry spell being experienced in the area and over- abstraction of water from the river by community based projects for domestic and irrigation purposes. Some of the water abstractions are illegal. The dam was designed according to the recommendations in the guidelines for design and construction for dams and pans in Kenya, and the provision to maintain environmental flow within the river course was allowed during design and construction of the dam. My Ministry held a meeting on 20<sup>th</sup> July, 2011 with the Community-Based Projects officials abstracting water from the river and the following measures were discussed and agreed upon to save the situation:-

- (i) Installation of measuring flow control devices at all abstraction points;
- (ii) Issuance of irrigation orders to regulate abstraction by Water Resources Management Authority (WARMA);
- (iii) Audit and vetting of all abstraction water works for proper monitoring and rationing of water supply.

Mr. Deputy Speaker, Sir, after the above measures were taken, and environmental flow has been maintained within the river course, my Ministry is planning to supply the western side of Mathira Constituency with water from the dam.

**Dr. Khalwale:** On a point of order, Mr. Deputy Speaker, Sir. Is the Chair satisfied that the Assistant Minister is answering this Question when, in fact, in part (c) he was asked what urgent measures he is going to take to solve the problem of water shortage but in his answer he is saying that they have agreed on a programme of rationing water supply. If he has gone there to ration water supply, is he solving the problem of water shortage? Is the Chair satisfied that he is answering the Question?

**Mr. Deputy Speaker:** Mr. Maina, proceed and ask your supplementary question.

**Eng. Maina:** Mr. Deputy Speaker, Sir, the question was quite clear. There is nowhere in the world where people proclaim to be designers of dams and yet they make a river dry downstream. That is the situation we are facing. This dam is in the forest. In 2009 your Minister came to this site and promised that tanks will be built along the way to make sure that there are reservoirs at the balancing tanks but nothing has been done. What is happening is an environmental disaster. There is no water going downstream and that is a very serious matter. Since your design is wrong and you committed a mistake by designing a dam such that there is no water flowing downstream, can you tell this House that you are going to built the reservoirs you promised, to ensure that there is water downstream for the people?

**Mr. Waititu:** Mr. Deputy Speaker, Sir, while I appreciate the concern of the hon. Member, what he has forgotten is that there are so many people using the water from the river and only a small amount is flowing to the dam. Actually that is the main problem and there has also been a long spell of drought. We have not had rains in the area for some time.

**Eng. Maina:** Mr. Deputy Speaker, Sir, it is not fair that the Minister should go ahead and confuse this House by stating things that are not correct. I have just told him that the dam is in the forest and there is no water flowing downstream. So, there are no people abstracting water for irrigation as stated. That is incorrect information. There is no water flowing downstream and consequently, there is no way that people can be using water from a river which is not flowing. Could he, please, stop confusing the House and address the matter?

**Mr. Deputy Speaker:** Are you sure you are ready to answer this Question?

**Mr. Waititu:** Mr. Deputy Speaker, Sir, I think everybody is aware that we have had a long spell of drought. That is the main problem. There is no water flowing to the dam right now because of the drought.

**Mr. Deputy Speaker:** You do not seem to know that the dam is actually inside a forest. You have just said that there is utilization of the water upstream and that is why there is no water downstream

**Mr. Waititu:** It is also true that there are some people using the water upstream.

**Mr. Deputy Speaker:** Where, in the forest?

**Mr. Waititu:** Near the forest.

**Mr. Kioni:** Mr. Deputy Speaker, Sir, I am sure that the Assistant Minister is aware that the Mau Mau left the forests. So, there will not be anybody using the water upstream. However, is he in order to tell us that there has been a long dry spell when we actually had excessive rain in this region? The problem cannot be assigned to a dry spell that has not been there, unless the Assistant Minister is able to specify.

**Mr. Waititu:** Mr. Deputy Speaker, Sir, the information I have is that we have had a meeting with the Community-Based Organizations (CBOs) there – the ones that are abstracting this water – on 20<sup>th</sup> July and all the measures were agreed upon with the people who are abstracting that water for irrigation purposes. There was a proper arrangement with the people there.

**Mr. Deputy Speaker:** Are the arrangements working now?

**Mr. Waititu:** Mr. Deputy Speaker, sir, according to us, it is working honestly. It is only that we are waiting for the rains to come so that there can be a lot of water.

**Mr. Deputy Speaker:** Yes, Mr. Charles Kilonzo!

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, is the Assistant Minister in order to keep on avoiding answering the Question? When you ration water, you ration it because there is a shortage. When Ndakaini Dam was constructed, the amount of water flowing downstream on Thika River was substantially reduced. What the Government is doing now is to construct what is known as “Yatta Dam”. What the hon. Member is asking the Assistant Minister is; can the Government consider putting up more dams downstream so that the shortage of water is contained?

**Mr. Deputy Speaker:** Is it more reservoirs or more dams? Or are they one and the same thing?

**Mr. Waititu:** Mr. Deputy Speaker, Sir, what I have just said and I have told the hon. Member is that we are planning to construct another dam called “Hombe” in Mathira Constituency. This is a different dam from this one. This is because of the availability of water to supply the dam.

**Mr. Deputy Speaker:** The last supplementary question on the same, hon. Ephraim Maina!

**Eng. Maina:** Mr. Deputy Speaker, Sir, from the proceedings in the House, I will ask you to direct that the Assistant Minister goes back, comes back and gives the true picture to this House. He should also give an undertaking to protect the environment and the lives of the people downstream, rather than the circuiting he has been doing around here. I request you to direct that he comes another day to the House with a proper answer. I request that he does that by Wednesday, next week.

*(Applause)*

**Mr. Waititu:** Mr. Deputy Speaker, Sir, while I appreciate what the hon. Member is saying, he also needs to appreciate the fact that we have had a long spell of drought and there is nothing we can do there because we do not have water right now.

**Mr. Deputy Speaker:** Order, Mr. Assistant Minister! We had a long spell of drought, yes, but we also had a lot of rain after the drought! The rain was such that the reservoirs, even in the arid areas do have water today as we talk.

**Mr. Keynan:** On a point of order, Mr. Deputy Speaker, Sir. On the face of it, it seems that this project did not undergo a serious Environmental Impact Assessment (EIA) and this project did also not undergo a serious feasibility study. Is it in order for the Assistant Minister to mislead the House that there was a long spell of drought when we know that for the last six months this country had a lot of rain? Would I be in order to request that this Question is answered next week so that the substantive Minister can respond to it because this is a very sensitive issue? Water is life.

**Mr. Deputy Speaker:** Order! Hon. Assistant Minister, the Chair is satisfied that your answer is not adequate!

*(Applause)*

You need to go back to your Ministry and, indeed, if your Minister did pay a visit to the place and undertook to implement a raft of measures, she should have been here to tell us exactly what those measures were and how much success has been achieved in the process.

The Chair directs that this Question be listed on the Order Paper on Wednesday, next week in the morning. The Chair also directs you to come with an adequate and comprehensive answer that essentially will put to rest all these concerns that have been raised by hon. Members.

*(Applause)*

**Mr. Waititu:** Most obliged, Mr. Deputy Speaker, Sir.

*(Question deferred)*

**Mr. Deputy Speaker:** Next Order!

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

Order, hon. Members! We are only taking the Statement from the Minister and we are not taking any other statements. I do understand that there are a number of statements that hon. Members would wish to request and also Ministers would wish to issue, but today, the decision taken by the Chair is that we shall not entertain any statements because of the nature of the Business we have to transact except the one from the Deputy Leader of Government Business in the House!

Proceed, hon. Kimunya!

## MINISTERIAL STATEMENT



BUSINESS FOR THE WEEK COMMENCING 28<sup>TH</sup> FEBRUARY, 2012

**The Minister for Transport** (Mr. Kimunya): Thank you, Mr. Deputy Speaker, Sir. I wish to make the following Statement with regard to the Business for next week pursuant to Standing Order No.36(4).

Next week, the House will conclude debate on the following Bills, namely; the Committee of the Whole House on The County Governments Bill, Bill No.1 of 2012; The Intergovernmental Relations Bill, Bill No.2 of 2012 and The Transition to Devolved Governments Bill, Bill No.3 of 2012. We will also be considering the Second Reading of the Land Registration Bill, Bill No.4 of 2012; The National Land Commission Bill, Bill No.5 of 2012 and The Land Bill, Bill No.6 of 2012. All this is obviously dependent on the progress we make today and the decision that will be taken on the Motions before the House.

Mr. Deputy Speaker, Sir, the House is also expected to deliberate on the Motion to adopt the Report of the Departmental Committee on Justice and Legal Affairs on the Independent Electoral and Boundaries Commission (IEBC) Report on the proposed boundaries of constituencies and wards.

Finally, the House Business Committee will be meeting on Tuesday, 28<sup>th</sup> February, 2012, to consider Business for the rest of the week.

Thank you, Mr. Deputy Speaker, Sir.

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. I agree with the programme of next week. Even though this has been discussed elsewhere, I think this country needs to be told when or around what time The Finance Bill will be brought to this House so that it is debated. I think it is likely to cause panic because when the Minister for Finance was reading this year's Budget, he did indicate that there were proposals in The Finance Bill that would affect the economy. Our failure to pass the Finance Bill will disorganize the entire economy. So, this country needs to be told around what time we are likely to debate The Finance Bill after we have sorted out the differences which were there.

**Mr. Deputy Speaker:** Yes, Mr. Minister!

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, like I said, we will be meeting on Tuesday to deliberate on the decisions regarding House Business for the coming week. However, hon. Members may recall that this Special Session was called to conclude debate on the constitutional matters, and the House Business Committee took the view that we give priority to the Bills that have a constitutional deadline, the IEBC Report and, thereafter, we then get back to the ordinary Business of the House which includes The Finance Bill. I am sure we have received indications from the Minister for Finance that, indeed, he will be approaching the House Business Committee to allocate time for it to appear on the calendar.

**Mr. Mbadi:** On a point of order, Mr. Deputy Speaker, Sir. I agree with the Deputy Leader of Government Business that, truly, we came basically to discuss the constitutional implementation Bills. However, it should also be recognized and appreciated by the Government that the Finance Bill has a deadline of 31<sup>st</sup> December, which has already passed. So, any tax collection at this time – if the Government still bases it on the proposed Finance Bill – from January 1<sup>st</sup> to date - is illegal. We would like to get an indication from the Government on how they will fund the shortfalls if they will not have The Finance Bill passed in good time.

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, as much as I appreciate the concerns by the hon. Member, I would rather we cross that bridge when we get there. I think the important thing is that we are sensitive to the issues. The Ministry of Finance

has indicated that they are now ready and all we need is that, within the House Business Committee, to allocate a time immediately we dispose of the current Business that is of a constitutional nature. All those issues will be resolved at the time we come to discuss The Finance Bill.

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

**Mr. Deputy Speaker:** Is your point of order on the same issue, Mr. Ruto? What is your point of order?

**Mr. Ruto:** Mr. Deputy Speaker, Sir, the Deputy Leader of Government Business was just giving us an overview of Business for next week. I thought that, in good faith, he would also have taken a little bit of time to apologise for the absence of the entire Government in the morning that led to the closure of Business prematurely!

*(Applause)*

There should also be an apology from the Government because they are asking us to extend time, and when we extend time, they absent themselves from the Business of the House! They go about doing their business out there and we do not know what it is. So, there is need for a Statement from Government or a commitment to respect Parliament!

Mr. Deputy Speaker, Sir, I had asked that the Leader of Government Business do explain to us how they intend to manage the process of passing the Bills – the timelines. Could they table on the Floor of the House a programme showing how they intend to manage this process so that we do not keep on being called to come here on Saturday, Sunday, Monday, and also at night?

*(Laughter)*

Mr. Deputy Speaker, Sir, we need an apology! Let him confirm that the entire Government is here before he asks us to transact any Business for him!

**Mr. Deputy Speaker:** Next Order!

*(Loud consultations)*

Order, hon. Members! We have a Supplementary Order Paper and the Business we are going to transact now is Order No.8 on the Supplementary Order Paper, which is in possession of every hon. Member!

Proceed, Mr. Deputy Leader of Government Business in the House!

## **PROCEDURAL MOTION**

### **EXTENSION OF SITTING TIME**

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

THAT, notwithstanding the provisions of Standing Order No. 20(2), this House orders that the sitting time of today's sitting be extended from 6.30 p.m. to 11.00 p.m.

Mr. Deputy Speaker, Sir, as hon. Members will be aware, we have a very weighty Motion this afternoon that is proposed by the Constitutional Implementation Oversight Committee (CIOOC). We also have some Bills that should have been discussed in the morning in the Committee Stage and the Business was shifted to this afternoon to load onto what was to be discussed this afternoon. When we discussed, as the House Business Committee, we thought that it would be prudent to---

**Mr. Imanyara:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Deputy Leader of Government Business to move a Motion to extend the sitting of the House to recover time that was lost this morning without first explaining where they were and without offering any form of apology? Is it in order?

*(Applause)*

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I was going to come to exactly that point and if hon. Imanyara will bear with me, I will be getting into exactly the same issue.

Mr. Deputy Speaker, Sir, as you recall this morning, we had some of the Business that had been slotted to be discussed being adjourned to the afternoon. There was also a matter that was supposed to appear in the Committee that was rescheduled to the afternoon because some of the amendments were not quite ready and had not been agreed upon. However, in terms of business on the Motions, I want to take this early opportunity to extend our apologies as the Front Bench. As hon. Members are aware, due to the sad situation we are in on the passing on of our colleague, we had a meeting with the family to discuss some of the arrangements and to facilitate how Parliament will be involved. Some of us were in that meeting.

It was not because of any other----

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. The hon. Deputy Leader of Government business has apologised to the House.

However, under his procedural Motion, he is moving that we allow a sitting up to 11.00 p.m. However, he has not indicated what he wants us to do. Does he want us to continue until we finish what is on the Order Paper? I can see in the Supplementary Order Paper that there is Order No.10 and order No.11, which is the subject of the outcome of Motion No.9. I thought we would, probably, be in order if we could prioritize to first dispose of Order No.9, so that it can then determine whether we need that extension or not. Nevertheless, the procedural Motion No.8 should have clearly told us what the purpose of the extension is. He is seeking extension of sitting for us to do what?

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I have moved the Motion. I am explaining why we need the Motion.

If the hon. Member for Chepalungu would be patient, he would be able to follow through exactly why we need to extend our sitting time to 11.00 p.m. I did explain we had business in the morning, which we shifted to the afternoon sitting. We also have business that is slotted for this afternoon. When we combine the total business for the morning and what is scheduled for this afternoon, we would realize we actually need extra time to transact and complete all that

business. Notwithstanding whatever decision the House will make, first of all, whatever we have slotted for today, it would be good that we finish it today.

Hon. Members, in their usual magnanimity, have extended time in the past. We have worked up to midnight. We have also worked weekends. We have sat all those days to complete the business that is before us. It is based on that understanding that the hon. Members are willing to go the extra mile to finish the business, notwithstanding the fact that they might be inconvenienced as much as possible.

Without anticipating debate, should we agree to extend by extra time, and hon. Members also finish all the business at hand, we do not have to be here until 11.00 p.m. When 11.00 p.m. finds us here, wherever we shall be, we shall continue in the next sitting day. So, again, 11.00 p.m. is based on the Members endurance as in the past.

I believe it is, perhaps, not a matter we need to belabour much on. I would beseech this House that let us agree in our usual style. That we allocate as much time as possible to completion of the business before us, so that we can cover as much ground as possible. If we need to seek an extension, it is for the outstanding matters, rather than for the matters that we can dispose of immediately. I believe we have done this as a House Business Committee after consulting with as many people as possible.

Committees have been working extra hard to bring business. It is them who have brought all these business. Members will realize from the Order Paper that the number of amendments on the Land Bills, County Government, and Devolution Bills are quite voluminous. It will be important if we can finish at least devolution issues, so that the matter of devolution may start as early as next week. We want to give them the enabling framework to implement devolution. Hon. Members will agree with me that even as we work on all the other outstanding issues, devolution is critical. It is a new thing we are getting into. Let us get ourselves as much as possible, from next week to start the implementation, rather than wait for another 30 or 60 days to complete what we have already agreed on. It has been agreed in the Committees and it is before us now to make a decision on it today.

Mr. Deputy Speaker, Sir, I believe that we have responded to the Members' wishes to finish as much business as possible from the House Business Committee. The matter is now before the House. I would like to urge the House that let us in the usual manner dedicate some extra hours today. Let us finish what we can and give Kenyans the devolution system from as early as this weekend.

Mr. Deputy Speaker, Sir, with those words, I beg to move, and request hon. Githae to second.

**The Minister for Nairobi Metropolitan Development** (Mr. Githae): Mr. Deputy Speaker, Sir, I beg to second.

*(Question proposed)*

**Mr. Chachu:** Mr. Deputy Speaker, Sir, I stand to support the Motion. It is a unique time and we have to go an extra mile and do what is necessary to implement the Constitution. Some of my colleagues argue that the Executive have not done their bit. However, two wrongs do not make a right.

Mr. Deputy Speaker, Sir, I think it is time for us to work the extra hours and, if need be, even work on the weekends to ensure that this Constitution is implemented. We have a duty to our constituents. This is a very timely Motion. There are a lot issues on the Order Paper. There

are more than six critical Bills that need to be passed. In the interest of efficiency and for us to be able to implement this Constitution in a timely manner and to beat the necessary constitutional deadlines, I think it is important we support this Motion. I strongly support this Motion and urge my fellow colleagues to support it, even though the Government has not done what is necessary to expedite the implementation of these Bills.

I beg to support.

**Dr. Eseli:** Mr. Deputy Speaker, Sir, I rise to support the Motion and tell the Executive that; “what looks like a duck, walks like a duck, quacks like a duck, must be the executive”. This is because it does not follow a straight line and it keeps on waddling.

The Executive has held Parliament at ransom during this constitutional implementation period in the sense that they bring these Bills late to force us into situations like what we are in now. They are just using the loophole in the Constitution that blames any failure to implement a Bill on Parliament. Parliament risks being dissolved if they do not pass certain Bills by certain deadlines. But there is no deadline as to when the Government should present those Bills.

I think, as a House, we need to come up with a way of forcing the Executive to bring these Bills here on time.

With those few words, I beg to support.

*(Question put and agreed)*

## **MOTION**

### **EXTENSION OF PRESCRIBED PERIOD FOR ENACTMENT OF CONSTITUTIONAL BILLS**

THAT, aware that pursuant to Article 261(1) of the Constitution and the Fifth Schedule thereof the following Bills now pending before this House, namely: the Land Bill, 2012, the Land Registration Bill, 2012 and the National Land Commission Bill, 2012 are required to be enacted by this House not later than 27th February 2012; further aware that these Bills seek to implement critical and fundamental aspects of the Constitution; noting that owing to delays in the drafting, publication and presentation of these Bills to the House the time left before the 27th of February 2012 is not adequate for this House to effectively study and scrutinize the Bills and engage with the public as Required by the Constitution and debate and pass the Bills into law; noting that the Honourable Speaker of the National Assembly has certified that there exist exceptional

Circumstances in accordance with Article 261(3)(b) of the Constitution, this House resolves to extend the period prescribed in respect of the enactment of these Bills for a period of sixty days commencing on 27th February 2012.

*(Mr. Abdikadir on 23.2.2012)*

*(Resumption of Debate interrupted  
on 23.2.2012)*

**Mr. Deputy Speaker:** Proceed, hon. Mutava Musyimi. You were on the Floor.

**Mr. Musyimi:** Mr. Deputy Speaker, Sir, I was on the Floor when this matter was being debated. With your indulgence, I want to take this opportunity on behalf of the Departmental Committee on Lands and Natural Resources to also send our condolences to the family of the late hon. John Michuki. As this honourable House knows, this is one of the Ministries that we supervise. We had a very fruitful working relationship with the hon. Minister. Hon. Michuki was a formidable mind. He was indefatigable in his commitment to public duty and was a true friend. He also had a great sense of humour. Indeed, I remember in the last conversation I had with him, he told me, when he heard of my political ambition, in the Kikuyu Language that: *Gutiri ngware nini mahuria-ini*, which means that all players are equal when it comes to pursuit of opportunity and serious objectives in life.

So, we commend hon. Michuki to the Almighty and take this opportunity to condole the family as a committee and on behalf of Gachoka Constituency that I am honoured to represent.

Mr. Deputy Speaker, Sir, in respect to the matter at hand – the Motion that we are debating - I beg to support that we extend the sitting of this honourable House for the time requested. I wish to say this: The issue of land is a very serious issue in Kenya. I still remember when the clashes started way back in October 1991, and throughout the period and until the nation erupted in 2008, we have had serious land governance issues that were going on unattended for the longest time.

Mr. Deputy Speaker, Sir, it is important that we give his honourable House and our people the time to engage on a matter that is very key and central. We thank this honourable House for the land policy. We thank our people for enacting a new Constitution; I think we must admit that the enjoyment of a new Constitution is as good as the enabling legislation that we enact. It is absolutely crucial that we respect that Constitution in terms of giving our people the time to engage and participate, so that we can have quality legislation.

Mr. Deputy Speaker, Sir, the Executive - and in this I thank the hon. James Orengo - has done its part in giving our people the time to participate in the Bills that are before us but, unfortunately, this honourable House, through its committee, would have wished to have the opportunity to also engage the public. Indeed, only yesterday I was talking to the Clerk of the National Assembly, and we were planning to have the hearings out in the provincial headquarters, so that people will have time to look at the Bills and time to also engage them. The trouble is that we are sitting here today with Bills on the Order Paper because the Executive has dithered in this matter. The Executive has prevaricated. The Executive, I think, has schemed and we are now ambushed, and are having to be now asked to enact Bills without the necessary time.

Mr. Deputy Speaker, Sir, my committee did the following - I will say this and then sit down. We feared the Executive in respect of these Bills; so, we organised and went to Naivasha. In Naivasha, we called the Commission for the Implementation of the Constitution (CIC), the Land Reform Commission and other respectable members of the civil society under the sponsorship of the State University of New York (SUNY). We went through the draft Bills as we had them at the time. They sat together and they were able to enrich the Bills that we have today. As I speak here today, we have already met twice at County Hall with our people. We met last week and yesterday; even now as I speak here, the Law Society of Kenya (LSK), the CIC and---

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. It is very apparent that we are not going anywhere with this Motion, purely because it appears hon. Members have either been dewhipped by the Government or otherwise. As a member of this committee, I would wish to ask that we consider withdrawing the Motion purely because the numbers do not allow and we

will be wasting the time of this House if we continue debating this Motion for the next one hour or so. We would rather move on now to the Bills because it is very obvious we will not raise the numbers to put the Motion to the vote.

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. I think we had deferred this Motion to this afternoon because maybe we thought that the quorum would be better and, indeed, is better. So, it is only fair we deal with this Motion. We should go ahead and attempt, as a House, to the best of our ability and not withdraw the Motion when we have invested so much in it. We have been whipping hon. Members since morning and I think it is worthwhile to give it a shot and see how many the Government side can raise. In fact, I only see 25 hon. Members from the Government or Ministers and Assistant Ministers. I do not know where the rest are. I have counted all of them. I have been doing the counting since we came to this House. The Back Bench has been able to raise close to 70 hon. Members of Parliament. I do not know where the rest are. They are not at the burial of hon. Michuki. They are not anywhere. So, as we go on debating the Motion, could you instruct, or maybe advise, the Leader of Government Business, the Deputy Leader of Government Business and the third leader to go out and whip their Members? As we continue debating the Motion, hon. Members of the Front Bench should come and jam this House, the way they do when they have specific and most important business in this House.

**Dr. Eseli:** On a point of order, Mr. Deputy Speaker, Sir. I would like to associate myself with the sentiments of hon. Dr. Nuh; could we ask the Leader of Government Business, or the Deputy Leader of Government Business, to start whipping the Front Bench? If they continue this way, we will call their bluff! The Executive has failed to set an election date; if they continue this way, we will call their bluff and not pass these Bills, so that we go for an election. We can set an election date for them.

*(Applause)*

**Mr. Deputy Speaker:** It is the presumption of the Chair that, indeed, that the Government side has the capacity to whip itself, even in the process of discussion of a Motion. Thus, you will do justice to this country and its people by getting the requisite threshold to be able to pass this Motion. This is a constitutional Motion that needs a minimum of 147 hon. Members. That number has to be in this House before we go for a Division, and a division is a must. So, it is my humble plea and prayer that the Leader of Government Business, the Deputy Leader of Government Business and the Deputy Prime Minister give a firm undertaking that they will go out and whip their rank and file.

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, I wish to confirm to this House that from the moment the notice of this Motion was sent out, our Joint Whips have been at it; they have been communicating to every hon. Member of Parliament reminding them to be here. The members of the Executive have been reminded of this a couple of minutes ago; as many of them as possible are here. As we continue with the debate, the whipping will continue. At the end of it all, I think we ought to appreciate that each hon. Member of Parliament knows the importance of the matter under discussion; we expect that those who are physically in will be here.

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir. Is the Minister in order to mislead the House that the Front Bench, or the Executive side of Parliament, relies on the Chief Whips when we know that at times the Permanent Secretaries and the Head of Public Service

have been sending letters to whip hon. Members? Why should they rely on the Chief Whips and yet it is only Members of the Back Bench who support the Whips and not the Executive Members? Where is the Head of the Public Service?

**The Minister for Transport** (Mr. Kimunya): Mr. Deputy Speaker, Sir, if hon. Nuh was listening, I mentioned that the Whips have whipped every Member of Parliament; Members of the Executive have also been sent specific messages asking them to be here through the usual channels of communication of the Executive. So, both approaches are being used simultaneously; also every Member of Parliament has the responsibility to be here on a constitutional issue. We expect that the personal responsibility of Members of Parliament, the whipping of the Executive and the Members of Parliament will prick the conscience of the Members to be here for this historic Motion.

**Mr. Deputy Speaker:** It appears that it is the Chair's expectation that, indeed, you put your action where your mouth is. Judging by the number of Front-Benchers who are in the House now, barring the Attorney-General who is an ex-officio and does not have any right to vote, you are hardly 23 or 24. The Government side is supposed to have over 80 members. Where is the Government? That is hardly 20 or 25 per cent of your number. So, whereas you have given that undertaking, match it with action while the debate is ongoing.

**The Minister for Lands** (Mr. Orengo): On a point of information, Mr. Deputy Speaker, Sir. I just wanted to give information that it is not just the Whips but the Acting Head of Civil Service has been sending messages to Members of the Front Bench to come and I can show the message that has been sent to me.

**Mr. Musyimi:** Mr. Deputy Speaker, Sir, the sovereignty of this Republic belongs to the Kenyan people. It is not just the Back Bench that has been ambushed, but the people of this Republic. We got the Land Registration Bill, as a Committee, last week around Wednesday. We got the National Land Bill, which is the substantive Bill only two days ago. How are we, even as a Committee of this House, expected to transact serious business within about three days? That is the dilemma we are in and that is the tragedy of this discussion. The Executive is not being truthful on this matter. This ambush, dithering, prevaricating is absolutely deliberate. That is most unfortunate.

As I sit down, because of the shortage of time, the CIC, the LSK and the Law Reform Commission are meeting just now to look at some of the recommendations made yesterday and last week in respect of this Bill, so that this Committee will do its best to have some serious recommendations in its attempts to amend these Bills, so that the amendments will not just be constitutional, but will also have some kind of quality. It is most unfortunate that the Kenyan people will not have the opportunity to make their input into these Bills. I, therefore, support this Motion and beg that we get the time required to engage our people. It is their country, their land, their Government and their Parliament.

**Mr. Deputy Speaker:** Order, Members! The Motion had been seconded and proposed. Hon. Musyimi is contributing. Anybody else who wants to contribute?

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, to show that the Government is against this Motion, they are not willing - even one Member from the Government - to contribute on this Motion. It is very clear that the Government is officially de-whipping. In the morning, none of the Members came. Only two Ministers showed up and this afternoon, they have done the same.

I support.

**Mr. Shakeel:** Mr. Deputy Speaker, Sir, I stand to support the Motion. I also want to add to the disappointment. I was wondering whether there is a procedure that we could use to take a



roll call today, so that the Kenyan public knows which of the Members and Ministers were not doing their duty today. I would like to have a roll call if it was possible. I am talking to the Press here; please make a note of the Members who are not here, so that the Kenyan public can know who is here.

**Mr. Midiwo:** Mr. Deputy Speaker, Sir, I rise to support the Motion. A lot is being made out of very little because this morning, while some of us were busy representing Parliament in another meeting, the Back Benchers accused us of not being dedicated to Parliament. Now, we have whipped people and people are walking in, for instance, hon. Were has just walked in, and the same Back Bench is now complaining instead of debating the Motion. In other words, they have an opportunity just to be negative to the Government even when it is not warranted.

I want to plead with my colleagues that this is important business of the House and very important to all of us and our constituents. Please let us debate even as we continue to whip people to come, so that we can meet the threshold. Nobody basically is opposing this noble Motion.

I support.

**Mr. Keter:** Mr. Deputy Speaker, Sir, I wish to support this Motion. Issues dealing with land in this country are so crucial that we should give these Bills ample time. If you check in the records, I had said that I was not going to be here this afternoon because I was supposed to be attending a very crucial meeting in my constituency, but I thought it wise to cancel that meeting to be here to support this Motion because it touches on the lives of so many people in this country. Therefore, I want to call upon all my colleagues, especially the Members of the Executive that when it comes to issues which really affect us, we should be serious. We have had problems from way back in the 1990's of people fighting over land and if we are not going to be careful to an extent that we rush without giving the Committees ample time, we may make mistakes which may affect us later on as leaders of this country.

With those few remarks, I beg to support.

**Mr. Nyamo:** Mr. Deputy Speaker, Sir, I rise to support this Motion. We must agree that a lot of our problems in the recent past go back to the question of land. If we are going to be in a hurry in trying to sweep under the carpet our land problems, we are going to create even a bigger problem in future. So, it is important that we extend time, give the Committee time to discuss this matter exhaustively and bring the amendments that are going to be helpful to the National Land Bill.

With those few remarks, I beg to support.

**The Assistant Minister for Regional Development Authorities (Mr. ole Metito):** Mr. Deputy Speaker, Sir, I stand to support this Motion. Land issues are very critical and if you remember, when we were debating the new Constitution, then the draft Constitution in this House, most of the amendments were on the Chapter on land although they did not go through on the Floor of this House. That tells you that there are so many critical issues on land matters. Therefore, we need to be given more time through this Motion to ventilate a lot of issues on land. Most of the conflicts in this country like the tribal clashes, as explained in the Ndung'u Report on illegal land allocation, have made land issues very critical. Apart from the contribution by this House, the public needs to be given at least 30 days to ventilate and give their views through the normal channels like Parliamentary Committees.

I also wish to join my colleagues in calling upon this House not to rush such important Bills. This is an opportunity for us to set matters right where land is concerned. Rather than

amending these laws later if they are passed in a rush, this is the first time to do our things fast and right.

I also want to support the extension. I call for the Members to be serious and give this Motion the numbers that it requires.

**The Minister for Trade** (Mr. Mwakwere): Mr. Deputy Speaker, Sir, probably more than any other issue in the country, the question of land is really emotive and has caused problems in virtually every corner of the country and more so, in Coast Province. We all know that the people of Coast Province are amongst the most peaceful people in the country, but they have even gone to the extent of fighting. People will remember *Kaya Bombo*, *Mlungunipa* and even know what would follow next. These very peaceful people had to take up arms to try to repossess their land. They failed. The only way out and the only salvation lies in land laws that will take care of not only their problems, but all land problems in the country. I agree with colleagues that it is not right for us to rush the discussion of the Bills, but give ourselves time and even consult far and beyond.

However, Mr. Deputy Speaker, Sir, it is wrong for the Back Bench to claim that the Executive is bringing the Bills at the very last minute. That is not right! I think the biggest mistake that we made – if I may call it a mistake for lack of a better word – is that we passed the Constitution that gave us specific guidelines on what to do. If we had not given ourselves that short period to present and pass Bills as contained in the Constitution, maybe, we would have had more time. So, it is important that we extend the time so that we can ventilate appropriately and make sure that this is right.

**Mr. Musyimi:** On a point of order, Mr. Deputy Speaker, Sir. Is the hon. Minister in order to mislead this House? The Executive has had about a year and a half to give us these Bills. It is now giving us about four or five days to enact these Bills. Is the minister in order?

**The Minister for Trade** (Mr. Mwakwere): Mr. Deputy Speaker, Sir, from experience, one year and a half is not enough time.

**Hon. Members:** Ah!

**The Minister for Trade** (Mr. Mwakwere): That is from experience! We are talking of laws of a nation; Bills that will guide the lifestyles of everybody in this country. That was just an assumption! That was just a projection and, as humans, we make mistakes. The projection was wrong!

**The Assistant Minister for Lands** (Mr. Rai): Bw. Naibu Spika wa Muda, nataka nianze kwa kusema naunga mkono hii Hoja na kuwauliza Wabunge wenzangu kwamba maswala ambayo tunaenda kuyazungumzia, maswala ya ardhi ni maswala nyeti. Kwa hivyo, tunaweza kuwa na haraka ya kukimbia kana kwamba pengine mwisho wa dunia utafika kesho. Lakini ieleweke kwamba kile tutakacho kipitisha hapa huenda kikaja kikawa na madhara baada ya sisi kumaliza kupitisha zile sheria zinazohitajika kuweza kutuongoza kwa mambo ya ardhi.

Pengine Serikali italaumiwa kwa sababu ya muda wa mwaka mmoja na miezi minane ambayo imepita kwa kutoweza kuleta hii Miswada hapa. Lakini kumbukeni kwamba sheria ambazo zinahitajika kuletwa hapa ni sheria ambazo ni lazima tuhakikishe kwamba kila kitengo kimehusishwa ili kuhakikisha kwamba hatukumwacha mtu yeyote nyuma. Na kwa sababu tulikuwa tumechelewa na Kamati imekuja hapa na roho safi na kusema kwamba muda ambao pia wamepewa, wanahitaji wapewe zaidi, naona kwamba haitakuwa ni dhambi kupeana muda huo ili tupate kuhakikisha kwamba kila mtu amehusishwa. Hatutaki kufanya mambo kwa haraka. Matatizo ya ardhi yanayokumba watu wa Pwani ni mengi sana na tunahitaji tuwe na wakati wa

kutambua moja baada ya moja, ili tuone kwamba sheria ambazo zitapitishwa zitakuwa ni muafaka na zitaweza kutuongoza kwa kipindi cha maisha yetu ambayo yamebakia.

Kama kutoka mwaka wa 1901 tumekuwa tukiishi na hizi sheria ambazo ni zaidi ya karibu miaka 100 za kikoloni na tumeona yale madhara ambayo tumeyaona muda baada ya muda, na hasa kama tunakaribia kufanya uchaguzi, kwa nini turejeele makosa tena? Waswahili husema kufanya kosa si kosa, kurejeele kosa ndio makosa. Kwa sababu tumeombwa kwa nia safi, tupe muda tujaribu kuhakikisha kwamba kila mtu amehusishwa, naona kwamba ni swala la kuvumiliana na ni swala la kuelewana. Si swala la kunyosheana vidole vya lawama wakati kama huu. Kwa hivyo, naomba Hoja hii ikubalike na iwatosheleze Wakenya ili nafasi ipatikane.

Kwa hayo machache, naunga mkono.

**Prof. Sambili:** Mr. Deputy Speaker, Sir, I stand here to support the extension of the time for discussing this issue. This issue of land, as my colleagues have said, is extremely critical and we are dealing with it for the future of this country. I support that we get the extended time so that we can do justice to this issue of land. That is because we had problems in the past and the most serious issue that affects our people is land. So, I stand here to support the extension of the time for discussing this issue.

**Mr. Deputy Speaker:** Dr. Shaaban!

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

Order! The Chair needs to be gender sensitive! Proceed!

**The Minister for Gender, Children and Social Development (Dr. Shaban):** Bw. Naibu Spika, ahsante kwa kunipatia nafasi ya kuunga mkono Hoja hii. Kama walivyozungumza wenzangu ni kwamba maswala ya ardhi ni maswala nyeti sana na haswa kwa Wakenya kwa ujumla. Sisi tunaotoka Taveta na Pwani kwa ujumla, tunatarajia ya kwamba hili Bunge linaloheshimika yaani Bunge la Kumi, tutaweza kuzungumzia maswala ya ardhi na hasa sheria za kutulinda kwenye maswala ya ardhi ili tuweze kuhakikisha kuwa Wakenya watatoka kwenye yale matatizo waliokuwa nayo kwa sababu ya shida nyingi zilizotuweka kwa sababu ya sheria za kikoloni.

Kwa kawaida, sisi kwa sababu ya uraia wetu na hasa kama Wakenya, tumeshazoea ya kwamba mara kwa mara kwa sababu ya sheria nyingi zilizoko, tumeweza kuwapokonya watu ambao walikuwa wanatakikana kuwa na ardhi kwa sababu ya kutoelewa sheria nyingi zilizoko. Sioni haja ya sisi kukimbiza hizi sheria na kuzizungumzia kama hakuna muda wa kutosha. Wakenya wanatungojea pia turudi mashinani tuwaelezea haswa hizi sheria zina nini ili wakati tukikubaliana kupitisha, wawe wameelewa kuna nini.

Kwa hayo machache naunga mkono.

**Mr. Deputy Speaker:** Hon. Esther Mirugi!

**The Minister of State for Special Programmes (Ms. Mathenge):** Mr. Deputy Speaker, Sir, I think my name is Murugi; Mirugi is different!

**Mr. Deputy Speaker:** Fair enough; proceed!

**The Minister of State for Special Programmes (Ms. Mathenge):** Mr. Deputy Speaker, Sir, I rise to support this Motion of extending the time especially because our forefathers fought for the freedom of this country and for land. We have not resolved those issues. We have killed each other because of land. We are still killing each other for purposes of land. Even as I am trying to resettle the IDPs, I have issues as to where to settle them because everybody has an

issue of land. So, I think we need to extend the time and allow Kenyans to ventilate and express their views on issues of land.

Thank you!

**Mr. Deputy Speaker:** Ms. Chepchumba!

**Hon. Members:** Ah!

**Ms. Chepchumba:** Mr. Deputy Speaker, Sir, oh yes! We need to be given time to contribute to this important issue. I strongly support this Motion because land is very emotive. Land, as a factor of production, is limited in its nature. If you look historically at the issues that have been surrounding land, people have cried of historical injustices. Before Independence, we had people who did not have land not because they liked it, but because they were forced to move. So as we look at this critical Motion--- I speak with authority as the Vice-Chairperson of the Departmental Committee on Lands and Natural Resources. We need time to look at this important Motion. We need to be careful as Kenyans not to rush. What is the rush for? If you look at the Executive--- You also have to know that Kenyans are looking at all of us to provide a Bill where the stakeholders have given an input and where the public has been heard. So, as I support this Motion, there are weighty issues that need to be looked into.

**Mr. Deputy Speaker:** Dr. Laboso!

**Hon. Members:** Hapana!

**Mr. Deputy Speaker:** Order, hon. Members!

**Dr. Laboso:** Mr. Deputy Speaker, Sir, I want to begin by thanking you for being extremely gender sensitive today. I am sure it is because you know that the issues of land concern women; that it is women who suffer when people fight over land. It is women who have to run away with their children when people fight over land. I think we deserve to have enough time to ventilate on this issue of land. We want the public to ventilate. We want hon. Members to ventilate. We want each and every person to say, even the civil society that has been telling us that they have issues with it, let them come and have enough time to bring their views on board so that, finally, we will have a Bill that covers everybody's interest.

With those remarks, I beg to support.

**The Minister for Education** (Prof. Ongeru): Mr. Deputy Speaker, Sir, I feel privileged to make comments on issues concerning land. Land is one such resource, even for those of us who believe in creation, that was clearly demarcated as a resource for human consumption. Over the ages, issues of land have made nations and tribes to fight and separated families. It is those issues of land that we need to be given enough time to ventilate. I believe strongly that this may well be one area where we may come with an accord, and be the beginning of national integration and cohesion, once all the views have been integrated together in the form of a law reform on land. If we leave it in bits and pieces, it becomes a focus for fermenting trouble in this nation.

Mr. Deputy Speaker, Sir, I know, apart from being an hon. Member and Member of the Executive here, that many people will be watching us to see how we are going to handle this issue of land. That is because land was the basis upon which we got our Independence. Land has been elusive since the Independence time up to now. Courtesy of the Kenyans' support, we passed the new Constitution last year. We are now ready and willing to see how we elaborate the legal instruments that will govern the smooth administration of land as it is today. I would like to see people having confidence. There are those who have huge tracts of land and those with very small parcels of land. They would like to be assured that wherever they have settled, there will be no difficulty in them settling there because, first and foremost, they are Kenyans. They will understand that we are settling together because we have a common destiny.

Mr. Deputy Speaker, Sir, I strongly support this Motion. If there is one thing that is going to put this nation together, it is on how we agree on the land reforms and laws.

Thank you.

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Deputy Speaker, Sir, I asked for the Floor in order to clarify the perception that the Government would have any hidden agenda over this matter.

Mr. Speaker, Sir, it is true that on a spur, the Cabinet did meet over this Bill and I know that my learned friend, hon. Orenge, is ready to move. But I am also aware that land is so emotive that we would rather listen. Therefore, the Cabinet is prepared to listen. I want to confirm that I have issued a four-line whip today. The moment for reckoning is now because the country is watching. If there will be any Cabinet Minister or Assistant Minister who is not travelling with the President on the Somali Conference, and they are probably watching us now on television, I want to urge that they hasten and get to the Floor of this House now. I think this is very important. The importance of engaging the public---

**Dr. Nuh:** On a point of information, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Do you wish to be informed by Dr. Nuh!

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Yes, Mr. Deputy Speaker, Sir. He can inform me; he is my neighbour.

**Dr. Nuh:** Mr. Deputy Speaker, Sir, I just want to inform him that I have been handed a list by hon. Isaac Ruto, which has notable absentees like, hon. Raila Odinga, hon. ole Ntimama, hon. John Munyes, hon. Prof. Anyang'-Nyong'o, hon. Gumo and hon. Peter Kenneth. I am informed that most of them are within even the environs of Nairobi. It is only the President who is out of the country!

*(Laughter)*

**Mr. Shakeel:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order to give the impression that certain people who are not here, are not here on purpose? I have already seen Assistant Ministers walking out. Some of them are from the Coast. I have also seen certain other senior politicians walking out, knowing they are meant to be here. So, is it in order to mention the names of the Prime Minister and others as sabotaging?

**Hon. Members:** Name them!

**Mr. Shakeel:** Hon. Abu Chiaba has just walked out. Hon. Uhuru Kenyatta has just walked out!

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Order, hon. Members! The rules are very clear. You cannot discuss the conduct of your fellow Members of Parliament by mentioning their names without the requisite substantive Motion. So, Dr. Nuh was out of order. Hon. Shakeel is also out of order! If you want to give that information to the Leader of Government Business to specifically contact the Ministers that you notice are not here, then do it very privately with consultations and not as the business of the House.

Proceed!

**The Vice-President and Minister for Home Affairs** (Mr. Musyoka): Mr. Deputy Speaker, Sir, I should have began my presentation by joining the Deputy Leader of Government

Business in apologizing profusely to this House for what happened this morning. That is basically because of what happened; the death of the late hon. John Michuki. I was chairing a funeral committee at exactly 9.00 a.m. this morning. There are no hidden agendas over this matter. Therefore, if we can let the bygones be bygones with regard to what happened this morning, where the Front Bench was not looking so good, we owe it to this country. We want to offer an apology. Now that we are all here, I repeat my call. Even if there are some who may have walked out at this particular moment, I know that when the Division Bell gets finally rung, they will all come back to the House.

Mr. Deputy Speaker, Sir, I agree with you that it is not right to impute improper motive on the part of any leader; whether he or she is here or not. But this being the first major debate culminating in the two-thirds threshold, I think, as I have always said, it is incumbent upon this House to rise to the occasion and show leadership when it comes to the implementation of this Constitution. I do happen to know that the professional society, the Law Society of Kenya (LSK) and even the Chairman of the Law Reform Commission himself, Mr. M'noti, are clear when it comes to the quality of the Bills that are before this House. We need to do the best we can to correct those anomalies, so that we can give this country quality, considering that we fought for Independence, in the first instance, because of land.

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

**Mrs. Noor:** Thank you, Mr. Deputy Speaker, Sir. I would like to take this chance to also join my colleagues in supporting the Motion.

I want to just say that this House has made history before but we have also made some mistakes. After we rushed through the Constitution, there were a few critical issues that we wanted to amend. We wanted to enrich our Constitution because it is ours but some of us refused. We rushed through the Constitution and today we have a lot to say about it.

We also rushed through the Elections and the Political Parties Bills. We passed them. Today, the Acts have problems and some of us are already bringing amendments to them. That is because we were very careless as a House, and we did not look at many things.

Mr. Temporary Deputy Speaker, Sir, the Ethics and Anti-Corruption Commission Act also has a problem. That is because we rushed through the process. So, it is important for us to be keen this time round, because land is very important in this country. That is why people are killing each other all over the country. Therefore, it is important that today we take this matter very seriously.

The women of this country have a lot of interest in the Land Bill. We want to give women of this country a chance to talk about their issues. They want to say things on this Bill.

With those few remarks, I beg to support.

**The Attorney-General** (Prof. Muigai): Mr. Deputy Speaker, Sir, I stand to support this Motion.

I believe that good faith measures have been taken in this country by all people who have been involved in the process of drafting these Bills, but it is quite clear as we sit here this afternoon that these Bills require further work.

We have heard from the Law Society of Kenya (LSK) and other professional bodies. There are misgivings. They have written fairly elaborate comments. We cannot overlook those comments, coming from the very people whose business it will be to operationalise this law.

Mr. Deputy Speaker, Sir, I want to commend hon. James Orendo, the Constitution Implementation Committee (CIC), the Kenya Law Reform Commission and the Attorney-

General's Chambers, because a lot of work did go into these Bills. However, this House now believes that it is not enough work yet.

Therefore, I support the Motion that we should extend the time to seek---

**Mr. Ruto:** On a point of order, Mr. Deputy Speaker, Sir. Is it in order for the Attorney-General to stand up and support the Motion for extension of time, yet his Office is the one that has actually caused the jam? He is doing so without even apologising! Article 261 of the Constitution gives his Office the responsibility to midwife the process. We expect him to have a timeline. Apparently, he does not seem to know this. I want to warn him that the honeymoon is now over. He should be ready to play hard ball. Can he tell us whether he has timelines for the rest of the Bills, so that he does not come here again and tell us that he supports extension of time? You support the extension. Where have you been, Bw. Attorney-General?

**Mr. Deputy Speaker:** Order! Order! To begin with, the Government has a collective responsibility. It is there in the Constitution. It is there in the Standing Orders. That apology was given in this House by none other than the Leader of Government Business and the Deputy Leader of Government Business. So, it is not fair for the same thing to be treated at a very individual level. Nonetheless, if you want to hear it again from the mouth of the Attorney-General, it is okay.

**Mr. Ruto:** Mr. Deputy Speaker, Sir, I am seeking an apology not about the morning hiccup. I am asking about the fact that the Attorney-General has not advised the Executive that Parliament needs weeks to deal with each Bill. He has not factored in this period. He has left the job to hon. M. Kilonzo, who is even absent right now.

**The Attorney-General (Prof. Muigai):** Mr. Deputy Speaker, Sir, I would have thought that hon. Ruto, being a Member of very long standing in this House, is aware that the Attorney-General is a draftsman and that Bills are originated by the Ministries themselves.

In terms of the constitutional provision that the hon. Member has referred to, there are five other organs that are involved in this process, including the public. There is no way that the Attorney-General, as an Office, can in any way--- Hon. Ruto's own Committee is a key organ that must look at these Bills before the Attorney-General takes any personal responsibility.

Be that as it may, as I was saying before the hon. Member sought to inform me, this is the most complicated area of Kenyan law. The law on land has been evolving since 1897. There are over 100 statutes that touch on land. We should give ourselves time to exhaustively examine the Bills that have been so ably generated by the organs of this House.

Therefore, I support the Motion.

**The Assistant Minister for Co-operative Development and Marketing (Mrs. Kilimo):** Mr. Deputy Speaker, Sir, I rise to support the Motion, especially on the issue of community land register.

Land outside Nairobi, or the central areas, does not have title deeds. You will find that, indeed, in far-flung areas of our country, the tenure is communal. So, we need a lot of time, so that the people managing community land can have their input into the Land Bill.

With those few remarks, I support.

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, I thank you for giving me the opportunity to contribute. I rise to oppose the Motion that is before this House.

Mr. Deputy Speaker, Sir, if you look at what is before this House today, you---

*(Loud consultations)*

**Mr. Mungatana:** I need protection, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Order! Hon. Shabesh, allow hon. Mungatana to be heard. Proceed, hon. Mungatana.

**Mr. Mungatana:** Mr. Speaker, Sir, if you look at the Motion that is before this House, you will see that if we go into Committee of the whole House before 11.00 p.m., it is possible for us to complete the devolution Bills and start debate on any of the two land Bills. I believe in the industry of this House. Every time we have been called upon to meet deadlines, it has been possible. This House has always risen to that occasion. I know that the time for decision-making has come. Every time examinations come, people panic. People will always want an extension before an examination.

I want my colleagues to re-consider. We have held these opinions for a very long time. We now need to take decisions. Even if we take another one month, we shall still not be ready. What I am asking hon. Members is that we proceed and finish. If we need to extend the time, we should only---

**Hon. Members:** No! No!

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, I need to be protected.

**Mr. Deputy Speaker:** Order! Order!

**Dr. Nuh:** On a point of order, Mr. Deputy Speaker, Sir.

**Mr. Deputy Speaker:** Order! Order, hon. Members! Even if you do not like the fact that hon. Mungatana is opposing the Motion, he is entitled to be heard in silence and with all the seriousness that this House deserves.

Proceed, hon. Mungatana!

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, I am not intimidated by those calls. I must say that yesterday we were here debating the Land Registration Bill. How many were we in this House? You were sitting on the Chair, Mr. Deputy Speaker, Sir.

What I am trying to say is that if we want to do this work – and I beg that we do it – maybe, the Leader of Government Business can bring a Motion to extend the time for a few hours, for the rest of the week. We can finish this process because we owe it to the people of Kenya, to make decisions about how we will manage our land. I refuse to be moved by people who are saying that we extend time because---

**Dr. Nuh:** On a point of Order, Mr. Deputy Speaker, Sir!

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, the hon. Member cannot use the microphone while he is out of order! That is wrong! He is out of order!

**Mr. Deputy Speaker:** Order, Dr. Nuh! The Chair has directed that Mr. Mungatana be heard. Could you, please, allow him to be heard? Let him conclude.

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, I am just saying that we must look at ourselves and the conscience of this House. Let us tell the truth. Many hon. Members were not here yesterday to debate the Land Commission Bill. Many hon. Members were not here to debate the Land Registration Bill. Why is it that we are saying that we should extend time yet the truth of the matter is that many hon. Members, again, will not be here to debate those Bills?

I am just urging the House not be afraid. Please, let us not be afraid. At the Committee Stage, we will introduce any amendments that you wish. However, let us finish the work so that we can establish a proper management system of the land in the country.

I beg to oppose this extension.



**Mr. Midiwo:** On a point of order, Mr. Deputy Speaker, Sir. I notice that the mood of the House is that everybody is saying the same thing. Would I be in order to ask you to call the Mover to reply?

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

**Mr. Abdikadir:** Mr. Deputy Speaker, Sir, I beg to move.

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Hon. Members, it is the presumption of the Chair that you are versed with the rules of the House when it comes to a Constitutional Bill. Standing Order No.68 (1) states as follows:-

“In every instance where the Constitution lays down that a fixed majority is necessary to decide any question, the House shall not proceed to a Division on that Question unless and until a number of Members equivalent to such fixed majority is present at the time for directing the division.”

Two thirds is 148 hon. Members who have to be in the House. So, the Chair is now directing that the Division Bell be rung for five minutes after which a head count will be undertaken. We will only proceed to a Division if that requisite number is in the House.

Ring the Division Bell!

*(The Division Bell was rung)*

**Mr. Deputy Speaker:** Order, hon. Members! Take your seats so that the head count can be done.

Hon. Members, please, remain in one position so that a proper head count can be undertaken.

*(Loud consultations)*

**Mr. Deputy Speaker:** Order! Order! Clearly this is a Constitutional Bill. A Constitutional Bill is not like any other ordinary Bill. It is one time in our life time that this is happening right now. Therefore, the Chair will use its own discretion under Standing Order No.1 to direct that the Division Bell be rung for another five minutes.

*(Applause)*

*(The Division Bell was rung)*

## **DIVISION**

*(Question put and the House divided)*

*(Question carried by 151 votes to 1)*

**AYES:** Ms. Abdalla, Messrs. Abdikadir, Affey, Akula, Ali M.M., Anyanga, Anyango, Bahari, Baiya, Baya, Bett, Chachu, Chanzu, Ms. Chepchumba, Messrs. Chepkitony, Cheptumo, Cheruiyot, Duale, Ethuro, Dr. Eseli, Messrs. Farah, Gabbow, Dr. Gesami, Messrs. Gitari, Githae, Gumo, Messrs. Gunda, Imanyara, Jirongo, Kabando wa Kabando, Kabogo, Prof. Kaloki, Messrs. Kamama, Kamau Jamleck, Kamau Maina James, Kambi, Kapondi, Ms. Karua, Messrs. Kathuri, Kenyatta, Keter, Keya, Keynan, Dr. Khalwale, Messrs. Kigen, Kiilu, Kingi, Mrs. Kilimo, Messrs. C. Kilonzo, Kimunya, Kinyanjui, Kioni, Kiptanui, Kivuti, Kizito, Koech, Konchela, Dr. Kones, Mrs. Kones, Dr. Kosgei, Messrs. Kosgey, Kutuny, Dr. Laboso, Messrs. Lagat, Langat, ole Lankas, Lekuton, Ms. Leshomo, Messrs. Lessonet, Linturi, M’Mithiaru, Magwanga, Eng. Maina, Ms. Mathenge, Mr. Mbai, Ms. Mbarire, Messrs. Mbau, ole Metito, Midiwo, Mututho, Mohamed I.E, Dr. Monda, Messrs. Mudavadi, Mung’aro, Munya, Dr. Munyaka, Messrs. Muoki I., Muoki D., Mureithi, Muriithi, Murungi, Musila, Musyimi, Musyoka, Muthama, Mwadeghu, Mwaita, Mwakwere, Mwangi, Mwatela, Mwathi, Mwau, Mwiru, Nanok, Ndambuki, Ms. Ndeti, Messrs. Ngugi, Nguyai, Njuguna, Maj-Gen. Nkaissey, Dr. Nuh, Mrs. Noor, Messrs. Nyamai, Nyambati, Nyammo, Nyamweya, Obure, Oburu, Mrs. Odhiambo-Mabona, Messrs. Odhiambo, Ogari, Ojaamong, Ojode, Okemo, Olago, Prof. Olweny, Messrs. Ombui, Omollo, Prof. Ongeru, Mrs. Ongoro, Messrs. Onyancha C., Orengo, Dr. Otichilo, Messrs. Poghio, Rai, Ruteere, Ruto, Prof. Sambili, Messrs. Sambu, Samoei, Sasura, Dr. Shaban, Mrs. Shebesh, Messrs. Shitanda, Waititu, Wamalwa, Wambugu, Warugongo, Washiali, Yakub and Yinda.

**Tellers of the Ayes:** Mr. Mwadeghu and Mr. Jamleck Irungu Kamau.

**NOES:** Mungatana

**Tellers of the Noes:** Dr. Nuh and Mr. Yinda.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Deputy Speaker left the Chair]*

### IN THE COMMITTEE

*[The Temporary Deputy Chairman*

*(Mr. Imanyara) took the Chair]*

### THE INTERGOVERNMENTAL RELATIONS BILL

*(Clause 2 agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Order, hon. Members! We are on the Intergovernmental Relations Bill (Bill No.2 of 2012) and you recall that we had already dealt with Clause 2 in the morning.

**Mr. Ngugi:** On a point of order, Mr. Temporary Chairman, Sir. In the morning we had started with the Transition to Devolved Governments Bill. Now we are starting with the Intergovernmental Relations Bill.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Ngugi, you recall in the morning that I called from Mr. Nyamai to propose his amendment and he was not here. So, it was the Intergovernmental Relations Bill that we were dealing with in the morning.

Hon. Members, please, look at the Supplementary Order Paper.

*(Clauses 3, 4, 5 and 6 agreed to)*

*Clause 7*

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be amended-

(a) in sub-clause (2) by deleting paragraphs (a) and (b) and substituting therefor the following new paragraphs-

(a) the President who shall be the chairperson;

(b) the Deputy president who shall be the vice chairperson;

(c) the governors of the forty seven counties.

(b) by deleting sub clause (3).

Mr. Temporary Deputy Chairman, Sir, I am on page 3280 to 3281 of the Order Paper. If you have the Bill with you, it is page 155. It is in respect of the National and County Governments Coordinating Summit.

Mr. Temporary Deputy Chairman, Sir, allow me in one breath to explain that the reason why I would like that we include the Deputy President to sit on that Summit as a Vice-Chair is that, under the new Constitution, the Deputy President enjoys Executive powers. Further, under the new Constitution in the unlikely event that the President is unable to continue for the rest of his term, it is expected that the Deputy President assumes office and completes the balance of the term. I am saying that if you have been keeping him out of the summit and then he now becomes the President, he will then become a stranger and will require some form of induction.

However, if he has been sitting there, the institutional memory he has will make it business as usual and there will be no disruption. For that reason, I beg to move.

*(Question of the amendment proposed)*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I am not very convinced because if you look at the Bill, the President shall be the chairperson but it is indicated in the Bill that the deputy shall be sitting for the President so which is what likely to be. The President is likely not to be sitting. So, in essence, we are saying that there is going to be only one person. So I am really not convinced with that amendment.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I think I want to convince Dr. Khalwale that under the Constitution there are two levels of government which are separate and distinct. Therefore, when you have a meeting or a framework for making decisions or considering affairs of the State in the manner in which it has been set here, it is not right that one level of Government dominates those proceedings. I think it is well thought out that the deputy should be one of the Governors in recognition of the two levels of government as opposed to a situation where the national Government will lord it over the county level in governance. I think that was the political theory around it but whether or not you agree is another matter. I think it is a good argument.

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Khalwale, can you answer the issue raised by Mrs. Odhiambo-Mabona?

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I want to respond to both. Let me start with the one by Mr. Orengo. My understanding is that each of the people who sit on that summit has one vote. If it is true, then the national level of Government has two votes but the county level of Government has 47 votes. Therefore, what you are fearing, that the national level will lord it the county government does not obtain because there are 47 votes from the 47 county Governors. The President and Deputy President have only two votes.

This thing will only come to weigh down on us many years later on. It is a fact that you cannot give the Deputy President Executive powers then he continues serving as a principal assistant of the President. We want the Deputy President to be felt at all levels of Government. What would we be hiding from the Deputy President?

Mrs. Odhiambo-Mabona, I think your issue is pertinent but may be you had not followed my initial explanation. I request that you listen to my initial explanation and think about it as we vote on this issue. I believe that we want to, again, reduce the power of the President by making him realize that all the time he has a deputy who is capable and who can be relied on.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, what we need to clarify is; if we create the President as the chairman and the Deputy President as the vice-chairman, then we are not giving any powers to the vice-chairman elected under Clause 19, I do not know, is Dr. Khalwale saying that the Council of Governors is not going to exist or what is he saying?

If it does not exist, then it makes sense. If it still exists then that amendment should fail.

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Khalwale, before I give you an opportunity to respond, let us hear the Deputy Prime Minister and Minister for Local Government.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I really want to plead with Dr. Khalwale to look at it in the context that this is an inter-Governmental body that we are setting up. We do not want it to look like the chair is the President and the Deputy President is the vice-chairman. We are trying to recognize that the county governments exist. The Governors under Article 18 will have their Council of Governors where they will elect one of them on a two-year basis according to the proposal that will be coming for amendment. So we must recognize these people. If not, we are creating a subservient scenario and that is what we want to avoid so that it reflects truly what the Constitution is.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, I also want to support the view that these being two governments, you cannot leave the Chair to one Government and when the Chair is not there, leave the same Chair to the Deputy President of the same Government. It would look like one Government is really dominating the other. Since the Constitution clearly says that these are two distinct Governments working together, it is only fair that the lower government is also given a chance and is also recognized as the vice-chair. I plead with Dr. Khalwale to accept this to sail as it is.

Thank you.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I really do not have much to add. I would just like to plead with Dr. Khalwale to drop this amendment because as the others have said, this is a summit that brings together the heads of various county governments and the head of the National Government. Therefore, if again you bring the Deputy President here, it is like

you are bringing two people from National Government and only one from the each county government. I do not think this is necessary.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I followed the argument by Dr. Khalwale in terms of the new Deputy President having some power, but I just also want to remind him that as part of the constitutional process, indeed, the Deputy President even at the election is elected as an appendage of the President. People elect a President with a running mate. When you see the President, you have seen the Deputy President. When you see the Deputy President, you have seen the President. You cannot separate the two and give them different roles within the same law. So it is one office; when one is there the other one is not there. The argument that you had earlier that you did not want to recognize this person does not quite hold.

Let us recognize the fact that the office of the President comes together with his Deputy's and technical staff. When you see that office, it is up to the two of them to agree who attends and who does not attend.

**Mr. Njuguna:** Mr. Temporary Deputy Chairman, Sir, very briefly; the President enjoys votes given by the citizens. Even the vice-chair is also directly elected by the people. The Deputy President is just a mere running mate. This is a political position and I would oppose the amendments because these are politically elective positions.

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Khalwale, what do you have to say now that you have heard all these? Let us make progress!

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, we want to make progress. However, there is an omission which has now forced me to agree with the hon. Members who have spoken and let me point out what we had shared with hon. Mungatana. Mr. Mungatana had proposed, and I am supporting him that we leave out the Council of County Governors. Since this amendment has not found its way on the Order Paper, it then supersedes my proposal. My proposal was going to be ideal, if this was going to be the case. Therefore, I step it down. I beg to withdraw.

*(Dr. Khalwale's amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Imanyara): There is also a proposed amendment by hon. Nyamai. Is he here? Tell us is on what page and its import.

**Mr. Nyamai:** Mr. Temporary Deputy Chairman, Sir, it is on page 3282.

**The Temporary Deputy Chairman** (Mr. Imanyara): Okay, go on.

**Mr. Nyamai:** Mr. Temporary Deputy Chairman, Sir, let me start by saying where I am coming from---

**The Temporary Deputy Chairman** (Mr. Imanyara): Just propose it first as it appears on the Order Paper.

*Clause 7*

**Mr. Nyamai:** Mr. Temporary Deputy Chairman, Sir, I beg to give notice of my intention to push an amendment to the Intergovernmental Bill No.12---

**The Temporary Deputy Chairman** (Mr. Imanyara): Just propose your amendment as it appears on the Order Paper.

**Mr. Nyamai:** I propose that Clause 2 be amended---

**The Temporary Deputy Chairman** (Mr. Imanyara): Just a moment, Clause 2 was dealt with in the morning sitting.

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

THAT, Clause 7 of the Bill be amended in sub clause (1) by deleting the words “Government Co-ordinating Summit which shall be the apex body for intergovernmental relations” and substituting therefor the word “Executive Co-ordinating Summit which shall be the apex body for inter-relations between the Cabinet and the county executive committees.”

**The Temporary Deputy Chairman** (Mr. Imanyara): What is the import of the proposed amendment?

**Mr. Nyamai:** Mr. Temporary Deputy Chairman, Sir, the import of this amendment is basically what we have just been discussing. We are talking about the co-ordination between the Executive and Governors. However, we also realize that as far as the separation of powers in our legislations is concerned, there is the Executive and the Legislature. We want to bring almost a mirror image of the same as far as the legislation is concerned. Here, we are creating almost the same forum for the Speakers of the Senate, Speaker of the National Assembly and the Speakers of the County Governments. We want them to have a forum where they can meet and discuss issues to do with legislation, whether the Senate, National Assembly or at the County level.

When we talk about the Government, what comes in mind is the Executive. So, we want to bring the Executive Co-ordinating Committee that shall be the apex decision making organ. In which case, it will bring the Executive, where the Governors and the President are sitting, and then the legislation, where the Speakers of the various arms of legislation are sitting.

Then, Clause 10---

**The Temporary Deputy Chairman** (Mr. Imanyara): No, No, we are on Clause 7.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, first of all, since he is introducing the word “Executive”, and he was supposed to introduce it in Clause 2, which we have already gone over without his amendment then, it is superfluous to try and introduce that, again, in Clause 7.

**The Temporary Deputy Chairman** (Mr. Imanyara): Indeed! I did not want to point that out but, indeed, that is the position.

Hon. Nyamai in these circumstances, do you want to withdraw?

**Mr. Nyamai:** Mr. Temporary Deputy Chairman, Sir, I did not realize that it had been dealt with in the morning. In which case, I beg to withdraw my amendment to Clause 7.

**The Temporary Deputy Chairman** (Mr. Imanyara): So, withdrawn.

*(Mr. Nyamai’s amendment to Clause 7 withdrawn)*

*(Clause 7 agreed to)*

*Clause 8*

**The Temporary Deputy Chairman** (Mr. Imanyara): There is a proposed amendment by hon. Ngugi.

Hon. Ngugi, what page is it on the Order Paper? It is on page 3277, right at the beginning, the very first notice.

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

THAT, Clause 8 of the Bill be amended in paragraph (l) by inserting the words “or that it may consider necessary or appropriate” after the words “or any other legislation”.

The justification for this is to allow the Summit to undertake any other functions that it may consider necessary.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi):  
Mr. Temporary Deputy Chairman, Sir, I have no objection to that amendment.

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

*(Clause 8 as amended agreed to)*

*(Clause 9 agreed to)*

*Clause 10*

**The Temporary Deputy Chairman** (Mr. Imanyara): There is a proposal for amendment by hon. Bonny Khalwale.

Could you tell us what page?

**Dr. Khalwale:** Thank you, Mr. Temporary Deputy Chairman, Sir, It is on page 3281 of the Order Paper and page 157 of the Bill. Page 157 of the Bill and page 3281 on the Order Paper.

Mr. Temporary Deputy Chairman, Sir, in this Clause which I am trying to order, or rather let me just move the amendment.

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

THAT, Clause 10 of the Bill be amended-

(c) in sub clause (2) by deleting the words “the Senate or the county assemblies may, upon receiving the annual report under subsection (1), make such recommendations to the Summit”; and substituting therefor the words “or the county assemblies may, upon receiving the annual report under subsection (1), make such recommendations”

(d) by inserting a new sub clause immediately after subclasses (3) as follows-

(3A) The Senate shall approve all annual reports of the Summit including any recommendations made to the reports by the National Assembly and the county assemblies.

Mr. Temporary Deputy Chairman, Sir, the reason for this is that, in its original form, the Bill recognizes that there is a need---

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I feel that the sub-clause that hon. Dr. Khalwale wants to amend should be Clause 3 and not Clause 2.

**The Temporary Deputy Chairman** (Mr. Imanyara): Are you doing it on his behalf?

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I was rising on a point of order because I felt that he was seeking to amend Clause 2; I thought he is seeking to amend Clause 3. Actually, his amendment touches on Clause 3 but indicates Clause 2. So, I just wanted that clarification before he moves it.

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Khalwale, maybe you can clarify.

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I was just starting to indicate that. The amendment I am moving is to Clause, 10 which in the Bill recognizes that reports of the Summit should be given an opportunity to go through the three assemblies. That process is addressed under Sub-clause (3), but there is a reference to Sub-clause (2). So, actually we are amending Sub-clause (3) and the reason for the amendment is that having recognized in this Bill the importance of the reports going before the National Assembly---

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, I think we will treat the Order Paper as containing a typo and it should be reading (3) and not (2).

**Dr. Khalwale:** Yes, Mr. Temporary Deputy Speaker, Sir. So, I was saying that the Bill, having correctly captured the importance of the County Assembly, the National Assembly and the Senate receiving these reports and being given an opportunity to amend them, if necessary, the same Bill has then gone on and made it optional. Because the Summit will make very important decisions and arrive at very important resolutions, the report of the Summit being looked at by the assemblies should not be made optional. The purpose of this amendment is to make it mandatory. So, I have brought in the thinking that the Summit be alive to the fact that all resolutions and decisions shall as by law and as a must, have to pass through the National Assembly, the Senate and the County Assembly.

Mr. Temporary Deputy Chairman, Sir, I have gone further by this amendment and recognized that of the three assemblies, the assembly which is responsible for county governments is the Senate. I have therefore said, to tidy it up even more, that the County Assembly, after looking at the report, will make proposals framed as amendments; the National Assembly will do the same; they will then transmit them through the Speakers to the Senate and then it is the Senate which will be the final recipient of these amendments with a view of making sure that the decisions made at the Summit do not in any way hurt the county government.

I beg to move.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I think I will need to understand a little more, because we are dealing with two governments – the national Government and the county government. So, this body will serve both governments. Therefore, I do not know how we can make one level of Parliament the sole decision maker on; it will serve two governments. It will serve the National Government and the county government.

**The Temporary Deputy Chairman** (Mr. Imanyara): I think he was insinuating that under the Constitution, the Summit is the body responsible for laws relating to counties. I think that is what I understood him to be saying; therefore, even though they are going to the National Assembly, the reports should go to the Senate as a responsible body and then it will propose laws, because that is its function under the Constitution. Deputy Prime Minister, did you get his explanation?



**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, yes but maybe he will elaborate a little more on that. Just to pick up on the issue you are putting across, I thought that a decision could be made by this Summit that could also affect the National Assembly, just as much as it would affect the Senate. So, I would say that as it is crafted now, both chambers of Parliament are seized with it as it should be, because it is an inter-governmental relation.

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Khalwale, maybe you can explain.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, so that the subsequent contributors understand my thinking, Deputy Prime Minister, this will not be the first time that decisions of one House will be referred to another House. In many other places in the Constitution, you see decisions of either House being referred to the other. Why I chose this route is because I read it together with the other role – the finer role where the Senate will decide on the Executive, the one of impeachment. You have realized that in the Constitution the final decision after being looked at by the National Assembly, the final decision of impeachment of the President will rest with the Senate. So, because the decision of the Summit is the highest decision, then it is assumed that by transmitting these reports to the National Assembly and the National Assembly making recommendations--- If it is taken to the Senate, then the Senate will act more or less as it will when it will come to impeachment that will have been brought to it by the National Assembly.

I beg that you respond.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I have listened to the hon. Member carefully, and the import of this amendment is to subject decisions by the National Assembly to the Senate and then to the Summit. In essence, what it does, in my understanding, is to make the Senate a senior House. These are some of the things that we are trying to avoid – we should not set up a clash when it is not necessary. So, I would want to encourage my brother that let us not set clashes because even when we were doing this in Naivasha, we tried to do a very delicate balance. With those remarks, I would request my brother to withdraw his amendment.

**Mr. Chachu:** Mr. Temporary Deputy Chairman, Sir, I also do wish to request my chairman and my friend, Dr. Khalwale, to reconsider this because Parliament also will have a role. It will vote for the funds which will go to the county governments. So, as it is, it is as if the Senate will have an exclusive role in relation to county governments in terms of reporting; I think the National Assembly will have its own mandate as the National Assembly. Surely, it will have a role; this is an inter-governmental kind of Bill. So, I think to reduce the role of National Assembly and make it compete with the county government, yes it will even vote the funds to the county governments; this amendment will take away some value from it. I really wish that he reconsiders his amendment.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I think we probably need to understand this from the beginning. The Summit has submitted a report to the National Assembly, the Senate and the county assemblies, and then the County Assembly, the Senate and the National Assembly each considers a report and makes their recommendations to the Summit. Really, you cannot ask the National Assembly to pass that report through the Senate. It is like subjecting the National Assembly to the supervision and prefecting by the Senate; I think this is not right. This is because these reports will subsequently go back to the Summit, which will be composed of the county governors. If there will be any recommendation from the National

Assembly that will not be good for the county governments, the governors will not accept it. So, I oppose this amendment.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I was trying to follow through the argument by Dr. Khalwale; his argument and proposal are at variance; when you superimpose this new amendment on the Bill, the effect it has is to leave out the Senate from receiving recommendations of the Summit; this is because you are deleting the Senate or the county assemblies and leaving it to be that only the National Assembly or the county assemblies that will receive the reports and make the recommendations to the Summit. So, the Senate will not make those recommendations, yet the import was to get the two Houses and the county assemblies to make recommendations to the Summit, and then the Summit will continue pursuing those matters. The intention and the drafting are at variance. If the intention was then to create a bigger role for the Senate on these things, it is already within the law because the Senate will receive those reports and make recommendations to the Summit. So, it is going round, deleting, then adding and arriving at the same issue, but on a very dangerous route. I would urge that we remove this for now. It does not leave out anything in terms of what was already drafted. The Senate, the National Assembly and the county assemblies will still receive those reports and make recommendations to the Summit and that is what we want. Then the continuation of the inter-Governmental relations will continue within the framework of the Summit.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I want to take up from where hon. Odhiambo-Mabona was talking, because the architecture in the Constitution must be kept in mind all the time. This is because the competencies and functions of the Senate and the National Assembly are distinct in certain respects, including financial matters. So, if you make the National Assembly subordinate in certain respects to the Senate, when the authority or function is with the National Assembly, it will disturb the overall architecture as perceived in the Constitution. The point that hon. Odhiambo-Mabona was making and those who were in Naivasha will remember, there was a big debate about which is the senior House and I think we did not resolve it. But it tilted towards making the National Assembly an overall chamber in certain respects. There are certain things that must go through the National Assembly even if they were going to go through the Senate. My reading of this is that it may be well intentioned but if you go back to the Constitution, the structure then will be upset.

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I have heard my colleagues and I just want to remind them, especially hon. Orengo and hon. Odhiambo-Mabona that as I went through this amendment, I was alive to the roles of the Senate, especially 96(2). However, so that I am not misunderstood to mean that we want to demean one House or elevate the other one, even in the US where it is expressly provided that there is an Upper and a Lower House, when you talk to Congressmen and Senators, they call each other the Other House rather than the Lower and the Upper House. I know those sensitivities. The real gist of my amendment, Deputy Party Leader, is that I am endeavoring to remove the optional aspect that reads “may”. So, with the permission of the Chair, having accepted the guidance, I would like to replace the word---

**The Temporary Deputy Chairman** (Mr. Imanyara): But before that, the issue raised by hon. Kimunya is quite substantive that, in fact, what you are doing is taking away the Senate functions all together.

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I have agreed with them. I have agreed with hon. Kimunya, but just to provoke you a little bit more, so that I hang on to what I wanted to achieve so that the Summit knows that it is mandatory for these reports to go through

these Houses, we replace the word “may” with “shall” and the balance remains the same, so that it is not optional.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, which one is he referring to?

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, if you look at 3, we are saying that the National Assembly, the Senate or the county assemblies “may”. So, I want to request that we read “shall” upon receiving.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I can live with the word “shall”. If there is no recommendation, then they indicate that there is no recommendation.

I beg to move:-

THAT, Clause 10(3)(A) be amended by deleting the word “may” and replacing it with the word “shall”.

This will now read that “The National Assembly, the Senate and the county assembly shall upon receiving the annual report---“

**The Temporary Deputy Chairman** (Mr. Imanyara): Then propose that there will be a further amendment to the amendment proposed by Dr. Khalwale as indicated by you. I need to get this clear because we need to deal with the amendment by Dr. Khalwale.

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Chairman, Sir. In essence, Dr. Khalwale has withdrawn his amendment and the Deputy Prime Minister and Minister for Local Government is moving an amendment, just changing the word “may” to “shall”. Dr. Khalwale has withdrawn his amendment.

**The Temporary Deputy Chairman** (Mr. Imanyara): That is fine. Dr. Khalwale, we mark yours as having been withdrawn and on the same clause, we accept the Minister’s proposed amendment, so that the word “may” is changed to “shall”.

*(Dr. Khalwale’s amendment withdrawn)*

*(Question of the further amendment proposed)*

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

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

*(Clause 10 as amended agreed to)*

#### *Clause 11*

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

THAT, Clause 11 of the Bill be amended in-

(c) subclause (2)-

(ii) by inserting the words “competitively recruited and appointed by the Summit;

(ii) by inserting a new paragraph immediately after paragraph (b)-

(c) the Principal Secretary of the government department for the time being responsible for matters relating to devolution.

(d) by inserting the following new sub clauses immediately after subclause

(3)-

(4) A person shall be qualified for appointment as a chairperson of the Technical Committee if such person-

(a) holds a masters degree from a university recognized in Kenya;

(b) has a distinguished career in senior management position in either private or public sector;

(c) holds at least fifteen years post qualification professional experience; and

(d) satisfies the requirements of Chapter six of the Constitution.

(5) A person shall be qualified for appointment as a member of the Technical Committee if such person-

(a) holds a degree from a university recognized in Kenya;

(b) has a distinguished career in their respective field;

(c) has at least ten years post qualification professional experience; and

(d) satisfies the requirements of Chapter Six of the Constitution.

(6) A person shall not be qualified for appointment as the chairperson or a member of the Technical Committee if the person—

(a) is a member of Parliament or County Assembly;

(b) is a member of a governing body of a political party;

(c) is an elected or nominated member of a local authority;

(d) is a member of a Commission established under the Constitution;

(e) is an undischarged bankrupt;

(f) has been removed from office for contravening the Constitution or any other law; or

(g) has, in the conduct of his affairs, not met any statutory obligations.

The justification for this is to incorporate the procedure of appointment of the chairperson of the technical committee as the procedure had not been provided for.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi):  
Mr. Temporary Deputy Chairman, I support the amendment.

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

*(Clause 11 as amended agreed to)*

*Clause 12*

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 12 of the Bill be deleted and substituted with the following new clause-

**Functions of the Technical Committee** 12. The Technical Committee shall-  
be responsible for the day to day administration of the Summit and of the Council and in particular-  
facilitate the activities of the Summit and of the Council; and  
implement the decisions of the Summit and of the Council.  
take over the residual functions of the transition entity established under the law relating to transition to devolved government after dissolution of such entity; and  
perform any other function as may be conferred on it by the Summit, the Council, this Act or any other legislation.

This is to explain the functions of the technical committee and make it clear. It is not clear in the Bill.

**The Temporary Deputy Chairman** (Mr. Imanyara): You are deleting the entire Clause 12 and substituting it?

**Mr. Ngugi:** Yes, Mr. Temporary Deputy Chairman, Sir. I am substituting it by the new one which makes it very clear. We had discussed that.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, I concur.

**Mr. Mbadi:** Mr. Mr. Temporary Deputy Chairman, I think we need more clarity on this. I can see that there is addition of the word “council”. If I check my paper correctly, from the original version to the current version, what has been added, apart from the Summit, is that they are also responsible for the Council. So, we need to know why this council is included here. But as you can see, it is responsible for the day to day administration of the Summit and of the Council and then the Council is everywhere. Could we get to understand why the Council is included?

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, in the Bill, the technical committee was only serving the Summit, yet we have the Council and the Summit. We are only bringing in the Council since it will be a secretariat and an implementing organ for both.

*(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)*

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT clause 12 of the Bill be amended by inserting a new paragraph immediately after paragraph (c) as follows –

(d) convene a meeting of the forty seven (47) county secretaries within thirty days (30) preceding every Summit meeting.

It follows that after the first Motion has gone through, I have to comment on it as I make this amendment. I propose that this amendment be added on the current amendment for the following reason: That there in the counties, you have the county secretaries. These are the people who are in charge of the technical arm of the county.

**The Temporary Deputy Chairman** (Mr. Imanyara): Let us get this clear because we had already deleted the entire clause that you had wanted to amend.

**Dr. Khalwale:** Yes, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): So now, if you are going to amend, you will be amending a clause that has already been replaced. Is that what you are indicating?

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, my amendment was an addition. It is a further addition!

**The Temporary Deputy Chairman** (Mr. Imanyara): I get that now!

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, so I am just persuading the House to see the need for this addition.

**The Temporary Deputy Chairman** (Mr. Imanyara): To put them in proper sequence?

**Dr. Khalwale:** Yes, Mr. Temporary Deputy Chairman, Sir, in the proper sequence. If my amendment goes through, it will become Clause 12 (d). This is a further amendment. I am saying that we convene a meeting of the 47 county secretaries within 30 days preceding every summit meeting. The importance of this is that the technical person in the county is the county secretary. So, I am seeing a situation whereby governors are going into a meeting of the summit without the benefit of the input of the technical team in all our 47 counties. If that meeting is preceded by those people, then the meeting of the county governors will be shorter, neat and more likely to reach accurate decisions because a working paper or a conference paper will have been prepared by the county secretaries. I request the Minister to support me.

*(Question of the further amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I think it is a useful addition because we do not want those governors coming in via a situation where there are no preparatory issues. So, I think it is a useful addition to this and I would like to propose that we add that.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I do not know how it will sit because what I recall from this Bill is that the agenda of the meeting is supposed to be prepared by the technical committee with the secretariat and then, in ordinary meetings, 14 days are supposed to be given as notice. In the extra ordinary meetings, they are supposed to be seven days. So how does it come in? The sequencing here is disturbing me!

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, if you look at it, although the technical committee is going to prepare that, there is no harm in this technical committee consulting with the county secretaries so that, as they prepare the agenda for the summit, they will have had an opportunity to consult with the technical arm of the county government.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I do not really oppose this but what we probably need to avoid is a power struggle between the governor and the county secretary. The county secretaries may think they are all answering now to the technical committee. If there is such a parallel meeting where the technical committee sits with the secretary and then the governors are also--- I see the possibility of some conflicts. I do not know how we are going to avoid that. Maybe, the Mover can help me to understand.

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, let me just borrow from the experience at the Ministry of Foreign Affairs and, even more, from the Ministry of East African Community. The technical people first meet from the partner States and then, when they meet, the agenda is the same. But each partner State has its own experience on that particular agenda. It has its own expectations. It has its own shortcomings on that particular agenda item. So the

technical team first sits to then tidy up those issues so that when you have the meeting of the politicians - the governor and the president are all politicians – they should then go and find when the technical arm has tidied up and has a good board paper which they would use. I beg Mr. Mbadi to support that!

**The Temporary Deputy Chairman** (Mr. Imanyara): I think we really cannot go through but I can hear Eng. M.M. Mohamed.

**The Assistant Minister for Energy** (Eng. M.M. Mohamed): Mr. Temporary Deputy Chairman, Sir, this amendment is not necessary in my opinion.

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! The Government has already accepted the amendment. The Deputy Prime Minister and Minister for Local Government has accepted it.

**The Assistant Minister for Energy** (Eng. M.M. Mohamed): Mr. Temporary Deputy Chairman, Sir, I do not think it is fair.

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Mr. Mudavadi, your colleague who is in the Government with you is taking a different position from you. The Standing Orders do not permit that. You better consult between yourselves before the movement. Mr. Kimunya, did have anything to say here?

**The Minister for Transport** (Mr. Kimunya): No, Mr. Temporary Deputy Chairman, Sir,

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

*(Question of the further amendment  
put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): There is a further proposal for amendment of that Clause by Mr. Mungatana.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, just for clarification, my amendments – the several of them – were going to restructure the entire secretariat. We have since discussed with the Minister---

**The Temporary Deputy Chairman** (Mr. Imanyara): I just need to get this correctly because they appear to be very different versions of the proposals from you and I need to get them properly.

*(Mr. Imanyara consulted with  
the Clerk-at-the-Table)*

Mr. Mungatana, you may now proceed, I have been guided!

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, let me just explain why you have my name there and these are not reflected on the Order Paper. There was a problem between the bringing of those amendments and the way it is typed there. So, they are not reflected on the Order Paper. They are just loose but you will have it on your list that I am moving amendments. However, what I am saying is that those amendments; the import of them--

**The Temporary Deputy Chairman** (Mr. Imanyara): Let me clear this: Your proposed amendments are not on the Order Paper?

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, they are not on the Order Paper. They are in the loose paper. So, it is not really my mistake. But I am saying this: which is the more important thing---

**The Temporary Deputy Chairman** (Mr. Imanyara): Let me get this correctly for the purposes of the HANSARD. Was this document circulated together with the Order Paper?

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I am advised that it was supposed to be circulated together with the Order Paper.

**The Temporary Deputy Chairman** (Mr. Imanyara): Leader of Government Business, I want this cleared.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, if you listen to me to the end, you will not go to---

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! Let me just get clarity; I will give you plenty of time. Is this document an addendum to the Order Paper? I want some clarification.

**The Minister for Lands** (Mr. Orengo): Can I give some clarification? The way I understand it is that that paper was circulated in the Chamber when we were already in the Chamber. So, it was not part of the Order Paper that we normally receive at the Bar by the Serjeant-at-Arms or when the orderlies went round.

**The Temporary Deputy Chairman** (Mr. Imanyara): I understand it was actually circulated as an addendum to the Order Paper. If that is the case, then it would be properly before us. That is, if, indeed, that is what happened. So, Mr. Mungatana, proceed.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I think the manner in which it came is not so important.

**The Temporary Deputy Chairman** (Mr. Imanyara): I just wanted clarity that hon. Members have had an opportunity to look at it. It has been explained to me that it was actually circulated as an addendum to the Supplementary Order Paper and so, it is properly before us. Proceed!

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, let me withdraw that. Let me just say that I withdraw because it is easier. I withdraw that particular amendment and, maybe, the easier thing to say here is that the proposal was for the restructuring of the entire secretariat. We have discussed with the Minister and we have basically agreed that we will withdraw all those amendments and maintain the secretariat as is it now.

The only thing that I wanted is on Clause 38. I am still interested in moving that.

**The Temporary Deputy Chairman** (Mr. Imanyara): When we reach there?

**Mr. Mungatana:** Yes, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Imanyara): Very well!

*(Clause 12 as amended agreed to)*

### *Clause 13*

**The Temporary Deputy Chairman** (Mr. Imanyara): There is a proposal for amendment by hon. Mungatana. Is that correct?

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, we have withdrawn those amendments until Clause 38.

**The Temporary Deputy Chairman** (Mr. Imanyara): So, that is also withdrawn.



*(Mr. Mungatana's amendment withdrawn)*

*(Clause 13 agreed to)*

*Clause 14*

**The Temporary Deputy Chairman** (Mr. Imanyara): I notice that there are two proposals for amendments. Hon. Ngugi will be first. Perhaps, you can tell us the page.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, it is on page 3279.

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

THAT, Clause 14 of the Bill be deleted and substituted with the following new clause-

**Reports by** 23D. The Technical Committee shall  
**the** submit quarterly reports to the Summit and to the Council; and  
**Technical** be accountable to the Summit and to the Council.  
**Committee,**  
**etc.**

Mr. Temporary Deputy Chairman, Sir, the justification of this amendment is just to include the submission of quarterly reports to the Council in addition to the Summit. It just flows.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, Deputy Prime Minister!

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi):  
Agreed!

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

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

**The Temporary Deputy Chairman** (Mr. Imanyara): Is the amendment by hon. Mungatana also withdrawn?

**Mr. Mungatana:** Yes, Mr. Temporary Deputy Chairman, Sir.

*(Mr. Mungatana's amendment withdrawn)*

*(Clause 14 as amended agreed to)*

*Clause 15*

**The Temporary Deputy Chairman** (Mr. Imanyara): There are proposals by hon. Ngugi for amendment.

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

THAT, Clause 15 of the Bill be amended-

- (a) by deleting sub-clause (1) and substituting therefor the following new sub-clause-  
“(1) There shall a secretariat of the Technical Committee which shall be headed by a secretary”;
- (b) in sub-clause (5) by-
  - (i) inserting the words “the Council” after the words “of the Summit” in paragraph (a);
  - (ii) inserting the words “the Council” after the words “of the Summit” in paragraph (e); and
  - (iii) inserting the words “the Council” after the words “by the Summit” in paragraph (f).
- (c) by inserting the following new sub-clause after sub-clause (5)-  
“The secretary shall be appointed for a single term of six years and shall not be eligible for re-appointment”.

Mr. Temporary Deputy Chairman, Sir, the justification for this amendment is that the Secretary is not the head of the technical committee, but the head of the secretariat of the Summit. So, it is just to clarify matters.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Deputy Prime Minister!

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I do support those proposals. They improve on it.

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

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

**The Temporary Deputy Chairman** (Mr. Imanyara): I note that hon. Mungatana had withdrawn his proposals.

*(Mr. Mungatana's amendment withdrawn)*

*(Clause 15 as amended agreed to)*

*(Clause 16 agreed to)*

*Clause 17*

**The Temporary Deputy Chairman** (Mr. Imanyara): There is a proposal for amendment by hon. Ngugi.

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

THAT, Clause 17 of the Bill be amended by inserting the words “the Council” after the words “Technical Committee”.

Mr. Temporary Deputy Chairman, Sir, the justification, again, is to require the technical committee to provide a secretariat for the Council of Governors as well as a technical committee.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): I agree, Mr. Temporary Deputy Chairman, Sir.

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

*(Clause 17 as amended agreed)  
(Clause 18 agreed to)*

*Clause 19*

**The Temporary Deputy Chairman** (Mr. Imanyara): There was a proposed amendment by hon. Mungatana, which I think he has withdrawn.

*(Mr. Mungatana’s amendment withdrawn)*

Hon. Ngugi’s amendment is to be dropped if Mungatana’s amendment is passed. I do not know what that means.

Mr. Ngugi!

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, it is on page 3279. Mr. Mungatana had already withdrawn his amendments. So, the amendment to stay is the one that I am proposing.

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

THAT, Clause 19 of the Bill be amended in sub-clause (3) by deleting the words “not be eligible for re-election” appearing after the words “and shall” and substituting therefor the words “be eligible for re-election for one further term of one year”.

Mr. Temporary Deputy Chairman, Sir, this is just to provide that the chairperson and vice-chairperson be eligible for re-election for a further term of one year. In the Bill it says “one year and not subject to re-election.” Now, we are providing a window so that if they have performed, they can be re-elected for a further one year only.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): I concur, Mr. Temporary Deputy Chairman, Sir.

*(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 19 as amended agreed to)*

*Clause 20*

**The Temporary Deputy Chairman** (Mr. Imanyara): There is a proposal for amendment by hon. Ngugi. Mr. Mungatana's amendment has been withdrawn.

*(Mr. Mungatana's amendment withdrawn)*

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

THAT, Clause 20 of the Bill be amended in paragraph (i) by inserting the words "or that it may consider necessary or appropriate" appearing after the words "or any other legislation".

Mr. Temporary Deputy Chairman, Sir, the justification for this is to avoid limiting the mandate of the Council of Governors.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): I concur, Mr. Temporary Deputy Chairman, Sir.

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

*(Clause 20 as amended agreed to)*

*Clause 21*

**The Temporary Deputy Chairman** (Mr. Imanyara): Once again there is a proposal for amendment by hon. Ngugi, hon. Mungatana's amendment having been withdrawn.

*(Mr. Mungatana's amendment withdrawn)*

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

THAT, Clause 21 of the Bill be amended in sub-clause (1) by deleting the words "and in any case not more than four times a year" appearing after the words "twice a year".

Mr. Temporary Deputy Chairman, Sir, the Bill limited the number of times that the Council could meet. It said "two" and not "a maximum of four." This amendment is to open it and be guided by the business that there could be.

*(Question of the amendment proposed)*

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, if we could read together this amendment by hon. Ngugi, it says:-

“THAT, Clause 21 of the Bill be amended in sub-clause (1) by deleting the words “and in any case not more than four times a year” appearing after the words “twice a year”.

Mr. Temporary Deputy Chairman, Sir, it is excellent.

I beg to support.

**The Temporary Deputy Chairman** (Mr. Imanyara): Let me hear the Deputy Prime Minister!

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I support.

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

*(Clause 21 as amended agreed to)*

#### Clause 22

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Mungatana having withdrawn the proposal for amendment, I will put the Question.

*(Mr. Mungatana’s amendment withdrawn)*

*(Clause 22 agreed to)*

*(Clauses 23, 24, 25, 26, 27, 28, 29, 30, 31, 32 and 33 agreed to)*

#### Clause 34

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, there is a proposal for amendment by hon. Ngugi.

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

THAT, Clause 34 of the Bill be amended in sub-clause (3) by inserting the words “and may recommend an appropriate course of action for the resolution of the dispute” after the words “to resolve the dispute”.

Mr. Temporary Deputy Speaker, Sir, the amendment is on page 3280 of the Order Paper. The Justification for this amendment is that it ensures finality in disputes resolution. The Summit can make recommendations rather than just providing a mechanism for dispute resolutions.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I support the amendment.

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

*(Clause 34 as amended agreed to)*

*(Clause 35 agreed to)*

*Clause 36*

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

THAT, Clause 36 of the Bill be amended in sub-clause (1) by deleting the words “section 34 if the person” appearing after the words “an offence under” and substituting therefor the words “this Act if in relation to section 34 the person”.

**The Temporary Deputy Chairman** (Mr. Imanyara): At what page is the amendment?

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, the amendment is on page 3280 of the Order Paper. This amendment is just intended to correct a drafting error.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, Deputy Prime Minister and Minister for Local Government?

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, that is okay.

*(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 36 as amended agreed to)*

*Clause 37*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, we have proposed amendments by Dr. Khalwale and Mr. Mungatana.

**Dr. Khalwale:** Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, the Bill be amended by deleting clause 37 and substituting therefor the following new clause -

**Operational expenses.**

**37.** The operational expenses in respect of the structures and institutions established in this Act shall be provided for in the annual estimates of the revenue and expenditure of the national government to cater for—

- (a) the Summit;
- (b) the Council of County Governors;
- (c) the Technical Committee, Secretariat and the sectoral working group established by the Technical Committee; and,
- (d) the sectoral working groups established by the Council.

Mr. Temporary Deputy Chairman, Sir, my proposed amendment is on page 281 of the Order Paper.

What I am basically doing is just to ensure that all the expenses of these meetings are charged on the national Government. The reason is that we want to jealously guard the money that will be in the estimates for the county governments. We want it to do stuff within the county governments. We would like money for meeting these kinds of expenses to be provided at the national Government level, so that at no time will money that goes down be used to finance national activities.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, Deputy Prime Minister and Minister for Local Government?

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I can see why hon. Khalwale is likely to be a Senator.

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

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

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Mungatana, it was pointed out that your amendment is to be dropped if Dr. Khalwale's amendment is passed. Is that the position?

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, that is correct. We have already spoken; I just wanted to make the point that even in the CDF, they have robbed us 3 per cent of the allocation. So, we do not want this to happen in this allocation.

*(Mr. Mungatana's proposed amendment withdrawn)*

*(Clause 37 as amended agreed to)*

*Clause 38*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Mungatana, there is an amendment proposed by you.

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

THAT, Clause 38 of the Bill be amended by deleting Sub-clause (3).

**The Temporary Deputy Chairman** (Mr. Imanyara): That is in the document that was circulated as an addendum?

**Mr. Mungatana:** Yes, Mr. Temporary Deputy Chairman, Sir. The Cabinet Secretary is to cause a draft of regulations, under Sub-Clause (1), to be laid before the Senate for approval before publication in the *Kenya Gazette*.

I was looking at Clause 38(1). These regulations will be made after the Cabinet Secretary has held consultations with the Summit and, therefore, so that we do not have delays along the way, they can gazette those regulations without having to go to the Senate for debate. At any rate, the Senate will be exercising oversight when they receive the reports at the end of the year.

So, I want to delete that sub-clause, so that there are no delays in the functioning of the inter-governmental relations.

Thank you.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I have a contrary view because in respect of all the Bills that we have been passing here, where regulations are made, Parliament has to go through them. So, we should not provide for an exception. In this case, we are talking of the Senate. You cannot just create regulations which can have serious implications and the Senate is not involved. So, I would say that we leave it as it is. Otherwise, we could have a rogue Cabinet Secretary and we have problems of gazettelement of all sorts of regulations.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, after hearing both arguments, I am inclined to oppose the amendment by hon. Mungatana because regulations are binding laws. The Executive is not an assembly nor are they a Parliament for them to exercise oversight over their own actions. So, if the regulations agreed upon by the Cabinet Secretary and the Summit pass through the Senate, this will give them more clout and they will receive much more respect.

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I would also like to beg hon. Mungatana to step down this amendment. I will just cite one experience.

Last year, we passed a law which we thought was very good – the Alcohol Control Act. The regulations that were brought have caused hell in the villages. This is probably because when the regulations were brought here, we did not pay proper attention to them. So, it is important that the regulations, as the Deputy Prime Minister and Minister for Local Government has said, should be subjected to approval by the Senate.

**The Temporary Deputy Chairman** (Mr. Imanyara): Yes, hon. Mungatana!

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I withdraw the amendment.

*(Mr. Mungatana's proposed amendment withdrawn)*

*(Clause 38 agreed to)*

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, before we go to the next item on the agenda, I did, inadvertently, mislead the House at the beginning of this session when I indicated that hon. Nyamai's proposals for amendment had been dealt with in the morning. I have gone through the HANSARD and have found out that, in fact, what we were discussing in the morning was the Transition to Devolved Governments Bill and, therefore, I am reinstating the proposals by hon. Nyamai. If he wants to move on, he can do so.

*Clause 2*



**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Members, there is a proposed amendment by hon. Nyamai.

**Mr. Nyamai:** Mr. Temporary Deputy Chairman, Sir, I thank you for your indulgence. I beg to move:-

THAT, Clause 2 of the Bill be amended-

(a) in the definition of “Summit” by deleting the word “Government” and substituting therefor the word “Executive”;

(b) by inserting the following new definition in its proper alphabetical sequence-

“Supreme Council” means the National and County Legislatures Supreme Council established by section 10A;

Mr. Temporary Deputy Chairman, Sir, what we have in the Bill talks about---

**The Temporary Deputy Chairman** (Mr. Imanyara): Hon. Nyamai, on what page is your amendment?

**Mr. Nyamai:** Mr. Temporary Deputy Chairman, Sir, it is on page 3282.

Mr. Temporary Deputy Speaker, Sir, in the definition of “Summit” it talks about the Government. The Government means the Executive as well as the Legislature. All we are saying is that we should delete the word “Government” and replace it with “Executive”.

**The Temporary Deputy Chairman** (Mr. Imanyara): What is your justification for your proposal? What is the import of this proposal? What is the justification for it?

**Mr. Nyamai:** Mr. Temporary Deputy Chairman, Sir, the justification is that I intend to bring a new Clause 10. There is a clause in this Bill which deals with the Executive. There is also the Summit where the President and the County Governors will be sitting. I intend to bring a new clause which will now leave out Government and Legislature and we remain only with Executive. So, we will establish almost a similar organ where all the legislators, the Speaker of the National Assembly, the Speaker of the Senate, the Speakers of the county governments will also sit. That will be a forum to discuss basically legislative agenda for all the various arms of the Government from the Senate, Parliament to the county governments.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I think that will completely negate the purpose of this Bill.

**The Temporary Deputy Speaker** (Mr. Imanyara): Indeed, that is the case actually. In fact, if it does negate the very purpose then it is inadmissible as you know. Mr. Nyamai, I just want to give you the opportunity to see that so that you do not lose the opportunity to air your views.

**Mr. Nyamai:** Mr. Temporary Deputy Speaker, Sir, if that is the case, I withdraw my amendments.

*(Mr. Nyamai’s proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Imanyara): And also Clause 7?

**Mr. Nyamai:** Proposed amendment to Clause 7 also to follow suit.

*(Mr. Nyamai’s proposed amendment withdrawn)*

*(Clause 2 agreed to)*

*(Clause 7 agreed to)*

*New Clause 10A*

**Mr. Nyamai:** Mr. Temporary Deputy Chairman, Sir, New Clause 10A is part of the clauses which have been withdrawn.

*(Mr. Nyamai's proposed amendment withdrawn)*

*Schedule*

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

THAT, Paragraph 2 of the Schedule be amended by deleting sub-paragraph (2) and substituting therefor the following new sub-paragraphs-

“(2) In the absence of the chairperson at a meeting of a body the meeting shall be chaired by the vice-chairperson.

(3) In the absence of both the chairperson and the vice-chairperson at a meeting of a body, the members present shall elect a member to chair the meeting”.

Mr. Temporary Deputy Chairman, Sir, the import and the justification of this is that the above corrects a drafting error to ensure that at all times a meeting of any body created by the Act has the person presiding, whether or not the body has vice-chairman.

*(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 Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I accept it.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, could I, please, request the Minister if he could consider doing a further amendment and making it “vice-chair” considering gender balance for chair and vice-chair.

**Hon. Members:** No!

**The Temporary Deputy Chairman** (Mr. Imanyara): Order! I take it that the invitation has been declined.

*(Schedule as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The Intergovernmental Relations Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

#### THE TRANSITION TO DEVOLVED GOVERNMENTS BILL

**The Temporary Deputy Chairman** (Mr. Imanyara): I will remind hon. Members that we dealt with Clause 2 in the morning.

*(Clauses 3 and 4 agreed to)*

#### *Clause 5*

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

THAT, Clause 5 be amended in sub clause (1) by inserting a new paragraph immediately after paragraph (g) as follows-  
(gg) the Clerk of the Senate

Mr. Temporary Deputy Chairman, Sir, we have really discussed this matter in the Committee. The justification or the import of this is to include the transition authority of the Clerk of the Senate as the Senate is the body responsible for county issues. The Clerk will give a lot of information and guidance to these transitional authority bodies.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I can see the linkage. I really have no problem. The only thing is that I wanted to stand guided by the lawyers about whether it is constitutional. That is my only query. Otherwise, I really have no problems.

**The Temporary Deputy Chairman** (Mr. Imanyara): Mr. Orengo, can we benefit from your wisdom on that?

**The Minister for Lands** (Mr. Orengo) Mr. Temporary Deputy Chairman, Sir, we will take the issue of separation seriously. I think the Clerk should not sit in that forum. The moment it starts, then it is very attractive to develop a framework in which that separation now becomes completely eliminated.

I remember even informally before the Clerk of the National Assembly was treated more or less as part of the Executive and it brought us a lot of problems. I think that separation and delinkage should remain.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, before I withdraw the amendment, let me explain a little. This is just a transition authority. It will be dealing with transitional matters. These matters could even touch on the County Assembly. There is nowhere else where this transitional authority can get any advice. This is just a temporary body. It runs only for three years or less and then it gets out of the way and the separation gets into place.

**The Temporary Deputy Chairman** (Mr. Imanyara): And it has the support of the Deputy Prime Minister and Minister for Local Government.

Are there any comments on it?

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I think I will go by the advice of Mr. Orengo. Although Mr. Ngugi wants to cure a problem here, I also have an amendment which we have discussed with him. In case counties are aggrieved by any decision that this Authority would come with, then they have a right to appeal to the Senate which is also a higher body which can see how they can mediate. But now, putting the Clerk of the Senate into day to day running of issues that have to do with this Authority is a little bit stretching the functions of the Senate.

I would really want to urge Mr. Ngugi that although he has the interest of counties at heart, it is still my amendment that can cure. If an authority seems to be highhanded and a county will be dissatisfied, then they can still lodge and appeal with the Senate and see how they can mediate on such issues.

I would urge Mr. Ngugi to withdraw his amendment.

**The Assistant Minister for Forestry and Wildlife** (Mr. Nanok): Mr. Temporary Deputy Chairman, Sir, during my presentation when this Bill was on the Second Reading, I pointed out that matter which the Committee has brought up. It was basically because the Committee can only withdraw it if the functions of the County Assembly are not going to be handled by this Transitional Authority. However, if it is going to be handling such issues, then we will have to take care of those functions of the Legislature even if it is not going to be the Clerk of the Senate but at least a representative appointed by the Senate so that at least the legislative arm at the county is represented.

**Dr. Kones:** Mr. Temporary Deputy Chairman, Sir, I want to imagine that the oversight function will be provided by the Senate. I will not see the purpose for somebody from the Senate sitting in the same body if they are supposed to play the oversight role.

I will not support the amendment.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I was just looking through the functions of the Authority and I actually fail to see where the Clerk would come in. It is really where we are moving from National Government to devolved governments and how the assets are to be transferred and how those functions will be done. It has nothing to do with the workings of the Senate or transition from National Assembly to the Senate. If we are talking of the National Assembly and Senate and how they work together, that makes sense. However in terms of the National Government and transition to the county governments; if you look at all the functions under Clause 7, then the Clerk does not come in. I would think their being here is probably more of a contradiction and would not add value to what the Committee had thought.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, hearing Dr. Nuh and my younger brother *Waziri*, I am persuaded to withdraw.

*(Mr. Ngugi's proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Imanyara); There is another proposal for amendment on Clause 5 by Dr. Nuh.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 be amended in sub clause (1) by deleting the words "in consultation with the Prime Minister" appearing in paragraph (a) and substituting therefor the word "with the approval of the National Assembly"

Mr. Temporary Deputy Speaker, Sir, what the amendment basically does is to remove the words, “in consultation with the Prime Minister”. This is because this is carried in the Schedule. The Schedule says that everything will be done according to the National Accord before the first elections.

Now we have introduced the issue of approval by the National Assembly. It will approve the names in the Authority.

**The Temporary Deputy Chairman** (Mr. Imanyara): Dr. Nuh, what page is it?

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, page 3289.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I think the import is that, if I got him right, he wants the names to be approved by Parliament.

But why do you want to delete the words, “in consultation with the Prime Minister”?

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I have said that we have carried this in the Schedule, so it does not make much sense carrying it again within the body of the Act itself. It is in the Schedule and is, therefore, part of the law.

An authority that is supposed to oversee transition from National Government to county governments is a very powerful authority. It would make more sense if this House looked at these names and approved them. It would give it more clout.

**The Temporary Deputy Chairman** (Mr. Imanyara): But it appears that they are all secretaries who, in any case, will have to be approved by the National Assembly?

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, there are eight appointees whom we are saying will have to be approved. It is the chairperson and eight other members who will be appointed by the President in consultation with the Prime Minister. That is where we are saying, “approved by the National Assembly”.

**The Temporary Deputy Chairman** (Mr. Imanyara): Deputy Prime Minister is it now clearer?

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, what I would say is that I am aware that the Committee is also bringing in the adjustment on the Schedule to incorporate the approval of the names by Parliament. If we leave Clause 5(a) as it is but add the words, “with the approval of the National Assembly and in accordance with the Schedule” so that we avoid the deleting, it will be fine. If that can be harmonized, then it makes sense.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, I support that proposal by Mr. Mudavadi because even if---

**The Temporary Deputy Chairman** (Mr. Imanyara): Let him make it clear then because it is an amendment from him.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I am proposing that Clause 5(a) of the Bill on page 118 should read:-

“A chairperson and eight other members appointed by the President, in consultation with the Prime Minister and with the approval of the National Assembly as provided in the Schedule”.

**The Temporary Deputy Chairman** (Mr. Imanyara): So, do I get it “and with the approval of the National Assembly”?

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, the Schedule is already part of the Bill or you prefer the other wording, “in accordance with the Schedule”? The Schedule is already amended.

*(Question of the amendment proposed)*

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I want to support him. All that this amendment is doing is to add value. This House will remember that when they were left on their own, once upon a time, in appointing the Chief Justice, Attorney General and so on, you know what they did. They are starting to get old and we need to continuously remind them that Kenya still exists.

I support the DPM.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, I also want to support the amendment by the Deputy Prime Minister and Minister for Local Government. It clarifies things. So, anybody reading the law and does not go to the Schedule can be misled by thinking that it is only the President who has to appoint.

So, when we do not delete “in consultation with the Prime Minister”, anybody reading that part or the Schedule then has the full picture.

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

*(Clause 5 as amended agreed to)*

*Clause 6*

**The Temporary Deputy Chairman** (Mr. Imanyara): Once again, hon. Ngugi, I see you have proposal for amendments. Which page is it?

**Mr. Ngugi:** Mr Temporary Deputy Chairman, it is on page 3285. I beg to move:-

THAT, Clause 6 be amended in sub clause (2) by deleting the word “fifteen” and substituting therefor the word “ten”

Mr. Temporary Deputy Chairman, Sir, this is just to reduce years of experience required for the chairperson of the Authority from fifteen to ten years.

*[The Temporary Deputy Chairman  
(Mr. Imanyara) left the Chair]*

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

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi):  
Agreed!

*(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 6 as amended agreed to)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Dr. Nassir, I am told that you are---

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I had the same amendment, so I withdraw mine now.

*(Dr. Nuh's proposed amendment withdrawn)*

*(Clauses 7 and 8 agreed to)*

*Clause 9*

**The Temporary Deputy Chairlady** (Dr. Laboso): You have an amendment, hon. David Ngugi

**Mr. Ngugi:** Yes, Madam Temporary Chairlady, it is on page 3285 on the Order Paper. I beg to move:-

THAT, Clause 9 be amended in sub clause (2) by inserting a new paragraph (c) immediately after paragraph (d) as follows-

(c) satisfies the requirements of Chapter six of the Constitution

This is really just to ensure the member of the Authority satisfies constitutional requirements on ethics and integrity.

**Hon. Members:** How! How!

*(Question of the amendment proposed)*

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

*(Clause 9 as amended agreed to)*

*Clause 10*

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 10 be amended in sub clause (2)-

(c) by inserting the word "or her" immediately after the word "him"

(d) by inserting the word "or her" immediately after the word "his"

What the amendment does is just to accommodate gender.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted be inserted,*

*put and agreed to)*

*(Clause 10 as amended agreed to)*

*(Clause 11 agreed to)*

*Clause 12*

**Dr. Nuh:** Madam Temporary Chairlady, I beg to move:-

THAT, Clause 12 be amended-

(g) in sub clause (3) by inserting the words “through a resolution” immediately after the words “and shall,”

(h) by inserting a new subclause immediately after sub clause (6) as follows-

(6) The Tribunal shall accord the person under investigation sufficient hearing and the person might be represented by a person of his or her choice qualified in respect of the particular ground of removal

These are two amendments; one is just to show the threshold. What the National Assembly shall consider shall be through a resolution. It just says if it is satisfied that it discloses the ground, but it does not even show to what magnitude the National Assembly should forward such grounds. So, it is just an addition of the words, “through a resolution” if it is satisfied that it discloses a ground under section 1.

**The Temporary Deputy Chairlady** (Dr. Laboso): There are two parts in it.

**Dr. Nuh:** The second part is a new clause that shall read:

“The Tribunal shall accord the person under investigation sufficient hearing and the person might be represented by a person of his or her choice qualified in respect of the particular ground of removal”

What we are saying is that if someone is being removed on issues of incapacity like health, such a person can be represented by his personal doctor. If it is issues that have to do with law, they can be represented by a lawyer of their choice, and I think that is the constitutional requirement.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I support the amendments.

*(Question of the amendment proposed)*

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

*(Clause 12 as amended agreed to)*

*(Clauses 13, 14, 15 and 16 agreed to)*

*Clause 17*



**The Temporary Deputy Chairlady** (Dr. Laboso): We will get the amendment by hon. David Ngugi followed by hon. Dr. Nuh.

**Mr. Ngugi:** Madam Temporary Deputy Chairlady, this is on page 3285 of the Order Paper. I beg to move:-

THAT, Clause 17 be amended-

(e) in sub clause (1) by deleting the words “and such terms and conditions of service as the Authority may determine”;

(f) in sub clause (2) by deleting the words, “in consultation with the Salaries and Remuneration Authority, may determine” and substituting therefor the words “determine subject to the advice of the Salaries and Remuneration Commission”.

This is a repetition of the method of determining the terms and conditions of service of staff of the Authority, which is in sub-clause 2 below. So, it is just removing the repetition.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I agree.

**The Temporary Deputy Chairlady** (Dr. Laboso): Therefore, let us hold on a minute. Dr. Nuh, let us get your further amendment first.

**Dr. Nuh:** Madam Temporary Deputy Chairlady, put the Question. I have a further amendment to hon. Ngugi’s amendment.

**The Temporary Deputy Chairlady** (Dr. Laboso): Can we dispose of hon. Ngugi’s amendment and then we will get your further amendment?

**Dr. Nuh:** No. Madam Temporary Deputy Chairlady. If you dispose of hon. Ngugi’s amendment then I cannot bring my further amendment to his amendment.

Madam Temporary Deputy Chairlady, I beg to move:-

THAT Clause 17 be further amended in sub clause (2) by deleting the words “Remuneration Authority” and substituting therefor the words “Remuneration Commission”

What I am bringing is a correction. They are talking of “Salaries and Remuneration Authority”, but instead we have a commission.

**Hon. Members:** It has already been changed.

**Dr. Nuh:** Thank you. I see the sense now.

**The Temporary Deputy Chairlady** (Dr. Laboso): Is that what it is, Minister?

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Yes, Madam Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Dr. Laboso): His amendment, therefore, does not hold. It is the first one that goes through. Now, can we please get the clarification as to whether hon. Dr. Nuh has withdrawn his amendment? Please, can you state that you have withdrawn it so that it is on record?

**Dr. Nuh:** Madam Temporary Deputy Chairlady, my amendment is just the same as the one for the Committee; so, I withdraw it.

**The Temporary Deputy Chairlady** (Dr. Laboso): Thank you. His amendment falls because the one for the Committee has been accepted.

*(Dr. Nuh's proposed amendment withdrawn)*

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

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

*(Clause 17 as amended agreed to)*

*(Clause 18 agreed to)*

*Clause 19*

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 19 be amended in sub-clause (3) by inserting the words "appointed under Section 5(a)" immediately after the words "amongst other members".

This is on page 3290. This amendment seeks to have the election of a vice-chairman from the eight members to be appointed by the President rather than coming from the statutory bodies.

*(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, 21 and 22 agreed to)*

*Clause 23*

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

THAT, Clause 23 be amended –

(c) in subclause (1) by inserting the words "by notice in the Gazette at least thirty days before the first elections under the Constitution" immediately after the word "shall",

(d) in sub-clause (3) by deleting the words "prescribed criteria" and substituting therefor the words "criteria set out under Section 24"

Madam Temporary Deputy Chairlady, this is on page 3285. This is to ensure that the Authority publishes funds to be allocated to the county governments, so that counties have such funds immediately after elections.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Minister, are you satisfied with the amendment?

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Yes, I am, Madam Temporary Deputy Chairlady.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Dr. Laboso); There is a further amendment by hon. Dr. Nuh according to the records.

**Dr. Nuh:** Madam Temporary Deputy Chairlady, mine is a different amendment to the same clause. So, dispose of hon. Ngugi's and then you can come to mine.

**The Temporary Deputy Chairlady** (Dr. Laboso): Okay.

*(Question, that the words to be inserted  
be inserted, 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 23 as amended agreed to)*

**The Temporary Deputy Chairlady** (Dr. Laboso) There is a further amendment by hon. Dr. Nuh.

**Dr. Nuh:** Madam Temporary Deputy Chairlady, mine is a different amendment; it is a new clause. This is on page 3290 of the Order Paper.

I beg to move:-

THAT, Clause 23 be amended by inserting the following new sub-clauses immediately after sub-clause (6)-

(10) A country government may appeal to the Senate against a decision under sub-section (6)

(11) A decision of the Senate on the appeal by majority vote in accordance with Article 123 of the Constitution shall be binding on the Authority.

This is the insertion of two new sub-clauses that would give county governments the leeway if they are dissatisfied with any ruling by the Authority to deny them any function that they feel they are capable of; they can lodge an appeal with the Senate, and the Senate by a majority vote, as contained in Article 123 of the Constitution, can decide that such functions can be transferred to certain counties.

*(Question of the further amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I concur.

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

*(Clause 23 as further amended agreed to)*

*(Clauses 24 and 25 agreed to)*

*Clause 26*

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I wish to withdraw my amendment.  
**The Temporary Deputy Chairlady** (Dr. Laboso) The Minister concurs with you.

*(Dr. Nuh's proposed amendment withdrawn)*

*(Clause 26 agreed to)*

*(Clauses 27, 28, 29, 30 and 31 agreed to)*

*Clause 32*

**Mr. Ngugi:** Madam Temporary Deputy Chairlady, I beg to move:-  
THAT, the Bill be amended by deleting Clause 32.

This is on page 3286 of the Order Paper. The justification for this is that the Authority is a body which should not be transacting business. To get money and it puts it in banks to get interest and all these--- I think this Authority should get money from the Exchequer, use it and if it does not use it, return it; it should not be a body that trades. We are trying to cut out any Euro Bank issues here.

*(Question of the amendment proposed)*

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Chairlady, I agree with the Committee that the Authority may not need to deposit in a bank any excess funds, but Clause 32 takes care of any excess money they will have. Clause 32(2) says:-

“The Authority may place on deposit with such bank or banks any money not immediately required for the purposes of the Authority.”

It gives it power to actually open a bank account and put in it its money at the beginning of the month which can be withdrawn at the end of the month. If we delete this we will be denying it the power to actually deposit some money in a bank. Let them have this power but they will not necessarily need to engage in investing funds in trusts or other securities; in any case, they will not have that kind of money, anyway; but deleting everything will actually deny them the opportunity to open a bank account and put their money in it for the time when they will not need it for operations. If the Committee looks at it from that angle, it will see that having the clause is harmless, but deleting it might do harm.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Mungatana, if the Chair of the Committee has allowed the Members to contribute, then you can come in.

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I see the point hon. Kimunya is making, but if you go to Clause 4, this Authority shall be a body corporate with perpetual succession and a common seal and it has all those powers of doing or performing all such other things as to proper discharge of its functions. So, even if we remove it, it is still covered here. So, 32 can be deleted and there is no problem.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Madam Temporary Deputy Chairlady, hon. Mungatana has cleared the issue and we can proceed by deleting it.

**Mr. Ngugi:** Madam Temporary Deputy Chairlady, it has been passed, but the way the law operates is that if it does not prohibit something, you can still do it. So, the import of what hon. Mungatana has said provides for that.

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

*(Clause 32 deleted)*

*(Clause 33 agreed to)*

*Clause 34*

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

THAT, the Bill be amended by deleting clause 34 and substituting therefor the following new clause-

34. (1) A person who—

(d) without justification or lawful excuse, obstructs, hinders or threatens a member, an officer, employee or agent of the Authority acting under this Act;

(e) submits false or misleading information to the Authority; or

(f) makes a false representation to, or knowingly misleads a member, an officer, employee or agent of the Authority acting under this Act, commits an offence and shall be liable, on conviction, to a fine of not less than five hundred thousand shillings or to imprisonment for a term of not less than two years, or to both.

(2) A person who transfers assets without obtaining the requisite approval under section 36 or contrary to the mechanism provided by the Authority under section 7 (2) (g) commits an offence and shall be liable, on conviction, to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding seven years, or to both.

The justification for this is to separate the punishments of the offences so as to have a harsh penalty for the offence of transferring property without the requisite approval.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I agree because it is enhancing the penalty for anybody who will transfer a public asset without the requisite authority.

I support.

*(Question of the amendment proposed)*

**Dr. Kones:** Madam Temporary Deputy Chairlady, I agree with that amendment. I just want a clarification from the Chairman as to where he has put this offence of transferring assets without approval. What is the difference between what we have and what was there?

**Mr. Ngugi:** Madam Temporary Deputy Chairlady, this is in 34(2). We are only separating the penalties.

*(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*

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

THAT, Clause 36 be amended by inserting a new sub clause immediately after sub clause (3) as follows-

(4) Any transfer of assets or liabilities made in contravention of this section (1) shall be invalid.

This is to nullify any transfer of Government assets, so that the assets can revert to the Government. It is to make it clear that even if you transfer Government assets, it is of no use.

*(Question of the amendment proposed)*

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

*(Clause 36 as amended agreed to)*

*(Clause 37 agreed to)*

*Clause 38*

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

THAT, Clause 38 be amended in sub clause (1) by deleting the words “but the National Assembly may, by resolution, extend the period specified in this subsection for a further period not exceeding one year”.

The Constitution requires that the matter be concluded within a period of three years. It will be against the Constitution to extend that period. Also, if you give room for extension, bodies like these tend to delay, especially towards the end, in order to get extension of time. So this body needs to know that within three years, it must be through and it must work within the stipulated period.

*(Question of the amendment proposed)*

**Mr. Langat:** Madam Temporary Deputy Chairlady, I want to oppose this amendment because we will be assuming that this body will be operating in an ideal environment. Even here

today in Parliament, we sought an extension of time. We should assume that sometimes it is not possible to carry out your mandate within the specified time because of one or two reasons. Let us not make this body hurry too much and make mistakes.

I oppose.

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, we have just passed the Inter-Governmental Relations Bill and one of the main functions of the technical committee in that Bill is to take over the residue function of the transition entity established under the law relating to transition to devolved governments after dissolution of such entity. There is absolutely no justification to extend at all.

I support this amendment.

**Mr. Chachu:** Madam Temporary Deputy Chairlady, initially I wanted some level of flexibility but Mr. Mungatana has explained very well. So, I support it.

**The Minister for Public Works (Mr. Obure):** Madam Temporary Deputy Chairlady, we do not know the magnitude of the assignment before this committee. We also do not know precisely whether they will get other challenges. In fact, they could be unable to discharge their function because of factors beyond their control. Referring this matter to the National Assembly is reasonable and I would think that we provide a window for extending their term.

**Mr. Ruto:** Madam Temporary Deputy Chairlady, I think there is absolutely no merit in attempting to extend any time for this commission. In fact, the sooner it winds up the better because that is when the full realisation of the benefits of the new Constitution will have happened. Therefore, the residue work that they may not be able to do can be taken over by the other committee. In any case, there is no need for the conservatives to overstay.

**Mr. Chachu:** On a point of order, Madam Temporary Deputy Chairlady. Is it in order for aspiring governors to take us in circles?

**The Temporary Deputy Chairlady (Dr. Laboso):** They should declare interest.

**Mr. Chachu:** They are so many of them in this room.

**The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi):** Madam Temporary Deputy Chairlady, I can see that Parliament does not want to extend the deadlines on this matter. Because we want to make progress, I will concede and we proceed.

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

*(Clause 38 as amended agreed to)*

### *First Schedule*

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

THAT the Bill be amended by deleting the First Schedule and substituting therefore a new First Schedule as follows-

### **FIRST SCHEDULE**

**(s.6)**

### **PROCEDURE FOR APPOINTMENT OF MEMBERS OF THE**

## **AUTHORITY**

1. Within fourteen days of the commencement of this Act, or of the occurrence of a vacancy in the office of the Chairperson or member, the Public Service Commission shall, by notice in the Gazette and in at least two newspapers of national circulation, declare vacancies in the Authority, inviting applications from qualified persons and competitively convene a selection panel for the purpose of selecting suitable candidates for appointment as the chairperson or members under clause 5 (1) (a).

2. The panel shall comprise a chairperson and six members drawn from public and private sectors and civil society.

3. An application in respect of a vacancy declared under paragraph 1 shall be forwarded to the panel within seven days of the publication of the notice and may be made by –

any qualified person; or

any person, organization or group of persons proposing the nomination of any qualified person.

4. The panel shall, subject to this section, determine its own procedure and the Public Service Commission shall provide it with such facilities and other support as it may require for the discharge of its functions.

5. The panel shall consider the applications and shortlist and publish the names and qualifications of all shortlisted applicants in the Gazette and two daily newspapers of national circulation within seven days from the last day of receipt of the applications under paragraph 3.

6. The Panel shall interview the shortlisted applicants within fourteen days from the date of publication of the list of shortlisted applicants under paragraph 5.

7. After carrying out the interviews, the panel shall select the three persons qualified to be appointed as chairperson and thirteen persons qualified to be members of the Authority and forward the names to the President.



8. The President shall, within seven days of receipt of the names forwarded under subsection (6), nominate a chairperson and other members of the Authority and forward the names of the nominees to the National Assembly.

9. The National Assembly shall, within twenty one days of the day it next sits after receipt of the names of the nominees under subsection (8), consider all nominations and may approve or reject any nomination.

10. Where the National Assembly approves the nominees, the Speaker shall forward the names of the approved nominees to the President for appointment.

11. The President shall, within seven days of the receipt of the approved nominees from the National Assembly, by notice in the Gazette, appoint the chairperson and members approved by the National Assembly.

12. Where the National Assembly rejects any nomination, the Speaker shall communicate the decision to the President who shall submit fresh nominations and the procedure set out under this section shall with necessary modifications, apply.

13. For the purposes of the appointment of the first Authority and filling of any vacancy in the Authority before the first general elections after the commencement of this Act, the President shall act in consultation with the Prime Minister.

14. Despite the foregoing provisions of this section, the President, in consultation with the Prime Minister may, by notice in the Gazette, extend the period specified in respect of any matter under this section by a period not exceeding twenty-one days.

15. In selecting, nominating, approving or appointing the chairperson and members of the Authority, the selection panel, the National Assembly, the President and the Prime Minister shall—

(a) ensure that the Authority reflects the regional and other diversities of the people of Kenya and that not more than two-thirds of the members are of the same gender;

(b) have due regard to the required experience and expertise.

16. The term of the Panel constituted under paragraph 2 shall expire upon the appointment of the members for which the panel was constituted under this Schedule.

**Temporary Deputy Chairlady** (Dr. Laboso): Mr. Ngugi, hon. Members seem to want to know the import of you amendment.

**Mr. Ngugi:** Madam Temporary Deputy Chairlady, I am trying to consult my notes. It is particularly to tidy up the Schedule so that it flows and it is in consistence with the other amendments that we have passed.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I think what is coming out clearly is that the Committee is recommending that rather than the Cabinet Secretary being the one to give notice to have the panelists who will interview the people, they would rather the Public Service Commission (PSC) puts out a notice and advertises in the public media or gazette. We are devolving power so that the Cabinet Secretary does not have to do it and I do not have to do it. So, I think we can go with the PSC.

**The Temporary Deputy Chairlady** (Dr. Laboso): So you are supporting?

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Madam Temporary Deputy Chairlady, yes, because here it is just the gazette notice. What it is saying is that rather than confine this to a particular individual, the PSC is the one that shall give notice in the gazette and at least two of the newspapers to appoint the panel that will then do the interview for the proposed members of the Authority. So I think it is in order and I support it.

*(Dr. Nuh stood up in his place)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Dr. Nuh, are you talking about your further amendment?

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I had a different amendment to the Schedule.

**The Temporary Deputy Chairlady** (Dr. Laboso): Dr. Nuh, if it is a different amendment then we will have to dispose of this one first.

**Dr. Nuh:** Let me explain, Madam Temporary Deputy Chairlady. I have dropped my new amendments to the Schedule. In most of the instances we were in concurrence with the Committee. I have talked to Mr. Ngugi and I have a further amendment to his amendment. Rather than the recruitment process being done by the Public Service Commission and because the Minister himself talks of devolving power even further, selection will be done by a panel that will be formed from statutory bodies such as the Kenya National Commission on Human Rights (KNCHR), the Revenue Allocation Commission (RAC), the Law of Society of Kenya (LSK) and the Association of Local Government Authorities of Kenya (ALGAK). They will make two nominations each to Parliament. Parliament will vet ten nominees and select five out of the ten. Then those five who are selected will be forward to the President. This will be the selecting panel that will shortlist and interview candidates. Once they get the names, they will submit them to the president to make nominations and Parliament will approve them. So, that is the input of

my amendment to Mr. Ngugi's amendment. We have discussed exhaustively even with some five or six hon. Members of his Committee and they are in concurrence.

I also want to specify that we have shortened the process and now it will only take 28 days to appoint members of the Authority.

*(Question of the further amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I beg to oppose that amendment because we have already agreed that the PSC should advertise. We have also had strange experiences when you say that you want to bring in the KNCHR, a person nominated by the Kenya Private Sector Alliance (KPSA) and the RAC. Let us have different people being given an opportunity. These people have already got their hands full. Let them do their job where they are doing it. Let other people interview and look for these persons. So, I would plead that Mr. Ngugi's amendment carries through.

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, I want to support the statement by the Deputy Prime Minister and Minister for Local Government and plead with Dr. Nuh to step down his further amendment because if we open up to all these organizations, we all know them, then there will be all manner of contestations, talk shop and all that stuff. Things will just not move! Let us stick to the amendment by Mr. Ngugi.

**The Minister for Lands** (Mr. Orenge): Madam Temporary Deputy Chairlady, I am getting worried in terms of these selection panels. If you look at a lot of the draft legislation that has come or the enactments that have been made in this regard, we are sticking around to some six to ten organizations which every time we want to constitute a panel, we are confined to the very same panels that I see here being suggested by Dr. Nuh. You may find that by default, you will be having the Government being operated by bodies which are not representing anybody.

*(Applause)*

Some of these commissions, you can even find that during their work, they may not be doing their work properly themselves.

**Mrs. Odhiambo-Mabona:** No!

**The Temporary Deputy Chairlady** (Dr. Laboso): Order, Mrs. Odhiambo-Mabona!

**The Minister for Lands** (Mr. Orenge): Madam Temporary Deputy Chairlady, once you have said they are the once to nominate, then there is no way you can run away and say that KNCHR is not doing its work properly and they should be thrown out. I think we are trying to throw the Government to unelected group of persons and I think that should not be encouraged.

**Mr. Ruto:** Madam Temporary Deputy Chairlady, I think Mr. Orenge has spoken very well for the first time in several weeks.

*(Laughter)*

I am actually persuaded to side with him on this particular issue because he has been supporting those busybodies for too long. Unfortunately, right now we are not being covered by the Press. We are not covered by the television so I request my colleague to withdraw.

*(Mrs. Odhiambo-Mabona stood up in her place)*

**The Temporary Deputy Chairlady** (Dr. Laboso): What is it?

**Hon. Members:** No!

**The Temporary Deputy Chair** (Dr. Laboso): She is on a point of order!

**Mrs. Odhiambo-Mabona:** On a point of order, Madam Temporary Deputy Chairlady. I am not bothered about Mr. Orengo; I defend a group of people here called the civil society and they are not busybodies. They produced a brilliant woman like me.

**Hon. Members:** Ah!

**The Temporary Deputy Chair** (Dr. Laboso): We need to dispense of this!

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I am persuaded by my senior colleagues.

**The Minister for Lands** (Mr. Orengo): On a point of order, Madam Temporary Deputy Chairlady, for record purposes, I did not mean that I was throwing some mud to the civil society. I have grown from the civil society by I was saying that the way it is being formulated, we may be confined to a particular category or group within the civil society. We should open up!

**The Temporary Deputy Chair** (Dr. Laboso): Okay! I think the point has been made. Dr. Nuh!

**Dr. Nuh:** Madam Temporary Deputy Chairlady, before I was interrupted, I said that I am persuaded by my senior colleagues, especially hon. Orengo, who says that he grew from the civil society. So, I humbly withdraw.

*(Dr. Nuh's proposed amendment withdrawn)*

*(First Schedule as amended agreed to)*

### *Second Schedule*

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, the Second Schedule to the Bill be amended in paragraph 1 by inserting the words "appointed under section 5(a)" immediately after the words "its members"

Madam Temporary Deputy Chairlady, this only goes to the amendment that I had fronted earlier, where I am specifying where the vice-chairperson of the Authority will come from.

*(Question of the amendment proposed)*

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

*(Second Schedule as amended agreed to)*

*(Third Schedule agreed to)*

*(Fourth Schedule agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Madam Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Transition to Devolved Governments Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, we will now move on to the last Bill, which is the County Governments Bill. We will then report all of them at the end.

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

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

#### THE COUNTY GOVERNMENTS BILL

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! We will proceed as mentioned by my colleague. We are now dealing with the County Governments Bill.

#### *Clause 2*

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

THAT, Clause 2 of the Bill be amended in the definition of “apex body” by inserting the word “apex” immediately after the words “means the”.

Mr. Temporary Deputy Chairman, Sir, this is just to ensure that the symbols once developed are used in accordance with the national registration to prevent abuse. That is all.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Mr. Deputy Prime Minister and Minister for Local Government, it is good to give your indication. You do not have to speak; you can just nod if you are in agreement.

**Mr. Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I think that there is an issue because in my Order Paper, Clause 2 talks of the word “apex” and he was referring to symbols.

**Mr. Ngugi:** I am sorry Mr. Temporary Deputy Chairman, Sir. I apologize. I beg to move:-

THAT, Clause 2 be amended in the definition of “apex body” by inserting the word “apex” immediately after the words “means the”.

This is just the flow of English.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I think we do not need the amendment. It is clear enough, unless you would want to replace the word “body” with “the entity established.”

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, I do not have strong views on it. We just wanted to make it clear, but if hon. Members feel that it is clear, we will leave it. I withdraw.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! The words “apex body” mean “the body.” It is already describing the “apex body.” So, we will assume that, that amendment has been withdrawn.

*(Mr. Ngugi’s proposed amendment withdrawn)*

Dr. Nuh, you have an amendment to Clause 2!

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I had an amendment on page 3273, but I have been advised accordingly and I withdraw it.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Dr. Nuh! The proposal is on Clause 2.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I have a proposal on Clause 2 on page 3273, where I wanted to---

**The Temporary Deputy Chairman** (Mr. Ethuro): No! No! So, you are withdrawing it?

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I am withdrawing that amendment.

*(Dr. Nuh’s proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Ethuro): There is another proposed amendment to Clause 2 by Dr. Otichilo!

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill be amended-

(a) in the definition of “shared services” by inserting the words “and public private partnerships” immediately after the word “government”

(b) by inserting the following new definition in its proper alphabetical sequence-  
“GIS based database system” means a geographical information system that integrates hardware, software and data for capturing, managing, analyzing and displaying forms of geographically referenced information.

Mr. Temporary Deputy Chairman, Sir, under Clause 2(b) we have a section which deals with partnerships between county or counties and National Government. I wish to insert there “public/private partnerships” because I believe that we should include the private partnerships in that exercise.

I have indicated that we need to insert a GIS based data system. This is a definition that I have provided, because under Clause 106 I have proposed the introduction of a GIS database.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I see no problem with part (d), especially on the GIS based database. However, on the issue of shared services, if I recollect properly, there is a Bill which will define public-private partnership separately. “Shared services” in this context is a

different situation where counties may share the services. So, I would support the proposal to have the GIS based database system defined in this law, but I would recommend that we do not include the partnership bit because it is covered under a different Bill that is coming to Parliament.

**The Temporary Deputy Chairman** (Mr. Ethuro): Okay, since these are in parts (c) and (d), I will dispose of them separately. Therefore, I will put the Question.

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

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, I further put the Question, that Clause 2 be amended as proposed by Dr. Otichilo in part (d).

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

*(Clause 2 as amended agreed to)*

*(Clause 3 agreed to)*

#### *Clause 4*

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

THAT, Clause 4 of the Bill be amended by inserting the following new sub clause immediately after sub clause (2)-

(3) The county legislation enacted under subsection (1) shall provide for the use of the county symbols in the same manner as provided for in the National Flag, Emblems and Names Act.

Mr. Temporary Deputy Chairman, Sir, the amendment is on page 3250 of the Order Paper. This is just to ensure that the symbols, once developed, are used in accordance with the national law, and are not subject to abuse.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Mr. Ethuro): Dr. Khalwale, you have amendment to Clause 4.

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, my amendment is on page 3270. I beg to move:-

THAT, Clause 4 of the Bill be amended by inserting the following new sub-clause immediately after clause (2)-

“(3) A county symbol shall not be the same as, or bear a likeness or similarity to a national symbol”.

Mr. Temporary Deputy Chairman, Sir, the import of this is that we want the county symbols to be distinct, so that no county government will design a symbol that will be a replica, so that it will look like a small Kenya somewhere in a corner of the country.

*(Question of the amendment proposed)*

The Minister for Lands (**Mr. Orengo**): Mr. Temporary Deputy Chairman, Sir, I have trouble with that one. For example, if you have a symbol and a particular part of the country wants to incorporate a national symbol, I do not see what is wrong with that. For instance, if the symbol includes the national flag, what would be wrong with that?

**Dr. Khalwale**: Mr. Temporary Deputy Chairman, Sir, I know that hon. Orengo knows about this. If you go to the USA, where we are starting to learn a bit of this stuff from, in each state, you will find that, in the office of the governor, you have the flag of the USA and the flag of the state. At no time do you find them similar. The same applies to the coat of arms and stuff like that. Why would hon. Orengo, who is likely to choose a fish, want to put there a lion?

*(Laughter)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Dr. Khalwale! I thought you actually wanted to choose a bull yourself.

*(Laughter)*

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

*(Clause 4 as amended agreed to)*

*(Clause 5 agreed to)*

*Clause 6*

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

THAT, Clause 6 be amended -

(a) in subclause (1) by inserting the words “be a body corporate with perpetual succession and shall” immediately after the words “a county government”;

(b) in sub clause (2) (b) by deleting the words “whether situate within or without its area of jurisdiction.”

Mr. Temporary Deputy Chairman, Sir, the amendment is on page 3250 of the Order Paper. This is just to ensure that the county government is a body corporate.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, could hon. Ngugi explain a little bit on part (b) of his amendment? He has also proposed an amendment to delete the words “whether situate within or without its area of jurisdiction”. Is that particular aspect of the amendment being dropped?



**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, the Committee was looking at (b) in a situation where it may want to purchase, for example, land outside the county.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, in that case, as we take on board amendment to (c), then we should not tamper with (b) because it gives the county governments the opportunity to invest or acquire something in a different county.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, perhaps we can benefit from the wisdom of a lawyer of more years. I would love it if hon. Orengo could listen. I wonder whether it is suitable for a county government to be a body corporate. If so, is the National government a body corporate?

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Orengo, you have been called upon to shed light.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I think it is normally done for purposes of clarity. For example, if you read the Local Government Act, you will find that there are provisions there that a local authority, as established under the Local Government Act, shall be a body corporate. That can be the case even for county governments, for avoidance of doubt. We have done this in so many Bills that have gone through this House. Even for that reason alone, so that we have consistency, it is okay.

We should not fail to establish this as a body corporate since we have created other bodies in a similar manner, including commissions. If for this particular one we do not have similar provisions, the question may arise why in this particular respect the Legislature did not do what they did for the other commissions. I think it is a safe thing to have. In other provisions, including in the Public Finance Bill, which is coming, county governments are going to be allowed to secure loans. Outside our jurisdiction, some people would wonder whether they are body corporate and are so recognised by the law in Kenya. That is just for clarity.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I really think for purposes of legal philosophy and maybe just because we want to save time I can live with it. However, I think it is something we need to look at again because when Kenya negotiates with France, it does not negotiate with France as a body corporate.

**The Temporary Deputy Chairman** (Mr. Ethuro): I want to dispose of the amendments in the two sections that are indicated. So, I will start with (c)

*(Question of the amendment proposed)*

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

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

*(Clause 6 as amended agreed to)*

*Clause 7*

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 7 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (3)-

“(4) The speaker of a county assembly may, in consultation with the leader of the majority and the leader of the minority and after hearing the representations, if any, by a member of the assembly on the matter, invite or allow a senator to attend a sitting of the assembly or to address the assembly either generally or on a particular matter”.

Mr. Temporary Deputy Chairman, Sir, the reason why I have introduced this amendment is borne out of the realization that whereas we want to look at the Senator as a representative, but functionally, he is a delegate representing the county. The voters in each constituency within that county look for votes, give to this man or woman and then when he is the most popular, he is the conveyor of the concerns of the county to the Senate.

Once in the Senate, he has got a specific job description. One of them which is very important is the issue of the budget of that particular county. Because the composition of the Senate is already known, it is stated, if you make this Senator a Member of the County Assembly, you will be negating the Constitution. You would be moving unconstitutionally. That is why I am proposing this amendment so that with the leave of the House the Speaker consults the majority House leader, the minority House leader and if there is any hon. Member within the county assembly who concurs, then this Senator on that particular occasion when they concurred, for example on the day of budget, he can then listen in and know what he is going to defend in the Senate.

I beg to move.

*(Question of the amendment proposed)*

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, that proposition is completely unconstitutional. It is very clear what constitutes a county assembly. It does not constitute Senators. Unless these Senators have nothing to do, they should be busy doing their thing up here in Nairobi.

Let us be very clear. The composition of the county assembly does not constitutionally include Senators. We cannot through an Act of Parliament try to sneak in Senators into this. It just does not sit well at all.

So, I beg to oppose.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, much as I sympathize with the sentiments expressed by Dr. Khalwale and the need, perhaps, for a Senator to address or to sit, unfortunately, if you look at our Constitution, even at the election point our Constitution is very clear that you cannot even be elected into the county assembly if you are a Member of Parliament. A Senator is a Member of Parliament. It is the recognition that we need to separate the two together. So, I can see the point of being invited. If it is by invitation you do not need to put that in the law. Not only do they need to invite the Senator, they can also invite business people. We do not need to put that in the law. So, I would urge that we remove it, first of all, because of the conflict within the Constitution and also not to get an overbearing Senator using the law to keep telling the county assembly that the law says he must be invited. Let us separate the two and devolve properly.

**Mr. Chachu:** Mr. Temporary Deputy Chairman, Sir, as one of the people who were in Naivasha I can clearly say that this is one part of the Constitution that was not well thought

through. Actually, what we gave in Naivasha as the Senate is very different from what you eventually produced. This is a fact.

So, there is need for some linkages between the county government and the Senate. The work of the Senate here in Nairobi is definitely managing affairs of the county governments at national level and yet there is no linkage at all. Maybe not through this forum, but I think in the long run as a country we must look for ways of linking the county governments and the role of Senators in Nairobi. It is important.

I do oppose the amendment.

**The Assistant Minister for Energy** (Mr. M.M. Mahamud): Mr. Temporary Deputy Chairman, Sir, I oppose the amendment. Senators are Senators and county assembly members are county assembly members. Let us not mix the roles. The Senator can be invited and sit in the gallery like any other person.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, I want to plead with my good friend the bullfighter that I actually notice his concern. Perhaps, in the Zambian system we have a system where Members of Parliament do sit within the local authorities. Maybe this situation is provided for in the Constitution. I think that was never provided for here. It is a good idea which is ten years ahead of its time.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I think it will be rather onerous on our part to take on us the responsibility to decide for counties or county assemblies whom they can and cannot invite. By our Standing Orders, by resolution, that issue is normally decided; who can sit in the galleries, who can attend sessions in what respect. Therefore, I plead with you let us give the county assemblies that latitude through their standing orders. Probably as a prospective Senator you are taking your work too seriously before you are elected.

**Mr. Kioni:** Mr. Temporary Deputy Chairman, Sir, I think I know where Dr. Bonny Khalwale is coming from. I have maintained that there is no work that the Senator will be doing and he is trying to look for work for the Senator. I think we should do it in a tidy manner. I oppose.

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I want to thank my young brother Charles when he confesses that I am ten years ahead of time. This is going to catch up with us, I tell you. This is because I can see the attitude that we had in Bomas as Members of Parliament, the attitude that we had in this National Assembly when we looked at the Senate as an organ that was going to take some power away from us because at that time it was not there. That is dangerous. I can for sure confirm to you that I am not going to be in the Senate, if the people of Kakamega allow me, forever. We want to create a system that is good for the whole country.

**The Minister for Lands** (Mr. Orengo): On a point of information, Mr. Temporary Deputy Chairman, Sir.

**Dr. Khalwale:** Yes, I would like you to inform me.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, luckily this thing has been dealt with. If you look at your Order Paper on page 3214 the proposed Second Schedule – Matters to be provided for in the County Assembly Standing Orders---

**The Temporary Deputy Chairman** (Mr. Ethuro): Which page Mr. Orengo?

**The Minister for Lands** (Mr. Orengo): Sorry, I am using the morning Order Paper. But anyway if you look at ---

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, he is not using a wrong Order Paper; you know there is the normal Order Paper and the Supplementary Order Paper. So that is where the differences are.

**The Minister for Lands** (Mr. Orengo): Anyway what I am saying is that if you look at the matrix of the Second Schedule it contains what must be in the Standing Orders. Amongst them there, the Governor's address to the assembly, address by the Senator or person other than the Governor or Member. Therefore, I think it has been placed where it belongs.

**Dr. Khalwale:** Thank you for the information. I had actually not looked at that particular section of the Schedule.

Mr. Temporary Deputy Speaker, Sir, I am therefore saying that if the future of this country is going to depend on devolution as we all expect, we therefore, must forever remind Governors and my junior younger brother Mr. Mungatana here---

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Dr. Khalwale! You speak through the Chair and the Chair does not sit behind you!

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, it is important that forever we keep the Governor worried; worried that there is oversight over him. What do I mean? I mean that the oversight role of the Senate over the county government should include actual specifics whereby he is alive to what the county assembly is saying. Members of the county assembly do not sit in the Summit that we have created and yet their issues might be misrepresented. The day will come when I will convince the House after we will have tested this model; the House will join me before the ten years elapse.

I thank you and I step down my amendment.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Members! I think in terms of procedure there is really no point justifying your argument and then you withdraw. I will therefore put the question!

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

*(Clause 7 agreed to)*

*Clause 8*

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

THAT, Clause 8 be amended in subclause (1) by inserting a new paragraph (a) as follows-

(a) vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law.

Mr. Temporary Deputy Chairman, Sir, this is just to incorporate the role of the county assembly to vet nominees for appointment.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I concur.

**The Temporary Deputy Chairman** (Mr. Ethuro): Minister, I suggested that if you concur just nodding is sufficient for our purposes.

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

*(Clause 8 as amended agreed to)*

*Clause 9*

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

THAT, Clause 9 be amended in sub clause (5) by deleting the words “deputize for the Speaker” and substituting therefor the words “in the absence of the Speaker, preside over the sittings of the assembly”

Mr. Temporary Deputy Chairman, Sir, if you look at the Constitution it has three languages; Kiswahili, English and sign language. We are just aligning this with the Constitution.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Ngugi! I think your amendment is on page 3250 according to the morning Order Paper; the first one before the Supplementary Order Paper and it is on Clause 9.

**Mr. Ngugi:** I apologize, Mr. Temporary Deputy Chairman, Sir. I think my clerks mixed them here.

We are proposing that Clause 9 be amended in sub clause (5) by deleting the words “deputize for the Speaker” and substituting therefor the words “in the absence of the Speaker, preside over the sittings of the assembly”

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I do not think there is any harm with it. I support.

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

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

*(Clause 9 as amended agreed to)*

*(Clause 10 agreed to)*

*Clause 11*

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

THAT, Clause 11 be amended in sub clause (1) by deleting the words “seventy five per cent” and substituting therefor the words “two-thirds”

Mr. Temporary Deputy Chairman, Sir, it is on page 3269 and I am proposing that the threshold for removal of the Speaker from office be downgraded from a resolution of not less

that 75 per cent of the members to two-thirds of the members of the county. The justification is that it is consistent with what has been the practice in the National Assembly.

I move.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I am just looking at it this way; the size of the county assemblies perhaps the largest maybe Nairobi, Kakamega or Kiambu. You will find that based on the number of wards or county assembly members, two-thirds is going to be a very small number. These are smaller entities and I would therefore really plead that we leave it as it is so that it brings some measure of stability. Some county assemblies will have 30 members others 40 members and others twenty something members. If you look at it in that context let us leave the threshold at 75 per cent.

**The Minister for Lands** (Mr. Orenge): Mr. Temporary Deputy Chairman, Sir, I just want to point out something to hon. Mungatana. I think under the old Constitution, threshold for the removal of the Speaker is much higher than even that required for changing the Constitution. I think it is 75 per cent, if I am not wrong.

So, I think it is well thought out that if you have a Speaker who can be removed any time then that undermines his authority, especially when as the Minister is saying the assemblies have few members

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I therefore, withdraw that amendment.

*(Mr. Mungatana's proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Given that the amendment has been withdrawn, I, therefore, put the Question that Clause 11 be part of the Bill.

*(Clause 11 agreed to)*

*Clause 12*

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

THAT, Clause 12 be deleted and the following substituted —

- The county assembly service board.**
12. (1) There shall be a county assembly service board for each county assembly.
  - (2) The county assembly service board shall be a body corporate with perpetual succession and a common seal.
  - (3) The county assembly service board shall consist of-
    - (a) the Speaker of the county assembly as the chairperson;
    - (b) the leader of the majority party or a member of the county assembly deputed by him or her, as the vice-chairperson;
    - (c) the leader of the minority party or a member of county assembly deputed by him or her; and
    - (d) one person resident in the county, appointed by the county assembly

from among persons who have knowledge and experience in public affairs, but who is not a member of the county assembly.

(4) The county assembly clerk shall be the secretary to the county assembly service board.

(5) A member of the county assembly service board shall vacate office—

(a) if the person is a member of county assembly—

(i) at the end of the term of the county assembly; or

(ii) if the person ceases to be a member of the county assembly; or

(b) if the person is an appointed member, on revocation of the person's appointment by the county assembly or

(c) if the person is the Speaker, Leader of Majority Party, or Leader of Minority Party when the person ceases to be such Speaker, Leader of Majority Party, or Leader of Minority Party.

(6) Despite subsection (5), when the term of the county assembly ends, a member of the county assembly service board under subsection (3) (d) shall continue in office until a new member has assumed office in the member's place in the next assembly.

(7) The county assembly service board is responsible for—

(a) providing services and facilities to ensure the efficient and effective functioning of the county assembly;

(b) constituting offices in the county assembly service, and appointing and supervising office holders;

(c) preparing annual estimates of expenditure of the county assembly service and submitting them to the county assembly for approval, and exercising budgetary control over the service;

(d) undertaking, singly or jointly with other relevant organisations, programmes to promote the ideals of parliamentary democracy; and

(e) performing other functions—

(i) necessary for the well-being of the members and staff of the county assembly; or

(ii) prescribed by national legislation.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to support. It was, in fact, highlighted by hon. Ngugi during our deliberations. We need to provide for this. So, I want to support the Committee.

**The Temporary Deputy Chairman** (Mr. Ethuro): There would have been another amendment by the hon. Mungatana, but since the one of hon. Ngugi and the Committee has been carried, there is no need for hon. Mungatana to move the amendment.

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

What is it, hon. Mungatana?

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I think my amendments are slightly different, on page 3269---

**The Temporary Deputy Chairman** (Mr. Ethuro): No, proceed, we are listening.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I was proposing an amendment on part (c). I am saying in sub-clause (3) we should add---- I think there is a misnomer on the Order Paper, but after the word “Kenya” the qualification for the county assembly clerk should include the word, “and a local of the county”.

Mr. Temporary Deputy Chairman, Sir, the amendment that I am proposing is self explanatory---

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Mungatana! Why we are saying you cannot carry your amendment is because what you are proposing to amend is no more. It was deleted by the amendment proposed by the Committee. So, you cannot amend what does not exist. You could only have brought a further amendment to what hon. Ngugi has proposed.

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

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

*(Clause 12 as amended agreed to)*

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

**The Temporary Deputy Chairman** (Mr. Ethuro): What is it, hon. Lessonet?

**Mr. Lessonet:** Mr. Temporary Deputy Chairman, Sir, I am not sure whether we did New Clause, which hon. Ngugi---

**Hon. Members:** It will come later!

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Members! Let us help the Member!

**Mr. Lessonet:** Mr. Temporary Deputy Chairman, you have already gone to Clause 13, when Mr. Ngugi has New Clause 12A.

**The Temporary Deputy Chairman** (Mr. Ethuro): In fact, you have described it nicely. It is a new clause. So, we usually deal with new clauses after we have disposed of the old ones.

Proceed, hon. Ngugi.

### *Clause 13*

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, on page 3253, Clause 13, I beg to move:-

THAT, Clause 13 be amended by inserting a new sub clause immediately after sub clause (7) as follows-

(8) Without limiting the generality of subsection (1), the Standing Orders made under this section shall provide for the matters specified in the Second Schedule.



This provides templates to be followed by the county assemblies in developing their rules of procedure.

*(Question of the amendment proposed)*

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

*(Clause 13 as amended agreed to)*

*(Clause 14 agreed to)*

*Clause 15*

**The Temporary Deputy Chairman** (Mr. Ngugi): Mr. Temporary Deputy Chairman, Sir, it is on page 3253 again, I beg to move:-

THAT, Clause 15 be amended by deleting the words “proceedings in the county assembly and substituting therefor the words “proceedings of the county assembly”.

This is basically to protect Members of the County Assembly not only in the precincts of the Assembly, but even while transacting business of the Assembly outside.

*(Question of the amendment proposed)*

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I want to support the Chair of the Committee and remind the House that the importance of this can be learnt from the experience of a former Member of this Assembly. He chaired Committee proceedings and made remarks within the precincts of Parliament, but he has been sued. He is supposed to pay—I do not know much. He is a cousin of Millie. Millie, you remember this award?

**The Temporary Deputy Chairman** (Mr. Ethuro): Order! Hon. Khalwale, you have made your point, you do not need a quantum.

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

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

*(Clause 15 as amended agreed to)*

*(Clause 16 agreed to)*

*Clause 17*

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

THAT, Clause 17 be amended –

(d) in subclause (1), by deleting the words “Kiswahili and English” and substituting therefor the words “Kiswahili, English and Kenyan Sign language, and the business of the county assembly may be conducted in English, Kiswahili and Kenyan Sign language.”;

(e) by inserting a new subclause immediately after sub clause (1) as follows-

(1A) No business of the county assembly or any of its committees or other organs may be conducted or transacted in a language other than the official languages.;

(c) in subclause (3) by deleting the words “in either of the official languages and substituting therefor the words “in the official language in which it was presented.”

In this first instance, this is to align the Act with the Constitution in terms of languages, and the second one is to prevent other languages being used as official languages. The third one is to ensure that recordings of the HANSARD are captured verbatim in the language in which the words are used.

*(Question of the amendment proposed)*

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

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

*(Clause 17 as amended agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Otichilo, you realize yours has been dropped.

*(Dr. Otichilo’s proposed amendment dropped)*

*(Clauses 18 and 19 agreed to)*

*Clause 20*

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

THAT, Clause 20 be amended-

(a) by deleting sub-clause (1) and;

(d) by inserting the following new sub-clause immediately after the existing sub-clause (2)-

(3) A Bill may be introduced by any member or committee of the county assembly, but a money Bill may be introduced only in accordance with subsection (3).

This is on page 3253 again. This is to mirror languages as used in Parliament, to be the same in the county assembly. As a corporate body, a county cannot introduce Bills; it can only do so through a member or community.

*(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  
be inserted, put and agreed to)*

*(Clause 20 as amended agreed to)*

#### *Clause 21*

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 21 be deleted.

Again this is on page 3253 of the Order Paper. The import of this is that even here in the National Assembly we have moved on. We should remove the need to seek leave by a Motion before introducing Bills.

*(Question of the amendment proposed)*

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

*(Clause 21 deleted)*

#### *Clause 22*

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 22 be deleted.

*(Question of the amendment proposed)*

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I do not know where this is coming from because the normal practice here, or in most jurisdictions is that normally a Bill should have a title if not a number. I think for each Bill to have a distinctive character it should have a title and a number, if need be. Otherwise, you may have Bills without reference; I think this is very important.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, this was from the Legal Department and I agree with hon. Orengo's argument.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Ngugi, are you withdrawing the amendment? Just for your information, neither the clerks nor the legal personnel are here. It is hon. Ngugi.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, I withdraw it.

*(Mr. Ngugi's proposed amendment withdrawn)*

*(Clause 22 agreed to)*

*(Clause 23 agreed to)*

*Clause 24*

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 24 be deleted.

This is on page 3254. The reason given for this is that this should be in the Standing Orders or rules. If that is not the case, I stand to be guided.

*(Question of the amendment proposed)*

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, again I want to plead with hon. Ngugi that how the Bill progresses, the basic structure is in the Constitution actually. So, I think it is better to have it here.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, I am persuaded and I withdraw it.

*(Consultations)*

Mr. Temporary Deputy Chairman, Sir, thank you for your guidance. The reason why the Committee recommended or proposed that this clause be deleted was because it is provided for in the Standing Orders, and it is in the schedule.

**Dr. Nuh:** Mr. Temporary Deputy Speaker, Sir, many of the amendments I had were dropped because they were also incorporated by the Committee. If you look at the way Clause 24 is listed, it is written in such a way that even the procedure of conducting business of Bills is chaotic. So, because this Act provides that the Standing Orders of the National Assembly shall apply to all counties until such a time that they will have their own Standing Orders, I think it is better that we do away with such a chaotic procedure. This is because Section 5 says: "Amendments to the Bill may be moved by hon. Members in writing at any time before the closure of the debate". That means that the Committee Stage of debate and the Second Reading are intertwined. So, I think, even for my case, the procedure is so chaotic. It is better that the Standing Orders are used for any procedure on Bills until such a time when the counties will have their own.

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

*(Clause 24 deleted)*

*Clause 25*

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

THAT, Clause 25 be amended by deleting subclause (1) and substituting therefor the following-

(1) When a Bill has been passed by the county assembly, the speaker of the assembly shall forward the Bill to the governor for assent.

This is to mirror the language used in the National Parliament for the forwarding of Bills for assent.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, I just want some clarification from the Chairman on this. Is he not giving any time limit? The whole idea was that within a certain time frame, the Speaker must forward, but here you are leaving it blank, I do not know whether that is what you intend to achieve.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, here, we have said that when a Bill is passed by the county assembly, the Speaker of the assembly shall forward the Bill to the governor for assent. Maybe, the timeline is what can be included as a further amendment.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, it is already there in the Bill. So, I would request that we leave it as it is.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Member! Are you withdrawing or we do it in the normal way?

**Mr. Ngugi:** I withdraw!

**The Temporary Deputy Chairman** (Mr. Ethuro): Thank you.

*(Mr. Ngugi's proposed amendment withdrawn)*

*(Clause 25 agreed to)*

*(Clauses 26 and 27 agreed to)*

Clause 28

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 28 be deleted and replaced with the following-

**Recall of a County Assembly member.** 28 (1) The electorate in a county Ward may recall their member of the county assembly before the end of the term of the member on any of the grounds specified in subsection (2).  
(2) A member of a county assembly may be recalled where the member—

(a) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;

(b) is found, after due process of the law, to have mismanaged public resources;

(c) is convicted of an offence under the Elections Act, 2012.

(3) A recall of a member of the county assembly under subsection (1)

shall only be initiated upon a judgment or finding by the High Court confirming the grounds specified in subsection (2).

(4) A recall under subsection (1) shall only be initiated twenty-four months after the election of the member of the county assembly and not later than twelve months immediately preceding the next general election.

(5) A recall petition shall not be filed against a member of the county assembly more than once during the term of that member in the county assembly.

(6) A person who unsuccessfully contested an election under the Elections Act, 2012 shall not be eligible, directly or indirectly, to initiate a petition under this section.

**Petition for recall.** 28A. (1) A recall under section 28 shall be initiated by a petition which shall be filed with the Independent Electoral and Boundaries Commission and which shall be—

(a) in writing;

(b) signed by a petitioner who—

(i) is a voter in the Ward in respect of which the recall is sought; and

(ii) was registered to vote in the election in respect of which the recall is sought;

(c) accompanied by an order of the High Court issued in terms of section 21(3).

(2) The petition referred to in subsection (1) shall—

(a) specify the grounds for the recall as specified under section 45 (2);

(b) contain a list of such number of names of voters in the Ward which shall represent at least thirty percent of the registered voters in that Ward; and

(c) be accompanied by the fee prescribed for an election petition.

(3) The list of names referred to in subsection (2) (b) shall contain the names, address, voter card number, national identity card or passport number and signature of the voters supporting the petition.

(4) The voters supporting a petition under subsection (3) shall represent the diversity of the people in the Ward.

(5) The petitioner shall collect and submit to the Commission the list of names under subsection (2) (b) within a period of thirty days after filing the petition.

(6) The Commission shall verify the list of names within a period of thirty days of receipt of that list.

(7) The Commission, if satisfied that the requirements of this section are met, shall within fifteen days after the verification, issue a notice of the recall to the speaker of the county assembly.

(8) The Commission shall conduct a recall election within the Ward within ninety days of the publication of the question.

**Recall** 28B. (1) Where a member of the county assembly is to be recalled under section 28, the Commission shall frame the question to be

**elections.** determined at the recall election. T  
 (2) A question referred to in subsection (1) shall be framed in such a manner as to require the answer “yes” or the answer “no”. his is to make  
 (3) The Commission shall assign a symbol for each answer to the recall the recall  
 question. procedu  
 (4) The voting at a recall election shall be by secret ballot. re  
 (5) A recall election shall be decided by a simple majority of the voters similar  
 voting in the recall election. to that  
 (6) Where a recall election results in the removal of a member of the of a  
 county assembly, the Commission shall conduct a by-election in the Membe  
 affected constituency or county. r of  
 (7) A member of the county assembly who has been recalled may run Parliam  
 in the by-election conducted under subsection (6). ent as

contained in the Election Act. It is to mirror the two so that we do not have a different procedure for recalling County Assembly Members and another one for recalling the Members of Parliament. It is just to mirror the same.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi):  
 Mr. Temporary Deputy Chairman, I have no objection if it becomes consistent with the Election Act as provided for the Members of Parliament.

*(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 20 as amended agreed to)*

*(Clauses 29 and 30 agreed to)*

*Clause 31*

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 31 be amended in subclause (2)-

(a) by inserting the words “Subject to the Constitution” in the opening paragraph immediately before the words “The governor shall”;

(b) in paragraph (h) by inserting the words “by decision notified in the Kenya county Gazette” immediately before the words “assign to every member of the county executive committee”;

(c) in paragraph (k), by deleting the words “Police Service Act” and substituting therefor the words “National Police Service Act, 2011”;

(d) by deleting paragraph (l) and substituting therefor the following-

(l) sign and cause to be published in the county Gazette, notice of all important formal decisions made by the governor or by the county executive committee.

(e) By inserting the words “containing such matters as may be specified in county legislation” at the end of paragraph (j).

This is to emphasize that the governor can only perform his functions in accordance with the Constitution and secondly, to mirror the powers of the President in the Constitution of assigning functions to Ministers, that requires him to do so by publication in the *Kenya Gazette*. The further amendment specifies which county Gazette Notice the governor can sign. He can only sign important notices to prevent situations where the governor is required to sign every gazette notice.

*(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)*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 31 be amended in sub clause (2) by deleting the word “determine” and substituting therefor the words “from time to time assign on the basis of mutual consultations”.

The import of this is to ensure that when the President assigns any job to the governor, there should be mutual consultation and it is not determined by the President.

*(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)*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 31 of the Bill be amended in sub-clause (2) by inserting a new paragraph immediately after paragraph (c) as follows-

“(ca) appoint, with the approval of the county assembly, the county executive committee in accordance with Article 179(2)(b) of the Constitution”.

This is to insert a new sub-clause to show the functions of the county governor; that he shall appoint with the approval of the county assembly the county executive committee in accordance with Article 179(2)(b) of the Constitution. There seems to have been some sort of omission in section “d”. The only place where it is mentioned that the county assembly will be involved in the county governor appointing the executive committee is where in 36, it says that the county assembly shall not approve nominations for appointment to the executive committee that do not take into account some other issues. So, it is to make it express as it is in the



Constitution that, at least, he will be appointing the county executive committee, but with the approval of the county assembly.

*(Question of the further amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, I just want to draw the attention of the House to Clause 36(2) of the Bill which deals with the appointment.

Section 36(2) says that the county assembly shall not approve nominations for appointment to the executive committee if they do not take into account the following--- Which by implication - and I think there was a specific clause which I am trying to trace – which makes it clear that the governor cannot appoint the executive committee members without the approval of the assembly.

**The Temporary Deputy Chairman** (Mr. Ethuro): Mr. Minister, that just provides for the county assembly basically to introduce a motion to negate the appointments if they feel displeased with them. But I think Dr. Nuh is, from the beginning, saying that all those nominations are subject to the approval of the county assembly.

**Mr. Ngugi:** On a point of information, Mr. Temporary Deputy Chairman, Sir. One of the amendments that we have passed---

**The Temporary Deputy Chairman** (Mr. Ethuro): Who are you informing, Mr. Ngugi? Let us take Dr. Nuh first. Maybe, you may wish to inform him.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I do not know whether the Minister has been listening keenly. I even cited Section 36(2) and that provision is negatory. It starts from the negative that the county assembly shall not approve, which I think we should have the positive side of the law for us to concur that the negative side is in concurrence with whatever is positive.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, in one of the amendments that we have just passed, one of the functions of the county assembly is to vet.

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

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

*(Clause 31 as amended agreed to)*

Clause 32

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

THAT, Clause 32 of the Bill be amended by deleting paragraph (a), and substituting therefor the following-

- (a) may, despite Section 41, dismiss a county executive committee member at any time, if the governor considers that it is appropriate or necessary to do so; The import of this is that just like the President, the governor should be allowed to dismiss his cabinet without giving any reasons.

*(Question of the amendment proposed)*

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I was just going to quote the particular section because there are provisions under which a Cabinet Secretary can be dismissed. So, there is that one of the Motion by the House. There are three instances and one of them is where it states that the President may dismiss a Cabinet Secretary. So, I think this is in keeping in line with what is already at the national level. So, it is okay. I support.

**The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi):** Mr. Temporary Deputy Chairman, Sir, I may want to ask the House to reflect a little bit on this because it says that the governor may dismiss a county executive committee member in accordance with Section 41. Now under Section 41, there is a description of why and so forth. In my view, we should make laws that become better. Leaving it as it is today for the President does not necessarily mean that it is the right law. In my view, if we were to look at it in terms of even the Constitution today and the need to make sure that nobody's rights are trampled upon, it would be good for a law to specify that the governor can dismiss but he should not--- It says either because of incompetence which means the person is inefficient. Maybe, he is a drunkard, there is abuse of office and gross misconduct. But imagine if a governor wakes up and says that I do not look good. I am just trying to get hon. Members to reflect on this and think about it rather than leaving it like this.

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

**The Temporary Deputy Chairman (Mr. Ethuro):** You have invited them to reflect and I guess they are going to do so. Yes, hon. Ngugi!

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, if we are truly mirroring the national government against the county government, we do not need to set different rules. At the national level, you cannot tell the President that if he has to fire a Cabinet Secretary, he has to prove incompetence or any of those grounds. That is because those members of the Cabinet can go to court and say that they cannot be fired. The governor is supposed to be a responsible person. He has appointed those people; they have been vetted by the county assembly and he has hired them. All those grounds are there. He can hire them if he is petitioned. But in addition, he should have a leeway to fire his Cabinet even for loyalty. Loyalty is not incompetence.

**The Temporary Deputy Chairman (Mr. Ethuro):** You have made your point, Mr. Ngugi!

**Mr. Njuguna:** Mr. Temporary Deputy Chairman, Sir, I think the new amendment offered by the Chairman of the Committee is giving sweeping powers to the governor and I think this is--

**Mr. Mungatana:** Very good!

**The Temporary Deputy Chairman (Mr. Ethuro):** Order, Mr. Mungatana!

**Mr. Njuguna:** Mr. Temporary Deputy Chairman, Sir, this is really draconian in terms of allowing the members to perform their duties well. I would rather we take (a) the way it is.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, if you look at Article 152 of the Constitution, it gives three instances under which the President may exercise powers. If you look, he has power to reassign a Cabinet Secretary under sub-section V and he may dismiss a Cabinet Secretary. It also says that if there is a resolution that a Cabinet Secretary be dismissed from the National Assembly, then the President may do so. Remember this is a president or - in this case where we are arguing is a governor - who is constantly kept under check by the senator

and also by the county assembly itself. He cannot be capricious! He cannot wake up in the morning and do something that does not make sense. But there are many offences that you cannot put on paper which - because these people are reflecting your administration at the end of it all - if you cannot live with one of your executive committee members and he is supposed to execute certain duties, it is fair, as an elected official, to have that leeway. This is the same way we have put it in the Constituencies Development Fund (CDF). When people misbehave and they are part of your CDF committee, we fire them because you want to reflect consistency with what you believe as the aims of your---

**Mr. Chachu:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Is it in order for Mr. Mungatana to mislead the House that you can fire a member of your committee? Once you have appointed them, you cannot fire them! You cannot!

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, maybe, he cannot but we always do these things!

**The Temporary Deputy Chairman (Mr. Ethuro):** Order! Both of you are misleading the House. You can only fire at the end of the expiry period of three years!

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, at any rate, the governor has the mandate of the people of that county. The county executive on the other hand--- You have chosen him. You are the one who---

**The Temporary Deputy Chairman (Mr. Ethuro):** I think you have made your point, Mr. Mungatana, for purposes of making progress.

**Mr. Mungatana:** Thank you, Mr. Temporary Deputy Chairman, Sir!

**Mr. Chachu:** Mr. Temporary Deputy Chairman, Sir, I would persuade my colleagues to really reconsider this particular amendment. We are giving too much power to the governor. The National Government is different because it is the entire nation. But some of those counties are actually tribal enclaves. For us to have the harmony, it is so strategic and critical that the governor, from wherever he comes from, has some level of control that is necessary. We make laws to contain and control people. A governor is a politician and there are so many critical considerations. So, I think giving a governor sweeping powers like this will not in any way enable those counties. Actually, I think it might even segment those counties.

Mr. Temporary Deputy Chairman, Sir, I strongly oppose this particular amendment.

**The Minister for Lands (Mr. Orenge):** Mr. Temporary Deputy Chairman, Sir, I am only commenting because the Deputy Prime Minister and Minister for Local Government said that we should reflect.

Mr. Temporary Deputy Chairman, Sir, I think it should be remembered that the governor is elected on a mandate. He should have a team who can work with him. That is the principle. The members of the Executive are not elected. They are not even called before a panel for interview for a job. So long as they meet the qualifications, the governor appoints them and then the assembly approves. Now, if he acts capriciously--- If you look at the Bill generally, you will find that a rogue governor can either be disciplined by the county assembly or he risks not being re-elected if he does not perform his work properly. But I think it would be wrong for somebody who has been elected by a popular vote, and then restrain his hand, if he has got people who cannot carry out his mandate.

**Prof. Kaloki:** Mr. Temporary Deputy Chairman, Sir, I support this particular amendment because the governor, again, is elected and there is no way he will be tied from performing the functions of his office. If the governor is not performing, he will be impeached by the

representatives. So, this amendment will help the governor to perform and maintain discipline and order in the running of the county.

**Mr. Lessonet:** Mr. Temporary Deputy Chairman, Sir, I support the amendment by hon. Ngugi, for the basic reason that if the governor does not have firing powers, those county executives will take him hostage. I want to assure you of that. Thank you.

*(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 32 as amended agreed to)*

*(Clause 33 agreed to)*

#### *Clause 34*

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

THAT, Clause 34 of the Bill be amended by deleting subclauses (2),(3),(4),(5),(6),(7), (8) and substituting therefor the following new subclauses-

(2) If a motion under clause (1) is supported by at least two-thirds of all the members of the County Assembly—

(a) the Speaker of the County Assembly shall inform the Speaker of the Senate of that resolution within two days; and

(b) the Governor shall continue to perform the functions of the office pending the outcome of the proceedings required by this section.

(3) Within seven days after receiving notice of a resolution from the Speaker of the County Assembly—

(a) the Speaker of the Senate shall convene a meeting of the Senate to hear charges against the Governor; and

(b) the Senate, by resolution, may appoint a special committee comprising eleven of its members to investigate the matter.

(4) A special committee appointed under clause (3) (b) shall—

(a) investigate the matter; and

(b) report to the Senate within ten days whether it finds the particulars of the allegations against the Governor to have been substantiated.

(5) The Governor shall have the right to appear and be represented before the special committee during its investigations.

(6) If the special committee reports that the particulars of any allegation against the Governor—

(a) have not been substantiated, further proceedings shall not be taken under this section in respect of that allegation; or

(b) have been substantiated, the Senate shall, after according the Governor an opportunity to be heard, vote on the impeachment charges.

(7) If a majority of all the members of the Senate vote to uphold any impeachment charge, the Governor shall cease to hold office.

(8) A vacancy in the office of the governor or deputy governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution.

Mr. Temporary Deputy Chairman, Sir, there are various justifications for this amendment. The first bit is that as the Constitution expressly provides that voting by the Senate on any matter concerning counties be by majority. We are just mirroring that.

Mr. Temporary Deputy Chairman, Sir, secondly, the process of removing the Governor should be like that one of impeaching the President by holding two-thirds members of the Assembly, and moving the process to Senate to adjudicate over the matter.

*(Question of the amendment proposed)*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I would want the guidance of the seasoned lawyers, like hon. Orengo, because I think I read some part in the Constitution where it says that the resolutions in the Senate shall be by a majority vote, unless otherwise specified in the Constitution. So, if we are setting the standard of two-thirds that is above the majority votes that is carried in the Senate, which has not been specified in the Constitution, are we not making standards that have not been laid down by the Constitution?

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I think there are resolutions which do not bear penalties. If by a resolution, you are punishing, like in this one, by a consequence of removal, the threshold is normally higher. But if it is an ordinary resolution, then the majority vote will always carry the day.

**Mr. Lessonet:** Mr. Temporary Deputy Chairman, Sir, I am just wondering whether it makes a lot of sense, that when we want to remove the governor, the Senate of the National Government will be there to remove him. That is the import of this amendment. I thought the Constitution is very clear that there shall be a National Government and County Government. So, when we allow the Senate of this National Government to impeach or vote on the removal of the Governor or even do hearings like it is anticipated in this amendment, I do not think that, that would be in order.

**Dr. Nuh:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I have just gotten the Section that I was referring to in the Constitution. It is Article 123, part (iv). It reads:-

“Except as provided otherwise in this Constitution, in any matter in the Senate affecting counties:-

(a) Each county delegation shall have one vote to be cast on behalf of the county by the head of---

(b)---

(c) the matter is carried only if it is supported by a majority of all the delegations.”

So, if the Constitution has not given us any rule where we are supposed to have only two-thirds majority for such a threshold, then such a threshold in a legislation I think is contravening the Constitution.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I think, maybe, for the comfort of the House, let me put it that this particular proposal was even put before the Commission on Implementation of the

Constitution (CIC). There was nothing wrong with this particular provision, because we have to make sure that the Governors are also stable. They have been brought in by their people and you cannot now have a situation where they can be thrown or tossed all over easily. So, I think that these provisions are in order. The two-thirds adjustment does not in any way infringe on the Constitution.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I conceded an amendment where we were saying that the county assembly numbers are so small that we need a speaker who will be stable and, therefore, he needs two-thirds majority of the county assembly members. Instead of the two-thirds, I was suggesting 75 per cent for the speaker. Why should a Motion to start this process have a lower majority or threshold? Are you not contradicting your argument of stability, because if the speaker is 75 per cent, then I was going to propose a further amendment; that if a motion is supported by instead of two-thirds, 75 per cent of all the members of the county, so that the speaker and governor are at the same threshold.

**The Temporary Deputy Chairman (Mr. Ethuro):** Order! Order, hon. Mungatana! You know how amendments are done. Let us dispose of this particular one. You can introduce yours as an amendment on its own merit.

**The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi):** Mr. Temporary Deputy Chairman, Sir, I want to remind hon. Mungatana that the 75 per cent was for the removal of the Speaker by the Assembly members because his case ends there. It ends with the 75 per cent of the County Assembly Members. However, the Governor is looked at differently in the sense that he is popularly elected. So, a Motion must be brought first. Subsequently, we are giving the Governor similar status to that of the President, who would have to go through impeachment.

**Mr. Lessonet:** On a point of information, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman (Mr. Mudavadi):** Deputy Prime Minister and Minister for Local Government, do you want to be informed?

**The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi):** Mr. Temporary Deputy Chairman, Sir, the hon. Member is an old school mate of mine. So, he may proceed and inform me.

**Mr. Lessonet:** Mr. Temporary Deputy Chairman, Sir, it is true that when I arrived at Nairobi School, he had just left to join the university.

I just want to inform him about the contents of this amendment. Is he aware that the proposed amendment is seeking the removal of the Governor by the Senate?

**The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi):** Mr. Temporary Deputy Chairman, Sir, I would put it this way. I do not know whether he has understood this. He is arguing for a different purpose. We are trying to provide stability for the Governors. The Senate is Parliament. It is not even Government. If we say that the Governor will be removed by the County Assembly Members, it will not be different from the way people used to remove mayors. So, this is a different person. You cannot allow people to throw out the Governor of Baringo County just like that. That is why the matter has to come to the Senate.

**The Temporary Deputy Chairman (Mr. Ethuro):** Order! Order, hon. Members! Let me guide the House. There are two issues here. The first one is that which hon. Lessonet was raising in terms of the Senate acting. I do not want to use his words of “interfering with the county governments”; given that there are two governments, namely the national Government and the county governments. There is also the matter that was raised by Dr. Nuh in terms of whether

when you provide for a higher threshold for a decision than that provided for by the Constitution, you are not breaching the Constitution. Those are the two issues that we need to clarify.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, I want the Deputy Prime Minister and Minister for Local Government to visualise the following scenario, so that he can actually guide us in this matter.

Let us assume that after the next elections, your party has majority Members in the Senate and my party brings majority of Governors in Eastern Province. Now, if you decide to sack the Governors from my party, what will stop you? You have the majority in the Senate. So, these are the things about which we are saying we need to be very careful. Will it be for the Senate to sack Governors or will it be for the County Assemblies themselves to do so? I am sure that if we give these powers to the Senate, we will have very unfortunate scenarios.

I hope you understand what I am talking about.

**Dr. Nuh:** On a point of order, Mr. Temporary Deputy Chairman, Sir. When I was advancing my argument, I was doing so to support hon. Ngugi's amendment. The initial Bill had set the threshold for the impeachment process by the Senate at two-thirds, and I said that contradicted the Constitution.

One more thing that hon. C. Kilonzo and his colleagues have to understand is that the process of impeachment of a Governor starts with the County Assembly. It is only after the threshold of two-thirds is attained within the County Assembly--- Such a decision will not be taken until and unless it comes to the Senate for ratification. So, the process of removing a Governor has been made a little bit harder. If we make it this hard, we will have Governors who will overrun everybody and no one will do anything about them. So, it is only fair that we support the amendment by the Committee.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, I wish to clarify the matter. If you look at the Bill at clause 34(7), you will see that it provides for two thirds of the Members of the Assembly present. I think that is what we were saying was unconstitutional. That is what the amendment by the Committee is trying to correct, so that such a decision is made by the majority.

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

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

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, there is another amendment to the same clause by Dr. Nuh.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 34 of the Bill be amended by inserting the following new sub-clauses immediately after sub-clause (7)-

“(7A) If a vote in the Senate fails to result in the removal of the governor, the Speaker of the Senate shall notify the Speaker of the concerned county assembly accordingly and the Motion by the assembly for the removal of the governor on the same charges may only be re-introduced to the Senate on the expiry of three months from the date of such vote.

(7B) The procedure for the removal of the President on grounds of incapacity under Article 144 of the Constitution shall apply, with necessary modifications, to the removal of a governor”.

Mr. Temporary Deputy Chairman, Sir, the amendment is at page 3274 of the Order Paper.

What this amendment is trying to do is that in case the vote in the Senate fails, we are providing for the channel of communication – that communication be conveyed to the Speaker of the County Assembly. We are also providing that such a Motion for removal of the Governor may not be introduced again in that County Assembly until after three months, if a Member feels that he can re-introduce such a Motion.

Part (B) provides for the procedure for the removal of a County Governor on grounds of incapacity. When you look at the Constitution, Article 144 provides different procedures for the removal of a President when it comes to physical or mental incapacity. This is because that is something that requires expertise of the medical field in the form of a tribunal sort of.

If we leave the removal of a Governor from office on issues of incapacity to debate and determination by only the county assemblies, we will be doing injustice. So, I am trying to cure that defect by saying that let the procedure for the removal of a County Governor on grounds of incapacity be similar to the one provided for in the Constitution for removal of a President.

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

*(Clause 34 as amended agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, as a consequence of that amendment by Dr. Nuh, the necessary amendments will be made to the Bill to make it neat. Hon. Members, you realise that we are running out of time.

*(Clause 35 agreed to)*

*Clause 36*

**Mr. Mungatana:** Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, Clause 36 be amended-

(a) in subclause (2) by deleting the words “gender equality” and substituting therefor the word “the at least one third gender principle”

(b) by deleting subclause (3)

My amendment is on page 3269 of the Order Paper. The import of the first part of my amendment is to remove “gender equality” and put it in the consistent principle of “at least one-third gender principle”, so that the county assembly does not reject the list of the Governor because it does not have 50 per cent representation of either gender. I request hon. Members to accept this amendment.

*(Question of amendment proposed)*



**Mrs. Shebesh:** Mr. Temporary Deputy Chairman, Sir, the provision talks about gender equality whereas hon. Mungatana's amendment is talking about "at least one-third". That is not even constitutional. We normally talk about not more than two-thirds of either gender. I believe that this was not a mistake. It was supposed to provide a 50 per cent representation for women. The proposed amendment will negate what the drafters of this Bill were seeking to do.

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I beg to oppose because Mr. Mungatana is not giving us the correct constitutional provision. The Constitution talks of both equality and equity. However, we have tended to over-emphasize equity. So, I would actually want to laud the drafters that for the first time, some people have actually recognized that the Constitution talks of both equality and equity and equity.

I, therefore, oppose.

**The Deputy Prime Minister and Minister for Local Government (Mr. Mudavadi):** Mr. Temporary Deputy Chairman, Sir, I would really plead with Mr. Mungatana to leave it as it is. Equity here is useful. It is a strong proposition. We are introducing something in this Bill for the County Governments. I think it will really help the 47 counties, so that the chauvinism in those areas can be moderated.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, what I fail to understand and let us reason together is that we have been trying to reflect what is happening at the national county executive. There is no requirement for the President to present 50 per cent ladies and 50 per cent men for approval by Parliament.

Why are we making onerous demands on the county executive just because we want to be popular with the women? Let us just say the normal gender parity principle should exist because---

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman (Mr. Ethuro):** Order, hon. Members, especially the other gender! I will give you the opportunity to respond. Let us hear Mr. Mungatana. This is the traditional historical contest. We are not about to conclude it today.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, it is not the debate---

**Mrs. Odhiambo-Mabona:** No!

**Mr. Mungatana:** Protect me from Mrs. Odhiambo-Mabona.

**The Temporary Deputy Chairman (Mr. Ethuro):** Mr. Mungatana, you are protected! You need more protection from Mr. Nguni and not Mrs. Odhiambo-Mabona.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, what I am trying to say is that the President when he is presenting his list for the approval by Parliament, the procedure is very simple, that you give your nominees for approval by Parliament. There is no requirement on the part of the President to present gender equality. Why have we brought it down to the county? Why are we making unconstitutional demands and putting them in the law? What we are saying is that---

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Member in order to mislead the House that what is being proposed is unconstitutional? Because of lack of time, I would not be able to find for you all the articles, but I want to read for you an example. The preamble says: "Recognizing the Aspirations of Kenyans for a Government based on among other things human rights equality."

That is a constitutional language. I would like to look at Article 27 on Equality and Freedom from Discrimination. It has some clauses from 1 up to 5. Equality includes the full and equal enjoyment of all rights and fundamental freedoms. Every person is equal before the law.

He has the right to equal protection of the law. Women and men have the right to equal treatment including the right to equal opportunities in political, economic, cultural and social spheres. So, when you have one-third is when you are looking at affirmative action. However, the ideal is equality constitutionally.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, is Mrs. Odhiambo-Mabona in order to only read sections of the Constitution that she thinks are a bit more favourable when, indeed, it sets out how these appointments are supposed to be done? It says that a third of which shall be from either gender. That is in the Constitution. It is not even in the Act.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Dr. Nuh! Mrs. Odhiambo-Mabona is perfectly in order to use sections that justify her argument. It is you to demonstrate that she does not have to read them selectively and without reading them *in toto*.

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I would like to seek some help, particularly from Mrs. Odhiambo-Mabona. I have had a situation where I have gone to a court of law--- In fact, I was representing FIDA. We were using formulations of these words “gender equity” and “gender equality”. They were saying that is really a principle which is not scientific or mathematical. So, in a situation like this when you are making legislation, probably, I would go by what Mrs. Shebesh said, why do we not put something that will guide the county assembly in terms of numbers? Why do you not put it at 50-50 if we want it to be not more than two-thirds from either gender? I think in another forum, we will find that more useful. What she is reading are basically governing principles. So, I would suggest that Mrs. Shebesh, probably, she introduce an amendment to this amendment saying “not more than two-thirds.”

**Mr. C. Kilonzo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I am just a little bit worried on the issue of time. I would have suggested that we be very precise on the issues as opposed to making one amendment into a big debate.

**The Temporary Deputy Chairman** (Ethuro): That was the advice of the Chair. If your colleagues could take it, the Chair would be more than happy.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, could we make the provision that is in the Constitution to say “not more than two-thirds” so that we make progress?

I am proposing that we amend that particular clause, so that it reads not more than two-thirds or other agenda.

**The Temporary Deputy Chairman** (Mr. Ethuro): Let the Chair help you. We usually do not do it, but given that this is very important as advised by Mr. Orengo, then you need to bring a further amendment to the amendment by proposing that you delete all those words “at least one-third gender principle and replacing them with “not more than two-thirds of either gender.”

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

A further amendment on Clause 36(2) that we delete (a) which leaves gender equality and replace it with “not more than two-thirds of either gender.”

**The Temporary Deputy Chairman** (Mr. Ethuro): You are amending the one of Mr. Mungatana.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Yes.

**The Temporary Deputy Chairman** (Mr. Ethuro): I, therefore, wish to dispose of the amendment to the amendment by Mr. Mungatana be further amended as proposed by the Deputy Prime Minister and Minister for Local Government.

*(Question of the further amendment proposed)*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I very proudly go on record as opposing. I know what equality means. I know what equity means. That is why I oppose.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, we should support that further amendment because it is a reflection of the principles that we passed in this Constitution.

I beg to support.

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

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

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I still have an amendment on clause 36.

**The Temporary Deputy Chairman** (Mr. Ethuro): That is correct but let me just dispose your amendment as amended.

*(Clause 36(c) as amended agreed to)*

*Clause 36 (d)*

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

THAT, clause 36(d) be amended by deleting the sub-clause 3(b).

Mr. Temporary Deputy Chairman, Sir, this whole section of, “a person may be appointed as a member of the county executive if that person is a Kenyan citizen and then a, b, c and d. So I am proposing that we delete the whole of sub-clause (3).

These are my reasons; if you look at the Constitution, Article 152, you will see that the only requirement the President has in appointing the Executive under Article 152(2) is to say that the President shall nominate and with the approval of the National Assembly appoint the Cabinet Secretaries. There is no requirement or onerous duty placed on the President to choose degree holders, masters degree or any other qualifications. The President is supposed to nominate and then Parliament in its own wisdom will approve those nominees whatever their capacities or reject them.

Why then are we coming down to the County Governor and saying that when he is presenting his list, they must be holders of at least a first degree and all those other things yet these things are not required of the President and the Cabinet level?

Mr. Temporary Deputy Speaker, Sir, further, while amending Clause 31, we have already said that the Governor will have power to appoint with the approval of the County Assembly the County Executive Committee in accordance with Article 179(2) (b) of the Constitution. If you

look at this Article of the Constitution, it says, “The County Executive Committee consists of (b) members appointed by the County Governor with the approval of the Assembly from among persons who are not members of the Assembly”.

My first argument is that at the national level, there is no educational requirement and I am also arguing that we have already approved Clause 31 which does not make any educational requirement again. It is already in the Constitution under Article 179. Why are we adding these things that we are demanding of the President on the Governor?

Mr. Temporary Deputy Chairman, Sir, I am urging the House---

**The Temporary Deputy Chairman** (Mr. Ethuro): Mr. Mungatana, we are at the Committee Stage. You have made your argument really!

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, that is a very dangerous suggestion. We have to have capacity in our county governments. In the whole county today, there is no county in this Republic where you would fail to get a graduate to handle these matters.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I also oppose Mr. Mungatana’s amendment.

We are making a debut on something that is unique and this is the beginning. Unless we have the right capacity in these county governments, then the thing is not going to be any different from the municipalities and county councils that we have today. Therefore, it has to start off with something.

We should start on a note that essentially puts a minimum requirement of expectation. You cannot have a minimum requirement of expectations if you do not have a minimum requirement of qualifications.

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

**The Temporary Deputy Chairman** (Mr. Ethuro): There was another proposed amendment by Dr. Otichilo.

Dr. Otichilo, I hope we have the same Order Paper and so your amendment is no longer--

**Dr. Otichilo:** No, Mr. Temporary Deputy Chairman, Sir. It is valid!

The amendment on page 3265 is valid.

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

THAT, Clause 36 be amended in sub clause (1) by inserting a new paragraph immediately after (b) as follows-

(c) ensure that the members are qualified in accordance with subsection (3) of this section.

Mr. Temporary Deputy Chairman, Sir, the import of this is to ensure that the Governor appoints people who are qualified as per Section (3).

*(Question of the further amendment proposed)*

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, I think this is an unnecessary amendment because the Act is very clear. It is very clear what the qualifications are.

**The Minister for Lands** (Mr. Orenge): You know the clause that deals with qualifications is sub-clause (3) and it is very clear. You do not want a situation where you read one clause and there is a qualification referring to another clause. The qualifications are there and are clear.

Dr. Otichilo, let us leave it the way it is.

**Dr. Otichilo:** Agreed!

*(Dr. Otichilo's proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Dr. Ottichilo, you have saved all of us because I was about to overrule it actually.

*(Clause 36 as amended agreed to)*

*(Clauses 37, 38, 39 and 40 agreed to)*

*Clause 41*

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I do not feel very strongly about that one. So, we can withdraw it.

*(M. Mungatana's amendment withdrawn)*

*(Clause 41 agreed to)*

*Clause 42*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 42 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (1)-

“(1A) The quorum of a meeting of a county executive committee shall be one half of its membership”.

**The Temporary Deputy Chairman** (Mr. Ethuro): You would help Members, if you start by the page number.

**Dr. Nuh:** It is on page on 3274. What the amendment tries to cure is the issue of quorum because we are provided for in the Bill that the resolutions of the County Executive Committee shall be by a majority of the members present and voting. For, at least, sanity to prevail so that it does not happen when a Governor wants to deliberate on a matter and have the resolutions of the Executive Committee, he sends seven or six Executive Committee members on trip outside county, or to even outside the country, and then he remains with two of them and vote to pass the a resolution that will affect the county as a whole. At least, we are trying to set a minimum quorum of about half of the membership, so that if the resolution is carried then---

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Dr. Nuh! I think we understand why we need quorum

*(Question of the amendment proposed)*

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I really want to support this very strongly. Under the old Constitution, there used to be a definition of Cabinet as consisting of the President, Vice-President and other Ministers, which created an impression that so long as there are those two and another Minister, then you had a full Cabinet.

Now in the situation that we are talking about, it is very easy for the Governor to ensure that the majority of the Cabinet is not there, and make very critical decisions. I think it is something we left out actually in spirit of the new Constitution. We should have had provisions dealing with quorum, because it is Government by Cabinet. So, I strongly support this position.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Farah Maalim, last contribution to this.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I think, whereas I agree with the hon. Orengo, if it says a majority, 50 per cent is not a majority. So, maybe, you need to further amend it and say 50 per cent plus one. A majority is more than 50 per cent. So, if that can be further amended to say the quorum of a meeting of a County Executive Committee shall be one-half plus one of its membership, so that we conform to the requirements of the law itself.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Farah! Are you making a suggestion or moving an amendment?

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I am moving a further amendment to the amendment.

**The Temporary Deputy Chairman** (Mr. Ethuro): Then do it.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, the further amendment should read:-

“The quorum of a meeting of a county executive committee shall be one half plus one of its membership”. For to it be able to establish the majority required; one half is not adequate.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, a quorum is not an issue in making a decision by the majority. It is just to ensure you have a critical number.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I was just looking for at least half of the membership; that would be better than when you have a governor and when an executive committee member deciding on an issue. So, I think we need not deliberate so much on the threshold of 50 plus one or the like; but I think half of the membership of, say 10, plus one which is 11 is enough.

**Mr. Farah:** Mr. Temporary Deputy Chairman, Sir, I think the fact that a majority is required to be able to reach a decision in any deliberation is very critical in this, so that this is not abused by the Executive. When you say one half plus one, or a majority which is essentially more than a half--- A half is not a majority. I could further amend it to say that the quorum of a meeting of a county executive committee shall be more than one half of its membership.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members! I, therefore, wish to dispose of the further amendment by the hon. Farah Maalim. I will thus propose the question that the amendment to Clause 42 by hon. Dr. Nuh be further amended as proposed by hon. Farah Maalim.

*(Question of the further amendment proposed)*

*(Question, that the words to be inserted,*

*be inserted, put and agreed to)*

*(Clause 42 as further amended agreed to)*

*(Clause 43 agreed to)*

*Clause 44*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 44 be amended in sub-clause (2)-

(c) by inserting a new paragraph immediately before paragraph (a) as follows-

(aa) shall be competitively sourced from amongst persons who are university graduates with at least ten years experience in administration and management;

(d) by inserting the words “from persons competitively sourced under paragraph (aa)” immediately after the word “nominated” appearing in paragraph (a);

Mr. Temporary Deputy Chairman, Sir, the purpose of this amendment is that the county secretary will be a very important person in the county government. As we have it now, there is no stated qualification as what the county secretary should have as a qualification. So, this amendment seeks to bring in the qualification that is suitable.

*(Question, of the amendment proposed)*

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

*(Clause 44 as amended agreed to)*

*Clause 45*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 45 be amended in sub-clause (1) by deleting the words “county chief officers from amongst persons recommended” appearing in paragraph (a) and substituting therefore the words “qualified and experienced county chief officers from amongst persons competitively sourced and recommended”

*(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 45 as amended agreed to)*

*(Clauses 46 and 47 agreed to)*

*Clause 48*

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

THAT, Clause 48 be amended in sub-clause (1) by-

(a) inserting the following new paragraph after paragraph (c)-

“(ca) such number of village units in each county as may be determined by the county assembly of the respective county”; and

(b) inserting the following new sub-clauses immediately after sub-clause (2)-

“(2A) In establishing a village unit under sub-section (1)(ca), a county assembly shall take into account-

(a) population size;

(b) geographical features;

(c) community of interest, historical, economic and cultural ties; and

(a) means of communication.

(2B) A county assembly shall enact legislation to provide for the delineation and establishment of the village units in the county”.

This is just in satisfaction of Article 176(2) of the Constitution, which reads that:-

“Every county government shall decentralize its functions and the provision of its services to the extent that it is efficient and practicable to do so”.

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi):  
Mr. Temporary Deputy Chairman, Sir, I believe that this could be a useful provision. In fact, when the taskforce did its rounds and consultations, there was a lot of request that this component be brought in, first of all to facilitate further citizen participation and also to recognize that at the county level, the issue of the elders in our communities play a very important role. Therefore, it will be important for the county governments to have a more formalized way of recognizing these personalities out there and also to provide that the county governments themselves can determine how many such councils they may desire. It is a useful provision. It is innovative and it provides for us to recognize the village elders who have played a great role in this country but have never really been seen as doing anything useful. So, I strongly support this.

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



**The Temporary Deputy Chairman** (Mr. Ethuro): There was a further amendment by Dr. Ottichilo.

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to withdraw the amendment.

*(Dr. Otichilo's proposed amendment withdrawn)*

*(Clause 48 as amended agreed to)*

*(Clause 49 agreed to)*

*Clause 50*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 50 be amended in sub clause (2) by inserting the word "competitively" immediately before the word "appointed".

*(Question of the amendment proposed)*

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

*(Clause 50 as amended agreed to)*

*Clause 51*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 51 of the Bill be amended in sub clause (2) by inserting the word "competitively" immediately before the word "appointed";

The import here is that the administrator should be sourced or recruited competitively.

*(Question of the amendment proposed)*

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

*(Clause 51 as amended agreed to)*

*Clause 52*

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

THAT Clause 52 of the Bill be deleted and substituted with the following new sub-clauses-

**Establishment of the office of** 52. (1) There is established the office of village administrator for each village unit established in a county.

**village administrator**

(2) A village administrator shall have professional qualifications and technical knowledge in administration and shall be appointed by the County Public Service Board in accordance with the provisions of this Act.

(3) A village administrator shall coordinate, manage and supervise the general administrative functions in the village including-

- | pursuant to paragraph 14 of Part II of the Fourth Schedule to the Constitution-
- | ensuring and coordinating the participation of the village unit in governance; and
- | assisting the village unit to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level; and
- | the exercise of any functions and powers delegated by the County Public Service Board under section 84.

(4) In carrying out the functions and obligations in sub-section (3), a village administrator shall be responsible to the relevant ward administrator.

**Village council**

53. (1) There is established, for each village unit, a village council comprising-

- | the village administrator who shall be the chairperson of the village council; and
- | not less than three and not more than five village elders competitively appointed by the village administrator with the approval of the county assembly, taking into account gender balance.

(2) A village council shall be responsible for-

- | ensuring and coordinating the participation of the village unit in governance;
- | assisting the village unit to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level;
- | monitoring the implementation of policies at the village level;
- | advising the ward administrator and sub-county administrator on matters pertaining to the village;
- | any other function necessary for the better administration of the village unit.

(3) A person shall be eligible for appointment as a village elder if the person-

- (c) is a citizen of Kenya;
- (d) has been a resident of or has been the owner of property in the respective village unit for a continuous period of not less than five years prior to the appointment date;
- (e) meets the requirements of Chapter Six of the Constitution; and
- (f) is not disqualified for appointment to office by this Act or any other law.

(4) A village elder shall be paid such allowance as shall be determined by the respective county assembly.

Again, this is a further amendment to Clause 48. It is to harmonize what is contained in the Constitution, Article 176 and what is the contained in the draft County Government Bill, Section 52. That is the establishment of the offices of the village elders. So, we are deleting what is in this and substituting it because it was left hanging. But this now fills that gap.

*(Question of the amendment proposed)*

**Mrs. Odhiambo-Mabona:** Mr. Temporary Deputy Chairman, Sir, I wish to note that under the Constitution, there are units below which it is up to the county levels to create. They should create the units that they want and even though we may create this, it will act as guidance. But it is not obligatory for the county government to use them.

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

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

**The Temporary Deputy Chairman** (Mr. Ethuro): You know the proposal is to delete that Clause 52. So, subsequently, the one by Dr. Nuh cannot be sustained.

**Hon. Members:** Why?

**The Temporary Deputy Chairman** (Mr. Ethuro): Dr. Nuh or the Deputy Prime Minister? The amendment we have carried by Mr. Chanzu was to delete Clause 52.

*(The Temporary Deputy Chairman (Mr. Ethuro) consulted with the Clerks-at-the-Table)*

Dr. Nuh, my information is that, if you look at the amendment by hon. Chanzu, he was deleting Clause 52 entirely as it is in the Bill and introducing new clauses. So, you can only amend the new amendments that hon. Chanzu had brought, while your amendments were on the original provisions of the Bill, which have been deleted. That is why we are saying that you must drop them.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, sometimes, we also get tired. We are not machines. It seems like I was overtaken by events. I thought that the one hon. Chanzu was deleting was Clause 51. Since even for my amendment I had consulted the Minister as well, and

I do not have powers to move any new amendments now and the Minister has been granted such powers by the Standing Orders, then I would rather donate my amendment to him, so that he can move it as a new amendment. I hope that he is listening.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Deputy Prime Minister and Minister for Local Government!

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I would like to take over and propose that we insert the amendment proposed by Dr. Nuh on Clause 52 on pages 3274 and 3275. I would like to propose that the amendment there on Clause 52 be made part of the Bill. In particular, I would like to propose that further on page 3275, it reads:-

“Until substantive appointments have been made by the County Public Service Board under this Act, the public officer serving in the system of administration commonly known as the provincial administration, on the coming into this force of this Act, shall serve in the county governments as officers---”

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Deputy Prime Minister and Minister for Local Government! Just procedurally, since we deleted that particular clause, all is not lost. You can only bring it as a New Clause. As we advised hon. Lessonet, and I thought you were present, new clauses come when we have disposed the old clauses.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Most obliged, Mr. Temporary Deputy Chairman, Sir. We will come to that stage.

**Mr. Konchella:** Mr. Temporary Deputy Chairman, Sir, the Deputy Prime Minister and Minister for Local Government must be very tired. I am wondering whether we can legislate an unconstitutional amendment. This amendment is totally unconstitutional. When you look at something of the village---

**The Temporary Deputy Chairman** (Mr. Konchela): Hon. Konchela, to which amendment are you speaking?

**Mr. Konchella:** Mr. Temporary Deputy Chairman, Sir, I am referring to Clause 52. The way it is, it actually empowers the County Governments to establish other devolved entities that may be necessary. Where I come from, we have no villages. So, I do not know what constitutes a village. This should be unconstitutional because we are actually creating a law for the County Governments, yet doing so is their role. So, we should retain Clause 52 the way it is. I do not know whether it is possible for us to re-visit this amendment.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Konchela, there is nothing unconstitutional if you do not have a village where you come from. There will always be some unit. You could be having *manyatas*.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, just to support hon. Konchela, when you say “village”, it has a definition. So, nothing in law will stop the different County Governments from enacting their own laws. We do not have to put all the laws within this particular legislation. County Governments can enact laws to suit them. So, I suggest that although the amendment is intended for a good purpose, let us leave that for the respective counties to legislate.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, the Chair only determines what the majority of you wish. When that amendment was being prosecuted, this argument did not arise. The only window of opportunity we are using is just the fact that we have not made the amendment part of the Bill. That is the only opportunity we have. That is why you see a flood of activities going on in trying to see what we can do. However, in terms of the

procedure, we have done the preliminary one. So, it is for you to be alert and convince your colleagues to agree with your argument.

So, it is for you to be alert and convince your colleagues, Mr. Konchela. So, could you help the Minister to come with a way out of this problem? That is exactly what we are trying to do.

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, I wish to share the concerns shared by the last two speakers Mr. Konchela and the previous ones. We are entering into very---

**The Temporary Deputy Chairman** (Mr. Ethuro): You are contributing to?

**The Minister for Public Works** (Mr. Obure): Mr. Temporary Deputy Chairman, Sir, the establishment of villages. I think we are entering a field which could be dangerous because we do not have standard practice in the entire country. We have not even defined what village is really. I agree with the sentiments expressed earlier by Mr. Konchela and the previous speaker. We should be a bit more careful in this respect. In any case, I think this should be really the territory of the new County Governments we have tried to devolve.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, let us make progress. My proposal is that we should carry the amendment by Mr. Chanzu. Between the Deputy Prime Minister and Dr. Nuh and the Clerks. You can redeem whatever you feel has been lost. I have advised appropriately. I do not have to say now. You will bring it as a new clause. I think that is the better way of doing it.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I rise on a point of order so that I can beg to move because we are running out of time. We have a deadline on this issue.

So, I beg to move:-

THAT, the Committee do report progress of its consideration of the County Governments Bill No.1 of 2012 and seek leave to sit again today.

*(Question proposed)*

*(Question, that the Committee do Report  
Progress of its Consideration of the  
County Governments Bill (Bill No.1 of 2012)  
and seek leave to sit again today  
put and agreed to)*

*(Question put and agreed to)*

*(The House resumed)*

*[Mr. Deputy Speaker in the Chair]*

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the proposals relating to County Governments Bill (Bill No.1 of 2012) and seek leave to sit again today; and further that the sitting of the House be extended until conclusion of that business tonight.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Lands** (Mr. Orengo) Seconded.

*(Question proposed)*

**Mr. Baiya:** Mr. Deputy Speaker, Sir, I beg to move that the Motion for Reporting Progress be amended by inserting the words, “subject to re-committal of Clause 27” after the figure, “2012”.

**Mr. Deputy Speaker:** Explain!

**Mr. Baiya:** Mr. Deputy Speaker, Sir, this is an amendment that was sought by the Departmental Committee on Justice and Legal Affairs. It was mandated to Mr. Abdikadir who was then in Nairobi to make this amendment. This amendment belonged, therefore, to the Committee on Justice and Legal Affairs. Mr. Abdikadir is not here to move it and there is no other Member of the Committee.

The purpose of the amendment is to give effect to one of the recommendations contained in the Report by the Committee on Justice and Legal Affairs. If I may just explain briefly; one of the criteria that was used by the Independent Electoral and Boundaries Commission (IEBC) on boundaries related only to population. Under the Constitution the additional criteria required relates to community of interests, geographical features and so on. These are the very criteria we have not taken care of.

Mr. Deputy Speaker, Sir, the Committee on Justice and Legal Affairs has received clearly genuine complaints that require to be addressed to take care of extremely glaring cases, for example, the constituency of North Horr which has 38,000 kilometers making representation impossible. We have other wards which have population of 55,000 people when the population for a ward should be 26,000. It is imperative that we open this window so that those people can have fair and proper representation.

Other cases relate to marginalized Kenyans; Kenyans who find themselves in marginalized segments where they cannot have any representation. Such minorities unless given recognition such as the Njemps in Mogotio and such other places---

This is why we are seeking this amendment.

**Mr. C. Kilonzo:** On a point of order, Mr. Deputy Speaker, Sir. In as much as the Vice-Chairman of the Committee on Justice and Legal Affairs is---

**Mr. Deputy Speaker:** Order! The amendment has to be seconded initially!

Mr. Ruto, please, proceed!

**Mr. Ruto:** Mr. Temporary Deputy Speaker, Sir, I beg the House to consider this matter because in some areas it is life and death. If you check certain wards that have been done, a ward has 70,000 people and you find a constituency having 60,000 people, what will we explain to these Kenyans with this type of representation? There are also other areas. The Constitution talks about representation, including affirmative action in areas that are marginalized. However, you will find certain communities who cannot meet the threshold of representation in a constituency. But if you allowed them, even ward representations, these are areas such as Laikipia North and Turkana which is over 200,000 kilometres---

**Mr. Deputy Speaker:** Could you conclude?

**Mr. Ruto:** Mr. Deputy Speaker, Sir, I want conclude by saying that I second. I really beg the House to do indulge with this request because it will be better for Kenyans.

**Mr. Deputy Speaker:** Hon. Members, I now propose the Question that the Motion be amended by inserting the following words: "Subject to the recommittal of Clause 27."

**Mr. C. Kilonzo:** Mr. Deputy Speaker, Sir, in as much as the Departmental Committee on Justice and Legal Affairs are trying to put up a case. However, in the first place, Mrs. Odhiambo-Mabona is a Member of that Committee. So, when this matter came up, the Chairman of the Departmental Committee on Justice and Legal Affairs was not even courteous enough to have a representation. But as it may be, they did not collect views from other affected areas. For them to assume it is only 60, it is very misgiving. If they came and proposed and said, 1,000, probably, that is something we can understand.

I am aggrieved because I have seen constituencies with smaller population, smaller wards with eight wards, while a constituency like mine, and others like Makueni--- So, basically what we are saying is this is not the right time, you have not lost. This matter can be deferred until even if it is after six months. I suggest that the issue of wards is looked into, not for a specific number, 60 only. I think that will be very unfair.

With those remarks, I beg to oppose.

**Mr. Mungatana:** Mr. Deputy Speaker, Sir, I also want to join hon. C. Kilonzo in opposing.

My first point is that the rules of the House do not allow anticipatory debates. That debate on the boundaries is not before the House. That Motion is not before the House. There is no debate on that. There is no decision of this House by a resolution of this House. How can we be returned back to make a decision on an anticipatory programme?

It is wrong, and it is not sustainable. When the IEBC came to make presentations, they made it very clear that these are the 1,450 wards. From here, we are making this kind of calculations. We tried to work within the provisions of what we were given. Some of us were very aggrieved, but we had to accept. Now people come and say it is only 60 and then they have not invited the rest of us. It is unfair. We believe this number 60 is divided between certain people to benefit and we will not accept that.

**Prof. Kaloki:** Mr. Deputy Speaker, Sir, thank you for giving me this opportunity. I rise to oppose this particular Motion.

Mr. Temporary Deputy Speaker, Sir, there was a taskforce that was mandated to go throughout the country. They had the capacity to determine the right number of the wards in this country. With the work that was performed, and we all agree to it, by getting our Committee here. Our Committee is composed of 11 members. They sat for one week and increased these wards by additional 60 wards. I strongly feel this is a violation of the work that was done by the taskforce.

With those few remarks, I beg to oppose.

**The Assistant Minister for Energy** (Eng. M.M. Mahamud): Mr. Deputy Speaker Sir, I would oppose the amendment. One, I would really have liked people to get wards but the way the committee has done it, I think we have all agreed that it was not fair and I think they were late. They did a clumsy job by not being here to move the amendment. They also did a clumsy job in their report and I think we should oppose it.

**Mr. Ethuro:** Mr. Deputy Speaker, Sir, I stand to support the amendment. All the hon. Members arguing against the amendment are speaking to the merits and demerits of the Motion itself. That Motion is not before the House. What is before the House is a procedure of getting

back an amendment that the chairperson of the Justice and Legal Affairs Committee - It is committee that we have worked so hard to reconstitute, and that represents the face of Parliament - wants to come back. Whether you get more or less, surely as my good friend, hon. C. Kilonzo, is arguing, is it not better to have something than none at all? It is a matter of nothing or all of them.

Mr. Deputy Speaker, Sir, I think it is important to realize that the provisions for a limit were just a proposal. There is nothing binding in law and hon. Mungatana cannot anticipate debate. Even the Constitution, which he believes in, has already given us 290 positions, which are yet to be proposed.

I support the amendment.

**Mr. Deputy Speaker:** Hon. Members, in view of the fact that we have very limited time, the Chair is going to put the Question.

*(Question, that the Motion be further amended, put and negatived)*

**Hon. Members;** Division! Division!

**Mr. Deputy Speaker:** Fair enough! It is clear you do not have the numbers and you understand the Standing Orders.

*(Question proposed)  
(Question put and agreed to)*

*[Mr. Deputy Speaker left the Chair]*

IN THE COMMITTEE

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

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! You must appreciate we have extended time and that time cannot be extended indefinitely. We must conclude our business before midnight, if we have to be faithful to the deadline we are trying to meet.

We were at Clause 52 and we had carried the amendment by hon. Chanzu; I will, therefore, put the Question.

*(Clause 52 as amended agreed to)*

**Mr. C. Kilonzo:** On a point of order, Mr. Temporary Deputy Chairman. You put the Question but we never heard the justification for this particular amendment.

**The Temporary Deputy Chairman** (Mr. Ethuro): Mr. C. Kilonzo, we spent a lot of time on it, and do not take us back.

*(Clauses 53, 54 and 55 agreed to)*



Clause 56

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 56 be amended in sub clause (1)-

- (a) in paragraph (a) by inserting the words “nominated and appointed by the county governor with the approval of the County Assembly immediately after the word “chairperson”;
- (b) by deleting paragraph (b).

The justification of this is to incorporate the manner of appointment of the chairperson which had been left out. It also removes the repetition of the procedure of the election of the vice-chair as provided in sub-clause 6.

*(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 be inserted, put and agreed to)*

**The Temporary Deputy Chairman (Mr. Ethuro):** There is another amendment by Dr. Nuh.

**An hon. Member:** He is not in!

**The Temporary Deputy Chairman (Mr. Ethuro):** Then we go to the next amendment by hon. Mungatana.

**The Minister for Lands (Mr. Orengo):** Mr. Temporary Deputy Chairman---

**The Temporary Deputy Chairman (Mr. Ethuro):** Hon. Orengo, you are either contributing or rising on a point of order. I do not see any amendment from you.

**The Minister for Lands (Mr. Orengo):** Mr. Temporary Deputy Chairman, this is from Dr. Nuh. I am not basically moving as it is in the Order Paper, but---

**The Temporary Deputy Chairman (Mr. Ethuro):** But the amendment is not there, so, it has not been approved.

**The Minister for Lands (Mr. Orengo):** Mr. Temporary Deputy Chairman, in Clause 56.

**The Temporary Deputy Chairman (Mr. Ethuro):** Then you need to give us an authority that Dr. Nuh has given you the mandate to move his amendment.

**The Minister for Lands (Mr. Orengo):** Mr. Temporary Deputy Chairman, it will be so unfortunate. He was feeling very unwell.

**The Temporary Deputy Chairman (Mr. Ethuro):** Hon. Orengo, if you wish to help Dr. Nuh, the best thing is to look for him before we conclude that particular clause.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 56 be amended in sub clause (3) by deleting paragraph (e).

The justification of this amendment is that we should not segregate against people who are, in fact, holding political party positions.

*(Question of the further amendment proposed)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Minister, I am relying on you on hon. Mungatana's amendment. The Cabinet side, hon. Oburu and hon. Mahamud, you can assist your colleague so that one can anticipate the next one. I know they are a bit bulky.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, actually, it is a discriminative clause. If somebody is to be on board, you cannot punish him for his political affiliation. So, I support that.

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

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Members, we have got information on the amendment by Dr. Nuh and the Minister wants to move it.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, I beg to move:-

That Clause 56 of the Bill be amended in paragraph (c) of sub-clause (3) by deleting the words "fifteen years" appearing at the end of the paragraph and substituting therefor the words "ten years".

*(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 56 as amended agreed to)*

*(Clauses 57, 58 and 59 agreed to)*

*Clause 60*

**The Temporary Deputy Chairman** (Mr. Ethuro): There was a proposed amendment by Dr. Nuh.

**Mr. C. Kilonzo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. May I propose that since there is a Minister who would like to help Dr. Nuh who is not feeling well, we give him time to consult. He can help him. In fact, he was looking for him.

**The Temporary Deputy Chairman** (Mr. Ethuro): Let him just move this one. Dr. Nuh, just say: "As per the Order Paper." Mr. C. Kilonzo, you could as well help. All we need is consent from the hon. Member to you.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, we are suggesting that if you can give him time, move to the other clauses and come back to his amendments later---

**The Temporary Deputy Chairman** (Mr. Ethuro): We do not operate that way!

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT clause 60 of the Bill be amended by deleting sub-clause (5).

*(Question of the amendment proposed)*

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

*(Clause 60 as amended agreed to)*

*(Clause 61 agreed to)*

*Clause 62*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 62 of the Bill be amended in sub clause (2) by inserting the words “and for a specified period” immediately after the word “authority”;

*(Question of the amendment proposed)*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, it is on page 3266!

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Dr. Otichilo! Until the Chair gives you directions, others are null and void.

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

*(Clause 62 as amended agreed to)*

*(Clause 63 agreed to)*

*Clause 64*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 64 of the Bill be amended by inserting the words “and other modes of communication” immediately after the word “advertisement”;

*(Question of the amendment proposed)*

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

*(Clause 64 as amended agreed to)*

*Clause 65*

**Mrs. Odhiambo-Mabona:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I understand that we are trying to beat time, but would I please request that hon. Members cite the

page number so that we can follow? That way, we will not be passing what we have no clue about.

**The Temporary Deputy Chairman** (Mr. Ethuro): We will assist you! I think what the clerk will do in the next couple of minutes--- That is because the amendments are as per the hon. Member and you can tell from here. It is either Dr. Otichilo, Dr. Nuh and Mr. Chanzu. So, the clerks will guide us.

**Mr. C. Kilonzo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. That was Clause 65. Am I right? But we do not see the section of the Order Paper where he has proposed amendments.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. C. Kilonzo! You cannot take back the House because you are not reading properly. If you look at the Order Paper, Clause 65 has no amendments. So, it is what is originally in the Bill. What you will see in the Order Paper is what is being amended.

*(Clause 65 agreed to)*

#### *Clause 66*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 66 of the Bill be amended by inserting the words “for a specified period” immediately after the word “shall”;

*(Question of the amendment proposed)*

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

*(Clause 66 as amended agreed to)*

*(Clauses 67, 68, 69, 70, 71, 72, 73 and 74 agreed to)*

#### *Clause 75*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 75 of the Bill be amended in paragraph (e) of sub-clause (2) by deleting the words “except on account of dismissal”.

Mr. Temporary Deputy Chairman, Sir, the import of the amendment is to simply remove issues where, when a person is aggrieved by the decisions of the county service board, he can have an appeal processed to the Public Service Commission.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Dr. Nuh! We will assume that it is as per the Order Paper, unless somebody wants an explanation. That is for purposes of time.

*(Question of the amendment proposed)*

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I find his proposal very reasonable because the most serious punishment that one can get is on account of dismissal, yet you can appeal on all other grounds except when you have been dismissed. So, I think this should not be exempted. It should be eligible for appeal in the appropriate circumstances.

**The Temporary Deputy Chairman** (Mr. Ethuro): Are you supporting or opposing?

**The Minister for Lands** (Mr. Orengo): I am supporting, Mr. Temporary Deputy Chairman, Sir.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! My proposal is that if you are supporting, let us just indicate in the normal way, unless you have a serious objection.

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

*(Clause 75 as amended agreed to)*

#### *Clause 76*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 76 of the Bill be amended in sub clause (1) by deleting the word “lesirous” and substituting therefor the word “desirous”;

*(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 76 as amended agreed to)*

*(Clauses 77 and 78 agreed to)*

#### *Clause 79*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 79 of the Bill be amended in sub clause (3) by deleting the words “for Ward” and substituting therefor the word “forward”;

It is a typographical error.

*(Question of the amendment proposed)*

*(Question, that the words to be left out*

*be left out, put and agreed to)*

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

*(Clause 79 as amended agreed to)*

*Clause 80*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 80 of the Bill be amended in sub clause (2) by deleting the words “for Ward” and substituting therefor the word “forward”;  
It is editorial.

*(Question of the amendment proposed)*

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

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

*(Clause 80 as amended agreed to)*

*(Clauses 81, 83 and 83 agreed to)*

*Clause 84*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 84 of the Bill be amended in sub-clause (1) by deleting the words “clerk to county assembly” immediately after the words “county chief officer”.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Chanzu, you have an amendment to Clause 84.

**Mr. Chanzu:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 84 of the Bill be amended in sub-clause (1) by inserting the words “village administrator” immediately after the words “ward administrator”.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted*

*be inserted, put and agreed to)*

*(Clause 84 as amended agreed to)*

*Clause 85*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 85 be amended in paragraph (c) by inserting the words “and their access to relevant information” immediately after the word “communities”.

Mr. Temporary Deputy Chairman, Sir, the amendment is on page 3267 of the Order Paper. The import of the amendment is to provide for access to relevant information to minority groups and people with disability.

*(Question of the amendment proposed)*

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

*(Clause 85 as amended agreed to)*

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

*Clause 89*

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

THAT, Clause 89 be amended by inserting the words “preparation and” immediately before the word “validation” appearing in paragraph (c).

Mr. Temporary Deputy Chairman, Sir, the amendment is on page 3258 of the Order Paper. This is to ensure that members of the public participate not only in the Budget validation but also in its preparation.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Ngugi! You have said that unless an hon. Member asks you for information, we prosecute the amendments as they are on the Order Paper.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Mr. Ethuro): Yes, Dr. Otichilo!

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 89 be amended by inserting a new paragraph immediately after paragraph (f) as follows-

(g) establishment of citizen fora at county and decentralized units.

*(Question of the amendment proposed)*

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

*(Clause 89 as amended agreed to)*

*(Clauses 90, 91, 92, 93, 94 and 95 agreed to)*

*Clause 96*

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 96 be amended by deleting the words “under this Act” appearing in sub clause (2) and substituting therefor the words “in section 98”.

*(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 96 as amended agreed to)*

*(Clause 97 agreed to)*

*Clause 98*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 98 be amended in subclause (1) by inserting the words “and establish a civic education unit in this regard” immediately after the word “programme”.

*(Question of the amendment proposed)*

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

*Clause 98*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 98 be amended in sub clause (1) by inserting the words “and establish a civic education unit in this regard” and immediately after the word “programme”;

*(Question of the amendment proposed)*

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



*Clause 98 as amended agreed to)*

*(Clauses 99 and 100 agreed to)*

*Clause 101*

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

THAT, Clause 101 be amended by inserting the following new paragraph immediately after paragraph (i)-

(j) develop the human resource capacity of the county

*((Question of the amendment proposed)*

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

*(Clause 101 as amended agreed to)*

*(Clause 102 agreed to)*

*Clause 103*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 103 be amended by inserting the following new paragraphs immediately after paragraph (d)-

(e) ensuring the collection, collation, storage and updating of data and information suitable for the planning process;

(f) ensuring the establishment of a GIS based database system.

*(Question of the amendment proposed)*

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

*(Clause 103 as amended, agreed to)*

*Clause 104*

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

THAT, Clause 104 be amended in sub clause (2) by inserting the words “on the functions of the county governments as specified in the Fourth Schedule to the Constitution and” immediately after the word “based”

*(Question of the amendment proposed)*

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

*(Clause 104 as amended agreed to)*

*(Clause 105 agreed to)*

*Clause 106*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 106 be amended in sub clause (3) by inserting the words “but held in a GIS based database system” immediately after the word “attached” appearing in paragraph (b).

*(Question of the amendment proposed)*

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

*(Clause 106 as amended, agreed to)*

*(Clause 107 agreed to)*

*Clause 108*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 108 be amended-

(a) in sub clause (1) by inserting the words “GIS based database system” immediately after the words “ten year county”;

(b) in sub clause (2) by inserting a new paragraph immediately after paragraph (i) as follows-

(j) shall indicate the areas designated for conservation and recreation;

(c) in sub clause (4) by deleting the word “ten” and substituting therefor the word “five”.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted  
be inserted, 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)*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I be to move:-

THAT, Clause 108 of the Bill be further amended-

- (a) in sub-clause (2) by deleting sub-paragraph (viii) of paragraph (c); and
- (b) in sub-clause (4) by deleting the word “ten” immediately after the words “reviewed every” and substituting therefor the word “five”.

One amendment has already been carried by Dr. Otichilo. So, part of the amendment on that page is what I propose.

*(Question of the further amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi):  
Mr. Temporary Deputy Chairman, Sir, could he give the rationale of his further amendment?

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, the clause I am deleting refers to where the County Governments are asked to make spatial plans and development plans. They are requested that those spatial plans must be aligned with the special frameworks reflected in development that is integrated development plans of neighbouring counties. Because we have already forced counties to align their spatial plans and development plans with the national level, there is no reason as to why we should force them to look at the county on the left, right, in front and at the back. I think we are stretching it a bit too far.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi):  
Mr. Temporary Deputy Chairman, Sir, I think it is important because when looking at the spatial planning, for instance, you are neighbouring a county here and you are doing something and pouring untreated sewage into another county, it is a serious matter. The whole issue of spatial planning here is to make sure that you are also taking into account the implications of what you are doing on your side with the other side. I do not think we should let it loose.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I thought that once we have that national framework, the spatial plans of counties and even the development agenda and general mood is aligned with the national one that takes care of the 100, 20, 30 and 40 counties. However, if the mood of the House is such, I withdraw.

*(Proposed further amendment withdrawn)*

*(Clause 108 as amended agreed to)*

*Clause 109*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 109 be amended in sub clause (1) by inserting a new paragraph immediately after paragraph (c) as follows-  
location of recreational areas and public facilities”

Mr. Temporary Deputy Chairman, Sir, the import here is that the city and municipal plans should have locations for recreational areas and public facilities.

*(Question of the amendment proposed)*

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

*(Clause 109 as amended agreed to)*

*(Clauses 110, 111, 112, 113,  
114 and 115 agreed to)*

*Clause 116*

**Mr. Ngugi:** Mr. Temporary Deputy Speaker, Sir, I beg to move:

THAT, Clause 116 be amended in sub clause (1) by inserting the words “or any agency of the national government” immediately before the words “or another county”

*(Question of the amendment proposed)*

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

*(Clause 116 as amended agreed to)*

*Clause 117*

**Mr. Ngugi:** Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, Clause 117 be amended in sub clause (1) by deleting the words “governor” and substituting therefor the words “County Executive Committee”.

*(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 117 as amended agreed to)*

*(Clause 118 agreed to)*

*Clause 119*

**Mr. Ngugi:** Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, Clause 119 be amended in sub clause (2) by deleting the word “corroboration” and substituting therefor the word “collaboration” appearing in paragraph (h).

*(Question of the amendment proposed)*

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

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

*(Clause 119 as amended agreed to)*

*Clause 120*

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

THAT, Clause 120 be deleted and the following new clause substituted-

<b>Grounds for suspension arising from conflict or war.</b>	<b>120</b> (1) The President may suspend a county government— in an emergency arising out of internal conflict or war; or in any other exceptional circumstances
---	--

*(Question of the amendment proposed)*

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, if you look at the marginal notes, you will see that they read grounds for suspension arising from conflict or war. We also have (b) which deals with “in any other exceptional circumstances”. I find this a little bit too dangerous because a County Government should only be suspended for specific reasons and exceptional circumstances. If you do not give any indication as to what constitutes exceptional circumstances, that would be dangerous. However, I am aware that in the Draft Bill for Public Finance, there are provisions that may be relevant in terms of the Presidential Powers to suspend a County Government. I think “exceptional circumstances” is where the problem is.

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, we put in this clause to mirror the provisions of suspension of counties contained in the Constitution. That is what the Constitution says; in any other exceptional circumstances. We just mirrored that.

*(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 120 as amended agreed to)*

*Clause 121*

**Dr. Otichilo:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, clause 121 be amended-

(c) in sub clause (2), by deleting the words “five thousand” and substituting therefor the words “ten percent of the“,

(d) in sub clause (8) by deleting the words “for Ward” and substituting therefor the word “forward”;

The import here is that if you read subsection (2), you will see that it reads; a petition under sub section (1) shall be supported by the signatures of not less than 5,000 registered voters of the county. Here, I am proposing 10 per cent because the population will vary from one county to another. Therefore, if you take a figure, you will run into a lot of problems particularly if you go to counties which have low population.

*(Question of the amendment proposed)*

**Mr. Kathuri:** Mr. Temporary Deputy Chairman, Sir, I have a comment to make. When we propose 10 per cent in a ward which has a population of about 25,000, the standard ward size, with 10 percent we only talking about 1,500 or 2,000 voters. That threshold may be very low and it can be achieved very easily. I think we should have put the threshold at either 20 or 30 per cent or, specifically 30 per cent.

*(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. Ngugi:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

That, clause 121 be amended –

(c) in sub clause (5), by deleting the word “inspector-general” appearing in paragraph (b) and substituting therefor the words “the chairperson”;

(d) in sub clause (7), by deleting the word “binding” immediately after the words “report on the facts and make”;

*(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 121 as further amended agreed to)*

*(Clauses 122 and 123 agreed to)*

*Clause 124*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir I beg to move:-

THAT, Clause 124 of the Bill be amended in sub-clause (3) by inserting the following new paragraph immediately after paragraph (c)-

“(d) has not, for the last five years, been a member of a governing body of a political party”.

This is on page 3276.

*(Question, of the amendment proposed)*

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

*(Clause 124 as amended agreed to)*

*(Clauses 125, 126, 127, 128, 129, 130, 131, 132, 133,  
134 and 135 agreed to)*

*Clause 136*

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

THAT, Clause 136 be amended by inserting the following new sub clause immediately after sub clause (6)-

(7) For the avoidance of any doubt, reference to a public officer under this section shall include officers serving in the system of administration previously known as the provincial administration

*(Question of the amendment proposed)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, there was a proposal that Dr. Nuh had and we are looking at it. We will deal with Dr. Nuh's as a new clause. I plead with hon. Mungatana that it will then take care of this.

**The Temporary Deputy Chairman** (Mr. Ethuro): Do you agree?

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, then I will withdraw that amendment.

*(Mr. Mungatana withdrew his amendment)*

*(Clause 136 agreed to)*

*New Clause 12 (A)*

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

THAT, the following new clause be inserted immediately after clause 12-

**Clerk and staff of the county assembly.** **12A.** (1) There shall be a clerk of the county assembly, appointed by the county assembly service board with the approval of the county assembly.

(2) A person shall not be qualified for appointment as a clerk of the county assembly unless such person-

- (i) is a citizen of Kenya;
- (ii) holds a degree from a university recognized in Kenya or its equivalent;
- (iii) has had at least five years relevant professional experience;
- (iv) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution

(3) The functions and powers of a Clerk of Parliament shall with necessary modifications be the functions and powers of the clerk of a county assembly.

(4) For the purposes of this Act, the clerk of a county assembly is an authorized officer.

(5) The office of the clerk of the county assembly and the offices of members of the staff of the clerk of the county assembly shall be offices in the county assembly service.

(6) The remuneration of the clerk and staff of the county assembly shall be determined by the county assembly service board upon the advice of the Salaries and Remuneration Commission.

*(Question of the new clause proposed)*

*(New Clause read the First Time)*

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

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

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

*New Clause 43A*



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

THAT, the Bill be amended by inserting a new clause immediately after clause 43 as follows-

**43A.** A county government may, pursuant to article 156 (4) of the Constitution request the Attorney General to represent the county government in court or in any other legal proceedings to which the county government is a party other than criminal proceedings.

*(Question of the new clause proposed)*

*(New Clause read the First Time)*

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

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

*(The new clause was read and agreed to)*

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

*New Clause 52(A)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Thank you Mr. Temporary Deputy Chairman, Sir. This is the new clause that is drawn from the proposal by Dr. Nuh. I will read it so that Members can follow. It goes as follows:-

“52A. There shall be such further structures of decentralization including locations and sub-locations as may be provided for in county legislation.

(2) Until substantive appointments have been made by the county public service board under this Act, the public officers serving in the system of the administration commonly known as Provincial Administration shall upon the final announcements of all the results of the first election of Parliament as contemplated by Section 2 of the Sixth Schedule to the Constitution serve in the county governments as officers of the county governments as follows:-

- (a) a district commissioner as a sub county administrator.
- (b) A district officer with a ward administrator.
- (c) A chief or sub-chief as officers of the further decentralized unit.

This will eliminate all the doubts that have been in the papers and coming up about the issue of the provincial administration. That is the proposal that Dr. Nuh had put forward. I think then it covers the concerns that hon. Members have been having.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I am really thankful to the Deputy Prime Minister for having accepted this. We have raised issues several times in this House regarding how the provincial administration wants to restructure. That is something that they are really reluctant to do. This Clause fairly eases the work if the Government has been unable to think of any way to restructure. Since the Government is the head of the security at the county level then there is no reason why chiefs and sub-chiefs should not be answerable to the county governor. I think this settles the matter once and for all.

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

*(The new clause was read a Second Time)*

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

*(Schedule agreed to)*

*New Schedule*

*(Question of the new schedule proposed)*

*(New Schedule read the First Time)*

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

**Mr. Ngugi:** Mr. Temporary Deputy Chairman, Sir, on page 3259, I propose that a new schedule be incorporated as in the Order Paper.

#### **SECOND SCHEDULE**

<b>MATTERS TO BE PROVIDED FOR IN THE COUNTY ASSEMBLY STANDING ORDERS</b>	
<b>GENERAL SUBJECT MATTER</b>	<b>SPECIFIC MATTER TO BE ADDRESSED</b>
Introductory	Interpretation
Swearing - in of Members and election of Speaker	Proceedings on assembly of a new Assembly

	Swearing-in of Members
	Election of the Speaker
Election of member to deputize for Speaker	Election of Member to deputize for Speaker
	Chairperson of Committees of the Whole Assembly
	Presiding in the Assembly
Leader of the majority	Leader of the Majority Party
	Opposition in the Assembly
Governor and persons other than a Member	Governor's address to Assembly
	Governor entering or leaving Chamber
	Address by Senator or persons other than the Governor or member
Sittings and Adjournments of the Assembly	Location of sittings of a new Assembly
	Regular sessions of the Assembly
	Special sittings of the Assembly
	Hours of meeting
	Adjournment of the Assembly
	Adjournment on definite matter of urgent national or county importance
Quorum of the Assembly	Quorum at commencement of the Assembly
	Quorum during the proceeding of the Assembly
	Quorum during voting or division
Order of Business	Order Paper to be prepared and circulated
	Messages from the Governor or Senator
	Sequence of proceedings
Statements	Statement Hour
Approval of county public appointments	Committal to committees
Motions	Notices of Motions
	Amendment of Notice of Motion
	Certain Motions not to be moved
	Time for moving Motions
	Motion withdrawn may be moved again
	Motions which may be moved without Notice
	Manner of debating Motions, Amendments thereto and deferment of putting a question
	Amendments to be in writing
	Amendments to be relevant to Motion
	Question proposed after Motion made
	Motion in possession of the Assembly
	Question as amended put
	When amendment proposed but not made

Special Motions	Definition of Special Motion
	Procedure for removal of Governor
	Procedure for removal of Deputy Governor
	Procedure for removal of Member of County Executive Committee
Voting and Divisions	Voting in the Assembly
	Division claimed
	Technical failure, confusion or error occurring
	Roll call voting
	In case of confusion or error
	Decorum during division
	Original vote
Rules of Debate	Proceedings to be in Kiswahili, English or Kenyan Sign Language
	Members to address the Speaker
	Two or more Members rising to speak
	Speeches may not be read
	No Member to speak after Question put
	Speaking twice to a Question
	Point of Order
	Anticipating debate
	Proceedings of Select Committees not to be referred to
	Contents of speeches
	Matters sub judice or secret
	Declaration of interest
	Responsibility for statement of fact
	Member who has spoken to question may speak to amendment
	Debate on amendment confined to amendment
	Reserving rights of speech
	Closure of debate
	Adjournment of debate
Limitation of Debate	Limitation of debate
Order In the Assembly and In Committee of the Whole Assembly	Maintenance of order
	Security checks
	Firearms and other offensive weapon
	Lady Members' handbags
	When the Speaker rises Members to be silent
	Members and the Chair
	Members to be seated
	Members to remain in their places until the Speaker has left the Chamber
	Irrelevance or repetition
	Disorderly conduct

	Member may be suspended after being named
	Member suspended to withdraw from precincts of the Assembly
	Duration of suspension of a Member
	Action to be taken on refusal to withdraw
	Grave disorder
Public Bills	Application and limitation
	Introduction of Bills
	Printing of amending provisions
	Memorandum of Objects and Reasons
	Publication
	Not more than one stage of a Bill to be taken at the same sitting
	Reading of Bills
	First Reading
	Committal of Bills to Committees
	Second Reading
	Committal of Bills to Committee of the whole Assembly
	Sequence to be observed on a Bill in Committee
	Procedure in Committee of the whole Assembly on a Bill
	Report of Progress
	Bill to be reported
	Procedure on Bills reported from Committee of the whole Assembly
	Procedure on Bills reported from Select Committees
	Procedure upon the re-committal of a Bill
	Withdrawal of Bills Third Reading
	Re-introduction of Bills
	Custody of Bills
Committee of the Whole Assembly	Limits on consideration of matters by Committee
	Committee of the whole Assembly may not adjourn
	Report.
	No debate on Motion for Report
	Chairperson leaves Chair without question put when directed to report
	General application of rules in Committee
Select Committees	Assembly Business Committee
	Nomination of members of select committees
	Criteria for nomination
	Approval of nomination
	Discharge of a member from a committee
	Composition of select committees
	Chairing of select committees and quorum
	Conduct of election
	Notice of meetings

	Sittings of select committees
	Member adversely mentioned not to sit
	Adjournment for lack of quorum
	Frequency of meetings
	Failure to attend meetings
	Absence of chairperson and vice-chairperson
	List of attendance
	Minutes of select committees
	Summoning of witnesses
	Temporary absence of a member of a select committee
	Vote of no confidence in the chairperson or vice-chairperson
	Filling of vacancies in select committees
	Original vote
	Attendance by non-members of select committee
	Procedure in select committees
	Public access to meetings of select committee
	Reports of select committees
	Progress reports
	Reports on Assembly Resolutions
	Joint meetings of committees
	Engagement of experts
	County Public Accounts & Investments Committee
	Budget and Finance Committee
	Rules and Programme Committee
	Committee on Implementation
	Sectoral Committees
	Appointment of Sectoral Committees
	Limitation of mandate
	Committee to be limited to mandate
Public Petitions	Meaning of Public Petition
	Member's statement on presentation of Petition
	Petition on Private Bill
	Notice of intention to present Petition
	Form of Petition
	Presentation of Petition
	Comments on petitions
	Printing of Petitions
	Committal of Petitions
Financial Procedures	General
	Restrictions with regard to certain financial measures
	Presentation of Budget Policy Paper in liaison with commission for revenue allocation.
	Presentation of Annual Estimates and committal to Committees
	Committee of Ways and Means and Committee of Supply
	Procedure in Committee of Supply

	Procedure on Supplementary Estimates
	Consideration of Supply Resolutions
	Order of Votes
Journals, Records and Broadcast of Proceedings	Journals of the Assembly
	Custody of Journals and Record
	Hansard reports
	Secret or personal matters
	Broadcast of Assembly Proceedings
Communication with the Senate	Messages to and from the Senate
	Procedure for presentation of reports and other matters from the Senate
The Public	Places to which members of public are not admitted
	Exclusion of the public
	Press representatives infringing Standing Orders or the Speaker's Rules
General	In cases not provided for, the Speaker to decide
	Exemption of business from Standing Orders
	Seating in the Chamber
	Members travelling outside the County or outside Kenya
	Expenses of witnesses
Suspension and Amendment of Standing Orders	
Broadcasting Rules	Broadcasting of Assembly proceedings
	Protection of the dignity of the Assembly
	External media houses
	Breach of broadcasting Rules

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

*(The new schedule was read a Second Time)*

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

*Title*

**The Temporary Deputy Chairman** (Mr. Ethuro): Dr. Ottichilo, you had an amendment to the title unless you have dropped it.

**Dr. Ottichilo:** Mr. Temporary Deputy Chairman, Sir, I wish to drop that amendment.

*(Dr. Ottichilo's proposed amendment withdrawn)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the County Government Bill and its approval thereof with amendment.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORTS AND THIRD READINGS**

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, this will be the sequence of the reporting. We will begin with The Intergovernmental Relations Bill, The Transition to Devolved Government Bill and then the County Governments Bill. So, Mr. Ethuro, you can report on the first one.

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, thank you and I will be guided by you if I did not get it right.

### **THE INTERGOVERNMENTAL RELATIONS BILL**

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Intergovernmental Relations Bill and approved the same with amendments.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Lands** (Mr. Orengo) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Intergovernmental Relations Bill be now read the Third Time.

**The Minister for Lands** (Mr. Orengo) seconded.



*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

**The Temporary Deputy Speaker** (Prof. Kaloki): We will now move to the second Bill which is the The Transition to Devolved Government.

#### THE TRANSITION TO DEVOLVED GOVERNMENTS BILL

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Transition to Devolved Governments Bill and approved the same with amendments.

**The Temporary Deputy Speaker** (Prof. Kaloki): All right. Yes, Mr. Deputy Prime Minister and Minister for Local Government!

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): 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 Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Transition to Devolved Governments Bill, Bill No.3 of 2012 be now read the Third Time.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Mr. Temporary Deputy Chairman, we now move to The County Governments Bill, Bill No.1 of 2012.

#### THE COUNTY GOVERNMENTS BILL

**Mr. Ethuro:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The County Governments Bill, Bill No.1 of 2012 and approved the same with amendments.

**The Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): 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 Deputy Prime Minister and Minister for Local Government** (Mr. Mudavadi): Mr. Temporary Deputy Speaker, Sir, I beg to move that The County Governments Bill, Bill No.1 of 2012 be now read the Third Time.

*(Question proposed)*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

### **ADJOURNMENT**

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, hon. Members. It is now 11.40 p.m. and the Chair appreciates all the hon. Members for your contribution and being able to stay this long.

Thank you very much.

*(Applause)*

Therefore, the House stands adjourned until Tuesday, 28<sup>th</sup> February, 2012, at 2.30 p.m.

The House rose at 11.40 p.m.