

NATIONAL ASSEMBLY

OFFICIAL REPORT

Friday, 26th August, 2011

The House met at 9.00 a.m.

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

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:-

Report of the Constitutional Implementation Oversight Committee on the approval of Prof. Githu Muigai for appointment as Attorney-General.

(By Mr. Abdikadir)

Report of the Joint Departmental Committees on Finance, Planning and Trade and Energy, Communication and Information on Sessional Papers Nos. 1, 2 and 3 of 2011.

(By Mr. Okemo)

Budget for 2011/2012 Financial Year Corrigenda.

(By the Deputy Prime Minister and Minister for Finance (Mr. Kenyatta))

NOTICES OF MOTIONS

ADOPTION OF REPORT ON SESSIONAL PAPERS NOS. 1, 2 AND 3 OF 2011

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

THAT, this House adopts the Report of the Joint Departmental Committees on Finance, Planning and Trade and Energy, Communications and Information on Sessional Papers Nos. 1, 2 and 3 of 2011, laid on the Table of the House today, Friday, 26th August, 2011.

ADOPTION OF REPORT ON APPOINTMENT
OF ATTORNEY-GENERAL

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

THAT, this House adopts the Report of the Constitutional Implementation Oversight Committee on the approval of Prof. Githu Muigai for appointment as Attorney-General, laid on the Table of the House today, Friday, 26th August, 2011.

PROCEDURAL MOTION

LEAVE TO SIT ON FRIDAY AFTERNOON

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Speaker, Sir, on behalf of the Leader of Government Business, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order No. 20(1) this House resolves to have a sitting today, Friday 26th August, 2011 at 2.30 p.m.

Mr. Temporary Deputy Speaker, Sir, this House has already done what it ought to have done. It has risen to the occasion and put in more sitting hours in order to fulfill the requirement of the new Constitution and pass the necessary laws to operationalize it. So far, the House has done very well. Even this morning, the House is sitting on a day that is not a Sitting Day. This Motion is seeking the authority of this House that we continue with the good work that we have been doing throughout the week by sitting today at 2.30 p.m. and continue until we finish the work that is before us.

Mr. Temporary Deputy Speaker, Sir, I beg to move.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta) seconded.

(Question proposed)

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we are in the Committee of the whole House and there are a number of Bills to be considered. I would like to say that there have been consultations and Bill No.iv will be deferred to next week. However, the rest of the Bills will be considered as per the Order Paper.

THE KENYA CITIZENS AND FOREIGN NATIONALS
MANAGEMENT SERVICE BILL

(Deferred)

THE CONTINGENCIES FUND AND COUNTY EMERGENCY FUNDS BILL

(Clauses 2, 3, and 4 agreed to)

Mr. Okemo: On a point of order, Mr. Temporary Deputy Chairman, Sir. We have an amendment to Clause 1.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Okemo! We will come to it at the end because it is usually the last one.

Clause 5

The Deputy Prime and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 5 be amended in sub-clause (2), Part II, by replacing the word “is” with the word “in” to read:

The Treasury shall keep the Contingencies Fund in a separate account and shall-

(Question of the amendment proposed)

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

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

(Clause 5 as amended agreed to)

Clause 6

Mr. Okemo: Mr. Temporary Deputy Chairman, I beg to move:_

THAT Clause 6 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (2)-

(3) For the purposes of Sub-section (1), the Cabinet Secretary shall develop suitable criteria through Regulations that shall be approved by the National Assembly before they come into force.

The intention of this is to make sure that when the regulations are made, they receive the approval of the National Assembly. That way, we will be on board and will not be surprised as a House.

(Question of the amendment proposed)

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

(Clause 6 as amended agreed to)

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I would like to get a clarification. Hon. Mungatana had requested to move an amendment on this Clause. He had requested hon. Mbadi to move it on his behalf.

(Loud consultations)

The Temporary Deputy Chairman (Mr. Ethuro): Which clause are you talking about, Mr. Abdikadir? I am talking to hon. Abdikadir.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I was misled by hon. Mbadi. I apologise.

The Temporary Deputy Chairman (Mr. Ethuro): You must take up your own responsibility. I did not recognize hon. Mbadi. You cannot say that you were misled by hon. Mbadi.

Clause 7

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I beg to move:_
THAT, Clause 7 of the Bill be amended by deleting the Clause and substituting therefor the following new clause-
Capital **7.** The permanent capital of the Fund shall not exceed ten billion
Fund Kenya shillings.

Basically, if you look at the Bill, it talks about 2 per cent of the National Revenue. We feel that is very elastic. This Fund is very clear. At the moment, it is fixed at Kshs2 billion. From reality, from the records we have, it is at Kshs6 billion. So, we thought that we should cap it at and it should be a specific figure. If there is need to revise it, the Minister can always come back to Parliament to seek for approval. So, we are proposing that the ceiling be fixed at Kshs10 billion which we think is quite adequate taking into account that devolved units of Government may also be involved.

(Question of the amendment proposed)

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, with all due respect to the Committee, I would like to oppose this amendment. I thought putting a percentage would take care of the decrease in value of the amounts in future, so that it is pegged to a percentage. As the economy grows, the Contingency Fund would also grow. The Kshs10 billion may look handsome today but in five to ten years time, it may be insufficient to meet contingencies. So, for me, I think applying a percentage on the National Government Revenue would be a better way to go than to have a fixed sum that would require amendments. Capping it at a specific figure means that we will be making amendments on the Act later, which I do not think is really tidy.

Mr. Midiwo: Mr. Temporary Deputy Chairman, I wish to support the amendment. I sit in the Finance, Planning and Trade Committee. We considered the amendment. Just to try to convince hon. Mbadi, 2 per cent of an ever increasing amount for contingencies--- This is a Fund that you only use during emergencies. The 2 per cent, even today, could be billions. What emergency would hit Kenyan so that we would prepare in such a way that we lock our Funds in an account awaiting emergencies? I think the smaller the better. That is an account that we could use and replenish as the emergencies occur. We are trying to avoid a scenario where in future, someone can raid that Fund, buy vehicles and other things that are non-emergency, and report that the money was just available and you would have nothing against him because, according to the law, it is a Fund that you can replenish.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I would really like to plead with hon. Members to leave it as it is - at 2 per cent. I will try and explain why. If you look at the current drought situation facing the country, the amount that we have injected to deal with the crisis is approximately Kshs11 billion. As a result of having the cap, we have had to dig in into the Budget that we recently read, re-prioritize in order to adjust and look for programmes to find monies and put into that particular crisis.

I think, even in the Bill, given the fears that the Members of the Finance, Planning and Trade Committee have, it is very clear that the Cabinet Secretary must report to this House within two months on the exact nature of the emergency that the money was spent for. It is also quite clear on what those monies can be utilized for.

Secondly, even as we approve the Budgets on an annual basis, the House will still have the capacity to look at that number and see how much has been set aside. All we are asking for is that flexibility. That is why we are saying “not exceeding 2 per cent”. That will consistently be part of the debate between the Executive and the National Assembly as to the exact amount that would be placed, without necessarily having to go back to change the law because the amount that will be set aside in each financial year will still have to be debated by this House before it is set aside.

Therefore, I plead with the Committee to allow the words: “Not exceeding 2 per cent” to remain.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, we had looked at all these arguments, possibilities and scenarios. What convinced us more was that the Contingency Fund is not a substitute for the Supplementary Budget. It cannot be and, therefore, it is very clear that it is for the unforeseen circumstances. You cannot quantify the unforeseen. Therefore, we are trying to put in place as much controls as possible by limiting the amount. If you say 2 per cent, today, that would amount to Kshs12 billion. Next year, if

the revenue becomes Kshs700 billion, then it will be Kshs14 billion. A Contingency Fund is an overdraft facility. Therefore, it is an amount of money that needs to be very carefully controlled. If there is need for it to be increased, the Minister can always come back to Parliament. We are completely convinced because that Fund has been abused in the past and there is evidence to that effect. If we make it very big we are actually giving the Government the leeway to use it whenever they have reasons that they cannot explain. Therefore, we still believe that the Kshs10 billion capital fund is a reasonable ceiling and the Government can live within that.

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

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

(Clause 7 as amended agreed to)

Clause 8

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 8 of the Bill be amended by inserting the following new words at the end of sub-clause (1)-

“after submitting a detailed report as set out in section 9 (2) of this Act”

Mr. Temporary Deputy Chairman, Sir, we would like to add that a detailed report should be submitted. Basically, we want more information. Parliament needs more information. That is all we are proposing.

(Question of the amendment proposed)

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

(Clause 8 as amended agreed to)

(Clauses, 9, 10, 11 and 12 agreed to)

Clause 13

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 13 be amended in sub-clause (2), paragraph (a) by replacing the words “Cabinet Treasurer” with the words “County Secretary”.

(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 13 as amended agreed to)

(Clauses 14 and 15 agreed)

Clause 16

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 16 be amended in sub-clause (2) by replacing the words “County Secretary” with the words “County Treasury”.

(Question of the amendment proposed)

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

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

(Clause 16 as amended agreed to)

(Clauses 17 and 18 agreed to)

(Title agreed to)

Clause 1

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Okemo you have the same amendment like the Minister. So, if we carry the Minister’s amendment, yours will be rendered unnecessary.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 1 be amended by deleting the word “management”.

(Question of the amendment proposed)

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

(Clause 1 as amended agreed)

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Okemo, you may wish to be on record that you are withdrawing your amendment because we have carried that one.

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I beg to withdraw my amendment since it has exactly the same effect as the Minister's.

*(Proposed amendment to Clause 1 by
Mr. Okemo was withdrawn)*

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of the Contingencies Fund and County Emergency Funds Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we will now proceed to the next Bill. This is the National Government Loans Guarantee Bill (Bill No.43 of 2011). It will be moved by the Deputy Prime Minister and Minister for Finance.

THE NATIONAL GOVERNMENT LOANS GUARANTEE BILL

(Clauses 2 and 3 agreed to)

Clause 4

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 be amended in sub-clause (2), paragraph (a) by inserting the word "if" at the beginning of the paragraph to read as follows:

If the loan is for a capital project that is revenue generating, the revenue generated will be sufficient to service the loan repayments.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, there are several amendments; we will dispose of them one at a time.

(Question of the amendment proposed)

Mr. Okemo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I seek your indulgence because I had an amendment to Clause 3 in the National Government Loans Guarantee Bill.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Okemo, if you were listening, I said there are several amendments to the Bill. To absolutely clarify such doubts, you have one amendment. Dr. Nuh and Mr. Mungatana each have an amendment. I had stated that we will dispose each one of them separately. Since yours is a new clause it usually comes towards the end.

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

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 4 be further amended in sub-clause (2) by deleting all the words after the words “capital project” appearing in paragraph (a).

We are saying that a county government may submit a project which may not necessarily satisfy this requirement, but if you look at the county as an entity because of various sources of revenue, they may be able to service the loan. Therefore, we want to amend the clause whereby any project submitted, say by the county, should not be based on the revenue generation of a specific project.

(Question of the further amendment proposed)

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

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 4 of the Bill be further amended-

- (a) in sub-clause (2) by inserting the following new paragraphs immediately after paragraph (g)-
 - (h) the Cabinet Secretary takes into account the equity between the County Governments so as to ensure fairness: and
 - (i) the proposal to guarantee has been approved by Parliament.
- (b) in sub clause (3) by inserting a new paragraph immediately after paragraph (b) as follows-
- (c) geared towards stimulating economic growth in the County Governments that are economically challenged.

(Question of the further amendment proposed)

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, as I support this amendment and, at the same time, I beg to move:-
THAT, Clause 4 be amended by inserting a new sub-clause 2 paragraph (h) which will read that: “if the guarantee is to be given for a commercial entity, the entity shall be 100 per cent public owned.

This is in order to avoid cases where public money is utilized to guarantee loans to those commercial entities with a significant private ownership.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Mbadi. This is a bit of a procedural matter. The Chair had not looked into your amendment. I was advised that if was a further amendment. From your submission, it is definitely not a further amendment. It is a new clause. There are procedures to that effect.

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, this is not a new clause. As far as I am concerned, it is a subclause. I thought that it was an entirely new clause, but it is under Clause 4. I am just adding among the conditions to be fulfilled.

The Temporary Deputy Chairman (Mr. Ethuro): It is still a new one since you are adding a new sub-clause. So, we still have the new clauses. We will give you the opportunity then, but not for now.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, whereas I can see the gist of hon. Mungatana's amendment based on the contribution yesterday, I am trying to follow the wording of the amendment. I am not quite sure how this translates into the wishes he expressed yesterday about the county governments and the national government in terms of guaranteeing the loans and in terms of how this will stimulate economic growth in the county government that are economically challenged. When you look at the original draft as it is, it actually makes reference to the fiscal policy that has already been approved by Parliament which is the one that actually works out the whole programme of Government and how Government wants to invest within the different counties and at the national level. I am not quite sure how this will be practically implemented or monitored. We do not want to legislate in vain unless it is something that we can enforce or monitor. Perhaps, hon. Mungatana might wish to explain this to the Committee, so that we do not pass an amendment without actually appreciating the full import of what he intends to do.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Kimunya, that is why you should have started.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, if you look at the amendment, sub-clause (h) is a new one. Here, we are saying the Cabinet Secretary should take into account equity and not parity between the county governments so as to ensure there is fairness when they are guaranteeing these loans." That is very clear. I do not think it should be a problem. So, in terms of him taking into account, I think even hon. Kimunya agrees. I think someone has fixed this sub-clause (i) because it is not supposed to be here. It was in another amendment. So, there is a typographical problem with it. So, I withdraw that (i). I think someone typed something which is not there.

However, if you look at subclause (b), when Parliament is approving the law, first of all, it takes into account public interest and secondly, the borrower's financial position. So, I am adding subclause (c) there, to say that the third consideration that Parliament should take into effect is if that borrowing will stimulate economic growth in the county governments that are economically challenged. I do not think we should have a problem with that.

The Temporary Deputy Chairman (Mr. Ethuro): I am sure now Amos Kimunya will assist us because I think you have understood this problem and he was very right.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, I just want us to look at this in terms of the practicalities. What hon. Mungatana is amending in 2(h) is to say no guarantee shall be approved unless it takes into account equity between the county governments, so as to ensure fairness. For example, we will develop the new port in Lamu. This port will require Government guarantees. So, all we are basically saying is that by going to Lamu which is in Lamu County, the guarantee could be challenged because the people in Nyandarua cannot see the equity. They will ask themselves: Why should the Government be putting money in Lamu County instead of Nyandarua County? I am trying to look at why we are talking of equity. We are saying there will be Kshs1 trillion to be guaranteed by the Kenya Government. All this money has gone to one county because that is where the port will be. Now, all the other

46 counties will be asking: “Where is the equity? This loan should not be guaranteed because it is not available to these other counties.”

Mr. Temporary Deputy Chairman, Sir, allow me to finish this so that he can respond together with what I raised earlier. What we are saying in subclause 3(b) is that the money will be guaranteed or approved by Parliament unless it is geared towards stimulating economic growth in county governments that are economically challenged and not in all county governments. Luckily for us, Nyandarua County is one of those which are economically challenged. However, this should not stop development of an airport in Nairobi which will require a guarantee on the basis that Nyandarua is economically challenged. Hence we stop the guarantee in Nairobi or for the development of Kisumu Airport until we sort out Nyandarua. That is why I have problems with these two amendments because we are basically saying: Unless it can be tied to an economically challenged county, the rest of the country will not move forward. That was the reason for having the Equalization Fund to bring up all those other counties, so that we move together with development. Let us not stifle development at the national level just because of one county. We must remember that even in legislating, the Constitution is very clear; that the national interests must override the local interests.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Mungatana, as the Mover of the amendment, what do you have to say?

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I think hon. Kimunya is confusing us here. Let us read these things slowly and understand them. Let us carry the House with us. There are two stages in approving this guarantee. Clause 4(1) says:-

“The Cabinet Secretary may guarantee the loan of a borrower on behalf of the National Government”

Mr. Temporary Deputy Speaker, Sir, I have no problem with that.

Clause 4(2) is where my amendment is. I am saying the Cabinet Secretary shall not guarantee a loan under subclause (1) on behalf of the National Government unless these conditions are met: The loan is a capital project and the borrower is capable of paying, among other conditions given. They comply with these conditions. We are saying at the new paragraph (h), the Cabinet Secretary will take into account the equity between County Governments so as to ensure fairness.

Let us go to your example of the Kshs2 billion we are guaranteeing for the construction of Lamu Port. We are saying in the next guarantee, the Cabinet Secretary should take into account the fact that he has already given Lamu, Kshs2 billion. So, he should go to Nyandarua this time. That is what we are saying. The amendment is saying we cannot have the Cabinet Secretary next time guaranteeing another Kshs1 billion for the same County. It is as simple as that. Do not confuse us!

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Mungatana! Every Member has a legitimate right to express himself. You have the right of rebuttal and I think you are doing well, so far. So, do not impute improper motives.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I withdraw that and apologise to the hon. Member. I was just getting a bit worked up. But on subsection (b) we are now moving to stage two where the Cabinet Secretary is considering to approve certain amounts to a county “a” or “b”. However, this has to come to Parliament. Here we are saying: “A House or Parliament may approve a draft loan guarantee document as provided by sub-clause 2(b)(ii) only if it is satisfied that the guarantee is: 1(a) in public

interest, (b) the borrower's financial position is strong enough to enable the borrower repay the loan proposed to be guaranteed and to pay the interest, or other amounts payable in respect of the loan. We want to add the third one. In addition, we are saying Parliament is considering that loan - should we guarantee Tana County or not. Tana County is urging that the project is in public interest. We may have some problems in repaying, if maybe, the House is not considering all that because we have all this to develop. However, this is a project that if we fund it, it will economically stimulate the county so much that we should be able to pay. So, we are saying let Parliament not be boxed down into only two considerations. Let Parliament be allowed to think wider than that.

Mr. Temporary Deputy Chairman, Sir, we have many counties that have possibilities--- If money is guaranteed and they are given this capital projects, they will economically stimulate those areas. Let us not agree to be boxed by this law into denying our counties facilities to develop. These guarantees must be fair to all of us. We shall not be selective. Parliament must also be given opportunity for them to approve and not to be tied to only two considerations.

I beg to move.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we need to conclude this. Let me give a chance to the Deputy Prime Minister and Minister for Finance.

(Several hon. Members stood up in their place)

Order, hon. Members! It was because it was hot that I allowed you to handle it. Are you telling me it is too hot for you to handle? It has been ventilated. The House also has rules. We are at the Committee Stage. So, we cannot go into Second Reading.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I get the spirit of what hon. Mungatana is talking about. Basically, he is trying to ensure that somehow there is equity in this whole process; and how do we protect it within this Bill? The only thing I have a problem with is the way he has explained it. Maybe, we need to look at how to word it to ensure there is equity.

Let me just give an example, as a country right now, what we are trying to focus ourselves on is the issue of alternative energy. If we look at the energy sector alone, we are talking about basically three main Counties if we talk about geothermal. We are talking about Nakuru County, Baringo County and Turkana County. If we have an objective of reaching a certain level in terms of energy generation--- It is those entities that are producing power and we are focusing on them. Now, if we are saying that if we give one guarantee, for example, to Turkana for a wind and there is another wind project that is coming and we need to give another guarantee for that project, are we then saying that we cannot give that one because it is in Turkana County? This is the interpretation and I am thinking we need to be very careful, so that we manage. However, I do agree with the principle of trying to get a balance.

(Several hon. Members stood up in their place)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, because you have interest and I also consider this is quite important, I will allow two more from both sides.

Ms. Karua: Mr. Temporary Deputy Chairman, listening to the debate I think there is a way this can be crafted. It is exempting projects of a national character that are not for the benefit of the county alone. That would cover such projects as the geothermal and roads that will open up the entire region, like the Northern Corridor; or even the Lamu Port which will open up the entire region. So, the question is finding the definition of projects of a national character, so that a county that is housing, say, a geothermal project, is not penalized and denied guarantees for other projects that are now solely for the benefit of the county. If it is Lamu, for example, it is not denied money for its own development because it has a project that will impact, not only in the whole of the North and Upper Eastern regions, but also in neighbouring Ethiopia and other countries.

If the procedure does allow, this amendment should be given a bit of time, so that the Minister and the Mover harmonize that language. It is an amendment that this House must pass. We also need criteria for those guarantees, so that it is not entirely at the whims of the Cabinet Secretary. That is what this amendment is trying to bring in.

I beg to support the amendment, but also seek that there be harmonization of those terms.

Mr. Kioni: Mr. Temporary Deputy Chairman, Sir, thank you for allowing me to speak even with the protest---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members! You also read the best of interest because I could see both arguments are compelling. Maybe, you may wish to cure that understanding by trying to harmonize through an amendment. So, as we contribute, that process should also be going on.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I agree with your direction. However, I suggest that we let the Minister and the proposer of the amendment work on the words as proposed by hon. Karua as we deal with the other amendments then we come back to it. I only propose this for the sake of time.

The Temporary Deputy Chairman (Mr. Ethuro): I am inclined to accept that since we have one more amendment on the other one. But since I had allowed views, let us give one minute each to hon. Kioni, hon. Musila and hon. Kones, so that even as they work on the wording, they will take on board the views of the Members.

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Chairman, Sir. Even as they work on the amendments, I had a further amendment to the same amendment.

The Temporary Deputy Chairman (Mr. Ethuro): You are completely out of order, hon. Mbadi! I have already ruled that you can consult. It was an invitation for you to be part of them. You do not need to tell us.

Proceed, hon. Kioni!

Mr. Kioni: Mr. Temporary Deputy Chairman, Sir, in essence, we have achieved what we wanted. The suggestion by hon. Mungatana has a basis, but even as we consider those fears, it is important that we end up with a legislation that allows economic growth in this country. By and large, the overriding factor should be that we do not stifle economic growth. Why is it that we are having these county governments? It is to ensure that there is economic growth and development in all the sectors of this country. For that to happen, we must generate revenue. So, if we have legislation that stifles revenue from

whatever point or corner in this country, then eventually we will have lost our intended objective.

So, even as they do the re-drafting, it is important that the amendment that they are going to propose ensures that counties that have the potential of growing the national economy continue being encouraged and at the same time ensuring that there is development in other counties. So that, where we can generate enough wealth and employment for the youth in this country, we do not slow it down in any manner because of our fears or suspicion. It is important that we take this into account.

The Temporary Deputy Chairman (Mr. Ethuro): You have made your point, hon. Kioni.

Mr. Kioni: Mr. Temporary Deputy Chairman, Sir, there is one more point that I want to make. This was somehow captured by the earlier speakers. We have the second economic and transport corridor that is going to run from Lamu all the way to Juba. Any legislation that we put in place that seems to stifle that kind of a project must be resisted at this level.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Kioni, Clause 3(a) is already saying “in the public interest”. So, the second corridor is in the public interest.

Mr. Kioni: Mr. Temporary Deputy Chairman, Sir, the proposed amendments seems to run against the first provision.

The Temporary Deputy Chairman (Mr. Ethuro): That is why you need to consult and agree.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, I have been standing and you have given hon. Kioni about five minutes. So, do not give me one minute.

Mr. Kioni: On a point of order, Mr. Temporary Deputy Chairman, Sir. If the Assistant Minister would want me to inform him, I was standing even before he came into the House.

The Temporary Deputy Chairman (Mr. Ethuro): Order Members! Hon. Musila has the Floor.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, I know where hon. Mungatana is coming from. This country historically has counties which have been marginalized even as I speak. Your own Turkana County will need massive investment to move forward. Of necessity, it will have to seek a lot of guarantees. Therefore, what hon. Mungatana is afraid of is what hon. Kioni has said; that those counties which have potential for economic growth should be encouraged. This means that those counties which have been marginalized be allowed to remain behind as those which have moved forward continue to move. This is what we must cure.

Mr. Kioni: On a point of order, Mr. Temporary Deputy Chairman, Sir. The Assistant Minister has completely misrepresented me. Maybe he was not listening at all. Those are assertions that do not belong to me.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Kioni, you have spoken twice without the Chair allowing you.

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Temporary Deputy Chairman, Sir, I am supporting hon. Mungatana’s amendments on the basis that this will ensure that there is fairness and equity. We are curing the imbalance in

development that has taken place over the years, so that those counties which are already marginalized will have the opportunity to be guaranteed bigger loans in order to put in place infrastructure and industries and catch up with other counties.

I beg to support.

Dr. Kones: Mr. Temporary Deputy Chairman, Sir, I want to agree that the spirit with which hon. Mungatana brought this amendment is okay, but the wording here, I want to assure the Members, particularly those who think that they come from marginalized counties, that if we leave it this way, it can cut both ways. Suppose we guarantee a loan to hon. Mungatana's county and yet there is another project that has come there that is also required to spur the same economic growth that he is talking about, are we saying that we cannot do it the second time just because we had done it before?

Secondly, I want to pick up from where hon. Kioni stopped; that we should not make a law that seems to discourage counties which are perceived to have potential for revenue generation. This has been done in a way that it discourages those counties that have potential to generate revenue. So, there has to be a balance. I hope the negotiated amendments will address the issues.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we now have the agreed amendments and I would invite the Deputy Prime Minister and Minister for Finance to move the further amendments to hon. Mungatana's amendment.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 4 be further amended as follows-

- (a) In the new Clause 4(h) by inserting the words "and the National Government's interest so as to ensure fairness" after the words "county governments".
- (b) That the new Clause 4(c) be amended by deleting the words "that are economically challenged" after the words "county governments".

(Question of the further amendment proposed)

Mr. Bahari: On a point of order, Mr. Temporary Deputy Chairman, Sir. I thought the focus is where, for example, a county has been challenged, as it is put here, we make a deliberate effort to invest in that county, so that it comes to the same level. If that is removed, I thought it is going to dilute the spirit.

The Temporary Deputy Chairman (Mr. Ethuro): The understanding of the Chair is that when the submission is being made to guarantee, that would be one argument that you can use, but also because the Constitution has already provided for the Equalization Fund for such, one can argue that way. Let us proceed, hon. Members!

Mr. Bahari: Mr. Temporary Deputy Chairman, Sir, the Equalization Fund is already there out of the revenue---

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Bahari, why are you arguing with the Chair? I did not give you the chance!

Mr. Bahari: I am not arguing.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Bahari, I have not given you the opportunity to respond to me.

Mr. Bahari: On a point of order, Mr. Temporary Deputy Chairman, Sir. The Equalization Fund comes out of the revenue. What we are doing now is to go out of our way to borrow. It is that borrowing that is guaranteed. So, let us not restrict ourselves to that because that is limited as usual and it is not sufficient. Therefore, we go out of our way through deficit financing to ensure that the potential of a county that is challenged is realized.

The Temporary Deputy Chairman (Mr. Ethuro): This only qualifies the counties and to me, it is an argument. You can prove why your case is more deserving than another. The way it has been done ensures that every other county cannot feel marginalized or otherwise. But the marginalized one can use it as an argument to convince, in its favour, why it should get more guarantees than others. Let us proceed. I think we have reached somewhere.

I will now put the question. For clarity, you will remember that in Mr. Mungatana's amendment, the entire sub-paragraph (i) was deleted.

Mr. Bahari: On a point of order, Mr. Temporary Deputy Chairman, Sir. I may not have a problem with one of the first amendment. But if I have a problem with the second amendment, how do I put my views across in terms of saying yes or no? Could this be separated and asked differently?

The Temporary Deputy Chairman (Mr. Ethuro): That is correct! I will do it separately!

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Chairman, Sir. This is a quick one; I just wanted to allay the fears of Mr. Bahari. We need to read the second amendment in total. It says: "A House of Parliament may approve a draft loan guarantee document as provided by Section 2---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Mbadi! The arguments have been made. You were to restrict yourself on the proposal.

Mr. Mbadi: But there is a fundamental---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Mbadi! I, therefore, wish to dispose of the further amendment. I will start with the first ones. Let me repeat that the first further amendment is to insert the words in (h) as proposed by Mr. Mungatana: "National Government interest" and between the words "the" "and county."

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

I, therefore, wish to propose the further amendment on "c" that all the words after the word "government" are deleted.

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

The Temporary Deputy Chairman (Mr. Ethuro): Dr. Nuh, you have an amendment to Clause 4?

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

THAT, Clause 4 of the Bill be amended by inserting the following new-sub clause immediately after sub-clause (2)-

(2A) Where a Cabinet Secretary declines to guarantee a loan request from a County Government, the County Government aggrieved by the decision may petition Parliament for a review of the Cabinet Secretary's decision.

As I had put it in the debate yesterday, this Clause is supposed to cater for a Cabinet Secretary where issues of high handedness or bias might come in. We have also to see whether the work is humanly possible. Giving so much power to one office without having a recourse for appeal might cause some counties disadvantage because of the opinion of one Cabinet Secretary that a county government is not in a position to repay the loan and thus deny the guarantee that would, otherwise, have been guaranteed in this Bill. So that is why I am saying; where the Cabinet Secretary declines to guarantee a loan request from a county government, the county government aggrieved by the decision may petition Parliament for a review of the Cabinet Secretary's position. With those few remarks, I move that amendment.

(Applause)

(Question of the further amendment proposed)

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

(Clause 4 as further amended agreed to)

(Clause 5 agreed to)

Clause 6

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT Clause 6 be amended in sub-clause (4), paragraph (a) by inserting "d" to read as follows:-

(d) "details of the guarantee."

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Mungatana, do you have an amendment to Clause 6?

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I have to complain on the Floor of the House because that amendment, if you look at it, is for the Contingencies Fund and County Emergency Funds Bill, Bill No.44. Now they have brought the office here and I cannot blame them too much because they are working under stress. But they have brought that amendment into another Bill, which is the Government Guarantee

Loans Bill. So, having complained about that, I do not know what you are going to do about that. But in this case, I have to drop it because it is not relevant.

*(Proposed amendment to Clause 6 by
Mr. Mungatana was withdrawn)*

The Temporary Deputy Chairman (Mr. Ethuro): We wish to apologize. You must withdraw but you must also complain. I think you have complained and we have registered that. Apologies from the Chair.

(Clause 6 as amended agreed to)

Clause 7

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Minister, we do not have a lot of time and these things are all on the Order Paper.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Sorry, Mr. Temporary Deputy Chairman, Sir. I beg to move:-

THAT Clause 7 be amended in sub-clause (3) by inserting “s” after the word “term” to read “terms”

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Minister, for the benefit of hon. Member, just say it is a typographical error and then we will be okay.

(Question of the amendment proposed)

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

(Clause 7 as amended agreed to)

(Clauses 8 and 9 agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Okemo, we have now reached where you always wanted us to be.

New Clauses 3A and 3B

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, after consultation with the Minister, we have decided to drop the amendments because they have been catered for. There are provisions within the Bill which cater for what we wanted to achieve through the amendment. So, we drop the amendments.

The Temporary Deputy Chairman (Mr. Ethuro): Does that extend to both New Clause 3A and New Clause 3B?

Mr. Okemo: Absolutely, because both are catered for, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Good! The amendments are dropped by the Mover.

(Proposed amendments to New Clauses 3A and 3B withdrawn)

(Title agreed to)

(Clause 1 agreed to)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to the House its consideration of The National Government Loans Guarantee Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, we are now on the third Bill. That is the Commission on Revenue Allocation Bill, 2011.

THE COMMISSION ON REVENUE ALLOCATION BILL

Clause 2

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 2 of the Bill under the definition of “revenue”, be amended by deleting “or” between and replacing it with “and” to read “Articles 209(4) and 206(1)(a)(b)”.

This is, again, a typographical error.

(Question of the amendment proposed)

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I have a similar amendment. So, I will drop my amendment.

(Proposed amendment to Clause 2 by Mr. Okemo was withdrawn)

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

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

(Clause 2 as amended agreed to)

(Clauses 3 and 4 agreed to)

Clause 5

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

THAT, Clause 5 of the Bill be amended-

(a) in sub-clause (2) by deleting the word “may” and substituting therefor the word “shall”;

(b) by inserting the following new sub-clause immediately after sub-clause (2)-

(3) The chairman and members of the Commission shall be non-executive and shall perform their functions in accordance with Article 216 of the Constitution.

Mr. Temporary Deputy Chairman, Sir, in part (a) of the amendment, we are substituting the word “may” with the word “shall” because we believe that the Commission should not be on a full time basis. However, we have saved the existing Commission under Clause 27 because there are already contractual obligations. But for future commissions like this one, the Commissioners will be part time. So, that is the import of the amendment.

(Question of the amendment proposed)

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, I wish to oppose this amendment. To me, this looks like we are weakening the Commission. If you look at the powers that are given to the Commission on Revenue Allocation by the Constitution, you will realise that the Commission is actually taking power from the Treasury. Therefore, I do not think this House should allow the weakening of this Commission to an extent that the Treasury will roll over this Commission.

Saying that the Commissioners will perform their functions in accordance with Article 216, to me, is superfluous. It is already known that the Commission will have to work in accordance with Article 216. So, I wish to oppose the amendment and urge this House not to weaken this Commission. Let us allow this Commission to have the powers to perform its duties. This is the Commission that will even decide how revenue will be allocated in this country.

Thank you. I oppose.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I think the amendment is superfluous because both issues are actually stated in the Constitution. If you allow me a bit of time, Article 216 is clear on the functions of the Commission on Revenue Allocation. That is as it will be and we cannot amend it.

As to whether the Commissioners will be permanent or part-time, again, the Constitution deals with that aspect. It says, in Section 250(5):-

“A member of a commission may serve on a part-time basis.”

So, the Constitution already provides for a member to serve either on part-time or full time basis. So, we are not doing anything new. The issue is that of non executive in part (b) of the amendment. That is also sorted out by the Constitution.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Abdikadir, the Constitution is making reference to any commission, but this amendment is specifying that particular Commission.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, this Commission is also specified under Article 248. The Commission on Revenue Allocation is indicated there. Therefore, I oppose the amendment.

Mr. M'Mithiaru: Mr. Temporary Deputy Chairman, Sir, I am a Member of the Finance, Planning and Trade Committee. We looked at this amendment. The Constitution clearly says that the Commissioners may be part-time or full time. This particular Commission, which is there now, is being saved by Clause 27. So, what we are saying is that since we already have an Executive Officer who is the Secretary to the Commission, the future ones should actually serve on part-time basis. Even the existing ones have the option, if they wish, of serving on part-time or full time.

So, I support the amendment.

Mr. Bahari: Mr. Temporary Deputy Chairman, Sir, there is nothing superfluous about this amendment. In fact, it is within the law, as you had said earlier. The only decision the Committee made is, perhaps, they--- The Committee may have considered the weight of the assignment of this Commission. After the first Commission, the formula could be very clear. They might require just minor amendments, and they may not need to be there full time, so that we can save on some of those costs. The Committee may have decided to have members of that Commission work on a part-time basis.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment. The functions that have been bestowed upon this Commission are functions which will be carried out throughout the year. The moment we start saying that the Commissioners will serve on part-time basis, they will not be able to fulfill these particular functions.

With those remarks, I beg to oppose.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, this is a straightforward matter. I do not know why it is generating a lot of interest.

Yes, hon. Midiwo!

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, it is generating a lot of interest because it has to do with revenue. Hon. Bahari has put this thing correctly. What our Committee was trying not to do was to keep bloating the Government. You do not divide revenue every day. We know that the special Commission, which is the existing Commission, which is saved under Section 27 of the Bill, will set the formula and criteria of division.

In this Bill, we have also given this Commission a Secretariat with a Chief Executive Officer, who will be working on a day-to-day basis. We are saying that the Commissioners can come on a need basis. They can even come seven days in a week, if there is work to be done. When there is no work, we want the Commissioners to do things other than staying permanently on salaries. We are becoming a country of Commissions.

Thank you.

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

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

(Clause 5 as amended agreed to)

Clause 6

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

THAT, Clause 6 of the Bill be amended in paragraph (a) of sub-clause (1) by inserting the following words immediately after the word degree-

“ in economics or public finance”

Mr. Temporary Deputy Chairman, Sir, we felt that this being a very specialized Commission, the qualifications should be very specific. If you look at the Bill, they are just talking of a university degree. However, we believe that it should be a relevant degree. That is why we have said, “a degree in economics or public finance”.

(Question of the amendment proposed)

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, whereas I do not have a word for the requirement of economics or public finance, I wonder what we mean by “public finance”. Most people have degrees in finance. Public finance is such a restricted portion of finance that I really do not know what qualification it is. For me, we should just put it as “economics or finance”. That would make sense.

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Mbadi, if you peruse courses at the Kenya Institute of Administration (KIA) you will have an understanding of what we are talking about.

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, I would stand to support this. Public finance, as you have just said, is a very established course not only here but all over the world. There is a big difference between private financing like the Master of Business Administration (MBA) that I have taken and public finance. Before, I did not even understand public finance. When I became a mayor, I thought I was a fellow of the Institute of Chartered Accountants (ICA) and, therefore, knew finance, but I did not. Public finance is a very different animal and, therefore, we must have it in.

Thank you.

The Temporary Deputy Chairman (Mr. Ethuro): Last one from Dr. Nuh!

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, I am a bit uncomfortable with restricting the qualifications of Revenue Allocation Commission to people who have only issues on economics and finance. This is because when allocating revenue it is not only about addition of figures. You have to have other perceptions and issues on board. When trying to allocate resources to far flung areas and disadvantaged places, you should not only have the knowledge of one plus one but also the knowledge to perceive and conceive that some places are really disadvantaged.

When we talk about distances, longevity, access to facilities and statistics in the case where the people of Turkana are being challenged that they do not add up to the numbers, you would need a statistician on board. I think the Committee that is relevant in vetting the Commission would have the capacity to see how they can accommodate the vast expertise that would be needed to serve within the revenue allocation.

Mr. Temporary Deputy Speaker, Sir, with all due respect to Mr. Okemo, I would want to oppose this amendment because I do not think it carries everybody on board.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, I had agreed that Dr. Nuh would be the last one. I think this matter is fairly obvious.

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

Let us get the further amendment by the Minister.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I would like to add a further amendment by inserting the word, “accounting” so that it reads:-

“economics, public finance or accounting”

(Question of the further amendment proposed)

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, I also want to oppose that proposed further amendment.

The whole idea of this Revenue Allocation Commission is to be a policy development commission. It will have the ability to recruit precisely that kind of expertise that is needed. Therefore, we are not looking for technocrats as such. We are looking for people who understand the situation of Kenya and who will work with those other technocrats to lead. We should allow the discretion to those who will do the recruitment to look for suitable persons not necessarily restricted to technocrats.

Hon. Members: Point of order! Point of order!

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, I hope you are not using points of order as an excuse to contribute because I will still give you the chance to do so!

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

The Temporary Deputy Chairman (Mr. Ethuro): What is it Mr. Mbadi? I will rule you out of order if it is not a point of order!

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, is it in order for Mr. Baiya who is a lawyer and who has always been supporting lawyers when they give themselves jobs in this House, to oppose accountants, finance experts and economists when they are giving themselves jobs?

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. My point of order arises from the contribution by Mr. Baiya. I would like to clarify that the qualifications we are talking about are not for the Commissioners. These are the qualifications of the person who would have clear understanding and has enough aptitude to interpret statistics and make them to be used in the distribution of resources. It is important because he seems to say this is the person who would be setting policies.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! Let me just bring it to your understanding that the argument as the hon. Member has proposed is that Clause 6(1) should read:-

“A person shall be qualified for appointment as the chairperson or a member if the person holds a degree in economics, accounting or finance”

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I have a problem with the further amendment just as I have a problem with the amendment. Even the addition of

“accounting” does not satisfy our concerns. I said the RAC should have Commissioners who have a broad-based capacity and expertise in all spheres. Therefore, restricting issues to only matters of finance and one plus one, minus one is not doing justice to this Commission. I have said that---

Mr. Mbadi: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is it in order for Dr. Nuh, whose profession I respect very much, to insinuate that finance is just adding one plus one is equal to two, minus one, when I took so many years to study finance?

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Mbadi! This is not an opportunity to prove your competence in accounts or finance.

Dr. Nuh, apologize!

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, I apologize. I also add that they also have times and division. I think the onus will be on the vetting body to question the expertise of that person in relevance to the RAC. When vetting, I think the matter will be considered. Obviously, they will not take someone whose profession has no relevance to matters on allocating revenue. Therefore, when you have, “holds a degree from a university or an equivalent professional qualification recognized in Kenya” and part “b” which says, “has professional experience in financial and economic matters”, I do not know why we are duplicating and restricting these degrees.

*(Question, that the word to be inserted
be inserted, put and negatived)*

The Temporary Deputy Chairman (Mr. Ethuro): We are back to the original amendment. Therefore, I wish to put the Question.

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Chairman, Sir. I think for avoidance of doubt and clarity in the House, Mr. Mbadi raised a very fundamental question that there may not be a degree in Public Finance. The amendment by the Minister was to broaden the qualifications which may have been negatived because of the issue but when we get back---

(Loud consultations)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! The Minister is on the Floor!

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I am on a point of order. The matter may have been spent but I just want us to understand that there was an issue that was being corrected, we have not corrected and we are now discussing it---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Kimunya! You are the Deputy Leader of Government Business and you should know better than anybody else the rules of the House. That matter has been disposed of. The continuity to explain was generously granted by the Chair and you did not convince the hon. Members. You cannot do it afterwards.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Chairman, Sir. I am just saying that as a Chair you should clarify to the hon. Members the consequences of either passing or rejecting that clause. That was what Mr. Kimunya was trying to put across.

The Temporary Deputy Chairman (Mr. Ethuro): Is it the one that we passed or the one that we are about to determine?

Dr. Nuh: The one that we are about to determine, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): That is a legitimate question given the interest. Clause 6(1) says:-

“A person shall be qualified for appointment as the chairperson or a member of the Commission----”

The amendment being proposed by the Committee, and I must declare my interest that is sweet to me, I also want to believe that the Commission of Revenue Allocation is not the Commission of Economists as we have it in the United States of America (USA). I am not making a ruling but the Chair has been invited to give advice.

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

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Mbadi! On this one, your professional interests are being shared by the Chair. So, I cannot negate them completely, but the Chair must also be alive to the scenario in the country. These commissions must reflect the Kenyan society. If you look at Clause 6(1)(b), you will find that we have already said; “has professional experience in financial and economic matters of, at least, 15 years in the case of the chairperson and ten years in the case of any other member.” So, for you to prescribe now that you must have a degree in this field, I think we are overstretching.

Mr. Shakeel: On a point of information, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Nobody needs any information. I will give this chance to the Chair of the Committee. What is your point of order, Mr. Okemo?

Mr. Okemo: On a point of order, Mr. Temporary Deputy Chairman, Sir. I thought the Chair was supposed to be impartial

The Temporary Deputy Chairman (Mr. Ethuro): That is correct!

Mr. Okemo: But the way you have acted in the last few minutes persuades me that you have taken a particular position and you have influenced the outcome before we actually vote!

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Okemo! I am glad you are saying it in jest because you are equally laughing so I take it that you are not imputing improper motive on the Chair.

Mr. Shakeel: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): Order! The Chair is communicating, Mr. Shakeel!

Mr. Shakeel: It is important. Is it in order for the---

The Temporary Deputy Chairman (Mr. Ethuro): Mr. Shakeel, do not push the Chair to do what it does not want to do to you.

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

(Clause 6 agreed to)

(Clauses 7, 8 and 9 agreed to)

Clause 10

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

THAT, Clause 10 be amended by—

- (a) numbering the existing clause as sub-clause (1);
- (b) inserting the following new subclauses immediately after the newly numbered subclause (1)—

“(2) In making recommendations under this section, the Commission shall take into consideration such facts or information as may be given to it by a county government.

(3) The recommendations made by the Commission under this section shall be acted upon within such period as is reasonably practicable.”

Mr. Temporary Deputy Chairman, Sir, so that the hon. Members can understand, we have created a Commission which Clause 10 says that its principal function is to make recommendations but we have not given that Commission the power to try and gather those facts. Principally, we want them to gather facts, particularly from the county governments and others. So, this is the move behind that. At the same time, we have created a Commission which we have not given timelines for implementation of its recommendations. Again, for that reason, I have brought that by saying that they should be acted upon as soon as practicable.

(Question of the amendment proposed)

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

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

THAT Clause 10 of the Bill be further amended by inserting the following new words at the end of paragraph (c)-

“including recommendations on the amounts earmarked for specific purposes like the constituency development fund, among others”.

We thought that it is important to be explicit about the Constituencies Development Fund (CDF); that the CDF is explicitly taken into account. That is the import of this amendment.

(Question of the further amendment proposed)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I understand where the Chairman is coming from but we also have many other funds that need to be considered and I thought that it might not necessarily be good to just refer to one specific fund. So, I want to move a further amendment to Clause 10.

I beg to move:-

THAT Clause 10 be further amended after the words “including recommendations on” by deleting the words “like the constituency development fund, among others” and inserting the words “conditional or unconditional transfers” in place thereof.

This takes into account the CDF, the Local Authorities Transfer Fund (LATF), The Roads Levy Fund, bursaries and everything else. I think it is a much broader definition and it includes all the other funds without necessarily mentioning one fund.

(Question of the further amendment proposed)

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, if I heard what the Deputy Prime Minister and Minister for Finance said, there is no difference only that my amendment was a bit specific, but it includes all the other funds. I have already achieved what he is trying to achieve by saying “among others”.

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

The Temporary Deputy Chairman (Mr. Ethuro): We are now back to the amendment by the Committee.

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

The Minister for Education (Prof. Ongeru): Mr. Temporary Deputy Chairman, Sir, I would like to seek your indulgence. I want to understand the implication of this amendment, because the earlier amendment by the Minister did include bursaries, among others. If it is not specified as bursaries, then I think we are in a lock-jam and I need to be advised accordingly.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I understand the mood of the House, but I really think that we need to be very careful about mentioning specific funds without looking at them. This is because we are still catering for the Constituencies Development Fund (CDF). We must also be careful how we manage and phrase these things to ensure that we are not challenged going forward. Hon. Members, the amendment that we have brought takes into account that particular fund. However, to specifically mention – and you know that this is not necessarily full agreement on this issue - we may be opening ourselves to challenge.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members! First, that amendment has been disposed of. So, we cannot really entertain debate.

Secondly, I want to appreciate the spirit in which Prof. Ongeru was asking. He was seeking for information and clarification from the Chair, and I will grant him that. The argument is that the Committee’s amendment is including recommendations on the amounts earmarked for specific purposes. So, your specific purposes include bursaries, conditional and other unconditional grants as proposed by the Minister. It is only that the

Committee decided to give one example amongst others. So, “among others” plus “specific purposes”, will take care of the concerns of the Executive.

(Clause 10 as amended agreed to)

(Clauses 11, 12, 13, 14 and 15 agreed to)

Clause 16

Mr. Okemo: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 16 be deleted and replaced with the following new clause-

Staff of the

Commission. **16.** The Commission shall, pursuant to Article 252(1)(c) of the Constitution, employ its own staff through a competitive and transparent process.

Mr. Temporary Deputy Chairman, Sir, what is provided for in the Bill is secondment of officers, I think from the Ministry to the Commission. We are saying that, that is not something that should be legislated and should not appear in the law because it is an administrative thing. But more importantly, we want the Commission to have full powers to recruit its staff, but in a competitive and transparent process. That is the import of that amendment.

(Question of the amendment proposed)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, what the hon. Member has referred to is already taken into account in the Constitution. They do have that independence to do that. I think this is only saying that where they may need additional expertise, officers can be seconded to the Commission. The officers seconded to the Commission will operate under its terms and norms. They will basically be Commission employees. All we are saying is opening up room for staff to be seconded at the request of the Commission, if that should arise.

Mr. Okemo: Mr. Temporary Deputy Speaker, Sir, we are just avoiding the possibility of the Treasury finding its way to the Commission in order to influence the decisions of the Commission on Revenue Allocation. That is why we want to be explicit in saying that the Commission should be free to hire its own staff. If it wants secondments, that can be arranged administratively. Why should we put it in the law?

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! In addition to the staff being appointed by the Commission under the same Article that is referred to, the Government may upon the request by the Commission---

Yes, Hon. Shakeel!

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, we had a long discussion on this and I see no reason why the Deputy Prime Minister and Minister for Finance should oppose it. This is because if the Commission requires staff, it can still ask for them because this is an administrative issue. What we are trying to get away from, and I do not want to repeat, is that even the Commissioners can be influenced to come and ask for secondment of staff.

Again, if the Commission is responsible for the recruitment of its own staff, it will be responsible to the Secretariat. If you recruit your own staff, you will be responsible because the buck stops with you.

Mr. Bahari: Mr. Temporary Deputy Chairman, Sir, I have no problem with the amendment brought by the Chair. I do not see where there is a conflict. This is because in the first place, Clause 16(1) says that it is upon the request by the Commission. This is strengthened further in Clause 16(2) in terms of control and direction over the staff who have been seconded. This means that they will work under the direction of the Commission. I do not see where the conflict is.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, let us look at the import of Clause 16(1) and (2) and remove any suspicions of micromanagement of the Commission. Earlier on, the Chair of the Committee on Finance, Planning and Trade told us that the intention was to get this staff of the Commission to work on a part-time basis. Even if we removed the Treasury from interacting with the Commission, this Commission may require to work with staff from the Attorney-General's Chambers and other departments, but not necessarily being bound that they must hire them on a full time basis. The import of having this provision, because I know we debated it at length in the Cabinet, is to obligate the national Government to provide the staff should the Commission so request. This is because leaving it at the mercy of the Government, that they may request, the Director of Personnel Management (DPM) may well say; "we do not have a budget or money for this," and the Commission will be held up because it does not have money to employ. This is because it cannot employ somebody for a day. The Government will say that it has no power to provide staff.

Mr. Temporary Deputy Chairman, Sir, this clause now creates that bond between the Commission and the Government; that they may ask for staff and the Government will provide for the time they require them, if they are not part of the full time staff. I think we have opened the door for the Commission to request and the Government to provide. If we close that door or window, then we will be stifling the Commission, because when it wants staff it cannot get them.

Mr. Temporary Deputy Chairman, Sir, I urge the good Chairman of the Committee to reconsider withdrawing this amendment and we live with what is already provided.

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, the Treasury has never been this generous before. I do not know where the generosity is coming from. However, I am unable to conceive why a secondment would be needed because as it is legislated now, we are only specifying that the Treasury may second an officer on request by the Commission.

An hon. Member: The request is not by the Treasury.

Dr. Nuh: Mr. Temporary Deputy Speaker, Sir, I may not speak on that, if the request is not by the Treasury.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, this recommendation as put here, first and foremost, is not from the Treasury. We will benefit from the amendment. If you want to go that route, I have no problem. However, it is important, once again, for Members to understand that the mischief they are trying to cure through this so-called amendment, is actually what

they are reinstating, unless it is specifically stated in law that if, at the time a Commission will come to request, it will be on the terms of the Government. It will not be clearly stipulated here that those officers who have been seconded to the Commission will work with the Commission and under the direction of the Commission. I think what you will achieve is the exact opposite of what you are seeking to cure.

Mr. Okemo: Mr. Temporary Deputy Chairman, I do not see where the conflict is. This amendment does not close the door. There is nowhere where it says that the Commission may not get staff from the public service. What we are saying here is that, that should be the decision of the Commission. But here, we are forcing them to get--- Let the Commission be an independent Commission. Let it have independent staff and let it decide whether they require officers from the public service or not. I think that is what an independent commission is supposed to be.

The Temporary Deputy Chairman (Mr. Ethuro): Members, you are agreeing and disagreeing at the same time. You need to find a way out.

Mr. Baiya: Mr. Temporary Deputy Speaker, Sir, the point being missed here is that the independence of the Commission is very important. It is very important to safeguard the independence of the Commission. But, at the same time, it is important to make it obligatory on the part of the Government to support with expertise and any other information that this Commission may require. If you give it independence but deny it the capacity to access expertise in the Government, you will be giving the Government an opportunity to stifle the very independence you are looking for.

The Assistant Minister for Forestry and Wildlife (Mr. Nanok): Mr. Temporary Deputy Chairman, I think we are basically discussing a Commission that was set up even without a law in place. The Government has already seconded some staff to it. But basically, as we move forward, and since we are putting down the law now, we are saying, as a matter of checks and balances between the Treasury, the Revenue Allocation Commission and all the other organs that will be handling our financial management, that the Commission is given the leeway to recruit its own staff and make its own decisions independently.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, in terms of staff, this is what the law says. Each Commission and holder of independent office shall recruit own staff. In terms of being told that finances are not available, this is what the Commission says---

The Temporary Deputy Chairman (Mr. Ethuro): Since you are in CIOC and just assisting - and I agree with that - there is value added on the amendment in terms of a competitive and transparent process.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, in terms of funding, the main issue is: What if they are told that there are no funds to hire more? But the Constitution makes it mandatory and says: "Parliament shall allocate adequate funds to enable each Commission and independent office to perform its functions and the budget of each Commission and independent office shall have separate Votes". So, let us strengthen the Commission on its own. Nothing stops the Commission, on its own volition, to ask for support from the Government.

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, we are splitting hairs. That is because the Commission is obliged by the Constitution to hire its own staff. But this clause, which is a standard clause in all commissions, is to obligate the Government.

Should the Commission ever want or hunt for an officer who is in Government, this is to obligate the Government to second the officer to the Commission. However, should the Commission never request, there will be no secondment. This is a standard clause. It safeguards the Commission against a refusal by the Government to second a needed officer. I stand for the independence of the Commission. This clause also stands for its independence because should it never request, no Government Department will ever second staff that is requested by the Commission. I am urging that we take the clause because if we do not take it, tomorrow the Commission will request for a staff that is good in Government, and the Government may not reciprocate. It will second another one. This is for strengthening the Commission and I am urging we read it dispassionately.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I really want to thank the Member for Gichugu for that clarification and to further add that, if you look at Clause 2, it says that a public officer who is seconded to the Commission shall during the period of secondment, be deemed to be an officer of the Commission and subject only to the direction and control of the Commission. If we delete as proposed by the Committee, we will also be deleting that clause. That would mean that they may request to hire and the people they get may as well go and be under the direction of somebody else. Clause 2 obligates that whichever officer is brought in will be under direct control of the Commission. I would like to ask that, for purposes of preserving Clause 2, we do not need to delete the entire Clause 16. That is because if we delete Clause 16 and only replace it with Section (i), we will gain the advantage of independence of transparency in recruitment, but we will lose the control and direction by the Commission of the officers who are seconded to it by the Government or by any other body. So, I would like to urge the Chairman of the Committee to consider withdrawing this, in the interest of us not defeating a proposal by the Committee.

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, basically, I think we are arguing too much about the same thing. I think so as to progress, we could do two things. I understand the argument of both parties. The argument of the Committee was that we do not want the Government to load the Commission with unnecessary staff that they do not require, although the Bill also takes care of that. It says that it is upon the request. The other fear that the Committee had is that the Commission would be denied the opportunity to recruit staff by being starved of funds. However, there is a constitutional cure for that. Clause 252(1) (c) gives the Commission power to recruit its own staff. I think we can live with the Bill as it is. I request the Committee to withdraw and then we proceed.

Mr. Midiwo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I just wanted to inform the House that this particular Commission - and I have reliable information - had previously attempted to hire its own staff as per the requirement of the Constitution. But the Treasury refused. The reason that was given was that the Treasury wants to control the issue of revenue allocation. That is why we decided in the Committee to---

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): On a point of order, Mr. Temporary Deputy Chairman, Sir. First and foremost, that is hearsay and it is not true.

Secondly, we are now in the process of making this law. There was no law. We want this Commission to operate under this law. All we are now doing is setting the framework for them to move forward.

So, I would really request that we focus ourselves on the Bill so that we move forward.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We need to make progress.

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

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

(Clause 16 as amended agreed to)

(Clauses 17, 18, 19 and 20 agreed to)

Clause 21

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, after yesterday's debate, there was a proposal by Mr. Mbadi which we want to include. Therefore, I beg to move:-

THAT, Clause 21(3) of the Bill be amended to read as follows:-

The annual estimates prepared by the Commission under sub-section (2) shall be submitted to the Cabinet Secretary for tabling in the National Assembly three months before the beginning of the next financial year.

I beg to move that the Clause be further amended by inserting the following words "at least" immediately after the word "three".

(Question of the amendment proposed)

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

(Clause 21 as amended agreed to)

(Clauses 22, 23 and 24 agreed to)

Clause 25

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

THAT, Clause 25 be amended by inserting the words "with the approval of the National Assembly" immediately after the word "may".

Mr. Temporary Deputy Chairman, Sir, basically, the Bill is saying that the Commission may make regulations generally for the better carrying into effect of any provisions of this Act. We are saying “with the approval of the National Assembly”. This is because the regulations make all the difference in operationalizing any Act. So, we want the National Assembly to have the opportunity to interrogate the regulations.

(Question of the amendment proposed)

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

(Clause 25 as amended agreed to)

(Clause 26 agreed to)

Clause 27

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

THAT, Clause 27 of the Bill be amended by inserting the words “and notwithstanding any other provision of this Act” immediately after the word “doubt”.

Mr. Temporary Deputy Chairman, Sir, we are making that amendment because of the earlier amendment in Section 5. This is because we were trying to save the Commission that was already in place because we had proposed that it be a part-time commission. Therefore, we were saying they already have contracts with the Commission, we want to save that situation until the next Commission. That was the intention.

(Question of the amendment proposed)

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

(Clause 27 as amended agreed to)

(First Schedule agreed to)

(Second Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Chairman, Sir, I beg to move that the Committee doth report to this House its consideration of The Commission on Revenue Allocation Bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(Consultations)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! We were just trying to agree on the procedure. It is the Chair's ruling that we now report on the first Bills that we have already disposed of before we come back to the Elections Bill because it has many amendments. So, let us proceed along those lines. So, we will report on this and then come back to the Committee for the next Bill which is the Elections Bill.

(The House resumed)

*[The Temporary Deputy Speaker
(Prof. Kaloki) in the Chair]*

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE CONTINGENCIES FUND AND COUNTY EMERGENCY FUND BILL

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Contingencies Fund and County Emergency Funds Bill and approved the same with amendments.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

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

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

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

THE NATIONAL GOVERNMENT LOANS GUARANTEE BILL

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The National Government Loans Guarantee Bill and approved the same with amendments.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

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

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

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

THE COMMISSION ON REVENUE ALLOCATION BILL

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House has considered The Commission on Revenue Allocation Bill and approved the same with amendments.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta): Mr. Temporary Deputy Speaker, Sir, I beg to move that The Commission on Revenue Allocation Bill be now read the Third Time.

The Minister for Transport (Mr. Kimunya) seconded.

(Question proposed)

(Question put and agreed to)

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

The Temporary Deputy Speaker (Prof. Kaloki): Mr. Ethuro, it is now your turn to report the progress on the Elections Bill.

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I wish to report that the Committee of the whole House would like to meet again and consider the remaining business as per the Order Paper which is the Elections Bill.

The Temporary Deputy Speaker (Prof. Kaloki): Minister, would you second that Committee Report.

The Deputy Prime Minister and Minister for Finance (Mr. Kenyatta) seconded.

(Question proposed)

(Question put and agreed to)

*[The Temporary Deputy Speaker (Prof. Kaloki)
left the Chair]*

IN THE COMMITTEE

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

THE ELECTIONS BILL

(Resumption of consideration interrupted in Committee today)

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members! We are back to the Committee of the whole House. As you know, we have disposed of Order No.9(i), (ii) and (iii). I had announced earlier that the fourth Bill; the Kenyan Citizens and Foreign National Management Service Bill, has been deferred to next week. So, the Bill before us is the Elections Bill, Bill No.34 of 2011

Clause 2

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

THAT Clause 2 of the Bill be amended –

(a) In the definition of “ballot paper” by inserting the words “and shall include an electronic version of a ballot paper or its equivalent for purposes of electronic voting” immediately after the word “voter”;

(b) In the definition of “election period” by deleting the word “and” appearing in the third line and substituting therefor the word “or”.

Mr. Temporary Deputy Chairman, Sir, we were merely trying to bring clarity since in Clause 45, we have allowed technology.

(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)*

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 2 of the Bill be further amended by deleting the definition of “party list” and substituting therefor the following new definition-
“party list” means a party list prepared by a political party and submitted to the Commission pursuant to and in accordance with Article 90 of the Constitution and sections 29, 35, 36, 37 and 38 .

The Temporary Deputy Chairman (Mr. Ethuro): You need to justify, Mr. Chairman.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, it is fairly self explanatory. It is just defining party list better than it was done earlier.

(Question of the further amendment proposed)

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

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

(Clause 2 as further amended agreed to)

(Clauses 3 and 4 agreed to)

Clause 5

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I beg to move:-
THAT, Clause 5 of the Bill be amended-
(a) in sub-clause (1) by deleting the word “may” appearing after the words “under this Act” and substituting therefor the word “shall”;
(b) in paragraph (a) of sub-clause (1) by inserting the words “or an election under Article 138(5) of the Constitution” after the words “general election”;
(c) by inserting the following new sub-clause after sub-clause (1)-

“(1A) Despite sub-section (1), where an election petition is filed in respect of an electoral area, between the date of the filing of the petition and the date of the by-election, where a court determines that a by-election is to be held, a voter shall not be allowed to transfer his or her vote to the affected electoral area”.

(d) in sub-clause (4) by deleting the word “amendment” appearing after the words “to the Commission for” and substituting therefor the words “inclusion in the Principal Register of Voters”.

This is essentially to require the Commission to carry out registration throughout as opposed to the “may” carry out. We want to say they “shall” carry out registration.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Mr. Ethuro): Dr. Nuh also has an amendment. Since he is not here it is dropped.

(Dr. Nuh’s amendment dropped)

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Chairman, Sir. I am aware that Dr. Nuh is drafting another amendment. So, if it is possible, I want to move the amendment on Clause 5 on his behalf.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Mungatana, we will take you in subsequent ones because that is not a matter of life and death. So, the Chair cannot bend the rules for your convenience. If you wish, you may look for Dr. Nuh wherever he is. For now, I will not entertain it. It shall still be dropped.

(Clause 5 as amended agreed to)

Clause 6

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

THAT, Clause 6 of the Bill be amended-

- (a) in sub-clause (2) by inserting the words “at least” after the words “for a period of”; and
- (b) in sub-clause (3) by inserting the words “being not less than thirty days before an election” after the words “as soon as practicable thereafter”.

This is essentially to tighten the inspection timelines, so that we have, at least, after the words “for a period of”.

(Question of the amendment proposed)

(Question, that the words to be inserted be

inserted, put and agreed to)

(Clause 6 as amended agreed to)

(Clause 7 agreed to)

Clause 8

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

THAT, Clause 8 of the Bill be amended by inserting the following new sub-clause after Sub-clause (2)-

“(3) The Commission, shall, in the conduct of its functions under sub-section (2), coordinate and liaise with the Ministry responsible for the registration of deaths and with all other relevant Government Ministries and departments”.

I introduced this new sub-clause because the reporting mechanism for the deletion of names of dead people from the register had not been made explicit as to how the Commission can go about it. When it comes to deletion of names of dead people from the register, the Commission would say that it got a whistle blower that hon. Ethuro is dead. When you come to the ballot, you find out that your name has been deleted because purportedly someone gave the Commission the wrong information.

The Temporary Deputy Chairman (Mr. Ethuro): Dr. Nuh, your amendment is not to wish the Chair death. You should at least add the words “God forbid”.

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, I withdraw that. In essence, what the clause wishes to say is that the Commission shall, in the conduct of its functions under sub-clause 2, coordinate and liaise with the Ministry responsible for the registration of deaths and with all other relevant Government Ministries and departments.

(Question of the amendment proposed)

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, while I support the amendment, I wish to propose a further amendment to it.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Karua! You still have some more work to do. The Chair is not aware of your amendments. Approach the Chair and I will give you the chance.

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, I oppose this amendment. If we allow this amendment as it is, it is making it mandatory for an independent Commission to be liaising with Ministries and Government departments. I find that a little bit compromising the independence of an independent Commission. Unless that amendment is further amended, I would hesitate to support it as it is.

So, I oppose the amendment.

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I fully agree with the sentiments of hon. Mbadi that, indeed, this amendment is stating the obvious. There is no way the Commission will do whatever it has to do without liaising with all the different Government departments, but by putting it in law, we are telling them to liaise with the Ministry in charge of registration and perhaps no other person. It is superfluous and it does not add value to the Bill, but could cause

mischief. If implemented, it could be a subject of mischief. I would urge Dr. Nuh to withdraw the amendment so that we can make progress.

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, thank you for your permission. I would like to propose a further amendment to this clause:-

I beg to move:

THAT, we substitute the word “shall” after the word “Commission” with the word “may”.

The reason is that the Commission can be rendered in-operable due to procedures. So, if we put the word “may”, we still have directed it to co-operate, but we have left some flexibility to move. I truly hope that Dr. Nuh who proposed this amendment will agree with that flexibility.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, we oppose the amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Abdikadir! The fact that you are the Chair does not automatically give you the right to speak. You still have to seek permission from this Chair.

(Question of the further amendment proposed)

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, we still oppose the amendment and the further amendment. This is an independent Commission. It will be given sufficient funds and support by this House and the other arms of Government by virtue of constitutional authority. If they wanted to co-ordinate or liaise with other entities, they will do so at their own time. This, as the earlier speaker said, will create mischief. We oppose the amendment.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, I agree with my Chair. This is unnecessary. Nothing will stop the Commission, under its normal operations, from getting in touch with any other Ministry, individual or corporation. So, this is an unnecessary amendment.

So, I oppose.

Mrs. Noor: Mr. Temporary Deputy Chairman, Sir, I want to support the amendment. We are talking of an independent Commission, but will it work in an island? It must work with people. That is why we want to subject them to this. This is a very serious Commission. You will remember that they put us into problems in 2007 and because of that, they must co-ordinate and work with others and be subjected to this. They are not in an island.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, allow me to persuade my good friend, Dr. Nuh and hon. Karua, to drop these amendments completely. The reason is that Kenya, since 1st July, was the first country in Africa to have an open portal on data. By putting this, we are, in fact, contaminating that process and also appearing to give directions to an independent Commission. We are the one country in Africa now with an open data portal where you can just log in and get whatever information you require. That includes deaths. Otherwise, if we go ahead with this, we will be the first country to require an independent Commission to keep records of deaths.

(Question of the further amendment, that the word to be left out be left out, put and negatived)

(Clause 8 agreed to)

(Clause 9 agreed to)

Clause 10

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

THAT, Clause 10 of the Bill be amended by inserting the words “a valid voter’s card issued to the person in respect of that registration and” after the words “and who produces”.

This is to require voters to register but on this matter, the Committee is flexible because we are fairly in the middle. So, if there are any other proposals, I have an open mind.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Chairman! The Committee must decide; you are either withdrawing or proposing it.

An hon. Member: Like you!

The Temporary Deputy Chairman (Mr. Ethuro): I am not like them! I am just telling them to go one way or the other.

(Question of the amendment proposed)

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, I wish to oppose this amendment and urge the Committee to withdraw it on the basis that, as we were looking through this Bill, it became very clear that obligating people to carry a voter’s card in addition to an identification card has been abused in the past, with all those voters cards being bought and we have seen that in every election. The only document that cannot be bought off, if you want a clean election, is the identity card. Because all the details in the voters register emanate from the identity card, carrying a voter’s card does not add value to the electoral process. We went through this and even looked at the position where the identify card will eventually, in future, incorporate a voter’s card and a driving licence within it. So, one document will identify the person. Just for avoidance of doubt and to apprise hon. Members, when you go to the voting station, you are asked for your identity card. Using the identity card, they will look for your name in the register. The voter’s card contains the exact information as in your identity card, but has the added mischief of being bought by opponents - and you know that happens - and people are then told that they cannot vote because you do not have a voter’s card and yet, it is not part of the registration. So, that is why we had suggested that we remove that voter’s card and let people only produce their identification document and their name are on the register.

The Assistant Minister for Tourism and Wildlife (Mr. Nanok): On a point of order, Mr. Temporary Deputy Chairman, Sir. I am not contradicting the Government but I just want for purposes of clarity from the Mover of the amendment---. The Order Paper

is indicating Clause 10 but if I look at the proposed Bill, it has Clause 10 sub-sections 1, 2 and 3. Could the Mover indicate under which sub-section this amendment is being proposed?

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Nanok! That is not a point of order! If you want information, you can get it from your neighborhood.

(Mr. C. Kilonzo stood up in his place)

What is it, Mr. C. Kilonzo? It had better be a point of order. I can only entertain valid points of order.

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, it is, indeed, an omission and for purposes of the record, it has to be very clear. We wish to inform the Chair that the amendment the Committee is moving is on Clause 10(1).

The Temporary Deputy Chairman (Mr. Ethuro): It is Clause 10(1); it could have been better but also the word “who produces” cannot be found anywhere else.

Mr. Mungatana: Mr. Temporary Deputy Chairman, Sir, I needed the House to remember when we were debating the Elections Bill, that I gave an example of where an hon. Member went to a polling station and he had forgotten his identity card or it was misplaced. The hon. Member was forced to go back. In fact, I had earlier on proposed an amendment to say that if that person is well known, then he should be allowed to vote and a record be kept there but it was rejected. Let me just say it was rejected by the Legal Office because counsel had said that an ID is enough. So, let us not put any other impediment. Let us remove that issue of the voter’s card. Let us have a simple identification that should be enough. Let us defeat this amendment by Mr. Abdikadir. Let us vote and say no!

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, if you look at the definition on the Bill itself, page 921, identification document means the Kenya national ID card or a Kenyan passport.

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I want to persuade the House that the intention of this law is to move from the past; to make sure that we have a system whereby a candidate does not go to your constituency and buy the so-called voters’ cards, force voters to accept money in exchange for the voters cards, manipulate the elections and do all sorts of things. So this amendment should be withdrawn.

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, I sit in the Committee. I actually resisted this amendment. I think I have an opportunity to say that this amendment, with the kind of society we are in--- So many people are illiterate and they lose their voters cards. But if their names are appearing in the register and they have the ID or a passport, why should you deny them the opportunity to exercise their right to vote and participate in electing their leaders? So, I would urge my Chair to withdraw this amendment based on the public’s mood.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Chairman, Sir. Mr. Mbadi, just a few days ago, was imputing improper motive on a Chairman of a Committee because of reading the same mood of the House and keeping quiet to an amendment. Is he in order to propose today that the Chairman withdraws the amendment?

The Temporary Deputy Chairman (Mr. Ethuro): Dr. Nuh, Mr. Mbadi is perfectly in order to entertain and request his Chair to change his mind because Mr. Mbadi has already changed his mind.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, as I had said earlier, even within the Committee---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Abdikadir! Are you withdrawing?

Mr. Abdikadir: I intend to do so, Mr. Temporary Deputy Chairman.

Dr. Nuh: On a point of order, Mr. Temporary Deputy Chairman, Sir. I was just wondering aloud whether we are not rendering the work of the Electoral Commission effortless. What would be the basis of the IEBC being told to do a voter registration and issue a voter's card which, at the date of the elections, would not be required as a document?

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, the whole idea of the third generation ID card is that, that ID card shall have somebody's bio-data. It will have everything such that if you have it, there will be no need to have a voter's card, a driver's licence or even a birth certificate. My last point is the point raised by Mr. M. Kilonzo.

Mr. Nuh: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Member in order to mislead this House by talking about the third generation ID card which is not with us here? We are making these laws not only for the future, but even for today. So, suppose a vacancy happens today and then you are telling hon. Members to come without a voter's card, when the IEBC is busy using public coffers and money to print voter's cards. Now, you are saying that someone can come and vote without the same.

Mr. Midiwo: Mr. Temporary Deputy Chairman, Sir, I am perfectly in order. Just recently, this House approved colossal sums of money to facilitate the printing of the third generation identity cards (IDs). The hon. Member may not be conversant with the issue of bio-data. But it shall be contained in the third generation IDs. It is easier for somebody to sell or buy a voter's card but nobody can ever sell their ID cards. That practice is very rampant across the country. The monied people go to an area where the people are hunger-stricken and where his opponent is popular and buy the voters' cards. So, let us cure this problem.

The Temporary Deputy Chairman (Mr. Ethuro): Committee Chairman, you had indicated that you wanted to withdraw your amendment.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I have consulted with sufficient number of the Members of the Committee. We are withdrawing this amendment.

(Applause)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, for the record, a question already proposed is the property of the House. It can only be withdrawn by the leave of the House or with the sympathy of the Chair. I wish to confirm that the Chair is sympathetic. I also wish to confirm from the House whether you have granted leave for the amendment to be withdrawn.

Hon. Members: Yes!

The Temporary Deputy Chairman (Mr. Ethuro): Thank you.

(Proposed amendment to Clause 10 withdrawn)

(Clause 10 agreed to)

(Clause 11 agreed to)

Clause 12

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

THAT, Clause 12 of the Bill be amended by deleting sub-clause (2) and substituting therefor the following new sub-clause-

“Subject to the Constitution, a claim under sub-section (1) shall be determined by the registration officer in the prescribed manner, and an appeal shall lie in the prescribed manner to the Principal Magistrates Court on matters of fact and law and to the High Court on matters of law”.

This amendment seeks to give one the right to appeal to the High Court only on matters of law relating to this matter.

(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 12 as amended agreed to)

Clause 13

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

THAT, Clause 13 of the Bill be deleted.

We are proposing the deletion of this clause because we did not think it is necessary to legislate that one can object to the registration of another person in the register or in their own registration. We will leave it to the broad capacity of the courts, if one wants to bring such objection.

(Question of the amendment proposed)

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, I had an amendment to delete part (c) of that clause, but the amendment that has been proposed by the Committee is more favourable. Therefore, I wish to withdraw my amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Dr. Nuh, we are not yet discussing your amendment.

Mr. Mbadi: Mr. Temporary Deputy Chairman, Sir, I support this amendment because I do not see why someone would register and then contest his registration. Why should you contest registration of another person? We will open a room for a lot of complaints. Somebody mischievous can just contest that he does not want Mbadi to be registered in Gwassi. I really did not understand why this clause was provided for, but I support the amendment.

The Temporary Deputy Chairman (Mr. Ethuro): Yes, Minister!

The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I accept the amendment.

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

(Clause 13 deleted)

The Temporary Deputy Chairman (Mr. Ethuro): Dr. Nuh and others, that is why we go for the deletion first. Once that decision is taken, any further amendment to the clause becomes unnecessary. Since you had already agreed with us, anyway, that is the position.

Clause 14

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

THAT, Clause 14 of the Bill be amended-

(a) in sub-clause (1) by deleting the words “three months” appearing after the words “under this Act at least” and substituting therefor the words “forty-five days”;

(b) in sub-clause (3) by deleting the words “each political party” appearing after the words “days upon which” and substituting therefor the words “political parties”; and

(c) by inserting the following new sub-clause-

“(4) In nominating the candidates for an election under sub-section (1), a political party shall ensure that not more than two-thirds of its nominees are of the same gender”.

Mr. Temporary Deputy Chairman, Sir, in part (a) of the amendment, we are reducing the period.

(Question of the amendment proposed)

Mr. Bahari: Mr. Temporary Deputy Chairman, Sir, I have no objection, but I want hon. Abdikadir to explain part (c) of the amendment to Clause 14, so that we can see the practicability of the intended purpose of the amendment.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, let me go through all the parts of the proposed amendments. In part (b) of the amendment, we are amending sub-clause (3) by deleting the words “each political party” appearing after the words “days upon which” and substituting therefor the words “political parties”.

Part (c) of the amendment seeks to introduce new sub-clause (4).

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, while I sympathise and agree that---

The Temporary Deputy Chairman (Mr. Ethuro): Order! Could I request the hon. Members wishing to contribute to be within the sight of the Chair?

The Minister for Transport (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, while I see the spirit of observing the principle of gender equity, let us not pass a law which becomes impossible to operationalise. When parties nominate candidates for an election, they nominate one person for each seat. If there is a by-election, for example, as will happen in Gatundu North, it is for one seat. How are political parties going to nominate a person who is two-thirds of one gender and one-third of another gender? You cannot nominate three people to vie for one seat. So, basically, the intention is good, but we must remember here that we are not talking about a party list. We are talking of an election. A party can only nominate one candidate, and that candidate cannot be of two genders. So, the amendment may be good, but it can only apply where a party is providing a party list of nominees, and not when it is nominating a candidate. I want us to make sure that we do not legislate on something here which has good intentions, but which cannot be implemented.

Mr. Wetangula: Mr. Temporary Deputy Chairman, Sir, this amendment does not add value to the Bill. It may have a genesis in the Constitution, but you can only ensure this if you are talking of putting names on a party list. An election is also a voluntary process. Persons who---

Mr. Mungatana: On a point of order, Mr. Temporary Deputy Chairman, Sir. As you can see, the main issue of contention is with regard to the proposed part “c”. I am proposing that we do away with “a” and “b” which have no contention. We would then concentrate on the issue that is generating heat.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Mungatana! Let us hear the views first!

Mr. Wetangula: Mr. Temporary Deputy Chairman, Sir, I think we are visiting a lot of unnecessary problems on this country. Political parties are voluntary associations. Persons who stand for elections volunteer to stand for elections on parties they wish to stand on. If a party attracts only male or female candidates, how do you form it to go and look for the other gender? These issues can only apply where a party has been given an opportunity to nominate without competition, then they must guarantee parity. However, where you are going to compete, it is those who volunteer to come to your party that you welcome.

The Minister for Lands (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, there is an additional problem that we have to deal with. Article 97 of the Constitution has created 290 seats. The Constitution says in Article 97(2) that:-

“Nothing in this Article shall be construed as excluding any person from contesting an election under Clause 1(a)”

So you can do everything with any other seat but the 290, you cannot. This is because they are political rights and all that. So you have got to find something else.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! The Chair is persuaded by Mr. Mungatana’s suggestion that we dispose of parts “a” and “b” of the amendment and then we can still prosecute part “c” separately.

Dr. Nuh: Mr. Temporary Deputy Chairman, Sir, I think on the same part “a” and “b”, I had an amendment on “b”. It would have been better that before you put the question, you also consider my amendment on the same.

The Temporary Deputy Chairman (Mr. Ethuro): You are aware of your amendment but we thought yours is another two weeks, so once we move from three days to 45 days, we can still come to yours.

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

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

(Clause 14(1) and 14(3) as amended agreed to)

The Temporary Deputy Chairman (Mr. Ethuro): Let us now hear more views on part “c”.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I seek your indulgence and that of the House. There is a big issue on the gender quota as far as the Constitution is concerned. Indeed, there is a query as to the constitutionality of the next House that is going to come in if it does not meet that. My own opinion is that, if this House does its best to cure that, it can be cured by other means other than amendment of the Constitution.

I agreed absolutely with the point that was raised by Mr. Orengo. That is why I oppose the issue of having specific constituencies tossed as constituencies that are for X gender or Y gender. I oppose that myself. That is the basis on which that particular subsection is opposed.

However, when dealing with political parties, one can move from one political party to another. One can be an independent candidate. Therefore, you are not foreclosed from being elected just because you have not been nominated by the party. In fact, when you are nominated, the person who wins the nomination is one. The others who did not win have other opportunities. This is supported by the Constitution in terms of the basic--

(Loud consultations)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! The Chair must be heard.

Mr. Abdikadir: Mr. Temporary Deputy Chairman, Sir, I will plead with Members. I know it is not a very popular position.

In terms of the basic requirements for political parties---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members! I am yet to put the question. You can do that as loud as possible at that particular time. For now, we are getting views and all of us will want to be informed.

Mr. Abdikadir: In terms of political parties and the requirements for political parties, one of the requirements is to respect the promotion of human rights and fundamental freedom, gender equality and gender equity. So since the Constitution requires political parties to respect gender equality and gender equity, and since a political party that has majority of its nominees coming from one gender is not equal or

equitable, they will be in breach of the Constitution if they do not do that. This is one way to cure that.

Mr. Duale: Mr. Temporary Deputy Chairman, Sir, I think we are missing the point. It is my opportunity to speak from this side for the first time.

I think the spirit of gender equity is well in the Constitution and we have no problem with it. However, when it comes to elective positions, to the representation of the people, it is the choice of Kenyan people to elect who they want. It is not even the choice of the political party. The political party will set up a nomination mechanism and it is the people to elect in Kipipiri and Dujis whether they want a man or a woman. We should be very clear. That is why we have a problem when some of our Members are saying; let us put the 80 seats for women. We should not agree to that.

The Minister for Public Health and Sanitation (Mrs. Mugo): Mr. Temporary Deputy Chairman, Sir, I want to strongly support this amendment. This House must be honest. If we really support the spirit of gender equity, if we support the two-thirds clause, then it is double standards when the only route out of this problem is presented, we reject it. We know that the country cannot carry another nomination to bring the number of women to two thirds after 290 seats. That will be impossible as far as expenses are concerned for this country.

If there is goodwill in this House, we can show the way and the country that we are serious and we support the spirit of this Constitution of gender equity.

I support.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Members! A reminder again; this is the Committee of the Whole House. Therefore, we should really limit debate. I will only take two more.

Ms. Karua: No! No!

The Temporary Deputy Chairman (Mr. Ethuro): Order, Ms. Karua!

Mr. C. Kilonzo, please, proceed!

(Loud consultations)

Mr. C. Kilonzo: Mr. Temporary Deputy Chairman, Sir, Members are consulting so loudly, I can barely hear myself.

The Temporary Deputy Chairman: Order! Order, hon. Members!

Mr. C. Kilonzo: Mr. Temporary Deputy Speaker, Sir, it is very unfortunate when you are a woman in a political party or when you are a youth in a political party. In this House, each party committed sin in as far as women are concerned. Let us start with my own party so that I deal with the other parties.

Ms. Wavinya was locked out because she is a woman and we gave a man the chance. The ODM locked out Prof. Sambili and a number of other women. Ms. Karua was locked out in 1992---

Mr. Bahari: On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. Member for Yatta in order to bring in party issues which have nothing to do with this clause?

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Bahari! The hon. Member for Yatta is perfectly in order. He is trying to convince you why that amendment is there.

Proceed, Mr. C. Kilonzo!

Mr. C. Kilonzo: We are talking about party issues, Mr. Temporary Deputy Chairman, Sir. Hon. Noor was locked out by KANU in 1997. If this law was there, that could not have happened. Men like asking women to vote for them but when it comes to giving them 30 per cent of the nominees, we do not want to do that. If we are genuine as men, we should endorse this clause.

The Temporary Deputy Chairman (Mr. Ethuro): The last one is from Dr. Khalwale and then I dispose of the matter.

Ms. Karua: On a point of order, Mr. Temporary Deputy Chairman, Sir.

The Temporary Deputy Chairman (Mr. Ethuro): The procedure is that if you want to catch the attention of the Chair, then you have to rise on a point of order but to speak from where you are seated, the Chair will not take it kindly.

Proceed, Ms. Karua!

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, we are just pleading with you because this issue has generated a lot of interest. We are pleading with you to let the House ventilate and that the time we have utilized was utilized, first, in passing the first two amendments which you separated. The actual time on this has not been much. I want to plead with the Chair that let the majority eventually have their way but allow the minority to have their say.

The Temporary Deputy Chairman (Mr. Ethuro): You may support it but the Chair is also constrained. This is a House of rules and this is not the moment for ventilation.

(Applause)

The Chair has gone out of its way to accommodate that ventilation to the extent possible. So, I will allow Dr. Khalwale and two other hon. Members of the other gender and then dispose of the matter.

Dr. Khalwale: Mr. Temporary Deputy Chairman, Sir, I can very well understand what is putting pressure on Mr. Abdikadir. Because we all live in this country, we know how sensitive this matter is but there is a difference between our concern and our sensitivity to the challenge that we are faced with by only one challenge - the issue of implementation. When you are talking about nominated positions, you as the party boss, you are the giver of those positions but when you talk about elective positions, you might be the party leader but you are not the giver. The giver is the person who is electing. In order to comply with Clause 14(1), the party must ask its members, either the delegates or universal suffrage, to give them those candidates. Therefore, how will you go to Mandera Central and tell them that make sure that you do not elect Mr. Abdikadir but bring us a lady? How do you go to Dagoretti and make sure that the voters in that constituency do not elect Mrs. Mugo but they bring us a man? How do you do it? It is not possible and, therefore, we just have to agree that the solution does not lie in populism but in respecting the law which says that you cannot force voters to do what the leadership of the party wants.

I oppose this amendment.

(Applause)

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, I think that we need sobriety in this debate. We need to remember that the Constitution has its guiding principles in the electoral process. One of the guiding principles in the electoral process is the issue of gender equality. There is also the principle that not more than two-thirds of any gender should occupy elective positions. It should, therefore, be the duty of this House in crafting laws to come up with a law that will help us to reach there. What this clause is intended to do is to put an obligation on political parties that when they nominate, they should ensure that there is inclusivity. How do they do that?

Hon. Members: How? How?

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, I would like to ask those who are shouting to be patient. This is a House of debate, a market-place of ideas and one should wait to hear the idea and not just to pre-empt the idea.

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! The Chair agrees with Ms. Karua. It does not matter how much you hate an idea but it must be heard here.

(Applause)

Proceed, Ms. Karua!

Ms. Karua: Thank you, Mr. Temporary Deputy Chairman, Sir. I would like to say that there is a rule we passed in this House, so that we stop doublespeak in the Political Parties Act that not more than two-thirds of the National Executive Members of any political parties - and these are elective posts - should be of one gender. Therefore, we have already accepted that even in elections, we can put in place mechanisms to include the two genders. That is the same clause that is being included here. How the party will do its preparation to ensure that, that happens is up to that political party and it is easy. We all know what we do to ensure that not more than two-thirds of the national executive are men even if it becomes a point system where you give advance points for affirmative action. I want hon. Members to go back to the Constitution. Article 97(2) was read by Mr. Orengo---

(Loud consultations)

Through the Chair, I want to plead with Mr. Mbadi, who is behind me, to stop distracting me by speaking so loudly.

Article 97(2) states:-

“Nothing in this article shall be construed as excluding any person from contesting elections under 1(a)”.

Article 97(1)(a) says:-

“two hundred and ninety members, each elected by the registered voters of single member constituencies;

(b) forty-seven women elected by the registered voters of the counties---

(c) twelve members nominated---

Clause 2 is trying to explain that merely because women have been given 47 special seats, you cannot exclude them from the general contest. Merely because the youth and persons with disabilities have been given a chance to contest---

Eng. Gumbo: On a point of order, Mr. Temporary Deputy Chairman, Sir. The hon. Member for Gichugu is a good friend of mine and a relative in some way---

Ms. Karua: I am not your friend! I denounce you now!

(Laughter)

An hon. Member: Declare the relationship!

Eng. Gumbo: Mr. Temporary Deputy Chairman, Sir, I will declare the relation if I am dared. However, is she in order---

The Temporary Deputy Chairman (Mr. Ethuro): You do not have to declare personal relationships here!

Eng. Gumbo: It is okay, Mr. Temporary Deputy Chairman, Sir. Is she in order to speak passionately on this matter when we know that as the party leader, she has supported a male candidate in Makadara, in Juja and recently in Kamukunji? Why did these issues not come up?

(Applause)

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, those were the candidates of the party, and where there is a female candidate, we support her equally.

That is a mere point of argument and I will proceed undeterred. I have said that Clause 2 is to ensure that women are not excluded from the contest merely because they have been given 47 women seats. The youth and persons with disabilities are not excluded merely because they have been given special seats. So, this clause is not meant to stop affirmative action but to affirm it. Therefore, Article 97(2) cannot be used to deny legislative measures on affirmative action.

I want to draw hon. Members' attention to Article 65 of the Constitution---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Ms. Karua! You are now debating. Just conclude.

(Several hon. Members stood up in their places)

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! Let us allow the Member for Gichugu to conclude.

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, I want to draw the hon. Members' attention to Article 27(3) which says that women must not be excluded from political, economic and all the other areas. Article 27(6) says that affirmative action measures shall not be construed as being discriminatory. I, therefore, want to say that affirmative action measures are recognized by this Constitution and where there is more--

(Loud consultations)

Mr. Temporary Deputy Chairman, Sir, could you protect me in my wrap-up from the loud consultations?

The Temporary Deputy Chairman (Mr. Ethuro): Order, hon. Members! In fact, the Chair will protect the least popular view.

Proceed, Ms. Karua!

Ms. Karua: Thank you, Mr. Temporary Deputy Chairman, Sir. I am saying that Mr. Kimunya said that where there is one seat, you cannot have one-third of the gender. He is trying to stretch it to unreasonable bounds. Where there is one seat, then it cannot be subject to the rule, but where there are two or more seats, then you can ensure that one of either gender---

(Loud consultations)

How can I wrap up with the noise?

The Temporary Deputy Chairman (Mr. Ethuro): Ms. Karua, I think you have done your bit.

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, allow me to wrap-up.

The Temporary Deputy Chairman (Mr. Ethuro): Not any more!

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, I have been interrupted and I plead with you to allow me to wrap up. Just give me one minute.

(Mr. Orengo stood up in his place)

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Orengo! Resume your seat, Ms. Karua.

I am very sympathetic as the Chair and I have allowed you more time because of those interruptions. You cannot use that as an excuse to continue debating for too long. I, therefore, give you one minute and I will cut you short if you proceed a second longer!

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Temporary Deputy Chairman, Sir. My point of order is this---

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Orengo! In fact, I would have granted you the chance, but the fact that you were already on the microphone, I disallow you!

Proceed, Ms. Karua!

Ms. Karua: Mr. Temporary Deputy Chairman, Sir, quite a number of men in this House, including the one on his feet, have been given direct nomination without allowing candidates, including women candidates to proceed.

Mr. Temporary Deputy Chairman, Sir, in the case of Kamukunji by-elections, the woman candidate left the party before the nominations. That is why we had a male candidate who won the nominations. I want to urge this House to do what is good for the country. I urge men not to be scared of participation of women because it can only bring benefits to our country.

Mr. Temporary Deputy Chairman, Sir, I beg to support the amendment.

Mr. Shakeel: On a point of order, Mr. Temporary Deputy Chairman, Sir. My dear colleague---

The Temporary Deputy Chairman (Mr. Ethuro): Order! You are completely out of order!

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, is Ms. Karua in order to---

The Temporary Deputy Chairman (Mr. Ethuro): Order! She has already finished her contribution.

Mr. Shakeel: Mr. Temporary Deputy Chairman, Sir, but she has made a statement which is untrue.

The Temporary Deputy Chairman (Mr. Ethuro): Order, Mr. Shakeel! You are ordered out of the Chamber for the remainder of this morning session.

(Mr. Shakeel withdrew from the Chamber)

Mrs. Noor: Mr. Temporary Deputy Chairman, Sir, I want to start my contribution by congratulating Ms. Karua for supporting men. This is not a contest between men and women. We must appreciate each other and work together. That is why I congratulate Ms. Karua for supporting men and I never regret supporting them. I have been supporting men and will continue to do so. That said and done; the issue we are debating is very serious and sensitive to the cause of women of this country. That is why it is in our Constitution. I have repeatedly mentioned that we are anchoring this Bill to the Constitution. If we do not take the principles that are laid down---Article 81(b) is very clear. We must find a way of putting that into this Bill. When we come here and talk about gender issues, people say that those are issues of discrimination. However, look at the limitation of rights. Even the Constitution has appreciated that there have been historical injustices. A certain group of people has been marginalized historically. There is a right to limit the rights. That is why we are saying this is in order. I support this amendment because we are limiting rights.

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members due to time, we have to dispose of this amendment.

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

(Clause 14(c) agreed to)

Hon. Members: Division, division!

(Several hon. Members stood up in their places)

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members are calling for a division. We are counting to see if you have the requisite number. The required number is 20 plus but you are 15.

Hon. Members: No!

The Temporary Deputy Chairman (Mr. Ethuro): Hon. Members, let us have some order.

PROGRESS REPORTED

THE ELECTIONS BILL

The Minister for Transport (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Chairman, Sir. Going by the mood of the House and to facilitate debate on this matter, you will see that we have only two minutes left. I beg to move that the Committee do report progress and seek leave to sit again.

Hon. Members: No!

The Temporary Deputy Chairman (Mr. Ethuro): Order! We are continuing with amendments. You cannot say no.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Prof. Kaloki) in the Chair]*

REPORT

Mr. Ethuro: Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House is considering the Elections Bill and has instructed me to report progress and seek leave to sit again today.

The Minister for Transport (Mr. Kimunya): Seconded.

(Question proposed)

Ms. Karua: Mr. Temporary Deputy Speaker, Sir, I see no need of us rushing and yet, we are sitting again in the afternoon, especially after denying affirmative action to the female gender while many men are given direct nominations. The entire Pentagon and many Members here were given direct nominations.

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Prof. Kaloki): Hon. Members, it is now 12.30 p.m. The House now stands adjourned until 2.30 p.m., this afternoon.

The House rose at 12.30 p.m.