

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 9th May, 2013

The House met at 2.30 p.m.

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

PRAYERS

STATEMENTS

FLOODING IN TANA DELTA

Hon. Speaker: Yes, Member for Garsen.

Hon. Sane: Thank you, hon. Speaker Sir. I am honoured today to stand before this House. Hon. Speaker, Sir, pursuant to Standing Order No. 44(2)(c), I wish to request for a statement from the Leader of Majority Party in regard to the flooding in Tana Delta. Hon. Speaker, Sir, I wish also to bring to the attention of this House and Kenyans at large that the suffering in Tana Delta is becoming extreme. As I speak, over 50 per cent of the schools in Tana Delta have not opened and they are not accessible because they have been marooned by the flooding. Hon. Speaker, 80 per cent or above of the population in the Tana Delta is displaced or marooned. This is a serious issue which needs the attention of the Government. Kenya Red Cross Society has done a commendable job in addressing the situation, but the magnitude of the situation is beyond them. We do not feel the impact of the response of the Government on the situation. Guests are flying in helicopters. A delegation led by the PS, Special Programmes, has flown to Tana Delta twice, but we do not see the outcome of the assessment by this team. The people of Tana Delta are suffering and we are not ready to see tourists from the Government. I can say they are tourists because there is no point when a PS and his delegation flies to a place to see people marooned and then fly back to Nairobi and they do not respond. After the elections, with the Jubilee Government and the new Constitution in place, we thought the people of Tana River would move out of marginalization.

Hon. Speaker, Sir, I wish to ask the Leader of the Majority Party to explain what measures the Government has in place to distribute humanitarian assistance. As I am talking, the Kenya Red Cross Society with their food and non-food items are unable to reach 3,507 households because this can be accessed either by helicopter or a boat. As I sit down I request the hon. Member to give that statement. Thank you.

Hon. Letimalo: Hon. Speaker, Sir---

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Hon. Speaker: Hon. Letimalo, read your Standing Order No. 44. It is not a matter for debate. It is seeking statement from the Government and especially now from the Leader of the Majority Party because we do not have departmental committees, courtesy of a decision by the House.

Hon. A.B. Duale: Hon. Speaker, Sir, I will provide the statement on Wednesday afternoon, next week.

Hon. Speaker: Very well, yes Member for Garsen.

Hon. Sane: I would like to tell my brother, hon. A.B. Duale that it will not be fair for the people of Tana Delta to wait for that long to hear what the Government is doing for them.

Hon. A.B. Duale: Hon. Speaker, Sir, I had the pleasure of serving in the last Parliament and my colleagues will agree with me that, that is the shortest time to wait. It used to take two weeks. I want to have enough time to interrogate the Government. So, Wednesday afternoon, next week is fine.

Hon. Ng'ongo: Hon. Speaker, Sir, even as the Leader of the Majority Party is promising to give this statement, in light of what the hon. Member is requesting, could we ask the Leader of the Majority Party to pass the message that action be taken? We should not wait for the statement for action to be taken. Can he promise that he is going to diligently work since he has a very good working relationship with the Government, which has no cabinet? Can he also communicate with the Deputy President because it is like he has filled the gap of the Cabinet Secretaries at the moment? Let him order, because he is fond of ordering, that action be taken immediately before the weekend.

Hon. A.B. Duale: Hon. Speaker, Sir, I want to confirm that the leadership structure of both the House and Government of the Jubilee Coalition is well defined, active and very efficient. We will do as hon. Mbadi said. Action will be taken, but our leadership is up to the task.

Hon. Wanyonyi: On a point of order, hon. Speaker, Sir.

Hon. Speaker: It is not occasion for debate, hon. Wanyonyi. Leader of Majority Party proceed.

BUSINESS FOR THE WEEK COMMENCING 14TH TO 16TH MAY, 2013

Hon. A.B. Duale: Pursuant to Standing Order No. 44(1), on behalf of the House Business Committee, I wish to give the following Statement regarding the business appearing before the House next week:

The Report of the Committee on Appointments on Vetting of Cabinet Secretaries is scheduled to be tabled on Tuesday for debate. We also expect debate on the following Motions:-

(i) The Motion by hon. Abdulaziz Farah, Member of Parliament for Mandera East, urging Government to urgently establish Livestock Insurance Fund to cushion livestock farmers from ASAL areas against losses occasioned by drought.

(ii) The Motion by Member of Parliament for Kirinyaga Central, hon. Joseph Gitari urging Government to consider upgrading at least one hospital in each county and

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supply equipment to handle both chemotherapy and dialysis treatment procedures for cancer patients.

(iii) The Motion by the Member of Parliament for Kilifi South, the hon. Mustafa Idd urging Government to establish free nursing unit for the aged in every hospital in all the counties in Kenya.

(iv) The Motion by the Member of Parliament for Sirisia, hon. John Waluke urging for hand-over of agro-based parastatals to the respective counties in the Republic of Kenya.

(v) The Motion by the Member of Parliament for North Horr, hon. Francis Chachu Ganya urging for the tightening of measures on curbing poaching.

The House Business Committee will meet on Tuesday, 14th May, 2013 at the rise of the House to consider business for the rest of the week. I wish to lay the statement on the Table of the House.

(Hon. A. B. Duale laid the Statement on the Table)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

[Hon. Chairlady (Dr. Laboso) took the Chair]

THE DIVISION OF REVENUE BILL

Hon. Chairlady: Hon. Members, as this is the first time for most of the new Members present to consider a bill in the Committee of the whole House, I wish to guide the House. We are now in the Committee of the whole House to consider the Division of Revenue Bill (Bill No.1 of 2013). The rules of speaking are normally relaxed in the Committee to allow a Member to speak more than once in consideration of the Bill. Secondly, pursuant to Standing Order No. 132, the Committee shall start with Clause 3 and proceed up to the last clause as printed in the Bill. We will thereafter proceed to new clauses, schedules, new schedules, interpretations, the title and finally to Clause 1. In considering clauses without amendments, I shall propose the question that the clause be part of the bill and I shall proceed to put the question that the clause be part of the bill. We expect minimal debate if any, on clauses without amendments. Fourthly, in considering clauses with amendments, I shall propose the question that the clause be part of the bill thereupon the mover will move the amendments. Where there is more than one amendment proposed by different Members, I will proceed to call the members to move their respective amendments in the order that the Clerk has advised and this is pursuant to

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Standing Order No. 133. Where there are similar amendments, subsequent amendments will stand dropped. If they are similar, whichever one has passed, the others will be dropped. That is if the preceding amendment is carried. Hon. Members, I would also wish to request all Members proposing amendments to clauses that where amendments seeking deletion have been proposed, they should consult so that they can agree on the way forward. Members are reminded that if the House passes an amendment to delete a clause, any subsequent amendments to that clause will stand dropped. In this regard, I would encourage the Leader of the Majority Party, hon. A.B. Duale to consult hon. Alfred Sambu and Samuel Gichigi to consult on their proposed amendments to clauses 5 and 6.

Lastly hon. Members, when we have finished with the entire bill, I will call the mover to move that the Committee reports to the House. On resumption, the House will approve the Report of the Committee of the whole House. This will pave way for the Third Reading of this Bill and the subsequent passage. Thereafter, the Bill will be messaged to the Senate for consideration. It was by way of introducing this for all Members who are new and have not gone through the Committee of the whole House. We will now move to the Bill.

Clause 3

Hon. Sambu: Hon. Chairlady, I beg to move:-

THAT, Clause 3 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) the drawing of unconditional and conditional grants from the share of revenue of the National Government.

Contrarily to what the Bill states in Clause 3(b) “and schedule additional resources or conditional allocations to be part of the national revenue and to be part of the national revenue under Clause 202(2) of the Constitution”, this is catered for there. Indeed, the Constitution at Article 202 (2) explicitly states that county governments may be given additional allocations from the National Government share or revenue, either conditionally or unconditionally. This should not come from the county government, but from the National Government. Also, inclusion of the conditional allocations under county revenue share contradicts the spirit of Article 218 of the Constitution. I beg to move.

(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)*

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(Clause 3 as amended agreed to)

Clause 4

Hon. (Ms.) Gichigi: Hon. Chairlady, I wish to withdraw the proposed amendment on the basis that when we were here yesterday, many Members were complaining that we do not have enough time to consult and research on this Bill. After consultation and a bit of research, I confirmed that the provision that I was introducing has been taken care of by the Public Finance Management Act, Section 109(8) which is very clear. It states that any unutilized balances in the County Revenue Fund shall not lapse at the end of the financial year but shall be retained for the purposes for which it was established. So, this will be just a repetition of an already existing law. So, I withdraw my amendment.

Hon. Chairlady: So, you are dropping your amendment?

Hon. (Ms.) Gichigi: Yes, hon. Chairlady.

(Proposed amendment by hon. (Ms.) Gichigi withdrawn)

(Clause 4 agreed to)

Clause 5

Hon. Sambu: Hon. Chairlady, I beg to move:-

THAT, the Bill be amended by deleting Clause 5.

The provision to offset variation of revenue collections by sometimes reducing the county share is inconsistent with the need to protect revenue share of 15 per cent, in accordance with Article 203(2) of the Constitution. If we delete it, it cures this problem. Hon. Chairlady, lastly I had the privilege of serving in the Budget Committee and our problem was how to get accurate focus from the Treasury. We told them Parliament will not tolerate any more inaccurate focus from Treasury. This year alone, for example, apart from the warning last year, the Treasury has a gap of roughly Kshs. 100 billion. If you have already given say Kshs190 billion to be allocated to the counties and you find there is a big variation, the counties will not work. The counties will have no cash. So, we are asking Treasury to come up with substantive accuracies that are focused to avoid this kind of situation. All over the world, we have a situation where variations are very minimal. But we have seen in the Kenyan situation that variations can be very big and to a large extent the counties may not be able to operate, if we have a big variation. Thank you.

(Question of the amendment proposed)

Hon. Chairlady: Remember this clause is supposed to protect the Government. So, we want to hear from the Leader of the Majority Party, what is your view on this?

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Hon. A.B. Duale: Hon. Chairlady, I oppose. This Member has confirmed that in budget-making process, variations are there all over the world. This clause cannot be deleted because it talks about shortfalls and excesses. These are the order of the day in a budget-making process. This will be in the interest of both the national and the county government. At least, he has confirmed. I would urge him now that he has confirmed that there is minimal variation, he does not delete it.

Hon. Member: I oppose the amendment. Budgets are done under uncertain environment. Having a situation where we do not put up a buffer in cases of excesses and deficiencies would impractical. We are not even aware of the circumstances---

(A Member crossed the Floor without bowing to the Chair)

Hon. Chairlady: Order, hon. Member! You cannot cross the Floor without going to the Bar.

Hon. Member: Hon. Chairlady, we are not even aware of the circumstances ahead of us that might make us review any budget. Budget is about estimation and approximation. You cannot be one hundred per cent accurate. It is impossible to have accuracy in matters of budgets and other projects. You are not even in control of anything. Putting that decision would be committing the Government to the risk of the uncertainties which no man has control world over. It is an acceptable practice to cater for deficiencies and shortfalls. This particular clause does it and I want to oppose the intention of the hon. Member that it be deleted.

Hon. Konchella: Hon. Chairlady, indeed, this particular clause provides the latitude for Government, both county and national to address issues of calamity and issues which may be caused by international conditions where the Government has no choice other than to address it as it is. To try and remove this is actually going to make the Government not support the county governments and even itself. So, I wish to ask my colleague not to withdraw it because it is a very crucial provision.

Hon. Chairlady: We are giving you a little bit of time, hon. Ngong'o to debate although we should not do that in Third Reading. Because it did not go to the committee, we are giving some latitude for you to ventilate on this.

Hon. Ngong'o: Thank you, hon. Chairlady. Before I say anything, there is just a small thing I wanted to point out. You corrected the Member by telling him to go to the Bar, but one of the mistakes in these new standing orders is that they do not say that you have to go up to the end, as the old one did. So, you can bow anywhere. I just want us to look at that, those are the mistakes that we are complaining about.

Hon. Chairlady: I think a lot of these activities are by practice and tradition rather than by expressly stating them in the standing orders.

Hon. Ngong'o: I wish we could use traditions and practices in PIC and PAC but let me leave that. Let me go to the substance of the debate. Hon. Chairlady, I want to support hon. Sambu's amendment. I think we need to keenly understand this provision and see the mischief. I remember when we were doing Public Finance Management Act, the Treasury tried as much as possible to take away and give themselves powers to

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control funds for county governments. We resisted that and came up with these laws. If you look at this provision, it is actually unconstitutional. Suppose in a financial year you give 15 per cent to the counties, based on audited accounts and approved by Parliament and in the course of the year there is a shortfall to the extent that you cannot realize 15 per cent, what happens? If we pass this Bill with this provision, we are allowing the Cabinet Secretary through rules and regulations to reduce allocations to counties below the constitutional threshold. This provision, if you want it to stay here, should be worded differently because it is not right to allow Cabinet Secretaries to be deciding when there is shortfall how much to give to the counties. That is what we have always wanted to resist. I would urge my colleagues, before you support this provision in the Bill and object or oppose the amendment by Hon. Sambu, we need to clearly understand. Do we really want to give the Cabinet Secretary power to be making decisions as to how much should go to the counties in the event that there is shortage in collection of revenue? Finally, hon. Chairlady, remember the percentage we are giving, the amounts you are allocating to county government is usually based on historical data, it is not based on estimates for that particular year. It is usually based on the last audited accounts. So, it is not based on the current financial year. You should not tie the amounts released to counts to the performance of that particular financial year. That is not what Kenyans wanted when they voted for this Constitution. So, I support hon. Sambu that this provision is unnecessary in this Bill and should be deleted. I support.

Hon. Katoo: Thank you, hon. Chairlady. I rarely differ with my good friend, hon. Mbadi, but on this one I think we are on different breath. I stand to oppose the amendment by hon. Sambu and urge my colleagues to oppose it for this reason; if you read the clause that hon. Sambu is trying to delete, it is for the interest of the counties. It says that in case there is a shortfall of the actual revenue the responsibility of ensuring that county governments still get what they had budgeted for rests with the National Government. If there is excess in actual collection, more than what had been budgeted for, the National Government should again share on pro rata basis that excess with a county government. That is what is in the Bill now. If you say that you delete that provision, then when the actual target for revenue collection has not been met as budgeted, it will leave the county government with no recourse to ensure that the budgeted priorities are met. I urge my colleagues to oppose that amendment and retain the original provision so that we leave our counties protected.

Hon. Aden: Thank you, hon. Chairlady. I stand to oppose the amendment by hon. Sambu. As echoed by other colleagues, in prudent financial planning it will be very risky and almost impossible to plan without planning for eventualities. This clause is very important. It protects our county government. Maybe that is what we need to understand. I say that because if for whatever reason the revenue falls short and the budgets done by the county governments were reflecting a certain amount, if we delete this clause, what it will mean is that indeed the National Government will not be under any obligation to support the gap that is created. The clause is also good to the extent that it actually says that should there be an excess in revenue collection – there will be more than we plan for

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– we will be able to do far more than we had planned to do in the counties. I, indeed, say that I oppose the deletion of this clause.

Hon. Ng’ongo: On a point of order, hon. Chairlady. It is not in order for the hon. Member to mislead the House that if there is a shortage, without passing this clause, we are exposing the counties. The Public Finance Management Act is very clear, once we appropriate money to the counties that money is supposed to go to the County Revenue Fund directly from Central Bank. You cannot get it back. So, the money that is already apportioned to counties through this House is secure. So, this fear that we are getting in this House that you are pretending to be helping counties, that chances are that every year the government will under collect, has no basis. We need to understand this clause clearly.

Hon. Chairlady: I think now we should put the Question. Remember it is Committee of the whole House. I think we are now beginning to repeat ourselves. Hon. Angwenyi, do you have something different?

Hon. Angwenyi: I just want to stress that budgetary estimates have accurate figures. I am talking from point of view of our financial experts. I oppose this amendment. What has been put in this clause assists our devolved governments to receive their dues. It clarifies how they will be addressed if there is a shortfall or if there is an excess. We should support it. I oppose this amendment.

Hon. Chairlady: Hon. Members in the interest of moving forward, I now put the Question.

(Question put and negatived)

Hon. (Ms.) Gichigi: Hon. Chairlady, I beg to move:-

THAT Clause 5 of the Bill be amended-

(a) in sub clause (1) by inserting the words “with the prior approval of Parliament” immediately after words “Cabinet Secretary”;

(b) in sub clause (2) by inserting the words “with the prior approval of Parliament” immediately after words “Cabinet Secretary.”

Hon. Chairlady, as I did in relation to Clause 4, upon further perusal of the Public Finance Management Act, I have discovered that Section 205 of the Act, specifically subsection 4 takes care of what I had proposed, that is “the regulation shall not take effect unless approved by a resolution passed by Parliament”. I am therefore withdrawing that particular proposed amendment.

(Proposed amendment by hon.(Ms.) Gichigi withdrawn)

(Clause 5 agreed to)

Clause 6

Hon. Sambu: Hon. Chairlady, I beg to move:-

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THAT the Bill be amended by deleting Clause 6

Hon. Chairlady: Again, you are suggesting that it be deleted?

Hon. Sambu: Yes. We are dealing with the revenue bill but not dispute resolutions. Dispute resolutions should be a separate Act of Parliament that should be used from time to time. What we are dealing with is revenue and division of revenue. This particular clause is misplaced. It should be deleted.

(Question of the amendment proposed)

Hon. A.B. Duale: Hon. Chairlady, I oppose. If we delete this clause we are contravening the Constitution, Article 189 and the Inter-governmental Relations Act which was passed by this House. The Inter-governmental Relations Act is the one that creates this. There might be disputes, that Act will be used to solve a dispute between the two levels of Government. We do not want to live in a country where there is chaos. Rules and procedures are very important. For the first time we are running a county government and national government. It is because of that, that this House felt that this Inter-governmental Relations Act has a constitutional mandate where devolution is involved. So, if we delete it we are contravening the Constitution. I oppose.

Hon. Ngong'o: Hon. Chairlady, first of all, this provision in the Bill was completely unnecessary. If you ask me, there is the Inter-governmental Relations Act in place; we have the Constitution in place. You did not need to bring the same provision in another bill. I support deletion because you are making it criminal to seek justice. There is nowhere in the world where you would criminalize quest for justice. By passing or not following the laid down procedures, it is a matter of law. Many of us may not know it. Then the lawyers will say that you did not follow one or two steps. You are not a lawyer yourself. Then you will be asked to take personal responsibility. I do not think that is acceptable in a democracy. Let us delete this because we know there is the Constitution which directs on how the county governments, if they have disputes with the National Government, can iron out their differences. The same is provided for in the Inter-governmental Relations Act, but providing it here and adding some words that make it criminal to seek justice, we will be giving this country a legislation that is very punitive. Thank you and I support.

Hon. (Ms.) Kajuju: I rise to oppose the deletion of Clause 6 in the sense that maybe they do not understand what alternative dispute resolution provides. Alternative dispute resolution is all about negotiation and arbitration. When there is a relationship, as it is going to be between the National Government and the county government there is bound to be conflict. When conflict arises, what is required is that parties explore all alternative means of dispute resolution before they move to a court of law. This clause does not follow that if you go to court to file a frivolous claim, then it means that you are being criminalized. What it provides is that if you file a frivolous claim, then you will take personal liability for the process and cost that you have made the government either at the county level or at the national level to incur. I state that it is not right to dilute that clause. It is properly placed in this law. The Constitution allows for alternative dispute

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resolution and the spirit of every law today as we enact legislation is to provide in the statute the alternative dispute resolution mechanism.

Hon. Kajwang’: Thank you, hon. Chairlady. I rise to support in half.

Hon. Chairlady: You have to decide which one it is.

Hon. Kajwang’: Clause 6(1) in itself is good law because the Constitution anticipates that there will be dispute resolution and an Act of Parliament really can regulate that organs would first of all look for all dispute settlements mechanisms before they approach a court of law. It is reasonable. So, to that extent I am inclined to support my sister, hon. Kajuju on this matter but again subsection 2 and 3 of the Clause is actually unlawful and unconstitutional. The Constitution itself has allowed the organs to be able to interface and the Inter-governmental Relations Act itself has also allowed further the mechanisms by which this can be done. To legislate a criminal fetter to a Constitution which does not give any such fetter is to place a criterion that the Constitution by its own wisdom decided not to put. I think this will make people just fearful. It will make governors not work, it will make public officers not to try to do what is right and a court of law has in a sense to decide that it has not been exhausted in the mechanism giving style. So, hon. Chairlady, as I object to the deletion of the entire clause, I think Sub-sections 2 and 3 should be deleted. You said that discussions in the Committee would be a little lax, I just want to ask guidance from the Chair.

I really think that Sub-section 2 and 3 is really unconstitutional. I do not know how you can direct the House that although Sub-section 1 should be retained Sub-section 2 and 3 to the extent that they prefer a fetter should be actually deleted.

Hon. Chairlady: Remember that the proposer is asking for it to be deleted. So, we cannot have an amendment to a deletion.

Hon. Cheptumo: Thank you, hon. Chairlady. I stand to oppose the deletion of Clause 6 as proposed by hon. Sambu. As you can read from Section 6(1), that section encourages us to fulfill the provisions of Article 189 of the Constitution. Sub-section 2 reinforces again the fact that we need to encourage alternative dispute resolutions. Going through the court process sometimes can be very expensive, sometimes it takes time. I think this is what the law is trying to address so that if we are able to resolve issues through amicable discussions, it will save time and costs. I would like to say that there is prejudice being suffered in this provision, whether to the county government or National Government. And so having it in the bill is not prejudicial to any institution or any organ as contemplated in this Section 6. We should, as a House, strengthen the constitutional provision of encouraging dispute resolution mechanisms. It is important to know that we are now undertaking serious reforms in our institutions of governance, the Judiciary, Parliament---

*(An hon. Member crossed the Floor
without bowing to the Chair)*

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Hon. Chairlady: Order! Hon. Member, you have just done what the former Member did. The position is at the bar. There is only one bar which is at the end of the room.

Hon. Cheptumo: I was saying that we need to strengthen the Constitution so that this House, which actually passed the Constitution strengthening Article 189, should not again negate the same provision of our Constitution. I oppose the intention to delete Clause 6 and propose that it remains in the Bill. It is going to strengthen our dispute resolution mechanisms in our country.

Hon. Chairlady: Can we give the Floor to hon. Muchai.

Hon. Muchai: Hon. Chairlady, I rise to oppose the intention of deletion of this clause from the Bill. I want to say that the Constitution has encouraged the use of alternative dispute resolution mechanisms and this particular clause seeks to enforce the use of alternative dispute resolution which is anchored in the Constitution. Furthermore, I do not see what is unconstitutional about sub-clauses 2 and 3. The good reading of these two sub-clauses tells you that a state organ must involve the alternative dispute resolution mechanism before seeking litigation on the matter. Sub-clause 3 ensures that an officer in charge of a state organ who encourages the shortcut to the alternative dispute resolution mechanism shall be responsible for the payment of the expenditure incurred by a state organ. I think this particular sub-clause 3 is bringing discipline within the state organ and should be encouraged by all to ensure that as far as possible disputes between state organs are resolved in the best interest of the state organs. The court will be the very last result where indeed, the mechanism applied has not resulted into a resolution. There is nothing unconstitutional about sub-clauses 2 or 3 and I oppose the deletion of this entire Clause 6.

Hon. Chairlady: Hon. Elmi, do you have something different so that----

Hon. Elmi: Hon. Chairlady, I would like to support the deletion because in the new Constitution, we have created two governments with different functions but there are grey areas. Through the disputes resolution mechanism that has been created, which is very clear in the Act, we want people to explore so that those functions become clear. Adding a clause that discourages people is not good because the moment you say you will be personally responsible, nobody will want to go through the system. Let what this Sub-section 3 is advocating for be within the Law Society so that if lawyers continuously take frivolous claims, they are punished rather than punishing an individual. So, why are you encouraging people not to explore the boundaries between the two organs? In my view, it is unnecessary punishing somebody who is seeking justice. I support the delegation.

Hon. Katoo: Hon. Chairlady, I want to oppose the amendment and I want my colleague to understand that this Clause 6 (2) and (3) is not saying you do not go to court. It is saying before going to court, exhaust other mechanisms as stipulated in Article 189 (4) of the Constitution and elaborated in the Inter-governmental Relations Act. You exhaust because if you go straight to court without first of all going through dispute resolution mechanism, you will have wasted funds and the phrase here is “wasteful expenditure”. It is explained in the Public Finance Management Act, Sub-section 2 on

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interpretation. It says: “Wasteful expenditure means any expenditure that was incurred which could have been avoided had due care and diligence been executed or exercised.” If we delete this clause, we are actually encouraging misuse of public finances in dispute resolution mechanism. So, let us retain and oppose the deletion. Thank you.

Hon. Chairlady: Order, Members! I think we have ventilated enough. We can put the Question so that we move. I think there has been enough ventilation on that.

(Question put and negatived)

(Clause 6 agreed to)

New Clause 7

Hon. Chairlady: Order, Member! Just let us get some guidance. Hon. Members, we will give the chance to hon. Nyakabi Kinyua and if her amendment is carried, then the ones for Gikaria, Pukose and Angwenyi will be dropped.

Hon. (Ms.) Kinyua: Hon. Chairlady, I had done my maiden speech but I continue to thank the people of Nyeri for voting for me and I promise to serve them and to do the best that I can. On this proposal---

Hon. Chairlady: Hon. Nyakabi, just for the record move that the new clause 7 be read a second time and then you can give your arguments.

Hon. (Ms.) Kinyua: Thank you, hon. Chairlady. I beg to move:-

THAT, the following new clause be inserted immediately after clause 6—

Explanatory
memorandum
not to bind
Parliament.

7. The memorandum accompanying this Act pursuant to Article 218(2) of the Constitution and the ceilings set out that memorandum shall not, in any way be construed to be binding on Parliament in subsequent budgetary proceedings relating to the approval of budget estimates and the enactment of the annual Appropriation Bill under Article 224 of the Constitution or for a particular financial year.

In moving the clause, I am applying what we call double protection. In terms of interpretation, usually a lot of what is covered in the memorandum may not be used but this particular memorandum is covered in the Constitution, in Article 218 and explained in terms of the content. It then does suggest that this is an important part of the Bill. I am also guided by the fact that we did not have committee discussions on this Bill, I regret like everybody else that we did not commit the Bill to discussions because it would have been good to see the three bodies; the CRA, the Treasury and the Transition Authority make presentations as key stakeholders on this matter of devolution. So, noting that we did not have that stage and I even wish that the Speaker had committed the Bill to the House Business Committee, I urge that we apply the double caution. Orphans have been referred to in this House. In terms of law, we also give the story of an orphan, a child who

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kills the parents and then continues to say that the community and the people of Kenya should feel sorry for the child who killed the parent and now is an orphan. We all did not form the committees. If we pass this Bill without asking why the memorandum is not used in interpretation, we will have saved ourselves. In whatever form the Bill passes, we will apply it but the notes in the memorandum some of which are quite contradictory and some of which even introduce the SRC structure of the salaries, should not be binding in terms of the future allocations that we might want to apply in the consideration of the County Allocation Act and other laws that will be coming before us. I beg to move.

(Question of the new clause proposed)

(New clause read the First Time)

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

Hon. Chairlady: Can I have some contribution on that, Majority Leader.

Hon. A.B. Duale: I stand to oppose. Article 218 of the Constitution says the memorandum to the Division of Revenue Bill is not part of the Bill. So, you cannot amend a memorandum. A memorandum is an explanation to that Bill. Two, Standing Order No.117 says that the Memorandum of Objects and Reasons merely accompanies a Bill and it is not part of the Bill for the purpose of enactment. So, hon. Jimmy Angwenyi and hon. Pukose, that was a fundamental issue because this Bill ends at the schedule. You cannot amend it after this schedule. Thirdly, under Standing Order No. 132, the memorandum is not listed among the items which the House can amend - our own rules. So, hon. Nyakabi Standing Order Nos.133, 117 and the same Article 218 you have quoted denies you the right to amend a memorandum. Finally, I want to read that Acts of Parliament do not upon enactment contain any memorandum. That means that if we go by what hon. Nyakabi is saying that amendment will not be binding to Parliament. It is redundant. So, I oppose.

Hon. (Ms.) Gichigi: Hon. Chairlady, I just want a clarification by Leader of the Majority Party. Which particular section is he reading by saying that the Constitution is very clear that memorandum does not constitute part of the Bill? I am not very clear on that. Maybe he can inform us.

Hon. A.B. Duale: Hon. Chairlady, I want to read the Constitution. In Article 218 it says "Each Bill required by Clause (1) shall be accompanied by a memorandum setting out –

(a) an explanation of revenue allocation as proposed by the Bill".

So the Constitution is saying it is an explanation of the Bill. I want the Member for Kipipiri to read Standing Order Nos. 117 and 132.

Hon. Chairlady: Just go slowly so that we have the same understanding.

Hon. A.B. Duale: Hon. Chairlady, I have quoted the section, so anybody who has the Standing Orders can read and I read the Constitution. I can read Standing Order

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No. 132 which states :- “ In considering a Bill in Committee, the various parts thereof shall be considered in the following sequence:-

(a) clauses as printed---”

There is nowhere where you see a memorandum. Standing Order 117 states: “Every Bill shall be accompanied by a memorandum containing:

(a) a statement of the the objects and reasons

(b) a statement of delegation of legislative powers and limitation of fundamental rights and freedom, if any

(c) an indication whether it concerns county governments and

(d) a statement of its financial implication--- ”

This is the appendix and you cannot amend it. I oppose.

Hon. Kajwang’: Hon. Chairlady, this is one of those rare occasions that I find myself in the same wavelength with the Leader of Majority Party. The amendment that is proposed is not in keeping with the legislative practice in the Commonwealth. The content of the Act itself is the enactment. The memorandum is a justification. It is an explanation of the enactment but what turns out to be law is the content itself in the Bill. It would be contrary to drafting procedure that you find a memorandum being part of the Bill because it does not in any way cause any enactment or something that the law expects somebody to do. So, I oppose the deletion by my sister and ask that the deletion as proposed in actual fact is a repetition of what the Constitution has said; that there will be a bill and that it will be accompanied by a memorandum, which is what we have. To subject that memorandum to be part of the Bill, in actual fact, is contrary to what Section 218(2) says. So, I oppose.

Hon. (Ms) Shebesh: Hon. Chairlady, there is miscommunication from the two lawyers who have presented to us and this is the problem of having too many lawyers in the House. I am reading the Constitution that hon. Kinyua and A.B. Duale have spoken about. This memorandum is stated in Article 218 of the Constitution. It talks about the Bill being accompanied.

“Each Bill required by Clause (1) shall be accompanied by a memorandum setting out –

(a) an explanation of revenue allocation as proposed by the Bill---” Can the lawyers clarify for us since the Constitution clearly states that this Bill must be accompanied by a memorandum? I wholly support what the mover of the amendment is proposing.

Since we did not go through the committee, we need to ensure that the memorandum which will be taken as part of the Division of Revenue Bill will not injure, at the end of the day, the work that we are trying to do. It should be corrected.

Hon. A.B. Duale: On a point of order, hon. Chairlady.

Hon. Chairlady: Just hold a little. Let a few of the Members say a few things before you come in. You will get a chance.

Hon. Sakaja: I think there is need to explain the intention of Article 218. When we say that a memorandum accompanies the Bill, it is clear that the memorandum is not part of the bill but accompanies it. I think we all know that Acts of Parliament do not

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contain memoranda. This memorandum will not become part of the Act. The memorandum is there to guide the House as we discuss, as to the intention as proposed by the mover, of certain elements within the Bill and to get the proceedings of the House. If you look at Standing Order No.132, it is very clear, it says that the House shall. "Shall" is exhaustive, meaning that the components of the Bill that are enumerated in Standing Order 132 are the only things that we can discuss but for our own understanding as a House, that is why we have the memorandum to understand the intentions as proposed by the mover.

Hon. Chairlady: Let us get a few more of you, the accountants and lawyers so that we can make informed decisions.

Hon. Ngong'o: First of all, hon. Chairlady, let me put it on record that what hon. Nyokabi is seeking to achieve is not to amend the memorandum. Hon. Nyokabi is adding a new clause to the Bill which is Clause No.7. Let me advise the Leader of the Majority Party, I have dealt with Treasury for now about five years and I know that you have to be very careful when you are dealing with the Treasury. If the intention of the Treasury was just to explain to us or to give us memorandum, we would not have had these schedules, like the one trying to set ceiling. If we are not careful, we are saying through this memorandum that Parliament will only access Kshs.16.7 billion. That is the ceiling set. We have to be very careful with Treasury. Treasury is one animal that is very complicated and especially when it comes to finances. They can easily mislead you. I would urge that even if there is no additional information we are getting from this clause, why can it not be there? Even if it is in the Constitution, why can we not just have it to be safe and to be sure that whatever we are passing with this Bill, another lawyer will not come and interpret differently. I would urge this House that even if hon. Nyakabi's amendment is not adding any value, it also does not take anything out of the Bill. Why do we not have it, because she is just saying that the memorandum that you have brought to us will not bind us when we are dealing with Estimates because if it will bind us, it is very dangerous. Judiciary is asking for Kshs23 billion and you are showing them that you can only give the Kshs15 billion. What if we realize that at the time we are dealing with estimates that they require more?. Why do they repeat to us the issue of SRC, something they know this House does not like very much? Why do they put it in the Bill? They are reminding us about something. They say if you want to know the owner of a dog, beat the dog and you will see the master coming. Now I have known who has sent SRC, it is the National Treasury. If we are not careful, we are just going to validate the SRC's mischief. So, I urge this House even if hon. Nyokabi's amendment is not helping us in anything, let us just have it there to protect us.

Hon. Ichung'wah: Thank you, hon. Chairlady. I do not know whether my opinion is supporting or not supporting the inclusion of Clause 7 by hon. Nyokabi. I want to draw the House's attention to a further amendment proposed by hon. Aden which basically covers the fear that we are looking at in seeking to add another clause to the Bill. The amendment by hon. Aden comfortably covers the fears in setting the ceilings that we seek. I can see the hon. Aden is proposing to set a ceiling of about Kshs20 billion for Parliament.

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Hon. Chairlady: It is a different amendment.

Hon. Ichung'wah: I was asking whether it would be in order if we are to oppose the inclusion of Clause 7 in the Bill then Members can be aware that the amendments by hon. Aden is there and we consider that. Alternatively, if we are to shoot down the amendment by hon. Aden then it is imperative that we include that Clause 7 and I support it.

Hon. Chairlady: Let us go as we had agreed clause by clause. So, now we are on Clause 7, let us not pre-empt or decide on Clause 8 when we have not executed and completed. I had given the chance to hon. Pukose.

Hon. Pukose: Thank you, Chairlady. I wanted to support hon. Nyokabi on the issue of this amendment which she is bringing. When I looked at it, I was one of the people who were thinking that we need to protect the House so that in future we are not held accountable in terms of a bill that we may need to vary at a later date. If it is just a memorandum, then it means when you look at it, you will find that there are tables that are coming after that. We are talking of Table 3 which is giving us expenditure items based on the proposals by the CRA and the National Treasury. On the last page there, there is also Table 4. In this, you find that we have not also been able to discuss the Equalization Fund. There is also the Appropriation Bill which will still be able to come later. In this proposal, we have not also captured the proposals by the CRA, neither have we discussed about the supplementary bill. Most of what we have is projected estimates and also estimates. So, in a future date when we want to be able to change, if we do not have a clause that will be able to protect us, we will not be able to bring those amendments. It will mean that this House passed this Bill the way it is and we cannot make any changes and we have to live with the consequences.

Hon. Chairlady: I think we have ventilated on this. I do not know whether the Leader of Majority Party has something and then we need to put it to the vote. Let the House decided.

Hon. A.B. Duale: Hon. Chairlady, hon. Nyokabi has two amendments. She has an amendment on the definitions and expressions which I have no problem with. I want to make it very clear that my amendment on the Schedule will fundamentally even change the memorandum and explanation because I have changed figures. I have replaced the whole schedule and put a new one. If you read the memorandum and explanations, they have changed. I want to ask hon. Nyokabi with humility to withdraw her amendment so that we move on.

Hon. Chairlady: Order, hon. Members! Let us have some order in the House. Eng. Rege.

Hon. (Eng). Rege: Hon. Chairlady, I want to inform the House and allow me to do it. I would like to really support hon. Nyokabi for what she said about the memorandum. What the leader of the Majority Party is trying to say is really amending what is contained in the memorandum. The word "memorandum" is an envelope containing some of these changes that we are looking at, some of which are mathematical functions. These mathematical functions must be changed when you are altering what is

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contained in the above clause. So, we must look at what the memorandum has as an envelope. Thank you.

Hon. Chairlady: The hon. Nyokabi was on her feet, we do not know what she wants. This is her amendment. Can we allow her to decide what she wants to do with the amendment?

Hon. (Ms.) Kinyua: Thank you, hon. Chairlady. Actually, I intended to alert this House about the inclusion of SRC in the memorandum. I think that objective has been achieved. I wish to withdraw the amendment.

(Proposed amendment by hon. (Ms.) Kinyua withdrawn)

Hon. Chairlady: We have another new Clause 7 by David Gikaria.

Hon. Gikaria: Hon. Chairlady, I beg to move:-

THAT, the following new clause be inserted immediately after clause 6—

Explanatory memorandum not to bind Parliament.	7. The memorandum accompanying this Act pursuant to Article 218(2) of the Constitution and the ceilings set out that memorandum shall not, in any way be construed to be binding on Parliament in subsequent budgetary proceedings relating to the approval of budget estimates and the enactment of the annual Appropriation Bill under Article 224 of the Constitution or for a particular financial year.
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It is yesterday when we were discussing the Bill. When I sought the assistance of the legal officer about an amendment and actually tried to look at the memorandum, if you look at the memorandum, and it has already been said by an hon. Member, Treasury is trying to give an explanation as to why the county assemblies' salaries should remain and by extension Parliament, as gazetted. I was thinking that if we allow this memorandum to go as it is, though I was advised that it is not part of the Act, we will be legalizing SRC and its gazettment which we have already tried to shoot down in this House. So, I was thinking that we just put a cushion and like hon. Mbadi has said, since it does not take anything, it is just a protective ring fencing so that in future we might not be affected or told to comply. Of course, the Leader of Majority Party has said that Article 218(2)--- In my thinking, I need to engage the services of a lawyer from my county to be advising me on these things. In my thought, an article in the Constitution is a requirement. Article 218 says that a Bill will have a memorandum. I was thinking that memorandum is part as indicated under Article 218(2). So, I beg to move that ----

Hon. Chairlady: Hon. Members, I think it is important to guide that in all the three new clauses 7, the impact of each of them is similar to Nyokabi's. Amendments by Pukose, Gikaria and Angwenyi's are actually having the same impact as Nyokabi's. So, the decision really lies with the House. I want to propose the Question since Gikaria has moved his amendment.

(Question of the new clause proposed)

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(New clause read the First Time)

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

Hon. Kimaru: Hon. Chairlady, when we talk of Clause 7, as much as it is said not to be of much use, I think we need to cushion ourselves. We need to have a safeguard as other speakers have said so that we do not have any mischief of any sort in interpretation. I do not think there is any harm in having a safeguard. It is not changing anything, it only reinforces the principle that we do not want anybody to come and mess around with whatever we pass here. So, I support that it be included as an extra safeguard for the principle that we uphold. The explanations and the memorandum shall not work. Just to reinstate it a second time does not cause any harm. It is better to be safe than sorry.

Hon. Mwaura: I would want to support. If Article 218 requires that a bill coming to this House should have a memorandum then it introduces a legal debate as to whether that memorandum should constitute part of that Bill. This is a new regime in this country and anybody could actually say by the virtue of that provision, it is constitutional that we should look at the bill. Bills are also accompanied by schedules and I think the House needs to realize that the Treasury will result to its own schedules as proposed in the memorandum to justify this Bill. Hon. Chairlady, therefore, for the avoidance of doubt and to make sure that Treasury mandarins do not connive with the figures we need to have this clause. Indeed, this clause is also restoring the independence of this Parliament to make budget. As you look at the estimates which we shall be discussing further in the memorandum, we are proposing amendments, but when we leave it as such and then it goes to the Senate and nothing is done about it, then Treasury can easily follow its own schedules and put them as part of these bills.

Hon. A.B. Duale: It is not about avoidance of doubt. In fact, I want guidance from the Chair. I have cited Article 128, it says the Division of Revenue Bill will come with a memorandum on explanation. It will come with an evaluation. I have cited Standing Orders 117 and 132. I want to tell my colleagues that even if we agree to what amendment, it will not be law. Even if you want to cushion, what are you cushioning? It is not law, and I want to tell my colleagues and I said it, Acts of Parliament do not upon enactment contain any memorandum and memorandum is only meant to serve as an explanation to the House which House agrees or disagrees.

I also want to say that what we are dealing with is Division of Revenue Bill, how to share resources between the national and country government. Some Members want to bring the SRC to get the numbers. They want to bring SRC so that, that can help them in terms of numbers, but the law is very clear. I want guidance and ruling on this issue. Hon. Kajwang agreed with me.

Hon. Kajwang: Unfortunately, the Leader of Majority Party is right on this. I hate to say so. This is about legislative practice. It is about how to structure bills and

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Members I want to plead with you that we are entering into an area which is specialized. Over the years, the structure of a Bill is an issue and there are statutory provisions that govern how you structure a bill. Memorandum over the world is an explanation which helps us appreciate the content of a bill. If we pass this Bill, it will be the first Act of Parliament that I know that will contain a provision talking about memorandum. In terms of legislative practice, it has never been done. But it helps to explain.

(Loud consultations)

There is no Bill which can come--- There a lot of consultations.

Hon. Chairlady: Order, hon. Members ! This is the first time we are doing this. Many of the Members do not understand and it is also the first time that we are having two governments. Let us understand the challenges that we may all be facing. Let me make sure that we do the right thing; that we do not tie ourselves by either agreeing or not agreeing to pass the amendments.

Hon. Kajwang: As a legislative practitioner, this will be the first time I will see a bill in which part of it will be a memorandum. When this Bill is now turned into an Act of Parliament, all those things we are seeing will disappear and all we will see is the content of the bill which is the practice in all Commonwealth jurisdictions.

Hon. Angwenyi: Hon. Chairlady, I wanted to raise a point of order in the sense that you have given the hon. Member time to contribute on the same Motion twice. This is not the practice of this House.

Hon. Chairlady: If you read what I said, I said it is possible in the Committee of the whole House to speak twice. It is possible.

Hon. Angwenyi: Second, I just want to withdraw my amendment because I have found it to be superfluous. I just learnt something about it.

(Proposed amendment by hon. Angwenyi withdrawn)

Hon. Manje: I want to take this opportunity also to contribute to this Motion. We have been told that a memorandum does not play a major role in this Bill, but if you check page 12 of this document you will find that there is a table. Although I am not a lawyer I am somebody who respects mathematics so much. If you check column 3 which has "NA", and you find a figure that is Kshs.231.1 billion then that defeats mathematics. The explanation that is given down there, it says "in determining the vertical allocation for the county government for 2013/2014 the CRA starts with a ratio which is then increased by 14 per cent". This is a clear indication that CRA did not go to the field. It just sat in the office and maybe projected these figures and that is why they are coming with Kshs.231.1 billion without any good explanation, meaning that if we do not want this document to follow us in the future, it is better we put that clause for the benefit of the doubt and for the benefit of the new Members because we have not gone through this document properly. I move to support that we should support the clause.

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Hon. Ngong'o: I listen to lawyers argue and I was asking myself, why was it necessary for this particular bill, for Article 218 to say expressly that this Bill shall be accompanied by a memorandum? We all know that all bills are accompanied by memorandum. But when the Constitution expressly states that a bill shall be accompanied by a memorandum, it is telling something and it becomes constitutional. This idea of saying that it is traditional that memorandum must accompany all bills does not apply to this. This specific bill, the Constitution says must be accompanied by a memorandum. Let me tell you, during the last Parliament, we passed something in Elections law which said that anybody who does not have a degree shall not contest. In fact, the people who were cheering did not have degrees. They did not know what we were passing. Afterwards, we met them when we were taking tea and they were almost in tears. Let us not be in tears tomorrow for passing something in this House that we are going to regret. When we were arguing about the issue of salaries and we were told that we were the same people who set up the Salaries and Remuneration Commission, you feel also stupid and embarrassed. Are we going to be embarrassed again tomorrow because another lawyer who is not T.J. is going to interpret it to mean that since the Constitution said that the memorandum must be part of the Bill, it is a bill? I am saying another lawyer will say that. Why is it that for this Bill the Constitution is telling us that we must accompany it with memorandum? If it is the tradition, why do you not leave it out? That is why sometimes I have a problem with lawyers because they confuse people. In accounts, we are very straightforward, you either debit or credit. Either you steal or you do not steal. There are no two ways about it, theft is theft, but for lawyers they want to steal from you and they will never tell you, until they have stolen from you.

Hon. Gikaria: I have just consulted a member who is a lawyer from the Jubilee side and he is advising me to drop the amendment.

Hon. Chairlady: Do not say he is advising you, make up your decision. Hon. Gikaria please guide us. Sit down until you have made up your mind and allow Keynan to contribute. Order! Let us have one person at a time. We have two withdrawals, I do not know if you have withdrawn, you have not indicated but Nyokabi has withdrawn hers.

Hon. Keynan: Hon. Chairlady, first of all, we do not want to get confused. This is not a semantics issue. I want to appreciate what hon. Kajwang said. There are traditional interpretations of law, the law is not static. The mere fact that other parliaments did not engage in this does not stop the Eleventh Parliament from also having something to do with memorandum. What I want to suggest is that for the sake of the comfort of the Members, this House is about to annul that purported Gazette notice of Sarah Serem. In my opinion, it will be wrong to have anything to do with that gazette notice captured in this particular bill. That is the import of the bill. Can we have that because it does not change anything? We are only saying that let us for now do away with anything in that purported gazette notice and I think this was the intention of hon. Nyokabi, as a lawyer. This is what we really need to achieve as a House. I want to support that we should allow this notwithstanding that interpretation of hon. Kajwang because there are many interpretations as there are lawyers and we do not want to be confused.

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Hon. Kombe: Thank you, hon. Chairlady. As it is, it is actually so important that we have it as it is. If we do not have protection then we are going to be subjected to the Serem kind of thing. That is going to disrupt---

Hon. Chepkong'a: On a point of order, hon. Chairlady. If I listened very carefully, I heard hon. Gikaria say that he has withdrawn his proposed amendment. Now, I do not know what is there to be contributed on.

Hon. Chairlady: Did he actually say, I asked him twice but he has said---

Hon. Chepkong'a: He has stated so. So, the Motion is dead. I heard it.

Hon. Chairlady: Can we hear it from you, have you withdrawn or not?

Hon. Kombe: Thank you, hon. Chairlady. This clause is giving us protection, nothing more than that. So, we need it and we should have it now, not later than now. I support.

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

(The new clause was read a Second Time)

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

Hon. Chairlady: Hon. Members, it means that the new clause 7 proposed by hon. Pukose and the one proposed by hon. Angwenyi now are dropped because Gikaria's has passed.

(Proposed amendments by hon. Pukose and Angwenyi dropped)

Schedule

Hon. Chairlady: On the schedule, there are three amendments, one by hon. Leader of Majority Party, another one by hon. Aden and the third by hon. Mbadi. We will start with A.B. Duale's.

Hon. A.B. Duale: Hon. Chairlady, I beg to move:-

THAT, the Bill be amended by deleting the Schedule and substituting therefor the following new Schedule.

SCHEDULE

REVENUE ALLOCATIONS BETWEEN THE NATIONAL AND COUNTY GOVERNMENTS FOR 2013/14

(Figures are in Ksh. unless otherwise indicated)

TYPE/LEVEL	OF	REVENUE	PERCENTAGE	OF	PERCENTAGE	OF
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GOVERNMENT ALLOCATION	ALLOCATION	AUDITED REVENUE (KSH.608.1BILLION)	2011/12 AUDITED REVENUE BUT NOT APPROVED BY PARLIAMENT (KSH. 682.1 BILLION)
	Kenya Shillings	%	%
National Allocation	730,375,441,286	120.1%	107.1%
Of which:			
Conditional Allocations to Counties	20,000,000,000	3.3%	2.9%
Equalization Fund	3,400,000,000	0.6%	0.5%
County Equitable Share	190,000,000,000	31.2%	27.9%
TOTAL SHAREABLE REVENUE	920,375,441,286		
Memo Items			
County Equitable Share	190,000,000,000	31.2%	27.9%
Conditional Allocations	20,000,000,000	3.3%	2.9%
Total County Allocations	210,000,000,000	34.5%	30.8%

Hon. Chairlady I am now safe. My only worry was that we do not set a precedent when it comes to law and the standing orders. This is a new complete schedule and this was after an agreement between the National Treasury, the CRA and Transition Authority that helps the country governments. The total amount allocated to counties was increased to Kshs210 billion. That is 34.5 of the audited revenue approved by Parliament of 2010/2011. Out this Kshs190 billion of the shareable revenue equivalent to 31 per cent of the most recent audited accounts approved by parliament. This 31.2 per cent is above the 15 per cent the Constitution has set. So, you should see that the 40 per cent we have promised, in the first year we have 31.2 per cent. There is Kshs20 billion of conditional allocations in our schedule from the National Government comprising of Kshs3.4 billion for Level 5 hospitals and Kshs.16.6 billion for loans and grants. What we have removed from the previous schedule was a harmless grant that was going to some particular counties and we have said that should be included in the shareable revenue among the counties. The allocation of Kshs210 billion includes both the Recurrent and Development

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Expenditure, almost on an equal basis. I want to say it here that CDF, the 2.5 per cent will be factored in the national budget. Members are aware that the governors are saying that CDF should be a local devolved system. I am happy now, you are seeing how Treasury is protecting you. The 2011 audited estimates is the one that has been used to get this allocation. We could not use the 2011/2012 estimates because they have been tabled in the House but they have not been approved.

I want to notify the House that this schedule that I am amending is coming with a memorandum and an explanation different from the ones we have been fighting over the whole afternoon. It says, it is an explanation. So, the moment I have amended the schedule, then it comes with a different explanation and different analysis. I am sure you must look for ways but I know you cannot do an amendment because of the standing order. It is only me who can move an amendment now. I beg to move and ask the Majority Whip---

Hon. Member: On a point of order, hon. Chairlady. I beg to disagree with what hon. A.B. Duale is saying because what he has done is only to delete the schedule. He has not introduced a new schedule. So, we do not expect new memorandum from you. You have only changed the schedule.

Hon. A. B. Duale: The explanation is basically about the new schedule. If you look at the schedule and the explanations, they are derived from the schedule. I have amended the whole schedule in all aspects. Now, I beg to move.

(Question of the amendment proposed)

Hon. Angwenyi: Thank you, hon. Chairlady. I rise to support this amendment because it has taken care of our interest to devolve funding to our county government as well as taking care of our interest with regard to CDF. I want to reiterate that hon. Members of this House you must guard if need be with you lives, the CDF. We should not centralize it at the county level. CDF is further devolution of the services and funding at the grassroots. Therefore we must guard it. What I would want to urge is that the Leader of Majority Party you discuss with Treasury mandarins to increase the base for CDF from 2.5 per cent to 6 per so that we can have some of those jobs done well. I am sure our leader has handled SRC properly. They should be put to their correct position; they work only one month in one year. That budget of theirs should be divided by 12. With those remarks, I support.

Ms. Ngetich: Thank you, hon. Chairlady. I also want to support this new schedule as given by the Leader of the Majority Party, noting that this is an improvement from what was there in the previous schedule where it was a total of Kshs198 billion. Knowing very well that our counties are still very young, much of this will go into setting up structures, employment and all that. I just want to add that this amount, in the spirit of devolution should be increasing yearly. I stand to support and say that in the spirit of devolution this amount should be increasing so that the counties can conduct their services very well.

Hon. Ngong'o: Let me also support this amendment. It should be noted that we

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took up a pragmatic approach when this House failed to produce a Committee on Budget and Appropriation. We found ourselves in a caucus of Jubilee and CORD MPs with a liking for finance, I do not want to say experts because some of us may not be experts but we like financial issues. We debated and more or less agreed that we should come to some reasonable figure close to this figure that the Leader of Majority Party has proposed. It should be noted that we have managed to move the proposed amount from Kshs154 billion to Kshs.190 billion. That is an increase of about Kshs36 billion. I think that is good for a start but I would want to emphasize that even as we move forward we should think of giving our counties more resources to be able to sustain themselves.

In conclusion, allow me to say that if the spirit with which hon. Naomi Shaban convened a caucus of CORD and Jubilee could go to the Leader of Majority Party, Leader of Minority Party together with whips, I think we would move forward. But if they are failing, why can we not convert that caucus into a mediation committee so that we can come up with committees of this House? By the end of that meeting, I am sure we will have agreed that probably CORD has majority in PAC and Jubilee has majority in PIC and then we move forward because this country wants to move forward. We may think we are doing things legally yet the country is waiting for us to make a decision. So, in that spirit I would urge hon. Duale together with hon. Nyenze, that let them not grandstand. Let us move forward by forming committees. Thank you. I support.

Hon. Korir: Thank you hon. Chairlady for giving an opportunity. I rise to support the amendment, I am very happy that finally the county government is getting money. I think for us in this country to achieve the Vision 2030, we need to empower the county government. For a couple of years in my life I lived in a country where it uses devolved government. For it to go on, it needs all the funds. Especially right now as they kick start the duties--- I come from Trans Nzoia and I went to visit the governor but found that he does not have an office, a house or a car, so giving him a little money will not get our county moving. I think what we should do is to make sure that our county governments can be able to raise revenue by themselves. To add on to what the central government is going to give them. So, I rise to support.

Hon. Sakaja: I have not spoken on this amendment. Hon. Chairlady, I beg to support this amendment but at the same time I just want to register something that is disconcerting. I think it is clear that we must do things right in this House. In as much as there is a misunderstanding as to why there is a memorandum accompanying the Bill, in as much as we know that Article 205 of the Constitution has not been followed, we all understand that devolution is very important and in this first instance we must get it right. We have failed to have a committee to take us through. Article 205 states clearly that “when a Bill that includes provisions dealing with the sharing of revenue, or any financial matter concerning county governments is published, the Commission on Revenue Allocation shall consider those provisions and may make recommendations to the National Assembly and the Senate. Any recommendations made by the Commission shall be tabled in Parliament, and each House shall consider the recommendations before voting on the Bill”. That has not been done as well. The process---

Hon. Ngong'o: On a point of order, hon. Chairlady.

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Hon. Chairlady: Allow hon. Mbadi because he spends all his time looking at these Bills. Sometimes it is good to share his wisdom.

Hon. Ngong'o: Hon. Chairlady, I think we need to correct hon. Sakaja, about that particular provision. You should remember that there was Tenth Parliament and all that is stipulated there, the National Assembly then acted as both National Assembly and Senate and we approved even the formula for sharing all that. So, it is not that, that has not been done, what has not been done is what we are doing today.

Hon. Sakaja: Hon. Chairlady, I humbly submit that hon. Mbadi does not understand the process. This is how the process is, according to Articles 217 and 218, the CRA puts recommendations initially. The recommendations are considered by Treasury and when doing the Division of Revenue Bill and even the Allocation of Revenue Bill, Treasury gives us the memorandum that we have explaining why they have deviated, if they have, from these recommendations. But after that step, the CRA still tells us what they think about it, for our consideration of this Bill. Having said that, it is---

Hon. Members: On a point of order, hon. Chairlady.

Hon. Chairlady: Order, hon. Members! We may be taking too long. What is the point hon. Gichigi.

Hon. (Ms.) Gichigi: Is hon. Mbadi in order to mislead this House by saying that the Tenth Parliament complied with Article 205 of the Constitution which specifically says that when a Bill that includes provisions dealing with the sharing of revenue---

Hon. Chairlady: Are you talking to hon. Sakaja or hon. Mbadi? I thought hon. Mbadi said that bit was done.

Hon. (Ms.) Gichigi: That is what I am raising. I am saying that the Constitution is very clear; when a bill of the nature that we are discussing today is published, and this one was published recently, the CRA is supposed to make its recommendations to this House as we consider this Bill. It is not the formula or the criterion for division of this money that is anticipated by Article 205. As we speak, what hon. Sakaja is saying is correct. What hon. Mbadi is saying is incorrect.

Hon. Chairlady: Please let us not split too much hair on this. I think if you look at the same article that hon. Gichigi has just read, it clearly says, "the Commission on Revenue Allocation shall consider this provision and may make recommendations to the National Assembly". I think yesterday we spoke on the same and said that we have not received any recommendations. So, we do not want to go back on what we had discussed yesterday. They "may" make not "shall" make. Therefore we shall move with the fact that they have not made any recommendations and we will move on with what we have.

Hon. Sakaja: Hon. Chairlady, the reason I raised that point is not to tie us down to that but to emphasize the fact that we must take devolution seriously and to emphasize further that indeed even by virtue of this amendment it is clear that the Jubilee Coalition and the Jubilee Government takes matters of devolution seriously. In the first year of devolution instead of just having 15 per cent allocated to counties, it has been exceeded by double to 34 per cent and I think that is something that the entire house must thank the Government for. Thank you.

Hon. Ali S.A.: Asante, mhe. Mwenyekiti. Nataka niseme kwamba kuunga mkono

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kwa marekebisho hayo yafana na hivi sasa si wakati wa watu kuanza kubishana wakisema kwamba Jubilee inaweza kufanya hivi ama haiwezi. Hii ndiyo hali halisi Wakenya walioitaka. Walipitisha Katiba kwa kuamini ya kwamba kutakuwa na serikali za county. Ukweli ni kwamba ramani ilichorwa na kontrakta kupatiwa kazi. Tukianza kusema kwamba tutamnyima kontrakta vifaa vya ujenzi, hivyo tumpe saruji kidogo aweke mchanga mwingi, jengo lile halitakuwa la maana na mwishowe litavunjika. Kwa hivyo, ninasema hizi serikali za majimbo tuhakikishe tumeweza kuzipa nguvu kwa kuzipa pesa za kutosha kufanya kazi nzuri. Kwa hivyo, ni lazima kuwe na pesa kiasi kwamba nikizungumzia Lamu Mashariki, pesa zilizokuwa zimetolewa hata hazifiki Kshs.1.3 billion na bajeti yao ilikuwa ni Kshs1.8 billion. Kwa hivyo, kwa marekebisho hayo, angalu itafika kama Kshs.1.7 billion. Kwa hivyo, tuhakikishe kwamba zile pesa tutaweza kupeleka kwa counties zitakuwa pesa ambazo zitaweza kufanya kazi kisawasawa and wao waweze kuonekana wameweza kujimudu. Asante.

Hon. Kajwang: Thank you, Chairlady. I want to contribute to this amendment brought by the Leader of Majority Party. My contribution is very specific and brief. Looking at the table which appears on page3, the only question I ask the Leader of the Majority Party is; where is development money that is going to counties so that counties can do their programmes? All we are seeing here are administration costs, payment of salaries and recurrent expenditure. What people are looking for is the money that these people are going to use to develop their counties. This is what we are trying to say, because it seems to be that for the financial year 2013/2014, all those counties will be on autopilot. There will be no development, nothing happening. People will be paid salaries and all recurrent expenses. Would the Leader of Majority Party on behalf of the Government tell us where the money that county governments will use for capital development is? Thank you.

Hon. Kanini Kega: I have risen to support this amendment because I can see the Treasury mandarins here. They have forgotten that---

Hon. Chairlady: Hon. Members we are overusing this word and some of the Members are not taking it very kindly.

Hon. Kanini Kega: I am sorry, hon. Member. I withdraw. I rise to support this amendment and on the same breadth I would kindly request the Treasury that since His Excellency the President, Deputy President, this House and Senate, we all agreed to try as much as possible to devolve as much funds down there, I would kindly plead with this House that once the estimates for the main budget come, we work on the CDF Act so as to raise the 2.5 per cent to at least 5 per cent. That 2.5 per cent will go directly to our children so that we can make sure they get bursary. This way, they will be contained within the Jubilee manifesto of 18 years in school. We must start budgeting for that from now. That will devolve enough funds at the grassroots level and it will be handled by the Members of Parliament. Since the governor has something to do, our folks will not understand. They can only see what hon. Members will do for them within the five years. Thank you.

Hon. Chairlady: Hon. Members, I think we have ventilated enough on this. Please let me put the Question so that we move.

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(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)

(Scheduled as amended agreed to)

With the passing of A.B. Duale's amendment, the one by hon. Aden and hon. Ngong'o now stand dropped)

(Proposed amendments by hon. Aden and Ngong'o dropped)

Hon. Members, it is also important to alert you that when this memorandum and the Bill are being passed to the Senate, necessary corrections will be made in line with the new schedule that has been presented. We are directing the Clerk to ensure that there is harmony between the memorandum and the schedule that we have given.

Clause 2

Hon. (Ms.) Kinyua: Hon. Chairlady I beg to move:-

THAT Clause 2 of the Bill be amended by inserting the following new definitions in their proper alphabetical sequence-

“conditional allocations” means allocations in the share of revenue allocated to the national government for the purpose of meeting specified county government expenditure including financing county expenses relating to development programmes;

“county allocation” means the share of national revenue computed in accordance with Article 203(2) of the Constitution that is allocated for the use of the County government consisting of the county Executive and the County Assembly;

“national allocation” means the share of national revenue computed in accordance with Article 203(2) of the Constitution that is allocated for the use of the national government consisting of the Executive, Parliament and the Judiciary;

“unconditional allocations” means allocations in the share of revenue allocated to the national government for the purpose of meeting unspecified county government expenditure; I am sure in this amendment we will have better luck than the earlier one. This particular proposal is to cover definitions. We have considered this Bill without the benefit of the committee. I also continue to urge the leadership of the House that we put committees in place. If you look at the terms that we have used, for example, ‘conditional allocations’ it is not very clear without a definition like the one that has been included to understand what exactly that captures. The term ‘conditional allocation’ has now been interpreted and will be part of Clause 2 in the definitions part of the bill covering allocations in the share of revenue allocated to the National Government, for the purpose

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of meeting specified county governments expenditure including financing county expenses relating to development programmes.

The bill on county allocation, when it is through from Senate will come here and so this particular House having understood and having included this definition will now have parameters with which to check the allocations that have been provided for the counties. The one that I am completely passionate about and do really care for is the county allocation which will be defined to mean the share of national revenue computed in accordance with Article 203 of the Constitution, that is allocated for use of the county government consisting of the county executive and the county assembly. This National Assembly is the mother assembly to all the legislatures that we have in this country including the Senate. We remain their mother; they really are not the upper house. As the mother of all other legislatures, it is important that this particular House protects the county assemblies. If you look at the revised schedule on page 3, you will see in the breakdown that there is cost of ongoing devolved functions at kshs.167 billion, the county government administration cost at kshs.7.5 billion, the county public finance management cost at kshs.5 billion, the county public service board and inflation adjustments. You do not see any allocations secured and ring fenced for the purposes of the county assembly.

As we move forward, we need to ensure that we give the county executives and the county assemblies their money and that it is not the county governor to go and decide how much to give the assembly. If we agree with the principle that “county allocation” in the definition part means money to be applied to the county executive and the county assembly, we will have given ourselves a chance to consider in the allocation bill whether both categories are catered for. Even in terms of this schedule, it would be preferable if Treasury also from the outset gives us allocations separate for the executive at the county level and separate for the assembly. If they can afford to give us the cost there is no reason why they should not be able to give us the monies that will go to the county assemblies directly.

The other interpretation is on the “national allocation”. It would be important that we start to understand what exactly is covered in national allocation and what it is that we have passed in this schedule.

The other term that is used in the scheduled is “unconditional allocations”. They need to be understood in terms of what we are passing today. Yesterday the Bill that we had received had an interesting term of “allocation of monies to counties to make them harmless”. It was rather difficult to understand that. It is important to have these definitions. I also want to urge this House that this is the first bill that we are passing on sharing of revenue. We can allow these definitions to help us for now, but I am hoping that next year we will do a better job in terms of looking at real devolution. I do agree that many of us here believe in devolution and we want to protect and secure devolution for real. There are many prophets of doom, there are people who have even given our devolution a ten year timeframe and after that, it will not be working. This House must commit and recommit itself to make sure that devolution works for Kenya and Africa and this devolution is real. It is not just cosmetic devolution.

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(Question of the amendment proposed)

Hon. Ngong'o: Hon. Chairlady, I realize now you have difficulties in giving me time. I think I have spoken too much. Let me make small contribution to this. Whereas I support the definitions added because the Bill did not have enough definitions, it is important to correct the definition of "unconditional allocations". It is only the Leader of Majority Party, according to our standing orders, who can amend an amendment on the Floor. The term "unconditional allocations" means allocations in the share of revenue allocated to the National Government for the purpose of meeting unspecified county government expenditure. I think it should be "by the National Government". This amount is not allocated to the National Government, it is allocated to county government, in my view. There is a grammatical issue that needs to be addressed otherwise we are saying this unconditional allocation is to the National Government, which is not the case. I agree totally that if you go to the Constitution, you will find that it talks about conditional allocations but it does not go ahead to explain what they are. When you go to the PFM Act, it is a bit explained but I think it is better to have it in the Division of Revenue Bill so that we have the terminologies used clearly defined.

Finally, let me agree with hon. Kinyua. I think we saw some wordings in this Bill that need not be repeated in future. Phrases like "holding counties harmless" is not provided for anywhere and it is confusing. I think we need to be consistent. We need to follow the law whenever we draw new bills. Otherwise we will come up with terminologies which may end up confusing everybody. I support, but I ask the Leader of Majority Party to consider moving an amendment on that amendment.

Hon. Angwenyi: Hon. Chairlady, I rise to support this amendment. It stresses on the issue of county assembly members. We should provide for them adequately. Hon. Chairlady, as you know their salaries and remuneration is Kshs79,000. The amount you can only use for one day or two days. Let us not balloon the functions of governors and the executives at the county level. Those county assembly members are our children. If they perform well, maybe some of them will displace us from this august House. Let us encourage them by providing for them adequately. It must be shown in these estimates how much is being devoted to them, not what is given to the governor and his executives. In most cases, some of those governors, you will find their executives are their brothers-in-law, sisters-in-law and grandmothers. They are not serving the public. So, I rise to support this amendment.

Hon. (Ms.) Gichigi: I rise to support this amendment. We have just defeated an attempt to remove the clause providing for surcharging of officers in the county government for bringing court action. There is need for clarity in interpretation of the Act itself which is just about to be enacted. When you have these provisions, whenever they are acting on the Act, it is going to be very clear to anybody that this is the meaning of these clauses and expressions. I would want to tell this House, as much as we are saying that some of these things are not important, if the issue goes to court, the court will be assisted by these explanations. If the law is not clear, sometimes the court goes behind

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the law itself and looks at the intended meaning by the makers of that law. Even the Parliamentary HANSARD sometimes assists the court. It is very important that whenever we enact law, we try to be as clear as possible to remove ambiguity that would subject our officers at the county level to the surcharge that we have said. Be careful, if you do not go to alternative arbitration methods, you may be made to pay. I support.

Hon. (Ms.) Kajuju: Hon. Chairlady, I support this clause that hon. Nyokabi has brought to the House on the strength that the law does not operate on ambiguity. The mind of the drafters must be very explicit to any person who is reading the law, whether he is a layman or lawyer. You will find under Article 260, we have provision where interpretations are stated and explained. What we realized in this particular bill is that these terms that were used in the Bill were not explained and therefore any person reading the meaning would not be able to get what exactly the drafters had in mind. Hon. Chairlady, you will find that for purposes of best practices and good governance you need to be able to tell which arm of the county government you will be dealing with at any particular time. I particularly refer to the “county allocation” interpretation which clearly sets out the county executive, whom we know are employees of the county assembly and the county assembly members who are elected representative of the assembly. What we are saying is that let us get to know and separate the definitions so that in the event of a dispute, as hon. Gichigi has put it, whoever goes to court the court is able to understand what meaning the drafters are putting in certain terms.

I beg to support.

Hon. Limo: Thank you, hon. Chairlady. I rise to support the Motion. There are issues which I want to point out here. Whereas we are very happy and we are very pleased to support the Motion on devolution, we have to be very careful. Whereas we have devolved funds to the county, we have not put structures in a way that we can have very clear allocation of these funds within the counties. We have had a lot of noises by now in terms of the sharing of the executive and the rest, but we as the Parliament must also look at the future, that after the devolved funds are shared in the counties we will have a lot of people saying that certain constituencies have not received enough funding from the counties. As a house, we should look at making everything very clear to the extent that even the sharing of development funding within the county has to be very clear. We have to look at the history on the sharing of the CDF and the rest of the funding which has been there, considering the level of poverty and all that. I am saying, as we look at the future allocations, let us also be very cautious and help this country to have some order by creating very clear formulas of sharing these devolved funds within the counties. If this is done, everyone will be happy with devolution and there will be no fighting. It will get to a time when people in our country will not be interested in knowing the governors because they know their share will be very clear.

I beg to support.

Hon. Chairlady: We are almost now debating. Members, let us allow hon. Majority Party Leader to give an amendment. He has a minor amendment.

Hon. A.B. Duale: Hon. Chairlady, I want to move a further amendment to the proposed definition of “unconditional allocations”. It should read like this “unconditional

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allocations” means allocations from the share of revenue allocated by the national government for the purpose of meeting unspecified county government expenditure;” I have taken care of the amendment which hon. Mbadi was talking about. That is the further amendment I am moving.

Hon. (Ms.) Kinyua: I think we also need to clarify because ----

Hon. A.B. Duale: Let me go the other way. I combined all of it in one sentence, but I will go one by one.

I am moving a further amendment that the proposed definition of “unconditional allocations’ be amended by-

(a) deleting the word “in” appearing between the words “allocation” and the “share” and replacing it with the word “from” in the first line.

(b) inserting the word “of” between the words “purpose” and “meeting” in the second line

(c) deleting the word “to” in the first line and replacing it with the word “by”. If that happens then it will read as follow:-

“unconditional allocations” means allocations from the share of revenue allocated by the national government for the purpose of meeting unspecified county government expenditure;”

(Question of the further amendment proposed)

Hon. (Ms) Ghati: Thank you, hon. Chairlady. I wish to support my sister, hon. Nyokabi on the amendments especially bearing in mind that when we are doing any form of budget, it is also very essential that any kind of budget takes into consideration the issue of notes. Very many people are not conversant with the terminologies that are used. For that reason, I support and I wish to support the idea of having the budget very clear in terms of the allocations for county assembly members and county executive members. So, it is not the prerogative of the governor to say this is what county executives and county assembly members should get. I wish to join in calling for the support of the county assembly members. If we look at the remuneration in this budget, the remuneration for the county assembly members of 79,000 is honestly, in my opinion, way too little. We come from areas where county assembly members have basically not been there. These are people who have used a lot of resources for their election. When they call for an increase in their salaries and remuneration, I fully support. I look at Nairobi, for instance, if a county assembly member is living in a house that he or she pays around Kshs.35,000, because that is basically a two or three bedrooms house in Umoja, I think that, that money is way too little. I, therefore, join the rest in supporting that subsequent budgets take into account the issue of remuneration and increment of salaries for county assembly members.

With that, I beg to support.

Hon. A. K. Keter: Thank you, hon. Chairlady. I want to support the further amendment by hon. A.B. Duale and generally support the amendments. In the last Parliament, some party took advantage of the loophole in the standing orders. The term

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“Leader of Government Business” was defined as “a minister appointed by government to lead the business in the House” and because we had a unique situation in the last Parliament, nobody defined in the standing orders the word “government”. That is why we had hon. Mwai Kibaki appointing his leader and the Prime Minister appointing himself. That was because we did not have a definition of “government”. This is a very important definition so that we do not have people taking advantage where there are no clear definitions. I support the amendments by hon. Nyokabi and Majority Party Leader.

Hon. Ababu: Hon. Chairlady, I want to first of all support the further amendment by the hon. Majority Leader and by extension the amendment by hon. Kinyua, my learned friend. In doing so, let me say that unfortunately we are living in what one may want to call a moment of trust deficit. This country is suffering from a trust deficit. It is very difficult to take anything for granted leaving absolutely no doubt as to what you mean. Therefore these definitions will certainly add value to the letter of this law. I just wanted to make one point and that has to do with the two issues that form the core of this amendment and that is the definition of “conditional allocation” and “unconditional allocations”. Just to give a caution, in the wording of Article 202 of the Constitution, these conditional allocations are actually part of the revenue share of the National Government. Just to caution, that this should not be a blank cheque where National Government can use this particular avenue to lend unfair advantage to certain areas, exercising this prerogative of sharing this revenue under the guise of the National Government giving its share to particular areas. For the record, National Government should be guided by the principles set out in Article 203 of the Constitution. On every allocation, whether that allocation is conditional or unconditional, the principle set out and those conditions include ensuring that we deal with economic disparities across the country.

Finally, as a House we have been at the forefront and rightly so because we want to be custodians of devolution. We have been at the forefront of protecting sharing of revenue in a manner that is equitable and fair across the counties.

The next stage for us to put emphasis on is ensuring that these counties also share in revenue generation so that as much as we want them to share in the revenue that they receive, may we also emphasize that counties take responsibility to share in the generation of this revenue that is then shared. We could end up creating entities that have this mentality, that all they have to do is wait to receive and so that all that we will always do in this House is to sit here and argue on who must get what, when. We need to emphasize that these counties are economic units and in similar manner that they shall share these revenues, so must they also share the burden of generating this revenue. The scales are balanced. Remember we have a watchdog role here. This House, as has already been stated, has three primary responsibilities; to legislate, represent and oversight.

I noticed the other day that the Senate is coming up with a committee that will be almost similar to what we call the Public Accounts Committee in this House. For the avoidance and for the record, that committee of the Senate that will seek to oversight the expenditure on public resources in the counties will not take away the primary responsibility of this House to oversight these funds. Therefore the Public Accounts

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Committee will have a mandate that will extend to oversight even this revenue that will go to the counties because it is part of the purse of the public revenue. As we send this revenue to the county, we may also send them with a caution that we are not devolving corruption; we are not devolving irresponsible expenditure of public resources to the counties. I support.

Hon. Kajwang’: On a point of order, hon. Chairlady. Today, it seems to be my bad day that I am rising a lot. May I bring the attention of the House to the amendment that was brought by hon. Aden Duale in which there was a schedule and in that schedule hon. Duale amended what was originally before the House. What was before the House, if you look at page 4 of the Revenue Bill, was unconditional allocations. By the amendment that was proposed by hon. Duale, that provision disappeared. When my learned friend attempts to define “unconditional allocations” is it in order that this is a term which is now worth a definition in view of the fact that by the amendment of hon. Duale, that definition has actually disappeared from the Bill before the House? I am looking at the amendment that is sought on “unconditional allocations”. By virtue of the amendment that hon. Duale brought, that word disappeared from the schedule and so to try to define it would be a redundancy or something which does not appear in the face of the Bill now considered.

In the original version of the Revenue Bill on the schedule, the first table contained “unconditional allocations”. In the amendments that hon. Duale moved on the first table, that now disappeared. What we now have is “conditional allocations to counties”, we do not have “unconditional allocations”. My good friend seeks to define “unconditional allocation”. Would it not be redundant or an attempt to explain something which the law does not speak about?

Hon. Chairlady: Yes, hon. T.J. is right. However, you look at hon. Sambu’s amendment to Clause 3 which was taken, that term is included in his amendment; the drawing of unconditional and conditional grants from the share of revenue of the National Government.

Hon. M’uthari: Thank you, hon. Chairlady. I rise to support this amendment and at the same time I would like to say that this idea of bringing clarity to the Bill is important. As we allocate these finances to the counties, it is also important, as one Member indicated that those at the county level are not just there to receive but they should also work or allocate resources appropriately. There is also the possibility, even with this Equalization Fund, of having disparities at the counties. Some of the regions have suffered for long. When we come to the counties, there are regions that are likely to be allocated more resources than others and hence we are going to devolve disparities at that level. It is important to take this into consideration.

The other issue is the consideration of the county assembly. By the end of the day, if these funds are just given to the governor and then he uses his discretion, there is a possible of members of county assemblies ganging up and they may not be able to carry out their mandates as expected. So, the clarity in terms of the funds that are disbursed at the county level, that will also assist so that there is equity in terms of resource allocation and utilization at the county level.

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Hon. A.B. Duale: I wish to withdraw the third part of the further amendment.

Hon. Chairlady: So, therefore, how does it read?

Hon. A.B. Duale: That the proposed definition of “unconditional allocations” be amended by –

(a) deleting the word “in” appearing between the words “allocation” and the “share” and replacing it with the word “from” in the first line.

(b) inserting the word “of” between the words “purpose” and “meeting” in the second line.

(Proposed amendment to part “c” is withdrawn)

Those are the only two further amendments I am making.

Hon. (Ms.) Kinyua: Hon. Chairlady, I just want to drive home the point. I hope the Leader of Majority Party can see how much we struggle to try and make law on the Floor of the House. Really, these committees have to be formed. My further amendment is to even do away with that “unconditional allocations” because the new schedule brought in today does not have that term. The term that hon. Sambu has introduced is “unconditional grant”. So, it is not even clear whether “unconditional allowance” is the same as “unconditional grant”. The unspecified county government expenditure in the “unconditional allocations” definition is also causing a bit of problems in terms of, why would the expenditure be unspecified? Since, the “unconditional allocations” is now not used in the new schedule, maybe the best position would be to take the allocations that already appear and leave out this one that does not appear until a future date when it will appear and then we will worry about it. I hope that the committee will be formed. I hope that this plea has sufficiently been made to the party leaders that next week we form committees.

Hon. Chairlady: We need to be clear whether you are withdrawing or not, hon. Nyokabi.

Hon. (Ms.) Kinyua: I am only withdrawing the “unconditional allocations”. The others remain; “conditional allocation, county allocation and national allocation”.

Hon. A. B. Duale: Hon. Chairlady, hon. Nyokabi should now know that it is only me who can withdraw on your behalf and I do withdraw the last bit. I withdraw and concur with hon. Kajwang and hon. Nyokabi.

(Proposed amendment withdrawn)

Hon. Sakaja: Hon. Chairlady, I think in the explanation by hon. Nyokabi on county allocation, the amendment is okay but she has made the wrong implications in terms of the fact that her memorandum is wrong. She has said county allocation tells us how much will go to county executive and how much goes to the county assembly. I would like to make that correction. Nothing like that will exist. The entire allocation goes

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to the county and the county assembly either passes the budget of the governor or amends it and so on and so forth. I support the amendment

Hon. Chairlady: I would therefore want to put the Question that what we are dealing with here is just the definitions of the three terms; ‘conditional allocations’, county allocations” and “national allocation’.

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

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

(Clause 2 as amended agreed to)

[The hon. Chairlady (Dr. Laboso) left the Chair]

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

(Title agreed to)

(Clause 1 agreed to)

Hon. A. B. Duale: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of The Division of Revenue Bill (Bill No.1 of 2013) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The hon. Deputy Speaker in the Chair]

CONSIDERATION OF REPORT, REPORT AND THIRD READING

THE DIVISION OF REVENUE BILL

Hon. Shebesh: Hon. Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered The Division of Revenue Bill and approved the same with amendments.

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

Hon. Katoo seconded.

(Question proposed)

(Question put and agreed to)

Hon. A. B. Duale: Hon. Deputy Speaker, I beg to move that The Division of Revenue Bill be now read the Third Time.

Hon. Katoo seconded.

(Question proposed)

Hon. Omagwa: Hon. Deputy Speaker, I hope now that we have passed this Bill, each one of us will consider it their duty to defend devolution in all ways. We have heard sentiments being made here by Members about how to create wealth within the counties and not the counties to expect the national revenue to just flow into them. We hope that as Members of Parliament and custodians of the Constitution, we shall ensure that devolution is achieved to the letter. Thank you.

Hon. Mwaura: Thank you, hon. Deputy Speaker. Now that we have passed this Bill, I would want to urge in future deliberations, that in the same spirit we increase the allocation from the current 32 per cent to 40 per cent because if that was to be done in the current estimates, we would be able to have netted another Kshs.20 billion to go to the devolved units. It is also a concern because if you look at the Bill and the way we have discussed it, there are some factors that have not been considered. First and foremost, we considered the budget or revenue of 2010/2011 and yet going by the collections of last year, which was Kshs956 billion, you can see there is a variance of about Kshs36 billion and that would have been of use in terms of division. In the same breath---

Hon. Deputy Speaker: Hon. Mwaura, this is not debate time. Just comment on Third Reading.

Hon. Mwaura: So, I do appreciate this and I do hope that then it shall go ahead to ensure that, indeed, we devolve service delivery and that Kenyans from now henceforth shall be able to feel government where it matters most. Thank you.

Hon. Ngong'o: Hon. Deputy Speaker, Sir, I want to just support this Motion by making three comments. We have not done justice to this Bill. Actually, this Bill would have been transacted much better if we had the relevant committee. I do pray that next week we will not move on without these committees. Both sides of the House need to come together. I want to say that this is not something to blame one side for. We need to all agree that we will need leadership.

Something has been talked about concerning the county representatives. It is high time that we spoke for these county assembly representatives. There is a difference between councillors and county assembly representatives. The county assembly

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representatives we have today, most of them are educated. Some of them are engineers. Like in my constituency, I have four and one is an engineer. Two of them are Bachelor of Commerce graduates. Asking these people to work on Tuesday, Wednesday, Thursday and even sitting in committees and at the end of it all you pay them a taxable income of Kshs 79,000, which will come down to Kshs60,000, is unbelievable. It is inhuman. We need as we talk about ours, to start also telling Serem she was unfair and her commission was unfair to these Kenyans.

Finally, we need to remind the SRC that before elections, what she had put as salaries for these representatives was much higher than what she recommended as their pay. They did not know that when they get to those county assemblies to legislate, to oversight and to represent people, that they were only going to take home kshs.60,000. It is completely unfair. Thank you.

Hon. Shebesh: Hon. Deputy Speaker, Sir, I want to say if there was a test for the Jubilee Government, it was to show its commitment to devolution. Many doubts had been raised about the commitment of the Jubilee Government to devolution. I think those doubts have been erased because there is nothing more important to devolution than resources. If in the resources the Government has already moved from 15 per cent to 32 per cent, I am urging those who have been going round the country saying that the President, Deputy President and the Jubilee Government are not committed to devolution to change their tone because if there is commitment, it is money and money now has been given to the devolved government so that they can be successful. I want to congratulate the government.

Hon. Lentoimaga: I want to say that I am very impressed as a person and as a Member of this House for what you have done for our country. We are happy with what Jubilee has promised and has delivered. So, for the first time places like Samburu will feel that they belong to this country because of devolution. Having said that, I am a little bit concerned that as Members of this House the budget for the Commission for the Implementation of the Constitution (CIC) has not been discussed in this House in depth. I have seen our country grow into a country of commissions. Sometimes I find these commissions almost doing nothing but getting a lot of money. For example, if you look at the CIC, you will realize that since the country passed the Constitution in 2010, they have not been doing much. There is no need to prefect the country. We do not need to pay them a lot of money to instruct us on what to do. That is why you see Nyachae commenting on everything and anything. I think it is time this House took their money and paid our county representatives. I was impressed by one hon. Member who was in one of the television shows; I think he is Eng. Gumbo. I have not verified the facts, but I think he is right. In countries like India, with millions of voters, you have only three commissioners. In our country, we have so many commissioners. I would like to say that in our next Budget Estimates please Members---

Hon. Deputy Speaker: I have allowed you some latitude. Hon. Wanga.

Hon. Nyasuna: Thank you, I applaud the passing of this very important Bill. With the passing of this Bill, the ball now rolls to our counties. All eyes are on our governors and county assemblies. For them to be able to now roll out the devolution that

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Kenyans believed in and voted for, they must hit the ground running. They must show a high level of accountability and equity. These monies must not rest at county headquarters. They must go to the last person on the ground.

On the issue of county assemblies and their independence, I must add my voice. That even as we allocate money, we must have distinct allocation for the county assembly and the county executive so that our county assemblies are able to check adequately the county executive. That is the devolved legislature and that is what we must protect.

This has shown the commitment of the government to devolution. It must now continue including the removal of County Commissioners so that our governors now have the leeway to continue. As I finish, I really applaud the passing of this Bill and say, let the ball roll now to our county governments and may the work now begin. May we now enjoy the fruits of devolution.

Hon. Deputy Speaker: As I put the Question, I want to confirm pursuant to our standing orders that we have the requisite numbers to pass the Bill in the House.

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

Hon. Deputy Speaker: The Bill will be committed to the Senate from here. Next Order!

MOTION

ESTABLISHMENT OF LIVESTOCK INSURANCE FUND

THAT, aware that livestock farming is the major source of income for the people living in the arid and semi-arid (ASAL) areas in the country; deeply concerned about the devastation caused by perennial droughts in most parts of the country, especially in the ASAL areas, that has occasioned heavy losses to livestock farmers thus greatly affecting them financially; noting that many farmers have lost almost all their livestock and experienced a sharp reduction in the quantity and quality of produce due to the harsh climatic conditions in the ASAL areas; convinced that unless these farmers are protected from the harsh climatic conditions, livestock farming is likely to face the risk of irreversible economic ruin; this House urges the Government to urgently establish a Livestock Insurance Fund to cushion livestock farmers in all the ASAL areas against losses occasioned by drought.

(Hon. Farah on 7.5.2013)

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(Resumption of Debate interrupted on 7.5.2013)

Hon. Deputy Speaker: Hon. Aden had four minutes remaining on this Bill on Livestock. If there is a Member who has got interest in it, he can contribute. There were many Members who were interested on that day.

Hon. Bunyas: Hon. Deputy Speaker, I rise to contribute to this Motion. I am very glad about the very intent of this Motion. Much as I have got sympathy for the ASAL areas, I believe that general investment that reduces the risk in ASAL areas ought to be increased. I would like to see much more investment in water. Pastoralism and livestock keeping are not commercial activities. They are a mixture of commercial and lifestyle activities. Insurance will not insure lifestyle, it will insure the commercial side. I think the most important thing that this House should push for is that investment including communication, whether rail or road as well as facilities such as abattoirs and feed regimes. There are several ways of doing that and it ought to be enhanced. I support that very strongly. My worry about insurance is that it is going to be a one way affair. With the covariance of risk, that when you have drought it is going to be affecting a whole region, it is an indirect way of saying that the budget allocations cannot cover these loses. This House should consider recommending an income support type for pastoral communities, when it is declared that we have a disaster. We do not want to do that via insurance. If you do that via insurance, when you know that it is certain that it is just going to be a definite payment each time it occurs, it is no longer insurance; it is just a Treasury transfer done to the pastoralists. Much as I support the need to reduce the risk for livestock theft, there are many other tools to use other than insurance I would be very reluctant to support a singular approach via insurance because it is a definite way of simply sinking money down and you do not necessarily get the results that you want. One of the major reasons why we do not get results is called moral hazard. We have had insurance in this country guaranteeing minimum returns. The beneficiaries are usually those who do not deserve it. The reason is that you can never tell the difference between the one who does and the one who does not. You do not have the database to do that. Let us agree that there is need to support the ASAL areas. Let us use the alternative instruments to do that. This is not one of the best instruments.

With those few remarks, I beg to oppose.

Hon. Ole Sakuda: Thank you, hon. Deputy Speaker. I rise to support this Motion. It is a very critical Motion. As one of the people who come from the ASAL areas, one of the challenges that we face as a country sometimes is that when there is drought, you find that the Government is slow to act. When a poor farmer from North Eastern or from Kajiado loses about 100 head of cattle, sometimes we are slow in responding as Government. When there are floods, we see a lot of effort of trying to save people.

In the past regimes, we have heard a lot of promises as pastoralists. Leaders from many political parties have been making declarations that if supported by pastoralist communities, they would ensure that a livestock insurance fund would be put in place. That has never been the case. The Jubilee Government had an opportunity to interact

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with a number of communities before we finalized our manifesto and one of the promises was not just looking at the insurance factor of livestock but the ultimate development of the livestock industry. It is very interesting to note in Kenya today and I have travelled quite a bit, that any meal that has no meat is not a full meal. Any time there is a ceremony people demand for meat. If we are not careful to develop this and make sure that we have livestock farmers taken care of, eventually we might decline to a country that might not have the delicacies of *nyama choma* and the rest. So, I strongly support his Motion. It is a motion that is needed like yesterday so that our pastoralists out there can have an opportunity to develop their livestock further knowing that they have the full support of the Government. I support.

QUORUM

Hon. (Ms.) Gatheca: There is no quorum in the House.

Hon. Deputy Speaker: We will ring the quorum bell.

(The Division Bell was rung)

Order, Members! We have quorum now. Proceed.

Hon. (Ms.) Gatheca: Hon. Deputy Speaker, I rise to support this Motion. The issue of livestock farming in the ASAL areas and the issue of cattle loss is one of great concerns to this country. This should be an industry that is developed to capacity where we are able to draw significant revenue from export. It can create an industry where we may even not need insurance since we can have the necessary investments such as abattoirs within these areas. This will allow us to be able to package meat for export and increase meat for local consumption. This will not only improve this particular industry but it shall increase security within the country. In these areas where livestock are ravaged by severe climatic conditions we also find that security is a good issue. Once we address the issue of insecurity, we will also have a significant industry in which within the ASAL areas, we will have farmers who are able to support themselves and this will reduce the level of poverty in these areas. I therefore rise to support this Motion for livestock insurance in ASAL areas. Thank you.

Hon. (Ms.) Duri: I would like to support this Motion because the poorest person in Kenya today is a livestock farmer or a pastoralist. This is somebody who has 500 head of cattle in January and loses all of them in July because of the drought. Drought is not caused by the Government or the farmer. Pastoralists also lose their animals through floods, clashes and so on. I support the Motion. There is nowhere where a pastoralist can get support apart from the government setting up insurance for these people so that they feel that they belong to this country. These people also suffer a lot of insecurity because of their animals. The Government of Jubilee always tells us that they are doing 100 per cent of their promises. One of their promises is dealing with insecurity. They must be able to come through insecurity and solve the problem of livestock farmer. I would like our people to be insured. Thank you.

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[Hon. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(hon. Kajwang) took the Chair]*

The Temporary Deputy Speaker (hon. Kajwang): Alright the Member on my right. Introduce yourself.

The Member for Kesses (Hon. J.K. Bett): This is my maiden speech. At the earliest opportunity, I want to thank the people of Kesses Constituency for considering me an ideal person to represent them. I would like to take this opportunity to promise them that whatever we promised both at my personal level and at the Jubilee as a coalition we will be able to deliver. I wish to take this opportunity to congratulate our speaker in absentia.

As regards this Motion, we cannot overemphasize the importance of livestock farming. We know that livestock farming is a major source of food in Kenya. It is a major source of employment. It is even a foreign exchange earner and to a bigger extent, it is a backbone to many communities in Kenya. I would not support the idea of insuring livestock. All of us know that insurance has certain principles and one major principle is the insurable risk. We know that all insurances are based on insurable risk and all farmers have insurable interest in farming but because most of the catastrophes that occur regard floods or drought, they normally occur in a catastrophic manner. What does that mean? It means that it covers a whole region within a short time. No single insurance or any serious government will be able to insure for all the farmers in that region. So, the aspect of insurance is not the way forward. In my own opinion, what we need to do like the budget we have just passed, we have the component of Equalization Fund. People who emanate from those regions should be able to provide for irrigation---

Hon. (Ms.) Gatheca: The maiden speech has incorrect information and I wish to correct my colleague that you cannot insure livestock. Currently, you can insure livestock in several banks.

The Temporary Deputy Speaker (hon. Kajwang): Order, Members! You know that he is on his maiden speech. Just bear with him.

The Member for Kesses (Hon. J.K. Bett): Thank you, hon. Temporary Deputy Speaker, for coming to my rescue. I was just saying that we have insurance for livestock, but you cannot insure livestock where there is occurrence of deaths or catastrophic events like when there are large droughts where you cannot compensate each and every person. I was suggesting that instead of going the insurance way, what we need to do is to improve the infrastructure and even provide irrigation schemes to such areas so that they are safeguarded against such calamities. Thank you.

The Member for Changamwe (Hon. Shimbwa): Thank you, hon. Temporary Deputy Speaker. May I also take this opportunity to make my maiden speech.

Hon. Manje: On a point of order, hon. Temporary Deputy Speaker.

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The Temporary Deputy Speaker (hon. Kajwang): What could be out of order, he has not even spoken.

Hon. Manje: My point of order is on the document that we are using in this House. Why members of the minority side are not respecting these standing orders is because we are becoming casual in them. I want to read Standing Order No.18, Presiding in the House, "The Speaker shall preside at any sitting of the House but in absence of the Speaker, the Deputy Speaker shall preside and in absence of the Speaker and the Deputy Speaker, a member elected by the House for that purpose pursuant to Article 107 of the Constitution shall preside." Have you been elected by Members to preside?

The Temporary Deputy Speaker (hon. Kajwang): Order! I think you must have been out of the Chambers last week when we run an amendment to that particular standing order. We have aligned the standing order to Section 107 of the Constitution. So, my dear you are out of order.

The Member for Changamwe (Hon. Shimbwa): I also wish to thank God for enabling me to be the winner for the Changamwe seat. I also pray to God to guide me in this House and in my constituency and at the national level to provide leadership that will go a long way to make Kenya a better place. I also take this early opportunity to thank my constituents for having confidence in me and I promise to do my best to serve them diligently with all my energy and wisdom. I also stand to support this Motion in the sense that other countries like Europe have areas designated for specific industries and this has made it possible for people not to be migrating the way we are seeing in Kenya. The fact that we have brought in a new Constitution as a result of the inability of the previous government to serve all regions equitably, I propose that we support this Motion and make the livestock industry a vibrant one and which can be made a foreign exchange earner for this country. For the few of us who have travelled to European and Arabic countries you find beef is actually more expensive than even chicken. So, if we can improve by way of minimum guarantee returns or by way of insuring them, I think we shall make this region to turn into areas which are going to be productive and to be more developed just as other regions have developed. So, just like we are supporting the growth of our tea, coffee and pyrethrum, we should also support that these people who are in these difficult areas should also be supported so that we do not see people crying year in, year out about drought, floods and other calamities. For those reasons I support the Motion.

QUORUM

Hon. Member: On a point of order, hon. Temporary Deputy Speaker Sir. I am afraid we do not have quorum again.

The Temporary Deputy Speaker (hon. Kajwang): Let me inquire from the Clerk if we have quorum or not. I am told that there is no quorum. So, I will ask that the Division Bell be rung and see if we can raise quorum.

(The Division Bell was rung)

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Hon. Member: On a point of order, I think we may not attain the quorum and time is also up---

The Temporary Deputy Speaker (hon. Kajwang): Member, the Division Bell will ring for ten minutes. That is when we will determine whether we have quorum or not.

Order! Unless we get back to quorum, we are unable to transact business. We will allow the bell to ring. I draw to you attention Standing Order No.35.

ADJOURNMENT

The Temporary Deputy Speaker (hon. Kajwang): Order, hon. Members! Hon. Members it is now time for interruption of business, the House is adjourned until, Tuesday 14th May, 2013 at 2.30 p.m.

The House rose at 6.10 p.m.