

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 29<sup>th</sup> April, 2014

The House met at 2.30 p.m.

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

### PRAYERS

### PAPERS LAID

**Hon. Speaker:** Hon. Gikaria, you are listed here as laying a Paper. Is that not so?

**Hon. Gikaria:** Hon. Speaker, I just have a report from the Implementation Committee on issues to do with the implementation of the 20 kilometre--- The issue that was brought up by hon. K.K. Kinyanjui. I have the implementation status report.

**Hon. Speaker:** You are supposed to be laying a Paper on the Report by the Committee on Implementation on the consideration of the status report by Cabinet Secretary for Transport and Infrastructure on the resolution of the House on upgrading of 20 Kilometres of roads to bitumen standard in every constituency. That is the report you are listed as tabling.

**Hon. Gikaria:** Yes, and it is here.

**Hon. Speaker:** You do not stay with it at your place. You need to proceed to read the topic. You are the one who is supposed to introduce. I am just saying that this is what is indicated to me as the Paper you are supposed to lay. Is it that you do not know how it is done?

**Hon. Gikaria:** It is---

**Hon. Speaker:** But you have been seeing other Members tabling Reports and Papers!

**Hon. Gikaria:** Normally, we get some write-up from the Clerk's Office so that we can read. All I have is this. It is not written.

**Hon. Speaker:** I will suspend that particular Order No.5. I suspend it until we are through with Order No.7. Indeed, I think we will suspend even the one--- Please, go to Order No.6. We will come back to that hon. Gikaria, when you have been shown how it is done.

*(Loud consultations)*

We go back to Order No.5 on the Order Paper. Hon. Gikaria!

**Hon. Gikaria:** Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Tuesday, 29<sup>th</sup> April, 2014:-

The Report of the Committee on Implementation on the Consideration of the Status Report by the Cabinet Secretary for Transport and Infrastructure on the Resolution of the House on Upgrading of 20 Kilometres of Road to Bitumen Standard in every Constituency.

*(Loud consultations)*

**Hon. Speaker:** Hon. Gikaria, that is okay. Nevertheless, because some of the Papers that are supposed to be laid especially on (a)--- We skip that part of Order No.5 and Order No.6 on the Order Paper. Yes, Clerk.

## REQUESTS FOR STATEMENTS

### PROVISION OF WATER TO TURKANA COUNTY

**Hon. Nanok:** Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Environment and Natural Resources concerning the reports of discovery of underground water in Turkana County and, particularly, in Turkana West where the main aquifer was discovered.

Mid last year, it was reported in the Press and the Ministry of Environment and Natural Resources declared that there was discovery of a major water aquifer in Lokipi Plains which lies in the constituency that I represent; that is, Turkana West. If those reports are true as we read them, water has been a major source of conflict and distress for the people of Turkana County and a lot of areas---

**Hon. Speaker:** Hon. Nanok, and this will not apply to you alone but everybody, if you submit to the Speaker a copy of the request for a Statement, please, be guided by it. What you are saying is not part of what I am having. You are engaging in some narrative about the virtues of what happens in your constituency. Nobody is interested in that. You have not given me that.

*(Laughter)*

Just be guided by what you have submitted to me.

**Hon. Nanok:** Most obliged hon. Speaker, Sir. It is just that my request for a Statement was thoroughly reduced to the extent that it does not seem to make sense.

**Hon. Speaker:** That is the only way it could be approved.

**Hon. Nanok:** It is okay. I am going to abide by your guidance.

Hon. Speaker, the discovery of this massive underground water resource in Turkana County could completely alter the lives of the pastoral communities, I believe positively, if things are done in such a way that---

The Chairperson of the relevant Departmental Committee will need to inquire into and report on the following:-

(i) the plans by the Government to provide residents with water and the timelines of that provision;

(ii) the measures the Government is taking to sensitize the community concerning the establishment of irrigation projects, land adjudication and resettlement in the concerned area; and

(iii) the measures the Government is taking to ensure that the local community is not exploited by unscrupulous individuals wishing to acquire ownership of the said land, considering that the resource is situated in community land.

**Hon. (Ms.) Abdalla:** Hon. Speaker, we will give him a Statement in two weeks, considering that we already had the request prior to this.

**Hon. Speaker:** Two weeks, hon. Nanok.

**Hon. Nanok:** Considering the calendar and also looking at it from the point that the Statement is already there, I think even a week would have been sufficient. But I do not mind. I also have expecting another Statement.

**Hon. Speaker:** Hon. Joseph Ngugi Nyumu! Is he not present? He is not. His request for a Statement is dropped. Hon. Dr. James K. Murgor.

#### ISSUANCE OF TITLE DEEDS TO SCHOOLS LOCATED WITHIN FORESTS

**Hon. Murgor:** Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Environment and Natural Resources regarding schools located within the gazetted Government forests nationally.

Hon. Speaker, the Ministry of Education, Science and Technology directed that public schools located in the gazetted forests will be given title deeds. In this case, some public schools in Keiyo North Constituency, namely Kutwomoso, Kameza, Sing'ore and Musekekwa, which are located in Kessup and Kapchemutwa forests, are yet to acquire their title deeds.

Hon. Speaker, in the Statement, the Chairperson should inquire into and report on the following:-

(i) the number of public schools located within the gazetted Government forests in the country, including Chepkitale in Mount Elgon;

(ii) the measures the Government is taking to ensure that those public schools acquire title deeds;

(iii) the number of acreage to be allocated to each school;

(iv) the plans in place to allocate more land to those primary schools intending to expand to secondary schools.

**Hon. (Ms.) Abdalla:** Hon. Speaker, I would like to seek your guidance. The Ministry of Environment, Water and Natural Resources does not allocate land. Land allocation is the responsibility of the Ministry of Lands. Is this question, therefore, properly before our Committee?

**Hon. Speaker:** Maybe, to the extent that he alleges that some schools were allocated land in some gazetted Government forest. That is the extent, perhaps, to which the Committee on Environment and Natural Resources can respond. But, of course, with regard to the measures the Government is taking to ensure that those public schools acquire title deeds that may be a bit of a tall order for your Committee.

*(Hon. (Dr.) Pukose consulted loudly)*

**Hon. Speaker:** Hon. (Dr.) Pukose, you have no business trying to direct the Chair how to deal with this matter. Please, remain quiet. Let hon. Amina Abdalla prosecute the matter.

**Hon. (Ms.) Abdalla:** Hon. Speaker, in the natural habitat of natural resources, we would be fighting for titles not to be given. I believe that this question will be wrongly placed if it was brought before the Committee on Environment and Natural Resources. I really urge you to send it to the Departmental Committee on Lands.

**Hon. Speaker:** Hon. Murgor.

**Hon. Murgor:** Hon. Speaker, I think forests, as it is now, are under the Department of Environment and as such, even the degazettment of those areas will be initiated normally by the Ministry in charge of environment. Issuance of titles will come subsequently. So, I think this question is in the right place.

**Hon. Speaker:** Very well. If you insist so! But should you get inadequate responses, then do not say that the matter be referred to the other Committee.

**Hon. (Ms.) Abdalla:** Hon. Speaker, with that insistence, we will look into the matter. So, with your direction, he waives his right not to be dissatisfied with the answer that we will bring forth.

**Hon. Murgor:** Hon. Speaker, when will the answer be ready?

**Hon. (Ms.) Abdalla:** Four weeks, hon. Speaker.

**Hon. Murgor:** Thank you, hon. Speaker. I hope that is as soon as we open in the next session.

**Hon. Speaker:** Yes. You appear to be well focused. You are planning ahead.

#### DISMISSAL OF ALFRED MWITI BY TSC

**Hon. Murungi:** Hon. Speaker, pursuant to Standing Order No. 44(2)(c), I hereby request for a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology concerning the unfair dismissal of one, Mr. Mwiti Alfred, a teacher.

Hon. Speaker, Mr. Mwiti Alfred, TSC No. 309983 was dismissed from his position in 2007 by the Teachers Service Commission (TSC) on alleged cases of carnal knowledge of students. However, it is reported that investigations into the matter by the Board of Management of the said school found the teacher innocent. The TSC did not give him a fair hearing. The Chairperson should inquire into and report on the following:-

(i) the reason why, despite the teacher having been cleared of the charges twice by the school management, he has not been reinstated by TSC;

(ii) when justice will be served to this teacher, including reinstating and compensating him for the time he has lost in proving his innocence and charges the guilty party;

(iii) whether there is any policy in place by the Ministry of Education, Science and Technology and TSC to protect students from sexual predators in schools; and

(iv) what measures have been put in place to deal with teachers found engaging in such illegal conduct.

Thank you, hon. Speaker.

**Hon. (Ms.) S.W. Chege:** Thank you, hon. Speaker. I request the hon. Member to give us a period of two weeks. The issues the hon. Member has raised are very serious. They are touching on our education sector and, especially, how to protect our young girls who, sometimes, are victims of the same teachers that they trust. Therefore, within a period of two weeks, we will be able to give a good answer to the hon. Member.

Thank you.

**Hon. Murungi:** Hon. Speaker, the teacher appeared before the TSC Disciplinary Board but he felt that he was not given a fair hearing. Therefore, he requested, through me, whether he can appear before the Departmental Committee on Education, Research and Technology, to shed some light on his case.

Therefore, could Mr. Mwit Alfred be allowed to appear before the Committee? His last resort is the Committee of Parliament. That is because he has been listened to by the Board of Management of the school and the TSC but still, he feels that he is being served with an injustice.

**Hon. Speaker:** In fact, I think we are going the wrong route. If he wants to prove his innocence, I am sure it is not before the Committees of Parliament. Just look at the role of the National Assembly as clearly stipulated in Article 95. It is never to prove the innocence of those who may be facing criminal charges.

**Hon. Murungi:** Just to give facts!

**Hon. Speaker:** You can advise him, as a Member of Parliament that his recourse should be in the law courts. Has his innocence been established in a court of law? The best you can do is to appear before the Committee as the hon. Member and say what you must say. But when you start saying that he will prove his innocence – Parliament is not an avenue for that.

Hon. Murungi, you can appear before the Committee with whatever material you may have and let the Committee make a report one way or the other which, perhaps, the Committee on Implementation can then make a follow up on.

Therefore, two weeks is good enough.

**Hon. Murungi:** Yes, hon. Speaker.

#### MEASURES TO CURB INSECURITY IN TURKANA SOUTH

**Hon. Ekomwa:** Thank you, hon. Speaker. Pursuant to Standing Order No. 44(2)(c), I wish to request for Statement from the Chairperson of the Departmental Committee on Administration and National Security concerning the deteriorating security situation in Turkana South Constituency, Turkana County.

Hon. Speaker, the residents of Turkana South Constituency have suffered because of insecurity and raids which occurred in Kakong on 15<sup>th</sup> March, 2013, where seven residents were killed and 3,000 goats stolen. The livelihood in Turkana is dependent on livestock. This current security situation is poor since the community is under siege.

Hon. Speaker, in the Statement, the Chairperson should inquire into and report on the status of the security with specific reference to:-

(i) the General Service Unit (GSU) Officer who killed a resident of Kakong on 26<sup>th</sup> March, 2013, at about 9.00 a.m. after a peaceful demonstration which was demanding that the Government provides security;

(ii) what security measures the Government has put in place to improve the surveillance, security situation and patrols in Turkana South, especially along the borders with West Pokot County in Kakong, Nakwamuru, Loyapat and Kapelipo. Thank you, hon. Speaker.

**Hon. Abongotum:** Hon. Speaker, due to the urgency of this matter, we want to take ten days and then we give a comprehensive statement.

**Hon. Ekomwa:** Hon. Speaker, this issue is very urgent. This statement has stayed in the registry for three weeks.

**Hon. Speaker:** Hon. Lomenen, I am sure you know which date of the month is tomorrow. The hon. Abongotum has said ten days. Do you want him to bring it on Labour Day which is on Thursday?

**Hon. Ekomwa:** Hon. Speaker, I need your indulgence. Is it impossible or it is in the Standing Orders that a statement cannot be brought within 24 hours? Unless the Chair assures my constituents that they will not be raided and they will not be killed, bandits cannot wait for two weeks; they cannot wait for one month when the residents are being killed all the time.

Hon. Speaker, this issue is urgent and is more than terrorism that is happening in Eastleigh. People are being killed all the time and their livestock is being taken away.

**Hon. Speaker:** Hon. Lomenen, I am sure you read and understood the calendar of Parliament. Except for the fact that you may wish to be heard by your people of Turkana South Constituency saying what you have said I am sure, having looked at the calendar of Parliament, you may wish to refrain from going the direction that you are going. I have clearly drawn your attention that this House had a special sitting this morning because of obvious reasons; well known to you and to the rest of hon. Members.

When hon. Abongotum says that he can respond in ten days, that is normal Parliamentary practice. Whether the House will be sitting or not sitting, his commitment is that in ten days time, there will be some response ready. As happens with even Bills and Motions, if you proceed to some adjournment of sorts, it will be responded to when the House reconvenes.

Please, these are simple things that I do not think we really need to keep arguing about. Even if you say that this matter is urgent, hon. Abongotum is not the one in charge of the security of the country. He has to hold sittings with the people in the Executive who are responsible. Unless you really just want to be heard to be putting pressure on hon. Abongotum; do you want him to rise in his place and tell your people that they will not be killed? I am sure he can say that with a lot of ease but we do not want that. We want a serious response and that is why he is requesting for ten days.

**Hon. Ekomwa:** Hon. Speaker, I respect you. There is no joy in being heard when your people are being killed. There is no joy! I think the issue here is that we are addressing this issue to the Government and I think bandits do not know a Parliamentary Calendar. They are there and they are doing their business, but I will respect what you are saying.

The Chairperson will have to advise those who are in charge of security to ensure that they prevent more killings as we wait for the allocated time. This is because I cannot keep on losing people who gave me mandate to be in this Parliament.

**Hon. Speaker:** Hon. Members, some of you just want to engage in arguments which are not necessary. This Statement was approved on 27<sup>th</sup> March, 2014 and today is 29<sup>th</sup> of April. It had to queue and go through the normal process. But if an hon. Member wants to rise in his place and claim they want to get a chairman of a committee to respond and give assurances, even when the matter is not really under the direct control and command of the chairperson, I think then you will be expecting too much. The more reason I think we should be having the people responsible coming to respond here on the Floor. That is the only time that those questions and Statements requiring responses within 24 or 48 hours or whatever number of hours as the case may be, can get an appropriate response. Hon. Lomenen, we appreciate that your people cannot be held hostage by the calendar of the House, but if the House is not sitting, what will happen? Surely, let us allow the Chair of the Committee to get a response from the people responsible, so that you are given a response that also gives assurance to your people. Hon. Peter Shehe!

CRITERIA FOR IDENTIFYING BENEFICIARIES  
OF CASH TRANSFER PROGRAMME

**Hon. Shehe:** Thank you, hon. Temporary Deputy Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding the implementation and effectiveness of the Cash Transfer Programme to older persons in the counties in general and Ganze Constituency in particular.

The implementation of the cash transfer programme is not effective as envisaged when the programme was initially conceived. Majority of the older persons in Ganze Constituency have not been receiving the money from the programme despite the vulnerability to poverty among other challenges associated with old age. In the Statement, the Chairperson should inquire into and report on:-

- (i) the criteria used to identify the beneficiaries since most of the persons aged 65 and above living in Ganze Constituency are not beneficiaries of the programme; and
- (ii) why the local committees that identify the beneficiaries as well as the officers who vet the identified beneficiaries of the programme are not facilitated in terms of transport and allowances by the Government.

*(Several Members stood on the gangway)*

**Hon. Speaker:** Order, Members! There are too many of you standing on the gangways. Consultations should be in low tones. The Chairperson, Departmental Committee on Labour and Social Welfare, hon. David Were! The Vice-Chair, hon. Tiah Galgalo! Is that Committee still sitting? They cannot be sitting even if they are dealing with matters of labour or Labour Day whatever the case. Hon. Wanga, are you a Member of that Committee?

**Hon. (Ms.) Nyasuna:** Hon. Speaker, yes, I am a Member of the Labour and Social Welfare Committee. We were sitting earlier today, but at the moment, we are not sitting. I can see quite a number of the Committee Members in the House present. The Chair may be held up somewhere. I think the Vice-Chair may have travelled, I am not too sure.

You had given guidance that in the absence of the Chair and the Vice-Chair, the Leader of Majority Party will take responsibility. So, that is why I was not proceeding to say how long this is going to take. You had given a direction that this is referred to the Leader of Majority Party.

**Hon. A.B. Duale:** On a point of order, hon. Speaker. You have heard what the great Member for Homa Bay County has said. Committees of Parliament are Committees of Parliament. They do not belong to Jubilee neither CORD. The moment a Committee is constituted under the Standing Orders, it is the Committee of Parliament. So, I have no obligation and that is why I am here to answer all my questions. If the Chair and the Vice-Chair are busy dealing with COTU and PUSSETU, I think from where I sit, I am a friend of Atwoli. I wish I was the Chair, Atwoli should be in charge of the labour movement.

**Hon. Speaker:** We will get back to it when we are through with the others. So, hon. Peter Shehe, you have to wait a bit. Hon. Joyce Emanikor.

LOSS OF LIFE DURING PROTESTS BY *BODA BODA*  
OPERATORS IN LODWAR TOWN

**Hon. (Ms.) Emanikor:** Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security concerning insecurity incidents involving the police and protesting *boda boda* operators in Lodwar Town, which has resulted in loss of lives and destruction of property.

On 23<sup>rd</sup> April, 2014, *boda boda* operators in Lodwar Town protested over exorbitant and unaffordable fines ranging from Kshs10,000 to Kshs15,000 for lack of helmets. In dispersing the youths, the police officers used live bullets and in the process, the Officer Commanding Station (OCS), Lodwar, shot dead Mr. Eregai Kapua. He also shot Mr. Paul Mburu on both legs and he is currently hospitalized at Lodwar County Referral Hospital.

In the Statement, the Chairperson should inquire into and report on:-

(i) why the OCS authorized the use of live bullets on unarmed protesting youth---

*(Loud consultations)*

**Hon. Speaker:** Order, Members! Order, Members! Hon. Joyce Emanikor Akai will be heard in silence.

**Hon. (Ms.) Emanikor:** Hon. Speaker, in the Statement, the Chairperson should inquire into and report on:-

(i) why the OCS authorized the use of live bullets on unarmed protesting youths;



(ii) action taken against the officers involved and the measures taken by the Government to restore order and assure the business community in Lodwar Town of security;

(iii) whether the Government will meet the cost of treating the injured youths and burial costs for the dead;

(iv) the deterrent measures the Government will put in place to avoid similar incidents in future; and

(v) what plans the Government has to assist the *boda boda* operators not only in Turkana, but in the whole country, in terms of training them on road use and traffic requirements considering that most of them cannot afford formal training.

**Hon. Speaker:** Hon. Members, even as we make these requests, you know that the Traffic Act requires that before you take to the road, either as a pedal cyclist or a driver, you must have undergone some training and be licensed. So, everybody is required to have some licence. The plans that may be there is for people to know that it is a legal requirement. Hon. Kamama, the Statement is sought from you.

**Hon. Abongotum:** This matter is also urgent and because I know the bureaucracy between the Office of the President and that of the Cabinet Secretary (CS) and the police, I would have taken one week, but I will still propose to the hon. Member that in 10 days we should be able to give a Statement.

**Hon. Speaker:** Hon. Emanikor

**Hon. (Ms.) Emanikor:** That is okay. Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Major Muluvi.

#### CONSTRUCTION OF THUA BRIDGE

**Hon. Muluvi:** Thank you, hon. Speaker. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the construction of Thua bridge in Kitui East Constituency of Kitui County.

Construction works for the said bridge started over one and a half years ago and so far the work that has been done is not substitutive. Moreover, the temporary suspended bridge that was constructed in the area has been cut off and this has made it difficult for the people and the vehicles to cross from Nzambani District to Mutito District Headquarters. In the Statement, the Chairperson should inquire into and report on:-

- (i) the scope of work for the said project;
- (ii) the percentage of the completed work so far;
- (iii) whether the contractor is on schedule and if not why; and
- (iv) when the project will be completed and commissioned.

This is so because as schools are just about to open, it will be very difficult for the children from either of the districts to cross over to the other side and that is the urgency of the matter.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Maina Kamanda.

**Hon. Kamanda:** Ten days if we do not go on recess, but if we go on recess until after we come back.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members! Hon. Ken Obura and others, you must consult in low tones. I am not able to follow what is being said. It is also against the Standing Orders for you to be standing between the Member seeking the Statement and the Speaker and especially when you stand alongside a tall person like hon. Athanas Misiko Wafula Wamunyinyi. Hon. Major Muluvi.

**Hon. Muluvi:** I have no objection, if it will be within 10 days. My fear was if the schools open before we get the answer. This is because we need a detour so that we can get the children from one district to another. As things are now, vehicles cannot move---

**Hon. Speaker:** Have you said you are okay?

**Hon. Muluvi:** With the 10 days, I am okay.

**Hon. Speaker:** For the second time, hon. Joseph Ngugi Nyumu.

#### STATUS OF ONGOING ROADS PROJECTS IN THE COUNTRY

**Hon. Nyumu:** Thank you, hon. Speaker Sir. Pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing concerning the status of ongoing roads projects. Most of the roads projects being funded by the Kenya National Highways Authority (KENHA) and Kenya Rural Roads Authority (KERRA) have stalled and in particular Gatundu-Karinga Fly Over Road project. In his Statement, the Chairperson should inquire into and report on:-

- (i) when the project is expected to be fully completed; and
- (ii) why the project has stalled since December, 2013.

Thank you, hon. Speaker.

**Hon. Speaker:** Hon. Maina Kamanda.

**Hon. Kamanda:** In two weeks' time.

**Hon. Speaker:** Two weeks, hon. Ngugi

**Hon. Nyumu:** Two weeks is okay with me.

**Hon. Speaker:** Very well, may we revisit the question by hon. Peter Shehe, which was directed to the Departmental Committee on Labour and Social Welfare. Has the Chairperson or the Vice-Chair arrived? How can it be that Chairs do not want to pay attention to what is going on in the House? The Statements sought by Members are issues of concern to the people. Well the Chair not being present, it is directed that a communication will be issued from the Clerk's office that the Statement should be ready in two weeks' time from today. The Statement should be ready, as to whether it will be read out, that is a different matter. It should be ready within two weeks from today.

Next Order!

#### MOTIONS

## ADOPTION OF REPORT ON CONSIDERATION OF EALA BILLS

THAT, pursuant to provisions of Standing Order Nos. 212 and 251(4), this House adopts the Report of the Committee on Regional Integration on the consideration of the East African Community Cross Border Legal Practice Bill, 2014; the East African Community Integration (Education) Bill, 2014 and the East African Community Co-operative Societies Bill, 2014 laid on the Table of the House on Tuesday, March 25<sup>th</sup>, 2014.

*(Hon. (Ms.) Kajuju on 29.4.2014)*

*(Resumption of Debate interrupted on 29.4.2014)*

**Hon. Speaker:** Hon. Members, take your seats. Hon. Members who are walking in, take your seats for a short while.

Hon. Members, for the convenience of the House, business appearing as Order No.5 and No.6 is going to be deferred for purposes of allowing the Chairpersons of two committees, as well as the representative of the Parliamentary Service Commission to appear before the House and table the budget estimates for the Parliamentary Service Commission. Therefore, they are going to be deferred until such a time as they will be ready in the House. Hon. Members, the business appearing as Order No.8, what remains is the issue of the Question to be put and I proceed to do so.

*(Question put and agreed to)*

## ADOPTION OF REPORT ON BILATERAL AIR SERVICE AGREEMENTS

THAT, pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Bilateral Air Services Agreements between the Government of the Republic of Kenya and the Governments of the Republics of Angola, Mozambique, the Government of Canada and the State of Kuwait, laid on the Table of the House on Wednesday, 26<sup>th</sup> March, 2014.

*(Hon. Kamanda on 29.4.2014)*

*(Resumption of Debate interrupted on 29.4.2014)*

**Hon. Speaker:** Hon. Members, including the Member for Narok, who is standing up, just look at your Order Paper and you will see what is listed. We will again put the Question, which I will proceed to do.

*(Question put and agreed to)*

*Second Reading*

## THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

*(Hon. A.B. Duale on 24.4.2014)**(Resumption of Debate interrupted on 24.4.2014)*

**Hon. Speaker:** The records indicate that the hon. Manson Nyamweya has a balance of nine minutes. Hon. Members, before the hon. Manson Nyamweya commences to make his contribution, I think I want to guide the House that in the event the House decides that it wants to reduce the time taken in debating a particular Motion or Bill, any Member desiring that to be the case or the House to resolve itself on a matter of that nature should raise the matter before the debate on that Bill or Motion commences. This one has already commenced. So, it is not possible that when I leave the Chair some of you can quietly purport to rise in your places and inform whoever will be on the Chair that you reduce the time to five or three minutes. That practice offends your own Standing Order No.97(3). So, anybody desiring that to happen because there are other Bills and Motions coming, please be guided by Standing Order No.97(2) that you must move such a Motion before the debate commences.

Very well. Hon. Nyamweya you have your balance of nine minutes.

**Hon. Nyamweya:** Thank you, hon. Speaker for giving me a chance to contribute to this Motion but as I said, I oppose the Bill and I have the reasons why I am doing so.

I want to refer to Article 206(1)(a) of the Republic of Kenya. It reads:

“There is established the Consolidated Fund into which shall be paid all money raised or received by or on behalf of the national government, except money that –

(a) is reasonably excluded from the Fund by an Act of Parliament and payable into another public fund established for a specific purpose.”

Now, when you see what this Act is trying to do you will find that it is trying to amend Section 57 of the Public Finance Management (PFM) Act. I want to go to Section (c) of this Act which says:-

“Disbursed directly to the suppliers where the loan is raised for the purpose of financing goods and services provided by a supplier outside Kenya.”

This section offends the Constitution of Kenya. It does not go with what the Constitution of the Republic of Kenya says. All funds raised, be it from an external or internal source should all come into the Consolidated Fund. So, for that reason I am saying that this Bill as it stands now is unconstitutional and to make it worse, Section (d) of that Act says:-

“In the case of an external loan all external government security, applied in part, to pay at closing, expenses associated with the borrowing, including but not limited to the fees, commissions, expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents,

counsel, clearing systems, listing agents and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security.”

What this section means if we pass it as a House is that the Government of Kenya will borrow money from outside, be it China and the supplier will be paid by the financing bank in China. The fees and commissions will be paid in China. The next question here is: How do you price the cost if we pass this Bill?

So, I urge the House not to support it. I am not standing here because I am in the Orange Democratic Movement (ODM). I am not standing here because I am against the Jubilee Government. I am not standing here for any reason. I am standing here as a Kenyan who is privileged to sit in Parliament and raise an issue which is critical for this House. As a nation we should look at what we are doing. As Parliament we should look at what we are doing. If we pass this Bill the way it is somebody will go to court and it will be nullified. So, hon. Members, let us see what we are doing and the implications it has for the nation. So, for that I am opposing it.

However more importantly I want to go to the issue of the Budget. We have said that in the Budget there is a slot for Kshs130 billion to be financed in this financial year. My question is: Is it realistic that within this year we will be able to raise this money? The first issue here is: Do we have an offer from investors as we sit today? The answer is no. We have no offer at the moment.

Two, at the moment what is the political environment in which we are? We have got insecurity. South Sudan is insecure. Somalia is insecure. We have got local terrorism here. More importantly the issue of the International Criminal Court (ICC) has not been resolved. So, if you are going to say that we want this money to be borrowed from overseas, it is going to be expensive. It is not going to be cheap because as a country we have internal issues which we need to resolve first. So, this thing is not going to be cheap. The other day when I was contributing to this Bill, I said what this country needs is an external aid policy. We should have a policy statement from which all the activities we want to say about donor funding can flow from. So, we are trying to anchor the foundation of Anglo Leasing. If this House passes this Bill the way it is and we say we are going to get money from foreigners, the first thing those people of Anglo Leasing will do is that they will go to court. Whether this Parliament passes to pay Anglo Leasing or not they will go to court in the international community. The money will be paid. It will be charged before we get it.

So, what are we doing in essence here? In Parliament, what we are trying to do is to lay a foundation so that Anglo Leasing deals can be paid. Kenyans are watching what Parliament is doing. They are wondering whether we are a watchdog for this country and whether we want to be in this country because the point I am raising here---

**Hon. A.B. Duale:** On a point of order, hon. Speaker. I think you gave very express instructions about Standing Order No.106. The Member is talking of a different matter outside this PFM law. So, I do not know whether your instructions on Standing Order No.106 on irrelevancies and repetition still hold. Is he in order?

**Hon. Nyamweya:** Hon. Speaker, what I am saying here is related. What I am saying here is that in the event Anglo Leasing companies were financed by a supplier from overseas, they would have been paid overseas. So, if we pass this section as it is

then it will be bad. Let me give the example of the railway project. It means here that if a bank in China will pay the supplier, the people who are arranging all the transaction will be paid in China. That is the meaning of that Section 3(c). It is very clear and I can quote for the Leader of Majority Party to get it correct.

**Hon. Speaker:** Another point of order from hon. Abdikadir.

**Hon. Nyamweya:** Hon. Speaker, you know they just want to take my time.

**Hon. Aden:** Hon. Speaker, I just wish to seek guidance on whether the Member is not misleading the House by saying that for this amendment to be done, it is a plan to pay suppliers from outside Kenya. This is not true. In a layman's language what we are trying to do is to allow within the PFM law, Kenya, using its own integrity as a nation, to borrow cheaper loans. That is all we are doing.

**Hon. Nyamweya:** Hon. Speaker, please can I read the section? This is what it says: "Disburse directly to the supplier where the loan is raised."

**Hon. Speaker:** Hon. Nyamweya, you know I am afraid you may lose a lot of your time. You know you can actually apply to amend that provision.

**Hon. A.B. Duale:** Hon. Speaker, if hon. Nyamweya is sincere about what he is saying, we should have had an amendment proposal on the particular clause on the Order Paper. I am sure that the people we represent here are watching me. You do not just come here and speak. If you want to amend a Bill, you have an opportunity to do so during the Committee Stage. Please, approach the originator of the Bill, who happens to be the Leader of Majority Party. We can discuss the matter. If we agree, you can bring your amendment and have the clause amended.

**Hon. Nyamweya:** Hon. Speaker, I do not want to amend anything. I want the Bill thrown out. That is my contribution. That is why I am seated here. This Bill is unconstitutional. That is why I am opposing it. It should not stand. Paragraph (c) of this clause is very clear. That is what it says. So, as I stand here to oppose it, I am very clear on what I want to put across to hon. Members. The hon. Members of this House are at liberty to approve the Bill. However, if we do so, we will be anchoring payment of illegal claims---

**Hon. Speaker:** Yes, hon. John Mbadi!

**Hon. Ng'ongo:** Hon. Speaker, we owe it to the people of Kenya to be factual and accurate so that they do not believe that this House has passed a Bill that is allowing the payment of Anglo Leasing claims. I want to just put it on record that we are correcting a mistake that we made during the Tenth Parliament. The mistake we made then was that there is what we used to call "The External Loans Act", which we repealed without capturing how this country would access money from the external market using the Public Finance Management Act, as it is today.

Therefore, this provision was in the External Loans Act but we left out that bit. So, for hon. Nyamweya to trash the entire Bill on the basis of Clause (3), and portray this House as passing a law that is allowing payment of Anglo Leasing claims is not fair to us. We had made a contribution similar to his on that particular provision. Actually, I have an amendment on that particular clause. So, what he should have done would be to bring an amendment to correct the Bill rather than make a sweeping statement to portray all of us who have contributed to this Bill as approving payments for Anglo Leasing, which we cannot do.

Thank you.

**Hon. Speaker:** Hon. Nyamweya, you have one minute to conclude your remarks.

**Hon. Nyamweya:** Hon. Speaker, finally, I want to refer to Clause 53A(6), which provides that external loans or external Government securities may be executed, on behalf of the national Government, only by the Cabinet Secretary or a delegate appointed by the Cabinet Secretary, in writing or a borrowing agent appointed for the purpose of this Act. What is the implication here? Anybody can sign contracts on behalf of the Government of Kenya. This is how this country ended up having all the problems that it has today. What is the history of these kinds of projects? We have had the fertilizer factory project, which ended the same way. We know what happened. We did not get it.

What is the history of gold export scheme by Goldenberg International? Kamlesh Pattni was exporting papers. We have the Anglo Leasing scam. The situation is very clear. We cannot go back to “A” and “A”. The Constitution of the Republic of Kenya is against “A” and “A”. What we are trying to do is bringing back “A” and “A” through the backdoor. This is unconstitutional.

Hon. Speaker, it is for the Members of this House to decide what to do but I oppose the Bill in the strongest terms possible.

Thank you.

**Hon. Speaker:** Hon. Pukose, you are next.

**Hon. (Dr.) Pukose:** Thank you, hon. Speaker, for allowing me to contribute to this Bill.

I stand here to support the Bill because it seeks to give us a framework for external borrowing and floating of external securities. However, I have an amendment that I will introduce later. Clause 53(2) of the Bill says that the Cabinet Secretary may raise an external loan or issue external Government securities on behalf of the national Government, for money borrowed by the national Government in such a manner as the Cabinet Secretary may determine.

Hon. Speaker, saying that it is the Cabinet Secretary who will determine this is leaving room for accountability. In Clause 53(A), the Bill says:-

Notwithstanding the provisions of section 53 of this Act, the national government may issue external government securities, for money borrowed or for any other purpose, only in circumstances expressly authorised by this Act.”

The authorisation of this Act comes in Clause 53(3), which says:-

“53(3) Any external loans or external government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set by Parliament under Section 50(2) of this Act.”

The two clauses actually contradict each other. Parliament is supposed to set the limit of the amount of money that should be borrowed. At the same time, we are giving the Cabinet Secretary power to determine how much money to borrow. The two positions are contradictory to each other. Therefore, where we are giving the Cabinet Secretary power to determine how much money to borrow should be deleted. I will move an amendment to that effect at the appropriate moment.

An area where I have an issue with is where the Bill is talking about how many people need to authorise borrowing, and the period within which that has to be done. Under Clause 53(9), the Bill says:-

“53(9) Claims against the borrower or issuer by holders of external loans or external government securities for payment shall be prescribed and become void if the claims are not made within six years from the redemption date in the case of principal and five years from the due date in the case of interest on any other amount.”

Hon. Speaker, this leaves room for any regime to make a decision that will affect another regime. If the claim only becomes void if claims are not made within six years from the redemption date or within five years from the due date, in the case of interest or any other amount, you can borrow and hand over the borrowing to another regime. Therefore, that one defeats the area of responsibility.

Hon. Speaker, on the same Public Finance Management Act, as the Committee on Health, we intend to bring an amendment. It is challenging because we are saying this Bill does not concern county governments. Initially, we were thinking that when you go to the counties, what we call the FIF money is being collected and banked in the Consolidated Account and once it has been banked, the county government will divide the amount, not based on how much a facility collected, but on how much the county collected. So, now that our amendment is not affecting counties, as a Committee, we will have to rethink.

With those few remarks, I stand to support this Bill.

*(Technical hitch)*

**Hon. Speaker:** The system has hung and I am therefore not even able to see who has made requests. So, I think for the time being---I do not even know if we are being heard clearly. I can see hon. Shakeel is raising his hand. Perhaps, he could enjoy that ---

**An hon. Member:** Even you, you cannot be heard!

*(Microphones were passed to hon. Members)*

**Hon. Speaker:** I cannot be heard either? Can you hear me from this? So, meanwhile we can use it interchangeably between me and the contributors. Now that there is no list of hon. members who have made requests, let us give that chance to hon. Shakeel.

**Hon. S.S Ahmed:** Thank you, hon. Speaker. I stand to support the amendments with certain corrections. In Clause 3 of the Public Finance Management Bill, the amendment proposes that all funds from the donors be put in the Consolidated Fund. The thought is good that we need accountability, but many of these funders do not wish to have their funds put in Consolidated Fund Account. Anglo Leasing and other problems have given us a bad reputation, but there is already a system that is presently being used, where certain funds are ring-fenced and left in the Central Bank of Kenya (CBK). If the Chinese were to give money for the railway project, it would be put, in Chinese Yen, in CBK account or even in the central bank of china. It would be ring-fenced. For any transaction, it would require the approval of the donor and that of the recipient. I think that is the way counties would want to see it handled so that it does not get swallowed up in the Consolidated Account. By using that system, we can also have the public procurement system in action because we can say who is to be paid.



The provisions on 3(b) are the most dangerous of all. It is suggested that before any loan is given, all expenses incurring in respect of that loan should be deducted. That is a very dangerous proposal. We are suggesting, I think the amendment has been approved by my Committee that it will only apply to any expenses which are pre-negotiated and are solely and exclusively for that particular loan. The word is “pre-negotiated” so that we do not have people coming up with claims which are false and they are deducted from the main loan. So, when you are negotiating for a loan, these expenses must be pre-negotiated with the Government and the donor. That will then make sure that other expenses are not drawn up, like those of Anglo Leasing. Those are my two amendments.

With those few remarks, I would like to thank you for giving me this Floor. Thank you, very much.

**Hon. Speaker:** I will also try to use my memory on the ones that I had seen. Hon. Waweru, Member for Dagoretti.

**Hon. Waweru:** Thank you, hon. Speaker. I must apologise---

**Hon. Speaker:** Hon. Waweru, people do not just walk across like they are in some market place.

**Hon. Waweru:** I was being led by the Majority Whip. It is important that we put our opinions on this Bill. On the outset, I want to say that I fully support it because it will give the Government a way to be able to raise necessary funds for our infrastructure. There was an hon. Member who I think was talking about Clause 5(c), when he was talking about funds being paid directly. The reason why we are doing a Euro bond is because we cannot raise money locally. This market is having a foreign component that is either Euro or Dollar dominated. We are going to be able to get the necessary FOREX that we need to settle our infrastructure that in most cases has a foreign component in it. That is why I would want to support it.

The second reason why I want to support this law is because it is going to enable the Government to borrow outside the country, so that we can let the private sector access the necessary funds and move this economy to the next level. I want to say we have been looking for a time when our Government can keep away from the domestic market so that the private sector can borrow and we can get some growth in the economy. The other reason why I think it is a good law is that it will allow some of our Kenyans who are suffering because of very high mortgages, especially some of our hon. Members and the general public, to see a reduction in the rate of interest. We are going to get a minimum of 2 per cent to 5 per cent reduction in the cost of money in this country with this law. And the benefit, of course, is going to be a cheaper cost of living for Kenyans. We are going to do infrastructure. So it is very important.

Hon. Speaker, the other reason why I think it is a good law is that nowadays if you want to borrow, the world economy because of globalization, Kenya is a major participant in this economy. So, this is just a beginning. We are doing the Euro bond and it is the way to go, going forwards. We cannot finance most of our infrastructure by keeping borrowing locally. I want to encourage the Government to keep borrowing outside and to structure many more other transactions to move this country to the next level. I know most Kenyans are wondering why we are advocating for the Government to start sourcing funds outside. I know it needs to do other Thika roads. We need to do the

SGR and many other projects. So I would like to support fully this initiative and tell Kenyans that at the moment we are going for a ten year bond at approximately 12.5 per cent, if we are borrowing in Europe like we are doing a Euro bond or Dollar dominated bet, we are going to save in excess of Kshs11 billion per annum. This is a good saving which we need to do more projects being foreign based. That will take the economy to the next level.

Finally, I heard somebody complaining about the ceiling. We are re-basing our GDP and I am sure going forward we are going to have headroom to borrow so that we can finance our development expenditure. I must tell hon. members that borrowing or financing from our own tax revenues is very strenuous in this economy. If you look at levels of debts for countries like Dubai, the UAE, America, there is nothing we have borrowed. So I would like the Treasury to take bold moves and invest most of our infrastructure through these programmes.

Thank you!

**Hon. Nyenze:** Hon. Speaker, thank you for giving me this chance to contribute on this Bill; the Public Finance Management (PFM) (Amendment) Bill, 2014. I stand to support this Bill for one reason, that it makes borrowing for this country easy, possible and it has put safeguards. But there are a few amendments that I would like the Committee to consider so that we fine tune it and protect Kenyans from losing money through things like Anglo Leasing.

The amendments that I want to bring will ensure transparency in loan taking. Clause 3 proposes amendment to Section 57(c) and (d) which will reduce accountability especially since the proceeds of the external loan can be used to pay suppliers from outside Kenya and financial intermediaries. We are talking about Anglo Leasing and I am very happy that the Deputy President, the President and the Leader of Majority Party have come out very strongly to say that we will not, we cannot pay and we shall not pay Anglo Leasing. I am sure across the divide, that is the point and we will not pay and we will not support it because it will be a big rip off!

I just want to say that Clause 3(c) is where companies especially from some countries we have seen in the recent past organize for external financing and when they are awarded contracts, sometimes those tenders can be inflated. We have to make sure that Clause 3(c) is amended so that there are proper safeguards so that Kenyans do not lose money. Clause 3(d)---

**Hon. Lati:** On a point of order, hon. Speaker. I cannot hear what hon. Nyenze is saying.

**Hon. Speaker:** You cannot hear what hon. Nyenze is saying?

**Hon. Members:** We cannot hear you!

**Hon. Nyenze:** I will take the microphone to my mouth!

**Hon. Speaker:** We have confirmed that what is being said is being recorded. So I think we better use our other senses. But more importantly if we could maintain some measure of silence, there is a technical hitch with regard to the microphones but it is being addressed.

**Hon. Members:** Adjourn the House!

**Hon. Speaker:** We cannot adjourn the House because of that. If we can consult in lower tones, we will hear what the contributors are saying.

Proceed, hon. Nyenze!

**Hon. Nyenze:** Hon. Speaker, thank you. I will speak louder so that hon. Members can hear.

We do not want taxpayers to lose any more money in future and this Parliament, the National Assembly, is the watchdog. So, the small amendment that I would want is on Clause 4(a). It excludes the requirement that if any amendment to the agreement to obtain a loan is prejudicial to the borrowing entity, then it shall be approved by Parliament. The Committee should take it very seriously that Parliament has to approve any borrowing that is prejudicial. There are other clauses that worry me a bit and if they can be improved and fine tuned by the Committee, this will be a very good Bill. The donors are suffering from what we call “donor fatigue”. There is not enough money to give to everybody. So there is competition globally to borrow from international sources. It is better if we make it possible and easier for Kenya to borrow money but put those safeguards in place that I have outlined by trying to change those clauses.

If we keep borrowing locally, we will stifle business because local entrepreneurs are borrowing. There is not much money in the market. The Government is borrowing and the interest rates shoot up making business very difficult in this country. It is easy to borrow from other countries than it is in Kenya. If you borrow a loan here, the interest rate is very high the reason being that the Government does not borrow money from external sources very easily. The reason why I support this Bill is that there will be a bit of ease. There will be more money to borrow as business people and the economy should grow.

I also want to talk about the exemption of external securities from the requirement in Sections 53 and 55. That may reduce the information available to the public. We do not want the public to be unaware of how much debt or how much is being borrowed because that will create room for corruption. We have to change Sections 53 and 55 so that information is readily available to the public and if they are committed, they will know the burden that will be put before them.

I also want to say that the issue of Anglo-Leasing could not have happened, if there was transparency and accountability. It is surprising that up to now, and as we talk about billions to be paid, there is no single prosecution. Nobody is in jail for committing this country to pay such huge amounts of money. The irony of it is that, if someone steals a chicken, a cow or a goat in the village, the lynch mobs get them and burn or kill them on the spot. But if someone steals billions, he or she is the one who receives glory in public rallies. He or she is the one who walks tall because they can buy justice. This has to change. I think this Bill has tried to guide us so that this country does not lose money as it lost through Anglo-Leasing scandal.

I support this Bill and just want to urge every Member to do the same because Kenyans are watching. Do not support the payment of Anglo-Leasing. Please stop it and refuse it. Thank you, hon. Speaker.

**Hon. Speaker:** Hon. (Ms.) Gathecha.

**Hon. (Ms.) Gathecha:** Thank you, hon. Speaker. In supporting the Bill today, I am happy to note that just before this Sitting, there was a heated debate in the Budget and Appropriations Committee, where a clarification was done and a fairly good amount of

details on the question of Kshs1.4 billion and the court processes that were followed in paying that amount provided.

I support the Public Finance Management Bill today. It is with great clarity that it is in no way connected to the Anglo-Leasing figures that we have been reading in the newspapers. I have had the pleasure--- All of us have had the pleasure of working with the gentleman who heads the Treasury Department now. He is, indeed, a very respectable and well educated person. He is aware of all the responsibilities in the new Constitution as relates to accountability. He has been able to share, including with those of us who had an occasion to meet him, what the Public Finance Management Bill will enable him to do. He will be able to go out there and source external financing that is very much required for projects related to roads. As I support this Bill, I am aware that there are roads that have been constructed across this country. I am aware that my own county, Nyeri, has roads projects that have stalled. I am completely convinced that the amount of money that we raise from external financing as allowed by this law, if it is passed by this House, will, indeed, enable the country to continue with the roads programme that is very important. As I support the Bill, I am also mindful of the reports of the Finance, Planning and Trade Committee, I have looked at the amendments that they have proposed and I am particularly convinced that, that particular Committee, having looked at the law that we have had, the External Loans Act; and having looked at the proposals that the Cabinet Secretary has brought; having looked at the intentions of this law; having, indeed, availed to this House a fairly well done report on the Public Finance Management (Amendment) Bill and the recommendations of that Committee, although they did intend that many more things be amended in the Public Finance Management Bill, I would urge that we first pass what concerns external financing and, at an opportune time, get a chance to review the Public Finance Management Act.

I have remained much persuaded that the Public Finance Management Act must allow us to have a chance to review the funding that we keep passing in this House every other day. At the time when the Public Finance Management Act will be amended, there will be an opportunity to really look at much more than what we are doing today. But for the purposes of this session, we are only looking at matters that relate to external financing. From the conversations that we had in Budget as relates to Anglo Leasing contracts, I particularly want to appreciate Clause 59 that introduces limitation in terms of when claims can be raised against our country. From now on, if anybody has a claim, we have gone back to the contract law, as it is known. You will have to bring that claim within six years. If the claim is based on the principal amount or interest, you will have to bring that claim within five years. This particular limitation clause will really guard us against some of those long-existing claims that we have had to deal with in some of the matters that we have seen. As I support this Bill, I am completely convinced that the Jubilee agenda and the Jubilee Manifesto will get implemented by the financing that we are going to have.

Just as I end, I want to note that women representatives have also been seeking funding to run some of the programmes in the counties and be able to work like other Members of Parliament. It is from such increased funding that some of the available resources will be availed not only to the women representatives, but also to the whole country. I support this Bill. The House is within its mandate to pass legislation that is

required. If any of this legislation is questioned, there will be--- I support the Public Finance Management Bill. We support external financing and the issuance of the sovereign bond.

Zambia, our neighbour, and Rwanda have recently issued a similar bond. The Rwanda one was over-subscribed. It got a lot more requests than what they had projected to get. I am sure that Kenya, with all the good things that we have to offer the world community, with the beauty of this country, including the beauty of its women, I am sure that this particular sovereign bond will actually attract the financing that we require. I support.

**Hon. Speaker:** Hon. (Dr.) Eseli

**Hon. (Dr.) Simiyu:** Thank you, hon. Speaker for giving me this chance to make my brief contribution to this very important Bill. Hon. Speaker, we are all desirous that the Government be allowed a leeway to borrow on the international market where we, perhaps, hope to get more favourable interest rates, so that we can relieve the local money market. However, as the Bill stands, I fear that it has certain loopholes which have not been completely sealed. If we agree with this Bill that money be disbursed directly to the suppliers from the loan source--- This is a very cheeky way of trying to circumvent the public procurement law. This is because if it is disbursed in a foreign country where it is raised, we might not be able to control the procurement law; that is where problems emanate from.

I do know that there are several people who say that the procurement law is convoluted and difficult to implement. However, in my opinion, an honest person implementing the procurement law has no problem. It is quite straightforward. It only becomes a problem for anybody who wants to mess here and there. I think, in view of that, I will support an amendment to delete Clause 3(7)(c) that money be disbursed directly to the suppliers. That raises a lot of questions. There is also Clause 5(6)(c) where at 6 it says, an external loan or external government security may be executed on behalf of the national government only by (a) the Cabinet Secretary, (b) a delegate appointed by the Cabinet Secretary, in writing or (c) a borrowing agent appointed for the purpose of this Act. But it does not state for the purposes of this Act. Who is appointing that borrowing agent? Who, indeed, is that borrowing agent, considering that, that borrowing agent is the one who is going to sign for that security? It goes on under subclause (7) to say that for the purpose of Subclause (6), it shall be sufficient if the signature of a person who is required to execute an external government security under this section is reproduced on the security. That to me creates an avenue for mischief. This country has a long history of mischief wherever finance is concerned. We have a long history of mischief whenever external borrowing is involved. If, indeed, we are putting in place this law to replace what we forgot to do in the Tenth Parliament, then we have to make it airtight, because this is a chance for us to make things better and not worse. This is because the issue of external borrowing is still afflicted by controversy surrounding the Anglo Leasing affair.

Hon. Speaker, it is important to note that if we leave paragraphs (b) and (c) of Subclause (6) as they stand then scandals similar to Goldenberg and Anglo Leasing will definitely recur. We need to clean up that and I will be supporting amendments intended to clean up this area.

With those few remarks, I support the Bill. Thank you, hon. Speaker.

*(Hon. Wangamati crossed the Floor without bowing at the Bar)*

**Hon. Speaker:** Hon. Wangamati, it is never the practice! You cannot walk from here and cross to--- For avoidance of doubt, the hon. Leader of Minority---. You cannot do that. You have just walked from here to there. You must go to the---

*(Hon. Wangamati went to the Bar and bowed to the Chair)*

**Hon. Kang'ata:** Thank you, hon. Speaker. I rise to support this Bill. I am supporting it because Kenya is about to rebase its calculation for GDP. When that happens, the effect will be that Kenya will be in a better position to borrow externally.

Kenya never had a situation where it could borrow money from private entities and banks. After the rebasing of the GDP, Kenya is set to become a middle-income country. In a scenario where we are a middle-income country the effect will be very positive in terms of attracting investment and credit worthiness of the country as a whole. We shall be fourth largest economy in this Africa. That is after Nigeria, which is said to be No.1, South Africa and Egypt. In my own opinion, this is progress taking into account that we have other countries in Africa which are rich in oil. For instance, we have Angola and Libya.

When we are a middle-income country and then you do not have capability to borrow externally by issuing bonds in the open market, then it does not make sense.

The Public Finance Management (Amendment) Bill, 2014, once enacted will enable Kenya to borrow from the open market. As a result, I would imagine Kenya will be able to increase its expenditure on infrastructure, and attain goals which will enable it comply with the Millennium Development Goals (MDGs), which are set to be appraised again in 2015 or thereabout.

As a country, we are planning to achieve proper development by 2030; we need such a law that enables this country to borrow in the open market externally.

Hon. Speaker, I have seen interventions by colleagues on the other side, and with due respect, I think their interventions were misplaced. One of the issues raised relates to the ability of the Government to issue a cheque directly in the international fora without reverting to the Central Bank of Kenya (CBK), or the National Treasury here in Kenya out of a dollar account or international accounts which will be generated upon enactment of this Bill. In my opinion, that is something that is positive.

It is positive to the extent that it will lower what we call transactional costs. The idea of the country keeping on reverting to a central entity to make international payments is outdated.

In a globalised world, or in a world where haste is very crucial, we need to come up with laws which enable the country to make international settlements easily, efficiently and that are aligned to the modern day international trade practices.

I to support and thank you.

**Hon. Aden:** Thank you, hon. Speaker, for giving me the opportunity to contribute to this very important matter. I rise to support this amendment Bill because it will give our country, for the first time, the opportunity to go to the international market--- Indeed, instead of putting pressure on the scarcely available cash locally, this country will now use its sovereignty and be able to access the more readily available funds at a cheaper price than it pays in the local market.

Indeed, this will have a lot of positive effects on our economy for the basic reason that the law of demand and supply states. The only reason interest rates are very high in this country right now is because there is a lot of demand for the little funds or cash available in the market. This is especially the case when the Government comes to the local market. It has the effect of raising interest rates to very high levels.

In developed countries, which have the ability to borrow from the international market, interest rates are below the 10 per cent rate. It is very likely that this endeavour to change, or bring into effect, this law to allow our country to borrow from the international market will have a similar effect of bringing interest rates down. That will mean that local businesses will now access funds in order to expand their business or get cash or capital that they need to start businesses. More importantly, for the young generation of Kenyans whom we have been reading a lot recently about their inability to afford a home or a house because of high interest rates on mortgages will now enjoy the low interest rates. Many Kenyans will be able to achieve their dreams of making that a reality.

Hon. Speaker, the principle of borrowing is just like that of a human being. Integrity is very important. You want to lend to somebody, and you can only do so when you are absolutely sure that the person you lend to has credibility, integrity and has honoured other commitments. This will enable you to trust that person.

Time and again, the few speakers who have spoken before me have raised a number of issues. I think some were misguided because the issue of Anglo Leasing does not come to play in this.

Hon. Speaker, I must say that when we enter the international market, our integrity will be on test. This means that Kenya will have to be prepared to honour international obligations and, indeed, meet its international commitments. This will include any rulings of any court of justice out there that might have made rulings that oblige Kenya to honour commitments. Indeed, this country will have to oblige.

Hon. Speaker, those who stood up here to speak to this matter and support this Bill very much, as indeed should have been done, should also be cognizant of the fact that as a country we need to think about our integrity. The person we are going to borrow money from is going to think about us. For that reason we must be prepared to meet all our international obligations, so that we are a nation that will not walk away from international laws; we will have to honour all international laws.

I thank you, hon. Speaker and I support this Bill.

**Hon. Lati:** Thank you very much, hon. Speaker. I want to say upfront that I support this amendment because it will allow us get proceeds from anything that we float abroad. I want to say that this is in anticipation of what we did in our Budget. I hope hon. Members will remember that we did pass a Budget that incorporates some proceeds from sovereign bonds that we are supposed to float abroad. It is not only these sovereign

bonds--- It will be actually a Euro bond. This means it will be priced in currencies other than the Kenya shilling.

We are very lucky as a country because this is the best time in terms of macro-economic environment to float a sovereign bond. For those of us who understand bond pricing, there is an inverse relationship between bond prices and interest rates. If you look at Europe today and the USA, they are partially in a liquidity trap, meaning, therefore, that interest rates and inflation are almost near zero. There is no better time to float a bond than when you have a situation where a zone or an area is in a liquidity trap. But we have to be careful; we need to move with a lot of speed because if you watch anything economics around the world, it is the European Central Bank which is already talking about quantity leasing, meaning they want to start doing something to raise interest rates.

Hon. Speaker, why do we want to float a bond in the first place? First of all, we need the proceeds from this bond. More importantly, if we were to float a bond today outside this country, there would be obvious things that our country or anybody would tell you about. In our country today the market is crowded, because the Government is competing with foreign and local investors to borrow from local banks. Therefore, immediately we get some money and the Government moves out of the domestic market, demand for loans will go down; the interest rates will also go down. We also know that it is a fact that our Government today owns about Kshs52 billion of syndicated loans across different banks; that is putting a lot of pressure on the borrowing across our country.

Hon. Speaker, if we were to get the proceeds and pay loans, the Government would save a lot of money. That is what we have been talking about for so long. We have a high debt ratio; this debt is very expensive. An hon. Member stood here and said that if we were to float a bond in Europe today, we would not gain anything as a Government in terms of reduced interest rates.

Hon. Speaker, in the USA there is a chunk bonds - forget about the sovereign bonds; they are trading at about 6 per cent. Therefore, assuming that our country had part of the chunk, we would still enjoy 6 per cent interest rates. I think that would be a big benefit.

The other benefit is the reputation that we get. I think we are getting into these markets very late. The first bonds were traded in 1600 and the first country to trade in them was Britain to finance the war against France. We need to move our country. It is unfortunate that at this time, we are going to be in the bond market outside this country; we need to move very fast and be represented there.

Hon. Speaker, I also want to speak on Anglo Leasing. These bonds and Anglo Leasing are not mutually exclusive. If you know how bonds are priced, you cannot expect to sell and get a good price as a country, and get a lot of proceeds that would support our Budget without clearing the small debts that we have. Default risk is one of the things that are priced in the bond market. Therefore, we have to pay this thing so that our bond can fetch a high premium. Then we can have a lot of money to do things like the Constituencies Development Fund (CDF) and everything else we are talking about.

Therefore, I want to go on record saying that as country there are just a lot of benefits that we get. In fact, if you look at the saving in interest rates alone--- If interest rates were to be reduced by a mere 2 per cent, our country would save about Kshs20 billion. What is Anglo-Leasing? It is worth Kshs1.4 billion. It can never put Kenyans into



a corner. They are saying that because it is morally wrong to pay Anglo-Leasing, we will not pay the Kshs1.4 billion, and so Kenyans cannot benefit from US\$20 billion. I think it is foolhardy and that is something that I will never support.

The other thing is about the famous saying in English that: “You cannot have your cake and eat it at the same time.” If you want this money to finance our Budget, and if we pass the Budget in this House incorporating proceeds from bonds, we cannot say that we cannot pay Anglo-Leasing money; that will affect our bond pricing. We also want to avoid eating our cake and having it at the same time.

I think I have made my point, I want to go on record saying, please pay Anglo Leasing money; it is the best thing for our country. It will save on interest rates. We will get a lot of money to finance our Budget. I support the Government, the President and this is a bi-partisan issue.

Hon. Abdikadir Aden is in the opposition and these other hon. Members. I am sorry, there is nobody in the opposition; these are colleagues and we know what we are doing. They understand this market; hon. Ng’ongo and Abdikadir are among them. Those who understand economics, this is the best thing to happen in our country.

Thank you.

**Hon. (Prof.) Nyikal:** Thank you, hon. Speaker, for giving me this opportunity to support this amendment. Even those of us who do not understand economics very well can understand the simple fact that it is important to avoid Government borrowing a lot within the local market. This is because competition makes local loans extremely expensive and pushes out the local people who would like to invest.

That is simple enough. To that extent, I do support this Bill. It is also clear even to people who are not economically well educated. Let me say that, if this country is to grow fast, we will need to get a lot of money to fund major projects. This is the level of funding for which you cannot raise money locally. Once again, we need to prepare our laws and pass a law that makes it possible for us to raise money from outside; this is extremely important. We are aware that interest rates in this county are actually prohibitive.

In other countries, when the interest rates get to about 6 per cent, it becomes a national crisis while in this country we are talking about interest rates of 20 or 25 per cent. Sometimes it beats sense; I am not a big business person, but what business would you do that will give you profit to pay an interest rate of 25 per cent and still stay in the market? In order to bring the interest rates down, this is the way to go.

Hon. Speaker, the main reason why I have made a comment is that when we go into external borrowing, we really must cap corruption. We must go for transparency. If the way we handle our national issues is not transparent and is opaque, even if we go into the international market, I do not think people will buy our bonds.

To give you an example of what is currently engaging us; Anglo Leasing is exercising my simple mind. I do not think it is just paying the debts that we have now. It is the whole area of being transparent. It is not just a single one. When we pay this, what are the others and what is the history? How are we going to handle things nationally? The main debate on Anglo Leasing now is simply that nobody is saying who was involved. The country is supposed to pay yet we do not know who did what. I do not

think that even if we pay, that lack of transparency will actually help to get our bonds sold in the external market really well.

Hon. Speaker, I know it is important to say that we pay Kshs1.4 billion and we protect, or gain, Kshs20 billion. But we must remember that corruption is expensive. If we do something that is going to protect people who are corrupt, integrity will not be achieved. In my mind, if we were to lose that Kshs20 billion so that we get to the root of corruption in this country, so be it and it is worth it. I think that is the direction to go. We must be totally transparent otherwise this law will not help us as much as we would like it to help us. Corruption is our number one enemy even outside this country. Nobody will buy from you if they know you are corrupt. Do not just pay one debt and say that you are now clean. You are not clean. It is a history.

Also, I realize that the section that allows---

**Hon. Limo:** On a point of order, hon. Speaker. Would I be in order to ask that the Mover be called upon to reply? It seems that there is a lot of repetition and we have a lot of business in front of us.

**Hon. Speaker:** Well, I will allow hon. Nyikal to finish making his contribution and then put the Question.

**Hon. (Prof.) Nyikal:** Hon. Speaker, repetition is the essence of perfection. The provision that provides that we can pay directly to external suppliers is risky. I will support the amendment that is intended to change that.

With that, I beg to support.

**Hon. Speaker:** Repetition is not bad, but when it is tedious, it is.

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

**Hon. A.B. Duale:** Hon. Speaker, I want to take very short time, and I said it when I was moving.

First, I want to thank the Members for their valuable contribution. Interest rates are a very serious issue in our country. Kenyan businessmen are competing with companies from China, Turkey, Malaysia and Europe who have borrowed money at 3 or 4 per cent when our companies are borrowing at 18, 19 and 20 per cent. If we allow this law, the issue sovereign bond and the Government gets Kshs130 billion, I can tell you that, first, the Government will stop borrowing from the domestic market. Secondly, the Kenya private sector will get enough resources and negotiate with the banks. Today, the Government has borrowed from the domestic market over Kshs52 billion at high interest rates. The moment the Government does not borrow from the domestic market, I can tell you the interest rates will come down.

Once the interest rates come down, development in our country will be facilitated. I see this Bill from that point of view. Bring in the Kshs130 billion for our people, and indirectly that will affect the interest rates of this country. If we do not do that, this House will be under an obligation to deal with the animal called "high interest rates". That is why our country will not develop. If interest rates are at 7 per cent, most of our young middle class, who earn Kshs50,000, will get mortgages. We are working for banks. Banks are posting profits of billions every year for the first time since Independence.

With those few remarks, I beg to move.

*(Question put and agreed to)*

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

**Hon. Speaker:** Hon. Members, I had indicated earlier that I was going to vary the sequence of Orders on the Order Paper and now go to Order. Nos.5 and 6; I will allow hon. Adan Keynan to proceed with business under Order Nos.5 and No.6 respectively.

### PAPERS LAID

**Hon. Keynan:** Hon. Speaker, I beg to lay the following Papers on the Table of the House today Tuesday, 29<sup>th</sup> April, 2014:-

The Estimates of Recurrent and Development Expenditure of the Parliamentary Service Commission for the year ending 30<sup>th</sup> June, 2015 and projections for 2015, 2016 and 2017.

The Public Investments Committee Report on the recapitalization, privatization and restructuring of the balance sheet of Telkom Kenya.

The Public Investments Committee Report on the restructuring of the Kenya Petroleum Refineries Limited.

### NOTICES OF MOTIONS

**Hon. Keynan:** Hon. Speaker, I beg to give notices of the following Motions:-

#### ADOPTION OF PIC REPORT ON KENYA PETROLEUM REFINERIES LTD

THAT, this House adopts the Report of the Public Investments Committee on the Special Report on the Restructuring of the Kenya Petroleum Refineries Limited.

#### ADOPTION OF PIC REPORT ON TELKOM KENYA

THAT, this House adopts the Report of the Public Investments Committee on the Special Report on the Recapitalization, Privatization and the Restructuring of the Balance Sheet of Telkom Kenya.

**Hon. Speaker:** Then we move back to Order No.11

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

## IN THE COMMITTEE

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

## THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Members this is the Committee of the whole House, convened to consider the Public Finance Management (Amendment) Bill (National Assembly Bill No.12 of 2014).

Hon. Members, we begin with Clause 3; as you have seen on the Supplementary Order Paper which is before you, there are amendments by Members appearing on page 141, going downwards. The first one is by the hon. Member for Suba, proposing to amend Clause 3. Let us consider Clause 3.

Hon. Mbadi, you have proposals but at the same time, there are other proposals by hon. Langat, I think as the Chair of the relevant Committee. There are also proposals on 3(7)(c), where only you and hon. Langat are conjoined. According to the Standing Orders, yours is seeking a deletion, meaning, therefore, that if yours is carried, then hon. Langat's amendments will have to be dropped. That being the case, let us hear you hon. Mbadi, as the Mover, proceed to the Dispatch Box.

*Clause 3*

**Hon. Ng'ongo:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 3 of the Bill be amended in the proposed new subsection (7) by deleting paragraph (c).

Hon. Temporary Deputy Chairman. I propose that Clause 3 be amended as on the Order Paper. Mine is very simple and actually if we delete this, then the Committee's amendment dies. The reason is simple, if you listened to arguments by hon. Nyamweya the whole afternoon, they were only based on Clause 3(7)(c); it says, that once we pass this Bill, then the proceeds that will be received by issuance of sovereign bonds can be used out there to pay for debts of the country, without the money first coming to the Consolidated Fund or to a public fund set up by an act of Parliament.

I find this to be contradictory to Article 206 of the Constitution. I do not think this is a major thing. Actually, both sides of the House should just support this amendment; really, we should not allow the Government to be paying contractors or suppliers outside there without money or the loan coming to our Consolidated Fund or a public fund. I do not know whether Members were listening, but actually, this clause 3(7)(c) is what hon. Nyamweya was talking about and trying to make the whole Bill appear as if it is what we were intending to do.

So, I plead with my colleagues that we delete this particular provision in the proposed amendment, so that we do not give room to the Government, or any mischievous officer of Government, to pay suppliers outside the country with proceeds of loans without the loans first coming to the Consolidated Fund.

Thank you, hon. Temporary Deputy Chairman.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Alright, thank you very much. Let me just have one or two interventions, if there are any, one of which is from the Chair of the Committee.

**Hon. Langat:** Thank you very much hon. Temporary Deputy Chairman. First and foremost, I must say that on Clause 3(7)(c) the Committee noted it had an issue. The solution is not to delete it, the way hon. Mbadi is suggesting. We have reached a compromised position because loans by the Government come in several ways; some of them have to be paid directly. A classic example was when the Government was procuring the Biometric Voter Registration (BVR) machines; it was a government to government arrangement, where the government of Canada agreed to fund that transaction; they paid the supplier and we received the kits. Those are some of the cases where government to government issues arise. Therefore, we need to provide for that situation where the Government engages with another government on loans.

When you look at my amendment, although I do not want to discuss it now, I would really want to propose that hon. Mbadi, who is an accountant like myself and understands what I am saying--- He is just trying not to. I want to beg him to withdraw his amendment and support mine. This is because of the many types of loans. There are those which require direct payment, and we have given in my proposal a safeguard, so that if there are any issues, then it will be government to government and not government to a private sector entity. So, I request the House to oppose the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Alright; we have heard debates proposing and opposing.

**Hon. Members:** The nays have it.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Resume your seats and stop excitement, because we do not want a stalemate. Let me repeat this Question and see how it goes.

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

Mover, hon. Langat.

**Hon. Langat:** I beg to move:-

THAT, Clause 3 of the Bill be amended in proposed new subsection (7)-

- (a) by inserting the words “is a government to government loan and” immediately after the word “loan” appearing in paragraph (c).

As I said earlier on, if we allow this direct payment of loans, there could be issues of accountability; my Committee discussed at length how to cure this apparent defect. When we engaged the Treasury and other stakeholders, we agreed that in many of the cases where government to government loans arise, they usually pay the contractors as they supply the services. We said, let us restrict these direct payments only to government to government loans. If there is another arrangement, maybe between the Government and the private sector, then all the money must go to the Consolidated Fund

as is provided under paragraph (a) of the amendment. I want the House to pass this amendment, so that we take care of both the fears of hon. Mbadi and the Government whenever a government to government situation arises. We may want to acquire the BVR machines in future; this is just a provision that gives Government a leeway but, of course, we are putting safeguards to ensure that it will not be just any loan that will be paid directly to a supplier. So, I want to propose to the House that they support my Committee's position.

Hon. Temporary Deputy Chairman, in (b) if you look at the---

**The Temporary Deputy Chairman** (Hon. Kajwang'): It is too long. Hon. Langat, we do not have too much time. Once you think that you have understood, just leave it.

**Hon. Langat:** Okay. In part (b) we are taking safeguards again. We are saying it is only those expenses that have been incurred to procure the loan and these are pre-negotiated expenses only.

*(Question of the amendment proposed)*

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairman, whereas hon. Mbadi's amendment has gone, I do not think the amendment that is proposed by the Committee cures the danger that we are afraid of. In my mind, I think we should add more to the Committee's amendment, so that we give approval to that payment by a specific officer, for example the Principal Secretary. This is because as it is, any officer in the Government can actually make that payment and say that he is supported by the law. I would like that confirmed to me.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Okay. First of all, let me correct myself on the HANSARD; we are considering Clause 3(7)(c). Earlier on we understood that since hon. Mbadi's amendment did not sail through then we are back on the amendment of hon. Langat. Hon. Members, we are considering hon. Langat's amendment to Clause 3(7)(c) which we have proposed.

**Hon. Ng'ongo:** Hon. Temporary Deputy Chairman, even though my amendment was lost I would be more comfortable leaving that clause as it is and we amend it in future, rather than pretending to have done something about it. Why should we allow this government to government payment to be effected directly out there? Even when we bought the BVR kits - I had the privilege of serving in the Government at that time - actually we had to make actual payment for them. Even though we were paying for things which did not work, we actually made payment. I remember at one point the Treasury had not even released the funds for the procurement of the BVR kits and time was running out. Actually, we had to summon the Treasury and all the parties concerned to have them pay. So, the Government can pay any contractor or supplier who is out of the country and in a matter of hours.

So, hon. Temporary Deputy Chairman, in my view this is not an excuse; for me I oppose this amendment because it is not helping anybody. It is just creating a loophole. Let us agree that we leave paragraph (c) intact, so that we amend it after sometime, something like six months.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Alright. You are in opposition to it. Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I want to tell the Chair that I agree with hon. Mbadi that we leave paragraph (c) as it is. At least he has confirmed that he was part and parcel of the acquisition of the BVR kits; I am sure now he is on the HANSARD.

*(Laughter)*

Hon. Temporary Deputy Chairman, if you allow me paragraph (c) says: “Disbursed directly to suppliers where the loan is raised for the purpose of financing goods and services provided for by a supplier outside Kenya.”

I really want to beg the Chair that we leave paragraph (c) as it was put by the originator of the Bill, which is the National Treasury. However, it is a good day since I heard him on the HANSARD that he played a part in the acquisition of the BVR kits. In fact, he paid for them.

**Hon. Ng’ongo:** On a point of order, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): That is a comment with a light touch, which the Member of Suba should take with a pinch of salt. Do I have somebody with a different opinion? Yes, hon. Dr. Eseli.

**Hon. (Dr.) Simiyu:** Thank you, hon. Temporary Deputy Chairman. As I said when I was contributing to this Bill, this clause is specifically meant to circumvent the Public Procurement Act, because some people have gone on record saying that the Public Procurement Act is convoluted and difficult to implement. What I know is that if somebody is using that Public Procurement Act genuinely and properly, it is not difficult to implement. Even if this clause is left without the amendments of the Chair of the Committee, it still exists purely to circumvent the Public Procurement Act. This is because there is no provision here then for the Public Procurement Act to come into play. This particular clause will only allow certain foreign interests to circumvent our Public Procurement Act. To ameliorate the problem, we can temporarily accept the amendments of the Chair of the Departmental Committee on Finance, Planning and Trade, though they are grossly inadequate. We will have to amend it later.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Is there another contrary view? I will allow the last one on this. Hon. Nyikal, you are the last one on this.

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairman, I had earlier made a suggestion as I felt like the others, that the amendment is inadequate. I propose that we should actually tie this to a specific senior officer in Government. I said the Principal Secretary and I was told that this is provided for in the main Act. If I can be assured that actually there is the provision that no other officer within Treasury will make this payment, then it will be good. I would like that to be clearly stated.

**Hon. Langat:** On a point of information, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Do you accept the information?

**Hon. (Prof.) Nyikal:** Yes, if it corrects this.

**Hon. Langat:** Hon. Temporary Deputy Chairman, I want to inform my very good friend, hon. Nyikal, that he can look at Clause 5 which amends Section 53 of the main Act; down there it says: “An external loan or external government security may be executed on behalf of the Government only by the Cabinet Secretary, a delegate appointed by the Cabinet Secretary, in writing; or a borrowing agent appointed for the purposes of this Act.” So, it is clear that nobody else can borrow, except the Cabinet Secretary or somebody appointed by him in writing, or a borrowing agent, as provided for under Subclause (6)(c) – in respect of which the Committee had a problem. Therefore, as a Committee, we have an amendment to make it clear as to how the agent shall be appointed.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Alright, you have explained yourself. I will now put the Question.

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

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Langat, now that we have understood where you are going, take a shorter time explaining part (b) of the amendment.

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

THAT, Clause 3 of the Bill be amended in the proposed new subsection (7)-

(b) by deleting the words “expenses associated” and substituting therefor the words “pre-negotiated expenses initiated solely and exhaustively”.

The Committee viewed this particular provision as an open-ended kind of expenses. We wanted to lock it up; we settled on the view that the expenses have to be pre-negotiated for that purpose only – not on any other expense that can be netted from the proceeds of the loan. Some Members asked: “Suppose we get a loan of Kshs100 billion and use 30 per cent of it as expenses?” It would be very funny.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, hon. Eseli.

**Hon. (Dr.) Simiyu:** Hon. Temporary Deputy Chairman, the Chair of the Departmental Committee on Finance, Planning and Trade talked of pre-negotiated expenses and felt that the amendment would cure any possible mischief. Pre-negotiated expenses can still come to 30 per cent of Kshs30 billion. I do not know whether the amendment is curing anything. If we really want to cure anything, we must propose amendments that really cure it rather than come up with cosmetic amendments. If the intention of this Bill is to circumvent certain provisions in the Public Procurement and Disposal Act, pre-negotiation is really not going to be a cure for any mischief.

Thank you.

*(Question of the amendment proposed)*



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

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

*(Clause 3 as amended agreed to)*

*Clause 4*

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

THAT, Clause 4 of the Bill be amended-

(a) by deleting subparagraph (ii) appearing in paragraph (a);

(b) by deleting paragraph (b).

Hon. Temporary Deputy Chairman, if the amendment to the original Bill goes through, the effect of it will be that where there is an amendment of the agreement of the loan, it will exceed the limits set by Parliament. The original amendment was saying that parliamentary approval is not necessary. It is the cardinal rule that Parliament must have the overall say over overall indebtedness of the country.

Therefore, we cannot waive the provision that Parliament should approve the limits of the loans to be taken by this country. We really want to make sure that Parliament has an overall role to ensure that it fixes the limit to borrowing by the Government. We are removing those amendments to ensure that they do not reduce the powers of Parliament. I request the House to support my amendment in order to safeguard the oversight role of the House.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, we are splitting this amendment because there are two hon. Members proposing amendments to the same Clause. So, we are considering part (a) of the amendment for the time being, which is what the Departmental Committee Chairman has spoken to. So, the Question that I have proposed is limited to part (a) of the amendment to Clause 4.

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

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, hon. Mbadi!

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

**Hon. Ng’ongo:** No, hon. Langat has only deleted part (a) of the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, we have dealt with part (a) of the amendment. We are now proceeding to part (b) of the amendment. Both of you are seeking to delete paragraph (b). I order that hon. Mbadi will take precedence over the other hon. Member.

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 4 of the Bill be amended by deleting paragraph (b).

Hon. Temporary Deputy Chairman, by saying that the provisions of this section shall not apply to external loans or external Government securities, in my view, it is not a very good provision because if you look at the parent Act, Section 53 provides that the Registrar must publish and publicise the loans that the Government owes. So, removing Government external loans and external securities from the provisions of this section means that the Government can borrow money, and the people of Kenya will not even know how much they have borrowed, yet the initial intention was to ensure that the Government discloses all the loans that it owes. Now that we have a devolved system of Government, all the counties must know how much money the Government is borrowing from outside. That provision was not necessary in this law.

Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Oner, there is something you are not comfortable with. Can the Member for Rangwe get access to the microphone?

**Hon. Ogalo:** Thank you, hon. Temporary Deputy Chairman.

Paragraph (b) necessitates the inclusion of new Clause 53A. Deleting it will mean that there is no need of introducing new Clause 53A. Look at the parent Act, all the subsections of Section 53 are enumerated in the proposed new Section 53A. The purpose of exempting external loans and external guarantees is to ensure that they are treated afresh in the new law. My interest is to actually put all the external loans on the same stringent rules and conditions provided in the parent Act under Section 53. That is the understanding that I wanted to get clear.

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

*(Clause 4 as amended agreed to)*

*Clause 5*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Ng’ongo, you have an amendment to paragraph 2. Is that correct?

**Hon. Ng’ongo:** Which amendment?

**Hon. Members:** To Clause 5!

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, my proposed amendment was to subject this to regulation so that we just do not leave it to the Cabinet Secretary. But I think after consultation with the Chairman of the Committee we agreed that we need to look at this amendment more comprehensively in future, because just having regulations may not add much value. We need to define under what parameters these regulations need to come. So, I withdraw this amendment in favour of hon. Langat’s amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay; I will propose the Question of the amendment by the Member for Suba.

**Hon. Members:** But he has withdrawn it!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can you go on the HANSARD? I want to hear you unequivocally? There is a word called “unequivocally”. Can I hear you unequivocally on the HANSARD?

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, I said that my proposed amendment was to subject the power that we are giving the Cabinet Secretary to regulations. But after consulting with the Chairman of the Committee, I felt that we need to be very clear on how these regulations need to come. I am withdrawing my amendment, so that in future we look at how the regulations should come. That is what I said.

**The Temporary Deputy Chairman** (Hon. Kajwang’): That is very clear; so that amendment is dropped.

*(Proposed amendment by hon. Ng’ongo withdrawn)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Can hon. Langat have the microphone?

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

THAT Clause 5 of the Bill be amended in the proposed new section 53A by deleting the words “for the purposes of this Act” appearing at the end of paragraph (c) of the proposed subsection (6) and substituting therefor the words “in accordance with section 50(9) of this Act.”

What we are doing here is that 5(6) gives authority to the Cabinet Secretary to borrow through a delegated agent appointed in writing by him or an agent appointed for the purposes of this Act. Under (c), the Committee felt that it was not very clear how this appointment of the borrowing agent will be done. Therefore, we said that we must tie it to the main Act which provides for appointment of those agents under 50(9); we want to subject these appointments to the normal procurement process.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairman** (Hon. Kajwang’): Instead of a point of order, just contribute.

**Hon. Ogalo:** Hon. Temporary Deputy Chairman, I am a little bothered. You saw me pacing back and forth to hon. Ngong’o. His amendment subjected external loans and guarantees to regulations passed by Parliament. That is not being discussed. In the face of that, I want to get clarification from you. As we debate 53(A), are external securities by the national Government and external loans covered by the principal Act, section 53?

**The Temporary Deputy Chairman** (Hon. Kajwang’): That is a point of order, not for the Chair but for the Chairman of the relevant Committee. Can you answer that question?

**Hon. Langat:** Hon. Temporary Deputy Chairman, I did not get it.

**Hon. Ogalo:** Hon. Temporary Deputy Chairman, as we debate the new section 53(A), will section 53 of the principal Act govern external loans and securities by the national Government?

**Hon. Langat:** Hon. Temporary Deputy Chairman, I thought we finished with that issue. Maybe he should have asked when we were at that stage.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Please answer the question!

**Hon. Langat:** Hon. Temporary Deputy Chairman, I want to tell him that if he looks at Section 53, it deals with the national internal borrowing. So even if we pass the amendment, it will still be superfluous because it says that this section shall not affect international securities. Even if we pass it, Section 53 deals with internal borrowing by the Government.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Do you want to have further clarifications?

**Hon. Ogalo:** Yes, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): It is okay to pursue it but you know we all have access to legislation; instead of asking the Chair, why do you not just read that section and then we can respond?

**Hon. Ogalo:** Hon. Temporary Deputy Chairman, the principal Act talks of the issuance of securities by the national Government. It does not specify whether they are external, internal or domestic. It only talks of issuance of securities by the national Government. Having passed the amendment by the Chair deleting part (b) of the amendment to Clause 4, it means that section 53 governs even external guarantees and loans. That is the clarification I was seeking. What that means is that whatever we are discussing now under 53(A) is redundant. There is no further need to discuss it because as we speak, what we have passed means section 53 of the Public Finance Management (Amendment) Act also covers external loans and guarantees. So this is irrelevant law.

**Hon. Langat:** Hon. Temporary Deputy Chairman, let us take note that this section 53(A) is new in the Bill.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Listen, Hon. Langat; the point that he is pursuing is that it is a redundancy to pass 53(A) in the face of what exists in the principal Act as Section 53. It is just a question which has been put and he is entitled to a response. If you are unable to respond, please pass it to someone who can respond positively.

**Hon. Langat:** Hon. Temporary Deputy Chairman, 53(A) cannot be redundant because it provides many things; Section 53A(1), (2), (3) and (4) has so many things. The hon. Member can read what it provides for in the Bill.

**Hon. A. B Duale:** Chair, I can help both the Member for Rangwe and the Chair. If you read Clause 5, it says “The principal Act is amended by inserting the following new section immediately after Section 53 -”. Section 53 exists. We have another 53(A) with new provisions. The very able Member for Rangwe, you need to read the 53 which is the principal Act and the 53(A) which is a new insertion. And hon. Temporary Deputy Chair before I finish---

**The Temporary Deputy Chairman** (hon. Kajwang’): I do not want to subject this to a debate.

**Hon. A.B. Duale:** We are not here to teach, you should go to the Committee.

**Hon. Ogalo:** You are not teaching me. Leader of Majority Party is saying---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Leader of Majority Party, that was not on the HANSARD was it? That you are teaching an honourable Member of this House?

**Hon. A. B. Duale:** No, I only said we are at the Third Reading. I am very sorry, I do not want to repeat anything, he is my good friend. I said we should not engage more.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I do not want us to engage more than necessary. We do not want to reduce this into an engagement between two Members.

**Hon. Ogalo:** Kindly allow me to read Section 53 in the principal Act. The Chairman of Finance, Planning and Trade Committee is not reading Section 53 of the Public Finance Management Act. Comparing with the new 53(A)---

**The Temporary Deputy Chairman** (Hon. Kajwang’): How does it read for those of us who have not seen the Statute?

**Hon. Ogalo:** Let me read Clause 53(I) “The national government may issue national government securities, whether for money that it has borrowed or for any other purpose---” It is exactly as 53(A)(1). Clause 53(2), “The Cabinet Secretary may issue national government securities on behalf of national government for money borrowed by the national government in accordance with criteria prescribed by regulations approved by Parliament for the purpose of this subsection”. That is the only place national security---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Please do not engage with others. I do not know that they exist until I say so.

**Hon. Ogalo:** Clause 53(3) “Any national government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set out by the National Assembly under Section 50(2).” All those are treated in 53(A), meaning what we were doing was taking away external loans and external guarantees from Section 53 and treating them afresh in the new Section 53(A).

The Temporary Deputy Chair, if we pass Section 53(A), we are going to subject external loans and guarantees to two sections of the law.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Alright, the point is made.

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

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

*(Clause 5 as amended agreed to)*

*Clause 6*

**Hon. Ng’ongo:** Hon. Temporary Deputy Chair, I beg to move:-

THAT, Clause 6 of the Bill be deleted.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Ng’ongo, approach the Chamber with honesty. Are you deleting? What other surprise can there be if you are deleting? That is because I can see you are sensing some suspicion from the Leader of Majority Party, just because he is uncomfortable with your amendment. Shall I put the Question now?

**Hon. Ng’ongo:** Chair I want to---

**The Temporary Deputy Chairman** (Hon. Kajwang’): We want you to do what you think your conscience is telling you. So, can you relax and apply your mind?

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, first of all, we have to admit that, really, a lot of discussion went into this amendment. We have shared with the Chair and I do not want to appear dishonest.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You are never dishonest.

**Hon. Ng’ongo:** I think I am agreeable with the Chair that I can live with this Clause. But then I withdraw the amendment that I had proposed.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Sorry! Meaning that you are withdrawing?

**Hon. Ng’ongo:** Yes.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Then I did not understand you to be withdrawing. Then, can you go on the HANSARD and express yourself? I thought you were deleting until you now say that you are withdrawing.

**Hon. Ng’ongo:** Initially, I had moved the amendment.

**The Temporary Deputy Chairman** (Hon. Kajwang’): So, can you, please, go into the HANSARD very unequivocally, so that we can capture you?

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, you are harassing me!

**The Temporary Deputy Chairman** (Hon. Kajwang’): And I am sorry I am not!

**Hon. Ng’ongo:** What I am saying is that we had consultations on this amendment with the Chair of the Committee on Finance, Planning and Trade. After consultations, I agreed that I could leave this Clause to be in the Bill. Therefore, in that case, I withdraw the proposed amendment. That is what I am saying.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you. Okay. That amendment has been dropped.

*(The proposed amendment by hon. Ng’ongo withdrawn)*

*(Clause 6 agreed to)*

Next Clause.

*New Clause 2A*

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

THAT, the Bill be amended by inserting the following new clauses immediately after Clause 2.

2A. Section of the principal Act 12 is amended by deleting the words “annual Division of Revenue Bill and the County Allocation of Revenue Bill” and substituting therefor the words “legislative proposals on annual Division of Revenue and the County Allocation of Revenue”

2C. Section 40 of the Principal Act is amended-

(a) In Sub-section (3) by deleting the words “the Finance Bill” and substituting therefor the words “a legislative proposal”;

(b) In Sub-section (4) by deleting the words “the Finance Bill by the Cabinet Secretary, the relevant committee of the National Assembly shall introduce the Bill in the National Assembly together with the report of the committee on the Bill” and substitute therefor the words “the legislative proposal of the Cabinet Secretary, the relevant committee of the National Assembly shall introduce a Finance Bill in the National Assembly.”

Hon. Temporary Deputy Chairman, if you look at the main Act, there was confusion. When the Cabinet Secretary comes and brings the Division of Revenue and the County Allocation of Revenue proposals, they are not Bill. This is just a change of names. They do not bring the Bills. They bring the legislative proposals which then become Bills. They are then published and presented before this House, for example, by the Leader of Majority Party, the Chair of the Committee or any other Member for that matter. This is just to correct the misnaming, that what the Cabinet Secretary brings is not a Division of Revenue Bill; it is a legislative proposal about the division of revenue which then becomes a Bill once it is published by a Member of Parliament. It could be Leader of Majority Party, Chair of a Committee or any other Member for that matter.

Actually, 2C is under 2A. But it is broken down into--- It is just about naming. If you look at 2C, we are simply saying when the Cabinet Secretary brings what we have been calling Finance Bill, it is not a Bill at that stage until it is published. So, it is just to say, when the Cabinet Secretary brings the Finance Bill, it is a legislative proposal which then becomes a Bill when it is published in Parliament. So, it is just about the names and hon. Duale knows it better.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Temporary Deputy Chairman** (Hon. Kajwang’): Alright, well explained. Thank you very much. Hold on, hon. Member for Suba?

**Hon. Ng’ongo:** Hon. Chair---

**The Temporary Deputy Chairman** (Hon. Kajwang’): I thought the understanding I got is that it is a misnomer to talk about the Bill. Instead, we should be talking about the legislative proposals.

**Hon. Ng'ongo:** But I think there is nothing that stops the Cabinet Secretary from bringing a Bill that has been published. Why can he not publish the Bill? That is because the Cabinet Secretary can do it. What does the Constitution say? I fear and think that the Constitution talks about the Finance Bill and not legislative proposals. Therefore, to me, this amendment, unless I am convinced that Article 12 does not talk about a Bill, it should not be a Bill.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Well, take the Constitution. It is here with me. Pick it up and look at it.

**Hon. Ng'ongo:** Hon. Temporary Deputy Chairman, it is very hard for me to quickly look at 226---

**The Temporary Deputy Chairman** (Hon. Kajwang'): You have your right and we will wait for you. We will not pass a law in this National Assembly which is unconstitutional. We have all the time to wait for that.

**Hon. Ng'ongo:** Hon. Temporary Deputy Chairman, then can we come back to it because I want to---

**The Temporary Deputy Chairman** (Hon. Kajwang'): No, I do not re-commit anything. Do you want information from the Chair?

**Hon. Ng'ongo:** Yes, hon. Temporary Deputy Chairman.

**Hon. Langat:** Hon. Temporary Deputy Chairman, I want my good friend to understand what I am saying. In fact, we should spend less than a minute on this because we are simply saying, if you look at the Public Finance Management Act, that once the Cabinet Secretary brings the Finance Bill or Division of Revenue Bill--- I do not know how hon. Mbadi can say that a Cabinet Secretary can publish a Bill. In fact, it is only a Member of Parliament who can publish a Bill in the House. In fact, the Bills that come to the House bear the name of the Leader of Majority Party, the Chairman of a Committee or a Member of Parliament. A Cabinet Secretary is not a member of this House. Therefore, he cannot publish a Bill on behalf of the House. So, we are simply saying that he brings the legislative proposals, we publish and it becomes a Bill. This is not even a big issue.

**Hon. Ng'ongo:** Hon. Temporary Deputy Chairman, we agreed with the Chairman but he is now not being honest. We agreed with him that we were amending this Act.

**The Temporary Deputy Chairman** (Hon. Kajwang'): Hon. Mbadi, I have collected my wits on this. I have read the Constitution and I have applied my mind to it. I think the Chair is correct. The reasoning where he comes from is that we are in a presidential system in which the Executive has no business presenting Bills here and that Bills will be presented by Members. So, outsiders will be bringing legislative proposals which are therefore, translated and published by the Legislature. I think that is where we are coming from. However, if you look at Article 218, you will find that it talks about the Division of Revenue Bill. I think that is where we are. I think it is clear enough. I will now put the Question.

*(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)*

*New Clause 7*

**Hon. Langat:** Hon. Temporary Deputy Chairman, I thought that the other Clause 2 by the Majority Leader will come back.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The problem you have, hon. Chair, is that you are controlling things from that side and then you do not allow yourself to apply your mind. Anyway proceed.

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

THAT the Bill be amended by inserting the following new clause 7

—

**9.** Section 191 of the Principal Act is amended –

(a) in sub-section (4) by deleting the words “Division of Revenue Bill and County Allocation of Revenue Bill” and substituting therefore with the words “legislative proposals on the Division of Revenue and County Allocation of Revenue” ;

(b) in sub-section (5) by deleting the words “Division of Revenue Bill and the County Allocation of Revenue Bill” and substituting therefor the words “legislative proposals on the Division of Revenue and County Allocation of Revenue”

Again, this is changing from “Division of Revenue Bill” to “legislative proposals on Division of Revenue and County Allocation of Revenue” for the reasons that I had explained earlier on.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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

*(The new clause was read a Second Time)*

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

*Clause 2*

**Hon. A.B. Duale:** Thank you, hon. Temporary Deputy Chairman. I beg to move:-

THAT, Clause 2 of the Bill be amended by inserting the following new paragraph immediately after paragraph (a)-  
(aa) in the definition of “accounting officer” by deleting the semi colon at the end of paragraph (d) and substituting therefor the words “in respect of the Senate and the Clerk of the National Assembly in respect of the National Assembly”.

This Clause is basically to give the Clerk of the National Assembly some accounting powers. As currently constituted, the Parliamentary Service Commission, the Secretary is the accounting officer. That is the Clerk of the Senate. That leaves the Clerk of the National Assembly powerless. I am sure Members will understand that is why there is a lot of misallocation of resources; there is more money on the other side. So, this amendment is trying to give powers or accounting authority similar to that of the Clerk of the Senate to the Clerk of the National Assembly.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): This is a very small one, the Leader of Majority Party. Just confirm to me that the words I am seeing after “National Assembly” is “respect” and not “resect”.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, Sir, it is “in respect of the National Assembly”.

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

Yes, hon. Mbadi.

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, if there is any amendment that should be opposed in its entirety, it is this one. The Constitution is very clear who the accounting officer of the Parliamentary Service Commission is. It is the Clerk of the Senate. This is clear in the Constitution and you cannot legislate otherwise. You cannot create another accounting officer unless the Constitution provides so. But the Constitution is very clear---

**Hon. Members:** No!

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order, hon. Member! We are not going to prohibit each other across the divide. We will allow people to debate freely.

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, I know we have been very uncomfortable with the Clerk of the Senate being the Accounting Officer of the PSC, just the same way I am sure the Senate is very uncomfortable with the Speaker of the National Assembly being the Chair of the PSC.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Mbadi, could you kindly look at the Constitution and point out exactly where you are reading? Are you, for example, talking about Article 127(3)?

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, I do not think it is under Article 127 but I know---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Mbadi, I am leading you. Are you looking at Article 127(3)?

**Hon. Ng'ongo:** Hon. Temporary Deputy Chairman, it reads:-

“The Clerk of the Senate shall be the Secretary to the Commission.”

However, if you go to the finance chapter, it is very clear that the Chief Registrar of the Judiciary is the Accounting Officer and it is provided in the Constitution. The same is also provided, that the Clerk of the Senate is the Accounting Officer. So, this is unconstitutional. You cannot do that.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I will be very patient with the Member for Suba. I will allow somebody else to speak as hon. Mbadi pinpoints that section of the law that he is talking about. When it is done, it is black and white and there will be very little to argue about.

Yes, hon. Langat.

**Hon. Langat:** Hon. Temporary Deputy Chairman, I think my good friend is confusing the Secretary to the PSC and the accounting officer. We currently have three Permanent Secretaries in the Ministries. The Treasury can appoint any of them or all of them to be accounting officers. I think the issue of accounting officer is captured under the Public Finance Management Act. The Constitution is clear. The Clerk of the Senate is the Secretary of the PSC. However, this does not necessarily mean that he is the only accounting officer.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, the hon. Leader of the Majority Party.

**Hon. A.B. Duale:** Number one, I want to read for hon. Ngong’o Article 127(3) of the Constitution. It states: “The Clerk of the Senate shall be the Secretary to the Commission.”

Hon. Temporary Deputy Chairman, the Public Finance Management Act is the one that stipulates who becomes an accounting officer. It is not the Constitution which stipulates that. It is very clear and if you went to another person--- I am sure the National Police Service (Amendment) Bill will state who will be the accounting officer. It is coming because I saw an amendment. Therefore, it is the PFM Act that will deal with it.

Hon. Temporary Deputy Chairman, this was basically for the interest of these hon. Members, nothing else. You can imagine if the accounting officer comes from another House and 70 per cent of the budget of the Parliamentary Service Commission is consumed by the larger House of 349 hon. Members. Therefore, what we are trying to do is to create more efficiency within Parliament by giving powers to the Clerk of the National to have some accounting powers.

**The Temporary Deputy Chairman** (Hon. Kajwang’): That is clearer now. Let us hear from hon. Mulu.

**Hon. Mulu:** Thank you, hon. Temporary Deputy Chairman. I think what hon. Ng’ongo is saying is to avoid confusion. It is not possible to have two accounting officers in one institution.

**Hon. Member:** No, it is possible.

**Hon. Mulu:** For instance, when you look at what is happening in the Ministries where they have about three---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, I do not want a discussion about what is happening in the Ministries. I want to hear what the law says.

**Hon. Mulu:** That is what I am saying, hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hold on. This is because the Leader of Majority Party has referred me to the Constitution which says that the Clerk of the Senate shall be the Secretary to the Commission. But he has stated that, that does not necessarily make him an accounting officer. The definition of “accounting officer,” is found in the legislation; which is what is now in the amendment that this legislator is bringing before the House.

**Hon. Mulu:** For your information, the person who appoints accounting officers is the Cabinet Secretary, Treasury.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The National Assembly is now making law. Therefore, a law is being made to define who is an accounting officer in respect to this amendment.

**Hon. Mulu:** Hon. Temporary Deputy Chairman, there is no problem in amending the law, but I think we have a problem with the situation where you amend the law to cause confusion. That is why we are rising on a point of order. We are saying, even as you amend this law, we have no problem having either of the two being the accounting officers, but let us make sure that we do not cause confusion whereby---

**The Temporary Deputy Chairman** (Hon. Kajwang’): I think you are also right.

*(Loud consultations)*

He is also right because you are opposing that amendment on the basis that it will cause confusion in the law. That is very legitimate and I thank you for it. Last one before I put the Question.

**Hon. (Eng.) Mahamud:** Hon. Temporary Deputy Chairman, I think the amendment is in order. Hitherto, the hon. Member has said that accounting officers are appointed by the Cabinet Secretary, Treasury. But the law is being made now where accounting officers are designated. Therefore, Parliament is like many Ministries put together and so you cannot say that for Parliament there will be only one accounting officer. The National Assembly has its account and the other House has its account. I think this is in order.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Alright. Hon. Ng’ongo I had stood you down for a minute. Can I just be fair to you by allowing you to have one minute, if you do not mind?

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, the point I want to raise, even when it comes to accounting, the law is very clear that it is the Clerk of the Senate who will submit accounts even to the Auditor-General. When you make two centres of power in terms of accounting officers for one institution, in my view, it is very wrong. I do not see why this is coming right now when we were dealing with sovereign bonds. Someone is playing mischief in this legislation

**The Temporary Deputy Chairman** (Hon. Kajwang’): We do not want to turn this into debate. Now that hon. Members have fully understood both the pros and cons, I think you are now ready to vote.

*(Question, that the words to be*

*inserted be inserted, put and agreed to)*

*(Clause 2 as amended agreed to)*

*(Clause 1 agreed to)*

*(Title agreed to)*

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairperson, I beg to move that the Committee doth report to the House its consideration of the Public Finance Management (Amendment) Bill, National Assembly Bill No.12 of 2014, and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

#### THE NATIONAL POLICE SERVICE (AMENDMENT) BILL

##### *Clause 3*

**Hon. Bowen:** Thank you, hon. Temporary Deputy Chairman. This is only to inform you that this Clause is not supposed to be here because it is under the National Police Service Commission. I think it is here by mistake because we are dealing with the National Police Service Act. I think we finished with this one in the last Session.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Well, we captured you as this is from the Table.

**Hon. Bowen:** No, this one is a mistake.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Well, can you now speak in Parliamentary language? Are you withdrawing this Clause or not?

**Hon. Bowen:** Yes, hon. Temporary Deputy Chairman. I withdraw the amendment to Clause 3.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, the amendment to Clause 3 is withdrawn by the hon. Member.

*(Proposed amendment to Clause 3 withdrawn)*

*(Loud consultations)*

Order, hon. Members! We are here to make legislation not to joke. Hon. Bowen having dropped and withdrawn his amendment, we now go back to Clause 3 as it exists in the Bill. The effect is that if it is negated, you do not have Clause 3 in the Bill.

So, I begin again. Do we have the Leader of Majority Party in this Chamber? Do we have the leadership in the Chamber?

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, in his absence, I can deputize. Just repeat the question.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, you have the numbers. So, do not be excited. Just sit down. Now, be alert and know your legislative duty in the Chamber. Hon. Kamama, what is it that you are on your feet for? Can hon. Kamama say something?

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, like he said, we have to retain Clause 3 in the National Police Service (Amendment) Act.

**The Temporary Deputy Chairman** (Hon. Kajwang’): You see, hon. Kamama, we do not want discussions on this. We have an amendment before the Chamber, which has been dropped and now, I am considering Clause 3 of the Bill. So, whatever discussions you have and thinking and all that is neither here nor there. I am considering Clause 3 of the Bill, which is what I am putting the Question on because I do not want to waste resources.

*(Clause 3 agreed to)*

*Clause 4*

**The Temporary Deputy Chairman** (Hon. Kajwang’): The Chair will not bend backwards to help some of us who are not following the procedure of the House.

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 4 be deleted.

The justification is that we have to retain No.247 as it appears in the original Act. The Directorate of Criminal Investigation is established under Article 247 of the Constitution and deleting this would amount to a constitutional amendment. So, we want it to be deleted.

*(Question of the amendment proposed)*

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

*(Clause 4 deleted)*

*(Clauses 5, 6, 7 and 8 agreed to)*

*Clause 9*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Waiganjo, let me give direction first of all, that if the amendment proposed by hon. Waiganjo is agreed to, then the amendment sought by hon. Kamama will be dropped because hon. Waiganjo’s seeks to delete the section. So, we begin with hon. Waiganjo.

**Hon. Waiganjo:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 9 be deleted.

My justification is that the amendment proposed in Section 8(a)(i) flies at the face of Article 246(3)(b) of the Constitution. Article 246(3)(b) of the Constitution is clear on the mandate of the Commission and it reads that:-

“(3) The Commission shall—

(b) observing due process, exercise disciplinary control over and remove persons holding or acting in offices within the Service; and---”

What is proposed is that notwithstanding the provisions of any written law, independent command of the Inspector-General in relation to the Service envisioned in Article 245(2)(b) and Section 8 of the Act means that the Inspector-General shall be responsible for all matters relating to the command and discipline of the Service subject to disciplinary control of the Commission. The effect of this proposed amendment is not constitutional. In fact, it robs the Commission of the mandate that is given to it under the Constitution. So, I want to say that if we allow anyone, in this legislation, to make amendments that are contrary to the Constitution, then any member of the public may move to the court and then Parliament will seem to be making legislation in vain.

But most importantly, in Section 8, what is proposed to be amended reads that the Cabinet Secretary may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service.

This again clearly contradicts Article 245(4), which reads that:-

“(4) The Cabinet secretary responsible for police services may lawfully give a direction to the Inspector-General with respect to any matter of policy for the National Police Service, but no person may give a direction to the Inspector-General with respect to—

(a) the investigation of any particular offence or offences;

(b) the enforcement of the law against any particular person or persons; or

(c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service”.

So, clearly, the current law has captured the spirit and the letter of the Constitution. What has happened here is that the Cabinet Secretary only gives directions. So, there is a caveat in the Constitution saying that the Cabinet Secretary may not give directions. It is clear under Article 245. So, again, if we allow this amendment, then we remove the caveat and secondly, we want to shield the Inspector-General from the Executive because then it will mean that apart from Article 157, which gives the Director of Public Prosecutions authority to inform or give directions to the Inspector-General, then we will be inviting the Executive to give directions to the Inspector-General. So, again, if we allow this to happen, somebody will move to court and then this legislation will be said to be unconstitutional. So, why do we want to make laws that cannot withstand the test of time even in our courts of law?

For me, I am proposing a deletion of the entire Section 8(a)(i), (ii), (iii), (iv) and (v) for the reasons that I have raised. I ask the Members to support me in this.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Before I give the Chair a chance, there are other people also who want to speak to it. Member for Ndhiwa!

**Hon. Abongotum:** Hon. Temporary Deputy Chairman---

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order, Chair! Before your name is mentioned, please, do not rise to speak. Member for Ndhiwa!

**Hon. Oyugi:** Hon. Temporary Deputy Chairman, I would like to support the amendment by hon. Waiganjo. He speaks to the spirit of what law making ought to be and should be. If you look at Section 8(a)(i), the amendment seeks to interrupt the Constitution in that section. It reads in part that:-

“The Section shall mean that the Inspector-General shall be responsible for all matters relating to the command---”

This particular amendment seeks to interrupt a constitutional provision in an amendment of a statute. I really think that without giving it so much attention, I want to support the fact that should we pass this as Parliament, it will be going against the spirit of Article 246 and I am hoping that the Chairman does understand and appreciate that we will be contravening Article 246. This sort of amendment should not be left to pass.

I support the amendment with that kind of consideration.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Chair, proceed.

**Hon. Abongotum:** Hon. Temporary Deputy Chairman, I totally oppose all the amendments that were suggested by my good friend, the hon. Waiganjo of Ol-Joro-orok and my other friend from Ndhiwa. All these issues have been fully exhausted by our Committee. We have sat down with legal experts and there is nothing unconstitutional here. So, I want to propose that we oppose all these amendments in the list.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you. Hon. Mbadi.

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, you know as a country we came from very far; from the Police Force to now the Police Service. If this Clause is allowed to remain in our laws, we are reversing all the gains we had achieved as a country. Hon. Waiganjo has thought through these amendments and I would urge other Members because I think there is this fallacy that because you are in Government, you must support anything that comes from the Government. This thing will hurt you. The police officers will mistreat you, whether you are Jubilee or the Coalition for Reforms and Democracy (CORD). We know the history of the police force in this country.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Do not get into the history. Just confine yourself to the Clause.

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, when you give the powers that were already with the Commission to the Inspector-General, it is wrong.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Okay. Thank you very much. Your point is made.

**Hon. Ng’ongo:** We should act above this cheap division of--- Just do the right thing for Kenyans and not listen to the Chairman.

**The Temporary Deputy Chairman** (Hon. Kajwang’): If I was in control of the microphone, I would have shut it down.

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, this is because I have realised the Chairman is the gatekeeper of the Inspector-General in this House.



*(Laughter)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Member for Nakuru Town.

**Hon. Gikaria:** Thank you, hon. Temporary Deputy Chairman. I rise to oppose the proposal by hon. Waiganjo. As a member of the Committee, we had an opportunity of sitting down with the Commission for the Implementation of the Constitution (CIC) and they gave us direction. The Inspector-General’s position under the law given, as it is indicated under Article 245, is that he has the mandate for the command and not anything else. The Commission has a different role.

**The Temporary Deputy Chairman** (Hon. Kajwang’): The point is made. I want to put the Question. Yes, Lentoimaga.

**Hon. Lentoimaga:** You always overlook me and I do not know why.

**The Temporary Deputy Chairman** (Hon. Kajwang’): I am sorry. I apologise.

**Hon. Lentoimaga:** So, just like our colleagues have said, I rise to oppose what hon. Waiganjo has put across. The National Police Service is a command driven organisation. It is not like the Ministry of Health or Ministry of Education. Somebody has to be there to carry the day to day operations. It is uniform; it is discipline and it cannot be subjected to bureaucratic decision making.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you, very much. It is now well understood. Leader of Majority Party, I want to put the Question, but before I do it I can see you have a very burning one.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I have just one point. Every time we hear this and this is unconstitutional. When we were doing the Second Reading, the report and the letters from the CIC were tabled showing that these amendments were from the CIC. The CIC is the only commission mandated---

**Hon. Ng’ongo:** On a point of order, hon. Temporary Deputy Chairman.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, can you protect me from this fishmonger?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Order! You are protected. First of all, let us clean up this. Leader of Majority Party, say what you must say; that small word to help me with my listening.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I oppose.

**The Temporary Deputy Chairman** (Hon. Kajwang’): No. You do not get me, I heard something like “fishmonger”.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I withdraw that and apologise. You know we are neighbours also. We live in Nairobi.

**Hon. Ng’ongo:** I do not mind being called a fishmonger.

**Hon. A.B. Duale:** The only time I eat fish is when I go to his house.

**Hon. Ng’ongo:** By the way, I do not mind being called a fishmonger.

**The Temporary Deputy Speaker** (Hon. Kajwang’): Order! Hon. Member for Suba, you cannot be speaking when the Chair is speaking. I now put the Question.

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

*(Proposed amendment by hon. Waiganjo negatived)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Kamama.

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

THAT, Clause 9 be amended in the proposed new Section 8(A)(5) by inserting the words “in writing” immediately after the word “direction”.

Hon. Temporary Deputy Chairman, the justification is to ensure that reference can be made on whether such directives were actually issued or not and to avoid ambiguities because sometimes the Cabinet Secretary can issue decisions and deny. We want to make sure that any direction that is made is actually done in written form and in black and white.

*(Question of the amendment proposed)*

**Hon. Melly:** Thank you, hon. Temporary Deputy Chairman. I just wanted to concur with the amendment which has been given by the Chair of the Departmental Committee on Administration and National Security, hon. Asman Kamama that we need to hold the Cabinet Secretaries responsible so that they cannot deny what they issued. It should be in writing.

I concur with him and I support.

**Hon. Ng’ongo:** Thank you, hon. Temporary Deputy Chairman. This amendment looks a little bit okay even though I was against the whole issue of giving command. So, I support. I wanted to confirm that actually I love being a fishmonger. So, do not be worried that hon. Duale called me a fishmonger.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Now that you have said so, you are officially a fishmonger.

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

*(Clause 9 as amended agreed to)*

*Clause 10*

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

THAT, Clause 10 be amended by deleting paragraph (d).

The justification is that deleting Clause 10(1)(t) would be tantamount to removing the critical role of the Independent Policing Oversight Authority on whose recommendation on misconduct and other misdemeanors the Service shall act on. The cardinal role should be retained in the proposed Bill.

*(Question of the amendment proposed)*

*(Question, that the words to be left*

*out be left out, put and agreed to)*

*(Clause 10 as amended agreed to)*

*(Clause 11 agreed to)*

*Clause 12*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Waiganjo, because you are proposing to delete this Clause, you will be first. If your deletion is carried, there will be nothing for hon. Kamama to amend.

Please, proceed.

**Hon. Waiganjo:** Hon. Temporary Deputy Chairman, I beg to move:-  
THAT, Clause 12 be deleted.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Waiganjo, please, be very brief in explaining your amendment.

**Hon. Waiganjo:** Hon. Temporary Deputy Speaker, my justification for the deletion of the proposal is very simple. Firstly, the National Police Service Act is very clear, and it has given a very good proposal on how the appointment of the Inspector-General should be done. The proposed Clause 12 seems to eliminate the role of the Commission again and the requirement of public participation in the appointment of the Inspector-General.

What is proposed now is simply that the President nominates a preferred candidate whose name should then be brought to Parliament for approval or rejection. The amendment also says that if the nomination does not happen within 30 days, it will be deemed to have been approved.

Hon. Temporary Deputy Chairman, Article 246(3)(a) of the Constitution is clear on the appointment procedure. It says:

“The Commission shall recruit and appoint persons to hold or act in offices in the service, confirm appointments and determine promotions and transfers within the National Police Service.”

So, if we allow this amendment to go through, we will be going back in time.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, Member for Ndhiwa!

**Hon. Oyugi:** Hon. Temporary Deputy Chairman, I would like to support the proposal by hon. Waiganjo.

In my opinion, the Constitution does anticipate two things, firstly, that the President shall appoint the Inspector-General by approval from Parliament. That is constitutionally guaranteed. The second thing that the Constitution speaks to is the fact that, that process ought to be initiated by the Commission. So, Article 246(3)(a) speaks to the fact that, yes, the President does have the final word in terms of appointing the Inspector-General, with the approval of Parliament, but the institution that is supposed to

initiate the process of the appointment of the Inspector-General is the Commission, as opposed to the President.

Hon. Temporary Deputy Chairman, therefore, this particular Clause ought to be deleted. Thank you.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Yes, Member for Suba!

**Hon. Ng’ongo:** Hon. Temporary Deputy Chairman, I want to say two things; the amendment by hon. Waiganjo is very good. Firstly, it is very clear that recruitment in the Public Service must be done competitively. There must be competitiveness in the recruitment process. Secondly, as hon. Waiganjo has stated, Article 246 is very clear that the Commission must be involved in the appointment processes in the National Police Service. The Inspector-General is part of the appointments in the National Police Service. We cannot do without it. So, let us do away with the idea of the President being given a blank cheque to appoint the Inspector-General.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you very much, Member for Suba.

Yes, Member for Mandera West!

**Hon. (Eng.) Mahamud:** Hon. Temporary Deputy Chairman, I support the amendment by hon. Waiganjo. We have a Commission called the “Police Service Commission”. We are now seeking to usurp their powers and giving them to a different Commission. In fact, once the proposals go through, the Public Service Commission will convene the first meeting. These are two independent commissions with equal constitutional stature. So, the process of short-listing, interviewing and recommending to the President should be done by the Police Service Commission, and not by an amorphous institution that we are trying to develop here.

With those remarks, I beg to support.

**The Temporary Deputy Chairman** (Hon. Kajwang’): Thank you very much. We have heard those opposing and supporting the amendment. We can now take a vote on it.

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

*(Proposed amendment by hon. Waiganjo negated)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Kamama, spend just one minute on your amendment, if you do not mind.

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

THAT, Clause 12 be amended by deleting Subsection (2) of the proposed new Section 12 and substituting therefor the following new subsections—

“(1) The President shall, within fourteen days after a vacancy occurs in the office of the Inspector-General, constitute a selection panel comprising one person from each of the following bodies, respectively—

- (a) the Office of the President;
- (b) the Public Service Commission;

- (c) the National Police Service Commission;
  - (d) the Independent Policing Oversight Authority;
  - (e) the Kenya National Commission on Human Rights;
  - (f) the National Gender and Equality Commission; and,
  - (g) the Law Society of Kenya.
- (2) The Public Service Commission shall—
- (a) convene the first meeting of the selection panel, at which the members of the selection panel shall elect a chairperson from among their numbers; and,
  - (b) provide the selection panel with such facilities and other support as it may require for the discharge of its functions.
- (3) The selection panel shall, within seven days of its convening, by advertisement in at least two daily newspapers of national circulation, invite applications from persons who qualify for nomination and appointment as the Inspector-General.
- (4) The selection panel shall—
- (a) consider the applications received under subsection (3) to determine their compliance with the provisions of the Constitution and this Act;
  - (b) shortlist the applicants;
  - (c) publish the names of the shortlisted applicants and the qualified applicants in at least two daily newspapers of national circulation;
  - (d) conduct public interviews of the shortlisted persons;
  - (e) shortlist three qualified applicants; and,
  - (f) forward the names of the qualified persons under paragraph (e) to the President.
- (5) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under subsection (4) (f), nominate a person for appointment as the Inspector-General and submit the name of the nominee to Parliament.”

Hon. Temporary Deputy Chairman, this is to ensure that the process of replacing the Inspector-General is as transparent as possible, and avoid situations where the appointing authority may misuse his or her powers to appoint inappropriate persons to that office. We have involved many public bodies, including the National Police Service Commission and the commissions that are mentioned in the amendment. So, I believe that the amendment is quite okay.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, those who are supporting the amendment should not even rise; unless you are opposing.

Yes, Member for Mandera West!

**Hon. (Eng.) Mahamud:** Hon. Temporary Deputy Chairman, I agree with the amendment but are we not creating confusion when we make reference to Parliament,

given that the Senate will also want to have a say in this matter? Would it be in order for the amendment to specifically make reference to the National Assembly?

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, the Constitution says that the approval shall be done by Parliament. So, this is just being consistent with the Constitution.

*(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 12 as amended agreed to)*

### PROGRESS REPORTED

**The Temporary Deputy Chairman** (Hon. Kajwang’): Hon. Members, because time is running out, we have to report progress to the House and seek leave to sit again another day. Since there is no resolution for extension of this Sitting, the House must adjourn at 6.30 pm. Therefore, I now call upon the Mover to move that the Committee doth report progress to the House and seek leave to sit again another day.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report progress to the House on its consideration of the National Police Service (Amendment) Bill (National Assembly Bill No.18 of 2013) and seek leave to sit again tomorrow.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[Hon. Deputy Speaker in the Chair]*

### REPORT, CONSIDERATION OF REPORT AND THIRD READING

#### THE PUBLIC FINANCE MANAGEMENT BILL

**Hon. Kajwang’:** Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the Public Finance Management Bill, National Assembly Bill. No. 12 of 2014 and approved the same with amendments.

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

**Hon. Langat** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. A.B. Duale:** Hon. Deputy Speaker, I beg to move that the Public Finance Management (Amendment) Bill, National Assembly Bill No.12 of 2014 be now read the Third Time.

I request hon. Gikaria to second.

**Hon. Gikaria** seconded.

*(Question proposed)*

**Hon. Deputy Speaker:** I have confirmed that we have quorum in the House for purposes of making a decision.

*(Question put and agreed to)*

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

#### THE NATIONAL POLICE SERVICE (AMENDMENT) BILL

**Hon. Kajwang':** Hon. Deputy Speaker, I beg to report that a Committee of the whole House has considered the National Police Service (Amendment) Bill, National Assembly Bill No.18 of 2013 and approved the same with amendments and now seeks leave to sit again tomorrow.

**Hon. A.B. Duale:** Hon. Deputy Speaker, I beg to move that the National Police Service (Amendment) Bill, Bill No.18 of---

**Hon. Deputy Speaker:** Order, the Majority Leader!

**Hon. A.B. Duale:** Hon. Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request hon. Waititu to second.

**Hon. Waititu** seconded.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Deputy Speaker:** Hon. Members, the Speaker has approved the laying of the Report by the Chair of the Committee on Budget. You have the Floor. Thereafter give notice of Motion.

#### PAPER LAID

**Hon. Musyimi:** Thank you, hon. Deputy Speaker for indulging me. I beg to lay the following Paper on the Table of the House, today Tuesday, 29<sup>th</sup> April, 2014.

Report of the Joint Budget and Appropriations Committee and the Departmental Committee on Finance, Planning and Trade on settlement of foreign court judgments against the Government of Kenya.

### NOTICE OF MOTION

#### ADOPTION OF REPORT ON SETTLEMENT OF FOREIGN COURT JUDGMENTS

**Hon. Musyimi:** Hon. Deputy Speaker, I beg to give notice of the following Motion:-

THAT this House adopts the Report of the Joint Budget and Appropriations Committee and the Departmental Committee on Finance, Planning and Trade on settlement of foreign court judgments against the Government of Kenya, laid on the Table of the House today, Tuesday, 29<sup>th</sup> April, 2014.

**Hon. Ng'ongo:** On a point of order, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Order, hon. Members! We would like those reports to be circulated in time for Members to acquaint themselves before we next meet.

**Hon. Ng'ongo:** *Ungeongeza* "Anglo Leasing"!

### ADJOURNMENT

**Hon. Deputy Speaker:** Order, hon. Members! We have come to the end of today's sitting. Therefore, the House stands adjourned until tomorrow, Wednesday 30<sup>th</sup> April, 2014, at 9.00 a.m.

The House rose at 6.30 p.m.