

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 15th February, 2017

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Hon. Members, we do not have quorum. Can the Quorum Bell be rung?

(The Quorum Bell was rung)

Very well, we now have quorum. We may now commence.

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The National Treasury 2017/2018 Programme-Based Budget.

The National Treasury 2017/2018 Estimates of Revenue, Grants and Loans.

The National Treasury 2017/2018 Annex of Revenue and Expenditure for State Corporations.

The National Treasury 2017/2018 Budget Summary.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. Next Order.

NOTICES OF MOTIONS

MEASURES TO CREATE AN ENABLING ENVIRONMENT
FOR TEACHING AND LEARNING IN SCHOOLS

Hon. Speaker: Hon. Jessica Mbalu.

Hon. (Ms.) Mbalu: Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware that education is an important tool for empowering Kenyan youth who actively participate in national development towards the realization of Kenya Vision 2030 and Sustainable Development Goals (SDGs); noting that conducive and enabling working environment for teachers is fundamental in enhancing efficiency and safety of learning materials; cognizant of the fact that teachers in public schools and Early Childhood Development Centres ECDCs

work from poor staffrooms or marketing facilities at both levels of governments, including ECD centers, some of which have no staffing or storage facilities for equipment or books; further concerned that teachers and students in most learning institutions have no internet infrastructure for accessing online learning resources; concerned that such poor working conditions constrain optimal service delivery by teachers and expose learning materials, including books purchased under the Free Primary Education and subsidized secondary school capitation funds to destruction and theft; this House urges the national Government and the county governments to initiate a comprehensive programme to ensure that all public primary and secondary schools and ECD centers have standardized staffrooms for teachers and safe custody of learning resources and internet connectivity for accessing online learning resources.

I thank you.

Hon. Speaker: Next Order! Leader of the Majority Party!

THIRD READINGS

THE PRIVATIZATION (AMENDMENT) BILL

Hon. A.B. Duale: Hon. Speaker, I beg to move that the Privatization (Amendment) Bill, (National Assembly Bill No. 27 of 2016), be now read the Third Time.

I will ask the Leader of the Minority Party Hon. Nyenze to second.

Hon. Nyenze: Hon. Speaker, I second.

(Question proposed)

Hon. Speaker: It does not look like any Member wants to say anything.

(Question put and agreed to)

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

THE PUBLIC APPOINTMENTS (COUNTY ASSEMBLIES APPROVAL) BILL

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to move that the Public Appointments (County Assemblies Approval) Bill (Senate Bill, No.20 of 2014) be now read the Third Time. I ask Hon. Nyenze to second.

Hon. Nyenze: I second.

(Hon. Barua walked into the Chamber)

Hon. Speaker: Member for Gichugu, I know you and Hon. Wamalwa normally debate matters on television stations instead of in the House. Please learn the procedures here. They are different from those of television stations.

(Laughter)

There is nothing wrong with debating in television stations though. It is your right as you may be aware.

(Question proposed)

Hon. (Dr.) Pukose: Put the Question!

Hon. Speaker: It appears that the Member for Endebess is the one who appears to be alive. Hon. Members, even as I put the Question as requested by the Member for Endebess, I think it is a true observation that Members are very active in Second Reading, debating and contributing to very useful ideas. Unfortunately, it disappears during the most critical stage of a Bill, when they could translate those ideas that they normally proffer during Second Reading into the Bill. When we put the Question, Members who may have contributed and wanted changes may be here to vote for the Bill, but have not transferred what they had said into the Bill. Nevertheless, I put the Question.

(Question put and agreed to)

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

THE COUNTY EARLY CHILDHOOD EDUCATION BILL

Hon. A.B. Duale: Hon. Speaker, I beg to move that the County Early Childhood Education Bill (Senate Bill No.32 of 2014) be now read the Third Time. I ask Hon. Nyenze to second.

Hon. Nyenze: I second.

(Question proposed)

(Question put and agreed to)

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

MOTION

ADOPTION OF REPORT ON VETTING OF NOMINEE FOR APPOINTMENT AS CHAIRPERSON OF CRA

Hon. Speaker: Hon. Members, it is important that everybody should be in possession of the Supplementary Order Paper. Order No.11 in the Supplementary Order Paper was not there in the Order Paper that was printed earlier in the morning. This was necessitated by the fact that, as you know; debate on this Motion was to end tomorrow. But taking precaution, at times, debate goes on and when it is necessary for the decision to be made, many of you will have left the Chamber. It was, therefore, found desirable that you better debate it today. If by the time you conclude debate on this there are not enough of you to vote we can, at least, have one more day,

which is tomorrow afternoon. It is for that reason that there is this Supplementary Order Paper. It is just a precautionary measure to be on the safe side.

Let us have the Vice-Chair of the Departmental Committee on Finance, Planning and Trade, Hon. Gaichuhie.

Hon. Gaichuhie: Hon. Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the vetting of the nominee for appointment as the chairperson of the Commission on Revenue Allocation (CRA), laid on the Table of the House on Wednesday, February 15, 2017 and, pursuant to the provisions of Article 215 of the Constitution and Section 9 of the Commission on Revenue Allocation Act, approves the appointment of Dr. Jane Wangui Kiringai as Chairperson of the Commission on Revenue Allocation.

On Wednesday, 1st February 2017, the Deputy Speaker of the National Assembly conveyed a Message from the President on the nomination of Jane Wangui Kiringai for appointment as the Chairperson of CRA pursuant to Standing Order No.42 (1). In furtherance of the provisions of Article 215(2)(a) of the Constitution and Sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, the Deputy Speaker of the National Assembly referred the credentials of the nominee to the Departmental Committee on Finance, Planning and Trade for vetting.

After the expiry of the term of the inaugural Commission on 31st December 2016, the National Assembly approved the new commissioners for appointment by His Excellency the President during the Special Sitting on 20th December, 2016. At the time of that approval, His Excellency had not submitted the appointment of the Chairperson pursuant to Article 215(2)(a) of the Constitution. The swearing-in of the new commissioners has been delayed pending the appointment of the chairperson.

Upon receipt of the name of the nominee, the Departmental Committee on Finance, Planning and Trade began approval hearings. On Friday 3rd February 2017, through the print media, the Clerk of the National Assembly notified the general public of the Committee's vetting programme and requested for memoranda by way of written statements on oath - a sworn affidavit - regarding the nominee's suitability to serve or otherwise. By the time of vetting on Tuesday, 14th February 2017, the Committee had not received any memorandum from the public.

On 2nd February 2017, the Clerk of the National Assembly wrote to the nominee informing her of her nomination for the position of the Chairperson of CRA and requested her to appear for vetting by the Departmental Committee on Finance, Planning and Trade on Tuesday, 14th February 2017. On the same day, the Clerk of the National Assembly wrote to the Kenya Revenue Authority (KRA), the Higher Education Loans Board (HELB), the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigation (DCI) requesting for tax compliance, loan repayment, integrity and criminal records status, respectively, of the nominee. By the time of vetting and compilation of this Report, none of those departments had objected to the appointment of the nominee.

On February 14th 2017, the Committee vetted the nominee. After vetting, the Committee made the following observations: First, we had to check if we were complying with the Constitution. Below is a list of the people the Committee had previously vetted and approved:

- (1) Peter Gachuba Njeru, a member of the Commission who comes from Kirinyaga;
- (2) Prof. Edward Akong'o Oyugi, who comes from Homa Bay;
- (3) Kishanto ole Suuji, who comes from Narok;

- (4) Dr. Irene C. Asienga, who comes from Kericho;
- (5) Ms. Fouzia Abdikadir Dahir, who comes from Garissa;
- (6) Humphrey Wattanga, who comes from Nairobi; and,
- (7) Peter Kioko Kimuyu from Machakos.

The nominee, Jane Wangui, comes from Nyeri. From the names, it can be inferred that Article 27 (8) of the Constitution on the two-thirds gender rule has been met. The same is true for Article 254 where they require regional and ethnic diversity from the people of Kenya. I want to confirm to this House that we checked on the gender rule and also ethnicity and found that everything had been met.

On her education background, we found that Jane holds a PhD in Economics from the University of Nottingham that she got in 2010. She also has a Master's degree in Development Economics from Williams College, United States of America (USA) which she acquired in 1998. She also has a Bachelor of Philosophy Degree which she got in 1992 and a Bachelor of Statistics and Computer Science in 1988, all from the University of Nairobi.

Her employment record states that she has a wealth of experience in the economic sector spanning for almost three decades, having worked in many institutions. She is currently working at the World Bank, Kenya Country Office, as a senior economist. She started working there in December 2008 and has been there up to date. She undertakes economic analytical work in the areas of micro-economic policy and economic growth, international trade, public finance and public expenditure management.

Between 2006 and 2008, she worked as a senior economic adviser to the European Commission Delegation, Kenya. She advised on budgetary support and private sector development and tourism. Between 2000 and 2006, she worked as a policy analyst with the Kenya Institute for Public Policy Research and Analysis (KIPPRA), Micro-economic Division, during which period she undertook extensive research on micro-economic policy, international trade and poverty, taxation, public expenditure, management, tracking and efficiency. As a member of the KIPPRA Micro-Modeling Team, she provided technical support to the Government through the KIPPRA Treasury Micro-model for growth, forecast and projections and in response to other in-depth policy questions.

Between 1999 and 2000, she was the Head of Statistics at the International Committee of Red Cross. Between 1989 and 1998, she worked for the Ministry of Finance as a senior economist where she was responsible for formulation of aggregate physical framework which included budget policy, expenditure framework, setting budget ceilings for ministries and departments, quarterly disbursement schedules and all matters relating to ministries' budgets. This employment record is consistent with the requirement of Article 215 (4) of the Constitution and Section 6 of the CRA Act, 2011, which require that one should hold a degree from a recognised university in Kenya and has a professional experience in financial and economic matters for, at least, 15 years.

Hon. Speaker, when we looked at her credentials and experience, we found out that she is a lady who has worked for Government in the budget section and has a wealth of experience in division of revenue. When we interviewed her, we asked her the other parameters she would be looking at before she formulates a formula for revenue allocation, and she proved to be of vast knowledge.

I can confirm that the Departmental Committee on Finance, Planning and Trade approved the nomination of Jane Wangui for appointment by His Excellency the President as the Chairperson of the Commission on Revenue Allocation (CRA), pursuant to Article 215 of the

Constitution and Section 9 of the CRA Act, and I urge this House to approve Jane because she has met all the requirements. The Committee has embraced gender balance and has also met the diversity criterion.

I urge this House to approve the chairperson because the appointment of the other commissioners has been pending. There is no way the President would have appointed them without the Chairperson. We found her suitable for the appointment.

With those very few remarks, I move and ask Hon. Mary Emaase, who is a Committee member, to second me. Thank you.

Hon. Speaker: Before Hon. Mary Emaase seconds, allow me to recognize the following groups: Seated in the Speaker's Gallery is Mary Hill Girls High School from Thika Town Constituency, Kiambu County and Gichumbu Primary School from Gatanga Constituency, Murang'a County. In the Public Gallery, we have a women group from South Imenti, Meru County.

Hon. Mary Emaase.

Hon. (Ms.) Otucho: Thank you, Hon. Speaker. I stand to second. As a member of the Committee, I must confess that we have interviewed nominees in the past for various positions, but we were very impressed by this nominee, Dr. Jane Wangui, whom we vetted for the position of Chairperson, CRA. We vetted her and when you look at her credentials, it is needless to repeat what has already been pointed out by the Vice-Chair. We felt that the nominee was over-qualified for the position. We were also quite impressed by her wealth of experience, which she is going to bring into the Commission. She has worked both in the public and private sectors. She started her career at a very young age at the Ministry of Finance and National Treasury as a senior economist. When you listen to her explain or elaborate as she responded to the various questions that we asked, we were quite impressed and felt that the candidate is qualified for the position that she has been nominated to.

So, Hon. Speaker, I second.

(Question proposed)

Hon. Speaker: Is that an intervention from Hon. Dawood? Member for Kiminini. I am sure the Member for Kiminini can now show that other aspect of himself, which he always does anyway.

Hon. Wakhungu: Thank you, Hon. Speaker. At the outset, I support the nominee, Jane Wangui. The previous Chair was Micah Cheserem. It is also good in terms of gender to have a woman as the Chair. I was just reading a thesis where scientific research has shown that when women are at the top, there is a very positive high correlation in performance. We hope this will be displayed when it comes to her nomination. Of course, in future, if it is possible, we want to have a woman as the President of this country, so that she can sort out some of the problems we have.

The CRA is very important. We know very well that it plays a very critical role in sharing revenue, particularly the formula. I know that the first Commission had teething problems. Having gone through the CV of Jane Wangui, it shows that she is somebody who is committed and understands the passionate and compassionate aspects of devolution. I am convinced that, that is the right lady who is going to take that Commission to greater heights of prosperity.

I caution the incoming Chairperson to be unlike the previous Chairperson, who we saw giving different signals. When he met the governors, he talked differently and when he met the

senators, he talked differently. My humble request to Jane, wherever she is, is that she should remain focused, objective and not to be intimidated by the governors. In the past, when the governors met, things were changed. The big problem in our counties today is corruption, which was devolved. As she gets this job - because looking at the mood of the House I see that she is going to get this job - she must be focused. In terms of revenue allocation, we must ensure that, as time goes by, we must increase the percentage of the amount that is going to be devolved to the counties. We are going to ensure that there is equity in the counties and that revenue is going to reach the person at the grassroots.

Another issue about Jane is on gender balance and how she is going to fight corruption. She explained very well how she is going to ensure that corruption is dealt with because it has negated the principle of devolution. I request Hon. Members to support her approval so that she can go and start working immediately.

Thank you, Hon. Speaker. I support.

Hon. Speaker: Member for Imenti North.

Hon. Dawood: Thank you, Hon. Speaker. I can confirm that Dr. Jane Wangui is a very capable lady to head CRA. I was in the vetting Committee yesterday and she came out as somebody who knows what she is talking about. Her qualifications are above par. She has a PhD in economics and worked for the World Bank. She had worked for the National Treasury earlier. She has even worked for the International Red Cross Society. She has even written a paper on drought management, its impact and how to cater for that. When we asked what we she could do because we have drought at the moment, she said that she had written a Paper on drought management and she will use the knowledge she has to help this country move forward. I believe she is the right person. There are very few women leaders in this country. So, the appointment of that lady is a plus for Jubilee. We, as Jubilee, take care of women as well. She will do a very good job. I support.

Hon. Wakhungu: On a point of order, Hon. Speaker.

Hon. Speaker: What is your point of order, Hon. Wamalwa?

Hon. Wakhungu: Hon. Speaker, is my friend Hon. Dawood in order to say that the nominee for CRA, Jane Wambui, has been nominated by Jubilee? We know this is a House and this was a collective responsibility. Both sides of the House are supporting her. Can he withdraw the statement that it is Jubilee that has nominated the Chairperson of CRA?

Hon. Dawood: Hon. Speaker, I want to answer Hon. Wamalwa. In fact, I should have interrupted him earlier. He was not even in the vetting Committee and he said that the lady talked about corruption and all that. He was not even in that meeting. So, I wonder where he heard Dr. Jane talk about corruption. The nominee is from the President, who is a Jubilee President.

Hon. Speaker: Hon. Members, there is no Jubilee President. There is the President of Kenya. It might be that it is in your head that you have that kind of a President. Here, I got the letter from the President of the Republic of Kenya. The letter that was forwarded to me was from the President of the Republic of Kenya. Let us deal with the issues which are here and not those others.

Hon. Makali Mulu, Member for Kitui Central.

Hon. Mulu: Thank you, Hon. Speaker. Let me join my other colleagues in supporting the appointment of Dr. Jane. The appointment is very important to the Commission in this country. When I listened to the presentation by the Mover of the Motion, it is clear that, in terms of experience, Dr. Jane has what it takes to do that important national duty. I know Jane. At one point when I was doing my Masters in Economics, she was doing a course in Economics at the

University of Nairobi. When you look at the other Commissioners, you realise that one of them is Prof. Peter Kimuyu, who was then one of our lecturers. This is a case of a teacher being now supervised by a student. I am really happy when I see such a case because it simply says that in this world, you have to respect everybody because one day, they might be your boss as you continue in life. This is a lesson we should all learn as leaders. The fact that God has given us the chance to be leaders today does not mean that those who we lead will never lead us in future. I am very impressed when I see a former colleague who has a PhD in Economics becoming the Chairperson of that important Commission. I just want to put a word of caution in terms of the work. We are all aware about the Equalisation Fund in this country. When the Commission was determining who should benefit from the Equalisation Fund, some very important and known disadvantaged counties were left out. I have in mind counties like Kitui and Makueni, which were never considered for the Equalisation Fund. Basically, it is the first Commission which determined who should benefit. As Hon. Wamalwa has said, Jane should come to that important office and bring a lot of objectivity in the way things are done.

We are aware that the second formula for sharing revenue has been approved by this House. That formula determines how much money will remain at the national level in terms of sharing with the county level. It is important that the formula which has been developed keeps on being reviewed so that emerging issues in terms of different counties are factored in. As a country, we all agree, irrespective of the political divide, that devolution is the way to go. If we want to develop this country, we must support devolution. That Commission is very important in informing the debate on devolution. I am a Member of the Budget and Appropriations Committee and every time we are finalising our Budget and more so the Division of Revenue Bill, there is always a section which indicates how the Budget and Appropriations Committee has considered proposals from that Commission. To some extent, you realise that some of their proposals are not able to be factored into the Budget because of resource constraints. I have in mind the current Division of Revenue Bill. There is one important issue, but it was never factored. The Commission had recommended that resources be set aside for construction of two national cancer centres so that our people who are suffering from cancer can get medical attention at those centres. We were not able to factor that important proposal into the Budget. I encourage the Commission, as Jane comes on board, to continue coming up with those kinds of innovative development initiatives so that, as we provide services to our people, in the long run, we will improve their living conditions.

I want to support Dr. Jane for this position. We are all aware she brings on board international experience, having worked with the World Bank and other UN agencies. We all know that her background in economics will help her in thinking different options in terms of modelling different situations and coming up with the best option. I want to support the appointment and wish Jane, together with the other Commissioners, well as they guide that important devolution discourse.

With those remarks, I support the appointment.

Hon. Speaker: Member for Kitutu Chache North.

Hon. Angwenyi: Thank you, Hon. Speaker, for giving me a chance to contribute to this proposal. I rise to support the appointment of Jane to that position. Jane impressed me on three accounts. First, she is highly educated in the relevant field. Secondly, she has got the relevant experience both domestic as well as international. She has performed very well wherever she has worked and in the relevant areas. Third, she impressed me in the sense that she is among the very few Kenyans who can sacrifice a very comfortable high paying job to come back to Kenya

and serve Kenyans. We should have had that lady in the first time. I am sure we would have gone miles in advancing the development of this country. That lady has got the relevant experience and relevant facts for that job. I am sure when she takes over, after we have approved her, she will show a difference in the way we should share revenue in this country. Currently, the counties that contribute a lot of revenue to be shared get the least of that revenue. I am sure with the type of experience that the lady has, she will make sure that we reward those who bring up the revenue that can be shared in the country.

With those few remarks, I beg to support her nomination.

Hon. Speaker: Hon. Wangamati.

Hon. Wangamati: Thank you, Hon. Speaker for giving me this opportunity to comment on the appointment of Dr. Jane Wangui Kiringai. The position of Chairperson for Commission on Revenue Allocation (CRA) affects us. Anyone who is appointed should understand the development of this country so that, when funds are allocated, they are properly utilized. Records must be there to show how funds have been allocated and spent.

According to the Committee's Report, Dr. Jane Wangui is the relevant candidate for that job. She has the required qualifications for that position. She has worked for international bodies. I think she will do well in that position. Revenue allocation to the counties is necessary because there are areas where people may need money for development. She will need to devote more of her time to make sure that work is done in the counties. In this respect, I support her appointment.

I want to thank the Committee for doing a good job. They have brought a Report that goes together with the good interview they conducted.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Gichugu. Just like Hon. Wamalwa, you can also show that you debate in the House and not only in television stations.

Hon. Barua: Thank you, Hon. Speaker, for giving me the opportunity to contribute to this Report. I want to appreciate the fact that you recognise my debating skills both in and out of Parliament, especially on TV supporting Jubilee, and Hon. Wamalwa supporting the National Super Alliance (NASA).

I support this Report from three fronts: First, it is my personal knowledge of Dr. Jane Wangui Kiringai, whom I have known since her first year at the university. I have worked with her in the academic journey until she got her PhD in Economics, after getting several Master's Degrees. She is self-made. She does not come from a privileged position or family, but she is an example of effort well rewarded, hard work and sacrifice to the community. Dr. Jane Kiringai scored highly in all the parameters that were considered by the Committee. At this point, I want to thank the Committee for nominating her.

From the academic point of view, the Member who seconded the Motion said that she is over-qualified. She has a Master's Degree in Development Economics and a PhD in Economics. Development Economics is a relevant study because it shows that she has good experience and knowledge from both theory and practice on development priorities for this country. That puts her above the other applicants that vied for the position.

In terms of integrity, no issues were raised against her. She is visionary and is going to offer good leadership to CRA. In terms of experience, it is always important for people working for Kenya to have experience with our development partners. I am happy to learn that Dr. Jane has worked in senior positions at the World Bank, European Union and Kenya Institute for Public Policy Research and Analysis (KIPPRA) - an important research institution in Kenya.

She has worked as a senior economist at the National Treasury. I am sure she understands how that institution works. That will be an added advantage for her. Hon. Wamalwa said that Dr. Jane should first consider increasing the percentage of revenue allocated to counties. As the Member for Gichugu, Kirinyaga County, I am of the opinion that Dr. Jane Kiringai and the team should look at the formula used to divide money amongst counties. For the last four years, counties like Kirinyaga, with high populations and which pay a lot of taxes, have found themselves allocated little money because of the formula that is used. Kirinyaga County gets Kshs3.8 billion. I think that is too little compared to counties that get more money. A person from Kirinyaga County is disadvantaged because they get less than other counties as per head basis. I want to ask them to, first, look at the formula. As long as the formula remains skewed and fails to consider some parameters, some counties will continue to be disenfranchised and will lag behind.

According to the Report, Dr. Jane has contributed to publication of chapters on issues of county finance management. This is very important because there is corruption and wastage based on inadequate capacities amongst employees of the counties. I am sure that, based on her experience, Dr. Jane will bring some of these issues forward and ensure that Kenyans get value for their money, and that counties benefit from monies that are allocated to them.

Hon. Speaker, she has also built a comprehensive database of revenue expenditures in counties. In my view, she will lead that institution from a point of knowledge. I am sure that she will add value in terms of reducing wastage and corruption, and improving efficiency among the county governments.

With those few remarks, I support the appointment of Dr. Jane Wangui Kiringai as the Chairperson of CRA.

Hon. Speaker: Member for Makueni.

Hon. Maanzo: Thank you, Hon. Speaker, for giving me this opportunity to contribute to this very important Motion. The appointment of the Chairperson of CRA goes a long way in helping the country realise devolution. Since devolution came into force through the new Constitution, many things have not gone on well, such as the verification of revenues which have been collected in the counties. There are targets and with the current governors, only two from the current reports have met the targets that are set for revenue collection. Therefore, the approval of the Chairperson of CRA is very important. She can set what the counties will raise and what we are going to allocate to the counties.

There is also the issue of monies which are going to be spent in the counties to make sure that devolution is realised. So, she holds a very important position in the country. She has the required qualifications and we believe she is going to do a good job - just like what the former Chair did - by going round the counties, seeing it practically and knowing the problems within the counties, especially now that we have famine and drought which we are not very sure when it is going to be over in the country. This will go a long way to make sure that resources are allocated appropriately in the country, so that we can make sure that devolution is achieved. Most important, is also to make sure whatever the counties are raising as their own revenue is accounted for and it becomes part of their budget, so that we can serve the Kenyans at the grassroots.

Therefore, I support her appointment and urge the House to support her.

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker. I stand to state that I support this Motion. In accordance with the provision of Article 215 (2) of the Constitution of Kenya, where the powers

to appoint the Chair of CRA is given to the President and then, consequently, within the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order No. 215(5)(f), Dr. Wangui was vetted by the Departmental Committee on Finance, Planning and Trade and found to be suitable for the position. The Commissioners were vetted and approved on 28th December 2016 and they were formally appointed. But their swearing-in by the Chief Justice was delayed because the Chair had not been appointed then. I am sure in accordance with Section 6 of the Commission on Revenue Allocation Act, 2011, the Report on the Chairperson is today before the House and I am sure, if the House approves it, then the Commissioners plus the Chair will be formally sworn in by the Chief Justice and the President of the Supreme Court.

Section 6 of the CRA Act, 2011, states that the chairperson shall have an experience of not more than 15 years. It is good to note that Dr. Wangui has worked as an economist at various positions within the National Treasury and the World Bank for almost 30 years. That, among other credentials, demonstrates that she has the required qualifications to be the chairperson.

Let me go to the Constitution and look at the functions of CRA. That is where I have a problem. I hope that lady, Dr. Wangui and her team will bring a new impetus to CRA. That is because the team that was led by Mr. Micah Cheserem had a different mindset that it was there to protect county governments. Every meeting you attended with Cheserem and his team was like they were told: "There are people who are going to invade devolution and you are the protectors of devolution." I have said it many times that devolution was decided by the people of Kenya in a referendum in 2010, and nobody should chest-thump that they are the protectors or custodians of devolution. What is the function of CRA? The principal function of the Commission is to make recommendations concerning the basis for equitable sharing of revenue that is raised by the national Government.

(Hon. Memusi interjected)

Hon. Speaker, the Member for Kajiado Central is purporting to intimidate me. You know he is the last member to join this House. It is like he is a Form One when I am in Form Four or Six. He is a *mono* and when the leader is speaking, he should even pick water with some respect. He is my friend. The other day, he talked about me in a rally in Narok in very unpleasant terms.

The principal function of the Commission is to make recommendations on how the revenue raised by the national Government is shared equitably between the two levels of government - the county governments and the national Government. First, they give a recommendation on how we should share the money raised through taxpayers between the two levels of government. Once the Division of Revenue Bill has given the amount for county governments, then the CRA goes down and sees how equitably the 47 counties can share that revenue. They are supposed to make recommendations on matters concerning the financing of and financial management of county governments. That is why later in the afternoon, we are going to deal with the Public Finance Management Act where we are going to deal with some very serious financial accounting implications on how to make sure that public resources at that county level are effectively and efficiently used in the interest of the citizens of our country. They must use the criteria as stated in Article 203 of the Constitution.

What are the parameters? They are population, land size, financial obligations at 1 per cent and poverty level. They must use those parameters in a very honest way so that those regions that were marginalised despite them getting the equalisation fund and those that have benefited from the successive governments--- There are regions that produced vice-presidents

and prime ministers or presidents not once or twice like Rift Valley and Central Kenya. Nyanza produced Prime Minister and Vice-President. Eastern Province produced a Vice-President. Some of the regions like where I come from, it is the first time they are seeing even a Leader of the Majority Party or the Speaker of the Senate. So, when the Commission is allocating resources, it must look at, for example, Marakwet County and see which part of that county has been left behind and give it more resources. They should go to Kitui County and see the constituencies where ministers were coming from like Kitui Central, where a Minister for Water used to come from. They should go to the rural part of Kitui like where Hon. Nyamai comes from. They should go to Meru. They should avoid where the big guys used to come from and go to the remote parts like Igembe and Tigania. That is what CRA is supposed to do. It is supposed to look at the formula and make sure regions, counties and constituencies that were left behind can come and join the more developed areas so that Kenya can be at par and every Kenyan can be proud of his country. One of the beauties about President Uhuru Kenyatta's administration is that it is a Government that believes in equity. The 6,000 kilometres of roads are everywhere, whether the people there voted for President Uhuru Kenyatta or not. Some other regions that have not seen tarmac like North Eastern Province have now seen tarmac and that is why come the elections, we will not listen to rhetoric. We will listen to Uhuru Kenyatta. We will not listen to people who have nothing to offer. We will see the road from Garissa to Wajir to Mandera. That will make our people vote for Jubilee.

Hon. Speaker, this is a good thing. The Chair is, one, a lady and two, she is qualified. Three, she has worked in the National Treasury. The problem with my former Chairman, Micah Cheserem, is that he was the Governor of the Central Bank of Kenya (CBK). For you to understand the thematic areas in the Commission on Revenue Allocation Act, you must have some basis and experience in the National Treasury. So, I am happy that, that lady has worked both at the National Treasury and she has also worked with the donor community. She is bringing experience of two key players.

With those many remarks, I beg to support and ask Members to also do so. I thank the Committee for bringing a more comprehensive Report.

I support.

Hon. Speaker: The Leader of the Minority Party.

Hon. Nyenze: Thank you, Hon. Speaker, for giving me this chance to contribute to this very important Motion.

I support the nomination of Jane Wangui Kiringai for the post of the Chairperson of the Commission on Revenue Allocation (CRA). The Committee did a good job. They did due diligence. For them to settle on her, it is not just because of anything else but her qualifications. As have been said by Hon. Chris Wamalwa, Micah Cheserem was a man. It is good to replace him with a woman so that we can care about gender balancing. From what I have seen on her resume, she has published extensively. I am happy to see she has done a paper on public spending inequalities in Kenya. This will help her very much when it comes to equitable sharing of revenue between county governments and the national Government.

She has also worked with the World Bank and so, she has a lot of exposure. I have no doubt that she will bring new ideas to CRA.

We cannot rubbish the good work that Micah Cheserem and his team did. They did a good job. I have no doubt that she will carry forward with her team and develop this country from where Mr. Cheserem and his team stopped.

On equitable sharing of revenue, there are counties that have lagged behind just because of lack of representation but, God has rewarded them with mineral resources. For example, there is Turkana which has a lot of oil. The company that is doing exploration is discovering oil with every strike; good amounts of oil and yet, when you look at the national TV, you see people starving in Turkana despite sitting on a lot of oil. They are sitting on a lot of water. I understand the biggest water reservoir - underground and fresh water - is found in Turkana. So, I wish that when Jane Wangui gets nominated to that position, she will allocate more money to those marginalised counties like Turkana, Kitui, Elgeyo/Marakwet, West Pokot, Kilifi and Kwale at the Coast, which have been left behind and poverty levels are very high.

Devolution is the cornerstone of our development. The people of Kenya voted to devolve power and resources so that each county can develop. The Commission, in its wisdom, allocates monies equitably depending on the needs. Those areas that have developed so much before will be allocated less money than those areas that have been neglected by successive governments. I appeal to Jane Wangui to be very impartial on this. There are places where, if you visit, you will wonder whether they are in Kenya. It is not the wish of those people, but their development should come through CRA.

I want to say that there is one thing that has pleased me on devolution and on the development of this country: President Uhuru Kenyatta never abandoned the projects that Kibaki started. You know there are leaders who come into power and they want to shut down everything that their predecessor did, and come up with their projects so that they can shine. If you look at the projects that were there during Kibaki's time and were incomplete, like the Southern Bypass, Eastern Bypass, the Airport, Standard Gauge Railway (SGR), and so forth--- Although I am in the Opposition and I am the Leader of the Minority Party, I thank the President because he has carried on with those projects. Kenyans may not see, but he has carried them on. That is a plus. To the future leader of this country, whatever President Uhuru would have done, whether it is the Opposition or Jubilee, he should carry on with those projects so that this country can develop.

It happens at the constituency level. A Member of Parliament (MP) is elected, he has initiated projects but, another MP wants to shut those ones out. In the process, the people suffer because you leave projects hanging. My appeal to the House is that we support her nomination. I am appealing to her: Let her allocation be based on a *pro rata* basis. Those areas that are too behind with development should get the lion's share so that they can catch up with the rest of the country. Let the areas of North Eastern which have suffered since Independence be allocated more resources. I want this formula to be looked into. We cannot always look at the population density of an area. There are other parameters. You have to look at the general development of that area. It is a pity that there are areas in Kenya which saw the first tarmac road after devolution – that is after getting the new Constitution.

These are the things that I want to appeal to Jane Wangui, as the Chair of CRA, to look into. Let there be equitable distribution of resources so that we are at par in development. We cannot develop one area and say Kenya is developed and think we are moving in the same direction. Even Nairobi, which is the Capital City, should not have all the projects. Let us see projects and money channelled through governors to develop areas like Wajir, Moyale, Isiolo, Kitui, Wote, Kilifi and Bungoma. Those are the disadvantaged areas in Kenya and they should catch up with the rest.

Hon. Speaker, I want to finish by saying that I have a lot of faith in Jane Wangui. Research has shown that women, if they have goodwill, do well than men when they are given responsibility. The reason is that men may develop the “do not care attitude”. But women have

that other sixth sense. They will ask: “If I mess up, what will people say? Who will I be in the society?” Just because of that, asking how people will take them, women tend to do better than men. Let us support that woman.

Thank you, Hon. Speaker. With those few remarks, I support.

Hon. Speaker: The Member for Igembe North.

Hon. M’uthari: Thank you, Hon. Speaker. I rise to support this Report on the appointment of Dr. Jane Wangui to that position. The lady is qualified. According to the Report, she also displays a lot of competence. For that, I support her appointment.

It is my hope that the Commission will look at all the parameters of resource allocation. We have seen occasions in this country, even when we are within one county - and we have the formula for resource allocation at the county level - that there are a lot of disparities in terms of development. That should be put into consideration.

The problem is not only resource allocation. The resources are being distributed in the countries, but what we are seeing at this moment in the Republic is something shameful. We have people suffering because of drought. If you look at a county like Turkana, that is the land of paradox – a place where you have a lot of underground water which can supply the whole Republic with water and yet, even when money is allocated to such counties, it does not seem to make a difference in the livelihoods of the people. At this moment, I would have expected, even if we have drought as we have now, the citizens of this country should not be suffering. It would be expected that elected leaders at the county levels are able to allocate resources at that level. The revenue given to them can be allocated in such a way that the livelihoods of the people are improved. The leaders should consider how resources within the counties are distributed and used to make all the difference. At the end of the day, we may have competence at that level. But we also need the Commission to take into consideration all the different parameters, the livelihoods and look at the wellbeing of the people. Then resources can be allocated at that particular level.

It is important even at the county level if we could have criteria for revenue allocation within the counties so that, if you go to counties like Meru, then you can look at some constituencies like Tigania and Igembe for particular consideration. Even if you look at other counties like Embu, there are areas like Mbeere which should be looked into in a particular way because of the different geographical realities. So, there are counties which have disparities even from within. Sometimes, when the resources are allocated and they go to the lower levels at the counties, monies are just distributed equally and politically. Nobody takes into account the various difficulties. In the end, even the monies that are allocated do not appear to make a difference in the livelihoods of the people.

Again, this is the function of the citizens. That is because the people they elect at that level--- Like now we are in an elections year. The citizens of this Republic sometimes wonder about the criteria for elections and identifying leaders. If people at that level do not consider who are being entrusted with the management of the resources and how they are going to utilize it, it will not matter how much resources are allocated. Resources are allocated to the counties but, given the leaders that we have at the county level, some of that money finds its way back to the headquarters through investments. Some of that money, instead of being invested in the counties for development, improvement of welfare and for creating change that Kenyans were looking for through devolution, has been diverted elsewhere. That is because of where the citizens are and how they elect those that are entrusted with the resources.

I wish Dr. Jane Wangui and her team all the best. Thank you, Hon. Speaker. I support.

Hon. Speaker: Hon. Zainab Chidzuga.

Hon. (Ms.) Chidzuga: Shukrani Mhe. Spika. Nachukua fursa hi kwanza kumpongeza Rais wetu wa Jamhuri ya Kenya kwa kuona umuhimu wa kumteua mama kuwa Mwenyekiti wa Tume inayosimamia ugavi wa rasilimali. Kusema ukweli, hii Kamati ambayo ilimhoji huyu mama waliona ni mama ambaye ana utaalumu na elimu ambayo kati ya wengi na waume walikuwa, akaibuka kwamba ndiye mjuzi kushinda wale wengine wote – kielimu na kiutaalamu. Ameweza kutumikia Serikali na jamii ndani na nje ya nchi. Ni mama ambaye katika wadhifa wake, atasimamia rasilimali zetu na kuona ugavi wa haki na wa usawa katika nchi nzima.

Tukiangalia nchi nzima, pia nitoe wito kwake aangalie maeneo ambayo yameathirika zaidi. Yameathirika kimaumbile na sio kwa sababu ya watu kupenda bali ndivyo yalivyoubwa. Kwa mfano, kuna maeneo ya Turkana, Isiolo, Kaskazini Mashariki, sehemu za Pwani ikimewo Kwale. Waangalie vile tutapata mgao wetu kwa wakati unaofaa na utumike kwa njia inayofaa.

Katika hali ya akina mama, mara nyingi ndio wanaojua jinsi ya kugawa. Natoa wito kwake asiwe kiongozi wa ndani ya ofisi, atoke atembe nyanjani, atushirikishe sisi viongozi wa mashinani ili tutembe na yeye, aweze kujionea mwenyewe ili akitoa uamuzi, awe anatoa uamuzi wa kisawasawa, ikiwa ni kitu ambacho yeye mwenyewe amejionea kwa macho.

Pia nitoe wito kwa Wabunge wenzangu kwamba hii nafasi kwa huyu mama ni nafasi ambayo imekuja kwa wakati unaofaa, hasa mkiangalia ile hali tulio nayo ya njaa katika nchi yetu ya Kenya. Saa hii kuna shida nyingi za njaa. Kuna shida kubwa ya maji. Kuna shida kubwa upande wa usalama. Hayo yote yameletwa kwa sababu hakujakuwa na usawa wa ugavi wa rasilimali. Lakini tutakapompa nafasi Daktari, nina imani tutakuwa tumejijenga kwa kumtukuza mama ambaye ana ujuzi wa kugawa. Kawaida yetu akina mama, hata ukimwachia shilingi hamsini juu ya meza, utakwenda uendako halafu ukirudi, utapata ugali juu ya meza na watoto watakuwa sawa.

Kwa hivyo, hii nafasi mkimpatia daktari, itabidi tuwe na imani kwamba ugavi utakuwa wa usawa bila upendeleo. Shukrani kwa Rais wetu kwa kuweza kuona mbali na kumpatia mama hii nafasi, na sisi Wabunge tunaunga mkono kwa pamoja.

Shukrani, Bwana Spika.

Hon. Speaker: Let us now have the Member for Marakwet East.

Hon. Bowen: Thank you, Hon. Speaker for giving me this opportunity to join my colleagues in supporting the candidate for appointment as Chairperson of the Commission.

Hon. Speaker, as you have heard from the Leader of the Majority Party, the members of the Commission are not in office. They were appointed by the President but they are not working because the Commission has no Chairperson.

The Commission is very important, especially in division of revenue amongst the counties. Many of my colleagues who spoke before me talked about the disparities witnessed in revenue allocation, and in disbursement of monies from the Equalisation Fund. As we discuss and possibly approve the candidature of Dr. Jane to be the chair of the Commission, I would like to ask her to revise, if possible, the formula used in division of revenue. This is especially the formula for sharing the Equalisation Fund. Her predecessor, Mr. Micah Cheresem, based it on counties. There are many constituencies in counties.

In Elgeyo Marakwet, we have four constituencies. Marakwet East is the arid part of the county. However, that county is not classified as one of those counties to benefit from the Equalisation Fund. If this formula is revised with focus on constituencies, that constituency will benefit. That constituency also has very many poor Kenyans who have been lumped together with other constituencies within Elgeyo Marakwet County.

Many Kenyans yearned for a new constitution basically because of devolution. We want the Chair of the Commission to look into the issue of corruption. It is like corruption has been devolved.

Yesterday, MCAs of a whole county were arrested because of corruption. That is not the only county where public servants are involved in corruption. Many counties are collecting less revenue than what they used to collect when they were county councils. This is an area where there are many loopholes that are used to perpetrate corruption. There is also need to legislate more to stop leakage of revenue.

Dr. Jane is very qualified academically and in terms of experience. She has a PhD in Development Economics. This Commission is very important to Kenyans. I can say that she is the most qualified person for the job. She previously worked at the National Treasury as well as at the Kenya Bureau of Statistics where she represented the Government on various economic issues. I guess she is the right person to lead the Commission.

The other thing I would like to say is that the Chair needs to come up with a way forward regarding health issues in the counties. The country is in problems today because the doctors are on strike. Issues to do with their salaries, wages and benefits have not been addressed. Health is a devolved function. The Commission needs to look into it very carefully with a view to allocating more resources to the health sector so that we do not see Kenyans dying because the doctors are not being paid well. When we devolve a function, that function must go with money. You cannot devolve a function and fail to allocate enough resources to it.

I do not want to say much because this candidate is very qualified. I want to support and say that if she adheres to what these Hon. Members have said, she will have a very smooth running of the Commission.

Thank you, Hon. Speaker. I support.

Hon. Speaker: Yes, the Member for Gem.

Hon. Midiwo: Hon. Speaker, I rise to support the Motion. The CRA that has just been replaced did not do a very good job in some requirements of the law. One of the functions of the CRA is to make recommendations on matters concerning financial management by county governments as required by the Constitution and any other legislation.

Concerning Corruption in counties, there is no report before this House or in public that was given by the CRA. There is no report whatsoever that shows they ever raised alarm when things were going wrong in counties. The amount of money that has been stolen and pilfered by county governments is untold. I hope Mrs. Jane and my friends in the new Commission, including Prof. Oyugi Akong'o, will adhere to that part of the Constitution. This is because it is a constitutional requirement. They must tell us where we have gone wrong apart from giving money. They must move further and work with the Controller of Budget.

A couple of years ago, there was controversy in this House. I attempted to take away money from the failed Jubilee computer project and add it to the Office of the Auditor-General so that we could have properly functioning offices of the Auditor-General and the Controller of Budget for real time auditing in counties.

At that time, my friend Hon. Gikaria whom I see paying close attention, was very hostile. I only want to remind him that the computers, which are now being called 'gadgets', were never delivered. That is just another failed project of the Jubilee administration. I hope this Commission will not sit back and watch them fail this country; not even in the remaining six months, because we are saying goodbye to them. With that, I am very sure Kenyans will not be so foolish to elect a government which is lazy, corrupt and just absent.

Maybe Hon. Gikaria was here yesterday. Does he know that the people who are barricading the entrance to the Main Parliament Buildings showed a sign which read ‘UhuRuto IDPs’? A year ago, the Deputy President told Kenyans that the problem of IDPs had been dealt with and yet they are still barricading Parliament even as we speak. If that is development consciousness, I do not wish to associate with it.

Hon. Speaker, on corruption in the counties, the CRA, the Auditor-General and the Controller of Budget can save this country the wrong perception we have given devolution.

Finally, I have heard Hon. Nyenze talk about the marginalised. The issue of resource allocation in this country must be revisited. We must look at the wrong statistics which are used to allocate resources in this country. In the process, the people of Kakamega, Kiambu or Nyeri have suffered because we have feared to tell the truth. Population is about people. Let us find a scenario where all of us benefit. If you look at corruption indices in the counties, you will find that marginalised counties which got the largest share of devolution funding are the most corrupt. I have had an opportunity to visit some of these counties and there is really nothing you can point at to justify what the billions of shillings allocated to those places have done. Half of Karen has been bought by some of that funding. The hotels in Nairobi and Eldoret have been bought – they are buying away from home. This Commission must adhere to the requirements of the Constitution to advise us to seal the loopholes.

Hon. Speaker, we are going to deal with amendments to the Public Finance Management (PFM) Act within the next seven days. Let them adhere to the law because the same law says they must use existing laws to ensure and advice about prudent use of public funds. I hope some of us here, including my next governor, Hon. (Eng.) Gumbo, the incoming Governor for Siaya, are not leaving the National Assembly or Senate because they are attracted to the looting carried out by the current governors.

The now outgone CRA was under the impression that their duty was like that of the Senate; that you just allocate and leave it at that. The Senate was supposed to be a holiday home. They were supposed to meet once. I remember having an argument with Hon. Musikari Kombo when he wanted to be a Senator. I asked him if he wanted to go on holiday and he told me that they will give themselves work. Right now they even have the Committee on Foreign Affairs and even the Committee on Education and yet we know that education is a function of this House and the national Government. They have just done it and everybody now wants to be a governor.

I think most of the attraction is because the counties are a free-for-all place where people go to enrich themselves. Some governors who I see making noise have had their lives change in four years. How I wish we could abolish this Ethics and Anti-Corruption Commission (EACC) and let the police deal with criminals and thieves by taking them to prison.

The office of the Deputy Public Prosecutor (DPP) has failed this country. What happened to the seven governors whose files were submitted to the DPP to take to court? What happened? The day I saw the Senate dealing with Governor Wa Iria at the Committee of the whole House and not the relevant Committee that is supposed to deal with such a matter, I thought it was a very sad day in our country. I can tell you in the history of Parliament world over, not a single day has a Committee converted into the Committee of the whole House. I have tried to look, and it is not there. We are taking this country to the wrong direction.

I support the Motion and ask the new CRA to understand that its job is described in the Constitution. Just follow the law and keep reporting. We will have a much better country.

Hon. Speaker: Let us have the Member for Nakuru Town East.

Hon. Gikaria: Thank you, Hon. Speaker for giving me this opportunity to support this important appointment of Madam Jane. My friend Hon. Jakoyo is arguing about the people seated out there. We know the people who have sent them. The Opposition has been pushing them to come and paint a bad picture of the Government. On the doctors' strike, the Chair of the Council of Governors (CoG)---

Hon. Speaker: Hon. Members, let me just draw your attention to the rules of relevancy. About the quacks hanging outside Parliament Buildings is not business before the House. They can stay there forever. If we make that as the debate, we shall not complete business because we veer off too much. Whoever brought or advised them to come there, let them go and deal with them. Let us just deal with the matter before us.

Hon. Gikaria: I stand guided but Hon. Jakoyo should know that it is the Governor for Kisumu who took the doctors to court. He should go and withdraw the case. It is not us; it is the Chairman of the Council of Governors. The people who went to court are known. They should withdraw the case so that it is not seen as if the President is the one behind it. The President has no business with the doctors' issues because health is a devolved function.

It is true, Jane is qualified to be the Chairperson of the CRA. Article 215(2) states that the Chairperson shall be nominated by the President and approved by the National Assembly. We fully support her nomination to this Commission as the Chairperson, but the most important thing Hon. Speaker, is about the functions that are bestowed upon the Commission. That is where we will ask the nominee Chairperson and the other commissioners to fully look at them.

Article 216 (1) states:

“(1) The principal function of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government—

- (a) between the national and county governments; and
- (b) among the county governments.”

Hon. Speaker, that is a very important thing that the Chairperson needs to start looking at. Secondly, Article 216(2) states:

“(2) The Commission shall also make recommendations on other matters concerning the financing of, and financial management by, county governments, as required by this Constitution and national legislation.”

Hon. Speaker: Hon. Gikaria, are you referring to Article 256 or Article 215?

Hon. Gikaria: Hon. Speaker, I am referring to Article 216. I totally agree with Hon. Jakoyo that counties have been allocated monies. Why should the Commission on Revenue Allocation (CRA) come and ask for more money to be given to them without giving us a report on how the three years allocation has been spent? It is very sad that counties misappropriate these funds and when they are requested to appear before the Senate we see cat games. This is the case and yet not even a single governor has been arraigned in court on matters related to corruption.

It is a mockery, as Hon. Jakoyo has just said that in the Senate, a committee which has been bestowed that responsibility and given mandate committed that issue to the Committee of the whole House. It discussed a certain governor, of course, with the fear that a few of its members would be compromised to give a false verdict. The new Chairperson has a huge task ahead of her. But I also do not agree with what the Leader of the Minority Party has said.

Article 203(1)(i) of the Constitution, regarding equitable share and other financial laws, is specific on how this should be done. It states:

“(i) the need for economic optimisation of each county to provide incentives for each county to optimise its capacity to raise revenue.”

It is not fair for the national Government to continue allocating money to county governments which have been given a responsibility to collect their resources so that they can bridge the gap. Where they are not given enough money, they should use their own local resources to continue offering services to the local *mwananchi*. If you look at most counties, first of all, you will find that without any care for the local person, they increase their fees and charges.

At least, in the past, when we used to have municipal councils, there were checks and balances by the Ministry of Local Government. If charges were to be increased, the Ministry had to look into them because the municipal councils had to submit and get an approval from them. They would refuse to accept if the charges were high and there were ceilings on how much was acceptable. If you look at the counties as we are speaking now, you will find that it is their responsibility to collect levies and charges.

Article 216(3)(a) of the Constitution on the functions of Commission on Revenue says:

“(3) in formulating recommendations, the Commission shall seek –
(a) to promote and give effect to the criteria mentioned in Article 203(1).”

Article 203(1) talks about equitable share and other financial laws, revenue collection and how counties are supposed to manage themselves.

Article 216(4) as Hon. Jakoyo has just said states:

“(4) The Commission shall determine, publish and regularly review a policy in which it sets out the criteria by which to identify the marginalised areas for purposes of Article 204(2).”

For example, if you look at Turkana County which is said to be marginalised, you will find that there is oil exploration now. Just the other day, we passed a law on how much we should allocate a county which has mineral resources. If Turkana, in another few years will be producing oil, the share from its mineral resource will be too much that it will no longer be a marginalised county.

We also need this Commission to review these policies on an annual basis. This is so, so that we do not have a county like Turkana getting a lion's share from the national Government and at the same time it has its own resources in terms of oil production. I do not totally agree with those other marginalised areas. For example, Nairobi County has not increased even an inch of its tarmacked roads and yet it collects a lot of money from taxes. There are other places in Nairobi which are not developed and need to be considered because of the huge population. When this lady takes over she should look into these issues exhaustively and bring them into line.

I support, Hon. Speaker.

Hon. Speaker: Just to remind ourselves, once the CRA, according to the Constitution comes up with a formula, except with regard to the first formula, it is supposed to stay for five years. So, it is not possible for the formula to be reviewed yearly unless we amend the Constitution. The determined formula is supposed to last for five years. But the first one was to last for three years because it was part of the transition.

Yes, the Member for Kanduyi.

Hon. Wamunyinyi: Thank you, Hon. Speaker for giving me a chance to also contribute on this Report by the Departmental Committee on Finance, Planning and Trade on the Vetting of Nominee for Appointment as Chairperson of CRA.

From the outset, I would like to thank this Committee for the good work it has done not just in the vetting and the Report, but even for their previous work. I also want to stress the fact that Parliament plays an important role. Actually, we share the power to appoint various personalities to various positions as provided for in our statute.

Previously, we did not have a say on any appointments but now even presidential nominees must be approved by Parliament after going through the requisite vetting by a relevant Committee of Parliament. This is a very important activity for us and it avails us an opportunity to get people with the best records, academic qualifications and experience. It also avails us an opportunity to get people who meet all the requirements of integrity.

This function is very important because it not only allows us to share power with the President but it also ensures that we get the best people for various positions in our country. I want to thank the Committee for having done a good job and coming up with a recommendation of Dr. Jane for appointment to this position.

When Parliament undertakes the role of public participation it does it for the public. We recently witnessed a case where some members of the Executive were proposing an amendment to take away the power of public participation in such appointments. This was in the Privatisation Commission. I know we pushed through an amendment to block that from happening but it will be very bad if anyone in this country wants to take us back to where we were. This was very unfortunate because if you looked at that amendment, you realised it sought to remove the role of Parliament from the appointment of Commissioners to the Privatization Commission. It even attempted to reduce the quorum of membership of this Commission for transaction of business to approve privatisation and other matters. It was, in fact, giving the Cabinet Secretary (CS) all the powers.

We need to seriously protect those sections of the law and the responsibility that we have been given by the law to undertake approvals.

Coming back to the approval of the Chairperson, I note that the Committee was very specific in the approval hearings. It looked at the academic qualifications of the Chairperson, her past employment record and what she has done. It also looked at the professional qualifications, other aspects of potential conflicts and knowledge that is particularly relevant to this position.

The Committee was satisfied after looking at all those aspects including leadership, expectations and priorities that may have been set out as required. The Committee, therefore, came up with strong findings and it made specific observations which are key to the recommendations. It has given us some of the important and key undertakings by the nominee to this position. If you look at them, you will find that she is a very qualified person who is capable of holding this position. She has done much more than is required for a person to hold this position.

As I support this Report and the recommendation of this nominee, I would like to stress two things. First, there is a need to harmonise the allocation of revenue to counties. I see the Leader of the Majority Party coming in. He is in a very happy mood. There is need to harmonise the allocation of revenue in our counties and stress the fact that county assemblies also receive revenue through county governments. It is important to separate these aspects and ensure full accountability by all devolved units, namely, county governments and county assemblies.

People have been blaming county governments and governors for misappropriation. Recently, Members of County Assembly (MCAs) and the Speaker of Trans Nzoia County were arrested. Those who took off are being sought. Even the Speaker has not been traced. They are all to be arrested for corruption. This also applies to the County of Bungoma which has problems. I am told the Ethics and Anti-Corruption Commission (EACC) is now at the County Assembly of Bungoma investigating the MCAs and the Speaker. The Speaker is said to have stolen a lot of money from the Assembly which is being investigated by the EACC.

As we recommend the appointment of the Chairperson of this important institution that is responsible for revenue allocation, it is important that the law and the harmonisation mechanism ensure full accountability and people take responsibility for their actions in their respective devolved units. This will ensure that we also protect funds and ensure that those that have the responsibility to exercise oversight do so. However, they must ensure that public funds are protected.

As I said, reporting is very important. If we do not harmonise the allocation of revenue, then those that are responsible for the funds report through others. That chain of reporting sometimes makes it difficult to follow up when there has been misappropriation, theft or some act has been committed which is undesirable and needs to be investigated. Direct allocation of funding to the various units by the CRA will be important to ensure that funds are protected.

As I said earlier on, it is unfortunate that my county was recently reported to have bought wheelbarrows at more than US\$1,000. Now they have again stolen money for medical cover in the county assembly. Those many embarrassing acts are on the increase. We will experience more. Action needs to be taken.

With those few remarks---

Hon. Speaker: Let us have the Baringo County Women Representative.

Hon. (Ms.) Kiptui: Thank you, Hon. Speaker, for the opportunity. I rise in support of the nomination of Jane Kiringai.

I am proud to announce that I was in the same school with Jane Wangui in our yesterdays. We were at Bishop Gatimu Ng'andu Girls Secondary School in Nyeri in the early 1980s. Jane is somebody that I have seen grow. She was a year behind me. I have seen her grow over the years holding different high positions, one after the other. I am very glad that at the moment, she has been elevated to take the mantle after another very serious Kenyan, the former Governor of the Central Bank of Kenya (CBK), Micah Cheserem. I have no worries that Jane will perform even better being a lady.

I want to ask Jane to assure Kenyans and try as much as possible to distribute the cake of this nation equitably. I know she will. I come from Baringo and the criterion that was used for revenue allocation locked us out. I remember we were in position 14 and the line was drawn at position 15. The only reason is that we had a longer tarmac road in our county than many other counties that were considered. I know tarmac roads in those other counties must have increased or have been developed by now. I would like her when she settles down to review the criterion that was used at that time.

Our country is unequal. The only way to do it and make Kenyans feel comfortable is to ensure that the cake and the few resources that we have are equitably distributed. We know for sure that those other areas that were left behind needed to be pulled up so that they could also be proud to be called Kenyans. They should not persevere being Kenyans. I am very glad that Jane will review that criterion and work with the team.

She should be very worried about issues of corruption because the former team left office clean. We ask her to be very vigilant and do her work in a very transparent way so that we do not hear cases of corruption coming from that Commission.

Hon. Speaker, I know the team that she has been given is a very capable one. She will lead them and they will deliver to us.

On her academic qualifications, I have no doubt that she has the proper qualifications and experience having been the Country Director of World Bank. This exposed her to a level where she will just sit and proceed with her work without fear. I am very glad that she has been appointed to this position.

When Mr. Kriegler came to Kenya after 2007 when we had problems, he said that Kenya is the most unequal nation that needed to be equalised. There is no other formula of equalising the resources of this country than balancing and ensuring that everyone gets a piece of the cake of this country.

The counties that are left behind should bring their voices forward so that when they sit and do a review, they are included. I am sure that Baringo County will be the first people to make an application so that we are included in the revenue allocation scheme.

Thank you, Hon. Speaker.

Hon. Speaker: Let us now hear the Member for Shinyalu.

Hon. Anami: Thank you, Hon. Speaker for giving the opportunity to contribute to this Motion. I would like to start by commending the Committee and supporting the appointment of Dr. Jane Wangui to be the Chairperson of the CRA.

The role of CRA is fundamental to the economic growth of this country. Appointing a personality like Jane is an indicator that we would like this Commission to be equal-eyed and to look at all areas of intervention in this country so that we can experience socio-economic development that Vision 2030 foresees.

On her appointment, I am particularly impressed by her academic performance. This is also good. For a long time, we have had appointments that were not based on academic performance and did not inspire the Kenyan youth who are pursuing careers in such a sector. I commend the Committee for considering the academic excellence and achievements of this appointee.

Dr. Jane also has a good history and track record of professionalism. Her professional interventions and itinerary is very attractive. It shows that she has the necessary experience that will change the trend of things.

However, I wish to advise the appointee to take to another level the professionalism that is required in this duty so that Kenyans can appreciate that we have work ethics and values which can be applied in a sector like this one. This is very important. The Constitution foresaw the transitional period of devolution. That is why there is recommendation of taking functions to the counties progressively. But we seem to have made the mistake of putting everything in the mouth to the extent that counties cannot even chew it, leave alone swallow. So, this is an area we can revisit and the Commission should take up this as a responsibility to consider what the counties really need and how they can be supervised so that we have minimal wastage of resources.

At the moment, the amount of wastage of resources is just too high. That is why we have temptations for people to overemploy and indulge in corrupt activities. So, the Commission should take seriously monitoring, evaluation and feedback so that we do not incur further wastage of resources.

The experience of this nominee is very good and we can only rely on it to get good results. I like the fact that she is a lady because it shows that Kenyans are sensitive to gender parity. We should encourage her by giving her the right atmosphere, environment, support and cooperation so that she can achieve. I am very confident that our sisters can do things right especially when their positions are not politicised. This is the time for the Jubilee Government to keep its hands away from this Kenyan lady who is well educated and has the right tools to do this work very well.

Congratulations to the incoming Chairperson of the CRA and God bless her in her work.

I support, Hon. Speaker. Thank you.

Hon. Speaker: The Member for Butere, you have the Floor.

Hon. A.T. Anyanga: Thank you, Hon. Speaker for the opportunity to contribute to this Motion. First and foremost, I support the appointment of Dr. Jane Kiringai as the Chairperson of the CRA. I sit in the Departmental Committee on Finance, Planning and Trade and I had an opportunity not only to interact with the members of this Commission but also with the nominee to the position of the Chairperson.

As a Committee, none of the candidates either for position of commissioners or Chairperson was disappointing. I have absolutely no doubt about her academic, professional or technical qualifications having grown from a very junior position in the Civil Service working for the National Treasury and having other experiences within other public institutions that deal with economic research, budgeting, finance and planning up to her current position of being the Country Representative of the World Bank.

If anyone was keen to look at the CV of Dr. Kiringai, he or she will know that she started off as a mathematician and statistician, but very quickly changed her career to economics. Within a span of about six years, she had done two degrees: one in mathematics and statistics and another in economics. For me, her appointment at this time is crucial because she is going to lead the second CRA in the history of our nation.

In as much as people may not appreciate what the first Commission led by Mr. Micah Cheserem did, given the circumstances under which it was created and the many forces that were working against devolution and the many institutions that were involved in the devolution of services, I want to believe that it did pretty a good job. At least it was able to develop a formula which has been used in the last four years. We have seen the weaknesses and the strengths of this formula.

The second Commission under Dr. Jane Kiringai has a better opportunity to come up with an even better formula which could be applied in revenue allocation in the years to come. It is true that the first Commission used very basic parameters like population, poverty index and geographical land mass of specific counties. This is the case and yet we know that when you talk about allocation of resources, those are very basic parameters to consider.

I expect the Dr. Jane Kiringai-led CRA to go a little bit deeper and be more scientific in trying to develop a formula that will ensure that every county in Kenya gets its fair share of the national cake. It is sad to note that under the current formula, there are counties that truly deserve more resources but because the parameters used are very general, they have lost out to other counties that have latent wealth. Such wealth has not been captured under this formula. I have in mind a factor such as infrastructural development, which was never captured in the first formula.

If you compare Kakamega County with Kiambu County, you will find that they are almost similar in all characteristics, particularly in terms of population. However, if you look at the infrastructural development of Kiambu *vis-a-vis* the one in Kakamega, you will realise that

whereas Kakamega may require another 10 years to develop the kind of road network that Kiambu has, they are almost receiving the same kind of allocation. Therefore, moving forward, we would like to see how this Commission will develop critical parameters that would not only promote development at the county level, but also bring about equitable distribution of resources.

The thing which this Commission needs to look at is the challenge which most county governments are faced with, and that is spending a lot of their resources on Recurrent Expenditure *vis-a-vis* Development Expenditure. There is very little to show in the first four years of devolution with regard to serious development. Many of these counties inherited a lot of staff from the previous local government. Many of them have continued to employ new staff and left little to be invested so as to promote development.

The other thing that I think this Commission should look at is the issue of the capacity of counties to generate their own revenue. We know that many counties are performing dismally in terms of internally generated revenue as opposed to the former local authorities. This is a little bit disturbing because we know that almost every single county government in Kenya has increased levies, licences, fees and basically the cost of doing business. Therefore, we expect them to generate more revenue than the former local authorities now that most of them have automated or attempted to automate their revenue collection systems. This does not seem to be the case. This Commission needs to ensure that we only reward counties that can account for the money that they are generating. Of course, we should encourage counties to generate more revenue.

As I conclude and support this appointment, I urge the Executive, and in this case I am specifically addressing the appointing authority which is the President, that when we appoint key positions like this, let us also cast the net much wider in the country and give an opportunity to other communities. However small other communities may be, they will still have qualified people who can serve this nation. It has been a trend that most of the key commissions in this country---

Hon. King'ola: On a point of order, Hon. Speaker.

Hon. Speaker: The Member for Mavoko, what is your intervention?

Hon. King'ola: Thank you, Hon. Speaker. I rise under Standing Order No.95. I appreciate that the Member on the Floor is a member of the Departmental Committee on Finance, Planning and Trade. Considering that most of us were in that vetting exercise and bearing in mind that the CRA was led by a very able Kenyan, Micah Cheserem, a former Governor of the CBK and a professional economist, much has been done in that Commission. The lady appeared before us and she performed fairly well.

Hon. Speaker: What was your intervention?

Hon. King'ola: I beg that you call upon the Mover to reply.

Hon. Speaker: It looked like you pressed intervention and I thought you began contributing.

Hon. King'ola: Thank you, Hon. Speaker. I rise under Standing Order No.95.

Hon. Speaker: Your intervention is that the Mover be called upon to reply? Hon. Member for Butere had one-and-a-half minutes remaining.

Hon. A.T. Anyanga: Thank you, Hon. Speaker. The Member for Mavoko may have been fiddling with the machine and he did not know that he had pressed the intervention button, but we forgive him for that.

All the same, as I conclude, we expect to see the face of Kenya when we are appointing or making key appointments to all these commissions so that we give every Kenyan an

opportunity. I know highly qualified Kenyans from fairly small communities like the Turkana, Njemps and Marama from Kakamega County who will equally serve this country very well if given such a chance. In future, as we approve such appointments, we want to see diversity.

Thank you.

Hon. Speaker: I need to find out whether the position taken by the Member for Mavoko carries any weight. The Member for Mavoko rose in his place requesting that the Mover be called upon to reply. For us to do that, the House needs to express itself.

Hon. Korir: Nay!

Hon. Speaker: You cannot just be seated there like somebody who is in Cherangany yapping. You wait for me to put the Question.

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

Mover!

Hon. Gaichuhie: Hon. Speaker, before I reply, I would like to give two minutes to each of the following Members; Hon. Korir, Hon. Mbui, and Hon. Mule.

Hon. Speaker: The Member for Cherangany, Hon. Wesley Korir, you have the Floor.

Hon. Korir: Thank you, Hon. Speaker. I want to thank the Mover for giving me an opportunity to contribute to this Motion. I support the appointment of this wonderful lady with a lot of qualifications to lead this institution. She has worked as an economist in the World Bank. We want somebody who knows where money will be invested for the growth of the economy of our country.

We lack a policy of investing our money for profit. We should invest money not only to create employment opportunities but to also empower our people. The lady has a PhD in Economics from the UK. I hope she learnt something from the developed world – that it is important to know where you invest in. There should be equal sharing of resources to all communities in this country to avoid conflicts. We have conflicts because of unequal distribution of resources.

Hon. Speaker: Yes, the Member for Kathiani.

Hon. Mbui: Thank you, Hon. Speaker. I want to thank the Committee for a job well done. The vetting was fair, and they settled on the right candidate. This country is on the verge of serious economic growth and for us to achieve that, we must support devolution. The CRA plays a critical role in ensuring that there is fiscal discipline. I think Dr. Jane Wangui is the right person to move us forward in terms of revenue allocation.

Article 250(4) on composition, appointment and terms of office of all commissioners states that appointments to the commissions and independent offices shall take into account the national values referred to under Article 10, and the principles that the composition of the commissions and offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Kenya.

In that Commission, there is ethnic diversity but it must be taken as a whole. You must look at that Commission and other commissions to ensure that you do not have skewed appointments where people only come from certain regions and others are left behind. That is just a caution for the Committees in future. I think the process was fair.

I support the appointment of Dr. Jane Kiringai as the Chairperson of the CRA.

Hon. Speaker: The Member for Matungulu, you have the Floor.

Hon. Mule: Thank you, Hon. Speaker for giving me this chance to air my views on this nominee. For the first time, the Committee has done a very commendable job by looking at all the balances of ethnic groups in the country. I have no doubt that the nominated candidate will bring a lot of expertise, especially on money balancing within the country, to ensure that all the regions get fair shares of national resources. There are counties that receive large amounts of money while others get very little money. I believe that Dr. Kiringai has the expertise to ensure that equitable distribution of resources is realised.

I want to urge the Commission to relook at the formula of distributing resources in this country once they get into office. The population is still growing in the various counties, and we cannot continue using the same formula. We must look at the actual needs of Kenyans, so that we direct resources to make sure that there is equal distribution of wealth so that we do not have unequal development in counties.

I support.

Hon. Speaker: Let us have the Mover.

Hon. Gaichuhie: Thank you, Hon. Speaker. I want to thank the 22 Members who contributed to this Report. I want to thank Hon. Makali Mulu, Hon. Barua, and the Member for Baringo County, who said that they have interacted with the nominee in their past education life.

I want to thank Members for noting that the nominee is quite conversant with the relevant experience. I want to confirm that when we interviewed her, she said that since the formula only comes up after five years, she will take into consideration all matters that Members have raised. We expect an Integrated Household Survey Report to be out soon. She promised us that she will consider all the matters that have been raised here when formulating the next formula. She also said that she can only change the formula after five years. She was quite conversant with the subject. Being a Kenyan and somebody who has worked internationally and locally, we expect her to perform. She promised to be giving reports to the Committee when called upon to do so and also interact with the Departmental Committee on Finance, Planning and Trade to update it on what is happening in the counties.

With the approval of the House, we will have a good chairlady at the Commission. We expect her to work with Parliament and county governments so that revenue allocated to counties can be reported on and monitored so that it can bring development to this country.

With those few remarks, I beg to reply.

Hon. Speaker: Hon. Members who have stayed here for the last two-and-a-half hours would recall that I indicated that part of the reason that we put this business today is because usually after debates, many would have found it a bit difficult to stay for long. For obvious reasons, I will not put the Question. The precautionary move that we took was quite appropriate.

Hon. Members, before we move to the next Order, the Leadership Retreat held last weekend made an observation. As you can see from the Order Paper, the Committee of the whole House has very important pieces of legislation. Many Members had given very useful ideas but they are not here to see that they become law. Nevertheless, since the House cannot act in vain, we will proceed to the Committee of the whole House.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

*[The Temporary Deputy Chairlady
(Hon. (Ms.) Mbalu) took the Chair]*

THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL

(Several Hon. Members withdrew from the Chamber)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Order, Hon. Members! Those who are walking out of the Chamber, we are now in the Committee of the whole House to consider the Public Private Partnerships (Amendment) Bill (National Assembly Bill No.25 of 2016). Those Members who are walking out of the Chamber, please do so, so that the business can continue.

(Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 agreed to)

New Clause 8A

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Vice-Chair to move the Second Reading of the New Clause.

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clause immediately after clause 8-

Amendment of
section 36 of
No. 15 of 2013.

- 8A. Section 36 of the principal Act is amended by—
- (a) by deleting Subsection(1) and replacing it with the following subsection—
 - “(1) The unit shall assess the technical expertise of the contracting authority to procure the development, preparation, procurement, contract negotiation and management of a project under this Act.”
 - (b) by deleting Subsection (2) and replacing it with the following subsection—
 - “(2) Where the unit finds that the contracting authority does not have the technical expertise to procure the project under this Act, the contracting authority shall, in consultation with the unit, appoint a transaction advisor to assist the authority in the preparation, procurement, contract negotiations, and financial close phase of a project.”

Hon. Temporary Deputy Chairlady, the justification of this is that the capacity of the contracting authority may be wanting in the entire Public Private Partnerships (PPP) value chain, preparation, development, procurement, contract negotiation and even management. Therefore, there is need for Section 36(1) to be amended by inclusion of the words “preparation, procurement, contract negotiation and management.” The scope of an advisor engagement under

this section needs to be expanded to include preparation which is feasibility studies, procurement, which includes preparation of tender documents, support with bidders' queries, support with tender evaluations and support with contract negotiations post procurement. These will ensure that any contracting authority that engages a transaction advisor will be properly guided on such an advisor's terms of reference.

Contracting authorities need assistance in structuring a transaction advisory, procurement framework and contract and need for technical support and guidance of the unit in several instances where contracting authorities have done this on their own. They have experienced very poorly developed projects and they have also experienced and ended in trouble during procurement or failing to close the negotiations.

(Question of new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I will only give one or two members a chance. The Member for Kitui Central, do you want to say something?

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairlady. This proposal makes a lot of sense and I am really attracted to the proposal of having a transactional advisor. At times, you realise that even though procurement officers are normally trained, there are cases where you need some technical expertise in terms of procurement.

At times, the subject matter or the technicality of the issue might not be clear to them. To me, to bring on a transactional advisor to assist is a very good proposal in terms of adding value to the whole process and make sure that Kenyans get the best out of the process and also realise value for money. With this kind of thinking, I support this inclusion to the Bill.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Kanduyi, do you have a comment on this?

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. I rise to support the proposed amendment. I do agree that this also provides a window in the event that the Authority is stuck so as to ensure that the value and the desired goals and objectives are attained. Therefore, it is important that we support this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Leader of the Majority Party, you wanted to say something on this.

Hon. A.B. Duale: Yes, Hon. Temporary Deputy Chairlady. I think this is more like a safeguard measure. It is very key that we do not allow any Tom, Dick and Harry from the private sector to take over a public entity. So, his technical expertise must be assessed and where his technical expertise is not satisfactory, the transactional advisor can hold brief and advise and make sure that the right things are done. This is because the public entity we are talking about belongs to the people of Kenya.

I support.

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

(New clause was read a Second Time)

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

New Clause 12A

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after clause 12—

Amendment
of Section 56
of No. 15 of
2013.

12A. Section 56 of the principal Act is amended by—

(a) deleting Subsection (1) and substituting therefor the following subsection—

“(1) The Committee shall, within a period of thirty days from the date of its decision approving the project and financial risk assessment report, inform the contracting authority of its decision.”

(b) deleting Subsection (2) and substituting therefor the following subsection—

“(2) Where the Committee approves an undertaking of a project, the contracting authority shall finalise the project agreement for execution by the parties to the project.”

(c) deleting the words “Cabinet or Parliament as the case may be,” appearing in Subsection (3) and substituting therefor the word “Committee”.

The justification for this clause is that Clause 2 of the Public Private Partnerships (Amendment) Bill 2012 has removed the Cabinet Secretary (CS) from the procurement process by making the PPP Committee’s decision final. This is the correct position in practice.

Section 46 retains reference to Cabinet decisions under Section 54(3), which has been deleted by Clause 11. It is necessary to carry it through the amendment philosophy from this Section 54 into sections 56 and 57 by deleting reference to the words “Cabinet” and “Parliament” and substituting thereof with the word “Committee”. This is actually making the Committee the final decision maker because when you go to these other sections which still have the words “Cabinet” and “Parliament” it makes it ambiguous because in the other section we have removed “Cabinet”. That is the import of this clause.

(Question of new clause proposed)

(New Clause read the First Time)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Kathiani, you have the Floor.

Hon. Mbui: Hon. Temporary Deputy Chairlady, thank you for the opportunity. I just want to bring to the attention of the House that I have just got an electric shock from this machine. I do not know whether it is my blood but it is something that needs to be looked at. Earlier in the morning, I also had the same problem when I was seated in the same place.

Otherwise, I support the proposal on the new clause introduced by the Vice-Chair of the Committee.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Kanduyi, do you have something burning?

Hon. Wamunyinyi: Yes, Hon. Temporary Deputy Chairlady. I would like the Vice-Chair to clarify the use of these words “Committee” and “Parliament”. Ordinarily, when reference is made to Committee--- A Committee is a Committee of this House and if you are making reference to a Committee of this House, then the plenary of this House usually has a final say on the Committee work. The Committee presents work to this House.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Are you seeking a clarification from the Vice Chair?

Hon. Wamunyinyi: Yes.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Vice-Chair, can you please clarify this as we move on?

Hon. Gaichuhie: I want to clarify that we are not referring to the Committee of Parliament. We are referring to the committee of procurement; that is, the Public Private Partnerships Committee and not the Committee of Parliament.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Good clarification.

Hon. Gaichuhie: Actually, what we are doing here is that we are removing Parliament and the Cabinet from the decisions of the PPP Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): That is a good clarification. You can make a decision now after the clarification as I put the Question.

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

(The new clause was read a Second Time)

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

New Clause 12B

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after clause 12—

Amendment of section 57 of No.15 of 2013. 12B.The principal Act is amended by repealing section 57 and replacing it with the following new section—

Execution of contract. 57. The contracting authority shall, following its finalization of the project agreement and after all parties to the agreement have complied with all conditions precedent to the execution of government contracts, execute the contract awarded to that bidder.

This is just cleaning up and making sure everything is done by the Committee as we said after the finalisation of the agreement.

The Member for Mavoko is not very pleased with you. He is saying that you should give him some time to contribute, so that he does not say “Nay”.

(Question of the new clause proposed)

(New clause read the First Time)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you for the import to this. I give the chance to Member for Kitui Central Constituency.

Hon. Mulu: Hon. Temporary Deputy Chairlady, I support this amendment. As the Vice-Chairman of the Committee has put it, this is more of cleaning so that things are clearer in terms of interpretation of the law.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Mavoko, you are in high spirits. Do you want to contribute on this?

(Hon. King’ola nodded in the negative)

The Member for Lugari?

Hon. Angatia: Hon. Temporary Deputy Chairlady, I would also like to support the amendment.

Hon. A.B. Duale: So, you are around?

Hon. Angatia: Yes, I am around. This supports ease of doing business. Immediately after the Committee has completed its work, you move faster to the next stage of the execution. This has happened in countries like Rwanda where public private partnerships are working smoothly.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Mary Emaase, Member for Teso South Constituency, do you want to contribute on this?

Hon. (Ms.) Otucho: I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): There being no other request to support or negate, I will put the Question.

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

(The new clause was read a Second Time)

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

Clause 2

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I can see there is an amendment by the Vice-Chairperson.

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting clause and substituting therefor the following clause—

Amendment of section 2 of No. 15 of 2013. 2. Section 2 of the Public Private Partnerships Act, 2013, in this Act, referred to as “the principal Act,” is amended by—

(a) deleting the definition of the term “contracting authority” and substituting therefor the following new definition—

“contracting authority” means—

(a) at the national government level, a state department, agency or state corporation which intends to have its functions undertaken by a private party; or

(b) at the county government level, the county government or county corporation which intends to have its functions undertaken by a private party;

(b) deleting the definition of the term “transaction adviser” and substituting therefor the following new definition—

“transaction advisor” means a person who has the appropriate skill and experience to assist and advise the contracting authority or the unit on matters related to a public private partnership.

I want to go straight to the justification. This is just the definition of “transaction advisor,” which includes the term “accession” which is not used anywhere in the Act. It means it is unclear in actual legal practice and introduces uncertainty on what is intended. We believe this was a drafting error. So, it is also proposed that the words “including the preparation, accession and conclusion of a project agreement and financial” be deleted from the definition.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Matungulu, you want to comment on this? I can see you are not ready.

Hon. Mule: I support.

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

(Question, that the words to be inserted in place)

thereof be inserted, put and agreed)

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, I call upon the Mover who is the Leader of the Majority Party to move reporting.

Hon. A.B. Duale: Hon. Temporary Deputy Chairperson, I beg to move that the Committee doth report to the House its consideration of the Public Private Partnerships (Amendment) Bill (National Assembly Bill No.25 of 2016) and its approval thereof with amendments.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Having moved the reporting by the Leader of the Majority Party, I put the Question for the reporting.

(Question proposed)

(Question put and agreed to)

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): As per the Order Paper, you can see we have two Bills for the Committee of the whole House. Let us continue.

Now, we are on the Public Finance Management (Amendment) Bill (National Assembly Bill No.4 of 2015).

(Clauses 3 and 4 agreed to)

Clause 5

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): I see there are amendments to this. We have to start with the Chairman of the Budget and Appropriations Committee who is represented by the Vice-Chairlady, Hon. Mary Emaase.

Hon. (Ms.) Otucho: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 5 and substituting therefor the following new clause —

5. Section 10 of the principal Act is amended —

(a) in subsection (1)—

(i) by inserting the words “Speaker and” immediately after the words “report to the relevant” and the words “Article 114 of the Constitution,” immediately after the words “making reference to” in paragraph (g); and

(ii) by inserting the following new paragraphs immediately after paragraph (h) —

- (i) undertake monitoring and evaluation of movement programmes and projects with a view to informing the legislative budget and economic analysis;
- (j) produce the Budget Options Paper which shall be the basis of evaluating the Budget Policy Statement and annual estimates; and
- (k) review the County Fiscal Strategy Papers and the Controller of Budget Reports with a view to informing the relevant Committees of Parliament on revenue allocation.

(b) by inserting the following new subsection after subsection (2) —

- (3) A public officer or national government entity shall upon request in writing by the Parliamentary Budget Office, provide information in such manner as may be specified by the Parliamentary Budget Office for the better carrying out of the functions specified under subsection (1).

The justification is that the proposed amendment in 5(a) seeks to entrench the provision of Article 114 of the Constitution as well as to facilitate key legislative mandate of proper oversight of the budgetary resources by providing empirical information to Parliament for informed decision-making.

In addition, the proposed amendment in 5(b) intends to enhance the role as well as empower the Parliamentary Budget Office to seek any information from any relevant institution needed in the performance of its statutory function of advising Parliament on the national economy, public finance and Budget matters.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Emaase, as you make your point, I understand you have an agreement to move the amendment in an amended form, in the word “movement”.

Hon. (Ms.) Otucho: Hon. Temporary Deputy Chairlady, yes, I want to move the amendment in the amended form.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): To remove the word “movement” and replace with the word “government”.

Hon. (Ms.) Otucho: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 5 and substituting therefor the following new clause —

5. Section 10 of the principal Act is amended—

(a) in subsection (1)—

- (i) by inserting the words “Speaker and” immediately after the words “report to the relevant” and the words “Article 114 of the Constitution,” immediately after the words “making reference to” in paragraph (g); and
- (ii) by inserting the following new paragraphs immediately after paragraph (h) —

- (I) undertake monitoring and evaluation of government programmes and projects with a view to informing the legislative budget and economic analysis;
- (j) produce the Budget Options Paper which shall be the basis of evaluating the Budget Policy Statement and annual estimates; and

(k) review the County Fiscal Strategy Papers and the Controller of Budget Reports with a view to informing the relevant Committees of Parliament on revenue allocation.

(b) by inserting the following new subsection after subsection (2) —

(3) A public officer or national government entity shall upon request in writing by the Parliamentary Budget Office, provide information in such manner as may be specified by the Parliamentary Budget Office for the better carrying out of the functions specified under subsection (1).

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I have a problem with Part (b)(3). I want the Vice-Chair and the House to listen to me. It says:

“A public officer or national government entity shall upon request in writing by the Parliamentary Budget Office, provide information in such manner as may be specified by the Parliamentary Budget Office for the better carrying out of the functions specified under subsection (1).”

If you look at Article 127 of the Constitution that creates the Parliamentary Service Commission (PSC), it is very specific. The function of the PSC is to deal with the various departments in Parliament and the Accounting Officer is the Clerk. All correspondence to Parliament comes through the office of the Accounting Officer, but that amendment says that anybody can write directly to the Parliamentary Budget Office (PBO). That is a misnomer. Maybe through the Chair, we can say that:

“A public officer or national Government entity shall upon request in writing by the Parliamentary Budget Office through the Clerk’s Office, provide information in such manner as may be specified by the Parliamentary Budget Office for the better carrying out of the functions specified under subsection (1).”

The PBO is not an entity of its own in Parliament. It must do its business through the Clerk’s Office, just the way we deal with the Legal and Legislative departments. I can see a contradiction with the functions of the PSC. If you give us a few minutes, we can consult and relook at it.

I can go further. Article 127(6)(b) of the Constitution, which creates PSC, says that the Commission is responsible for constituting offices in the parliamentary service and appointing and supervising office holders. So, the function and role of communicating to any entity in Parliament must come through the Clerk’s Office. If, for example, the CRA asks for a request on the Budget, I have no problem. They will prepare, but the route should be through their boss; the Accounting Officer.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Leader of the Majority Party, you have expressed your sentiments on this. As you consult with the Chair, allow me to give opportunity to the Member for Kitui Central.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairlady. I listened to the Leader of the Majority Party and he is raising an important matter. It is more of an administrative issue in terms of whether the PBO has the mandate to write directly to an institution or that has to come through the Clerk. I think that is just a matter of wording to get it right that even though they can

request for information, it has to go through the normal procedure, which is the Clerk, and then the information is given to them.

I want to support this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): What is your comment on Part (b) as you support?

Hon. Mulu: I am commenting generally on Clause 5.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): We want to hear your comment on part (b).

Hon. Mulu: I was just saying that we may need to reword it. This is a matter of drafting. Procedurally, we need to get the information right. The PBO should write through the Clerk because that is the normal procedure in Parliament. So, it is a matter of wording. I do not think you want the Director, PBO, to write directly to the Treasury. It has to be through the normal procedure.

To me, this amendment is very important because the PBO assists Parliamentary Committees on matters of the Budget in analysing, forecasting and all other important issues of the Budget. It is important that when they request for information from any Government agency, that information is provided so that the PBO can share the same information with Parliamentary Committees for the sake of effective analysis of the Budget. When the information is not shared, then the Committees do not have the information. I have seen a situation where there has been an exchange in terms of we are not getting the right information and then we cannot analyse budgets from an informed position. So, this amendment is very important, more so in ensuring that Parliament carries out its mandate in the budgeting process quite effectively. I want to support this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Kanduyi. I also want to give opportunity to the Chair for clarification after consulting, so that we can debate from an informed position.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. I have two things. First, on Part (a), I support the proposed amendment. For Parliament to execute its mandate on revenue allocation, accurate information is necessary. Therefore, I do agree with the proposed reporting.

On Part (b) where the Leader of the Majority Party has reservations, I also strongly feel that for avoidance of confusion and to ensure adherence to the chain of command and structures available, whereby the Accounting Officer of Parliament is the Clerk, we should not create another line where you have to report to the PBO. I do agree with the Leader of the Majority Party. It is necessary for us to rethink this proposed amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us give it to the Chair, especially on Part (b).

Hon. Gaichuhie: Thank you. I want to agree with the amendment. It is quite in order. To avoid cleaning-up exercise later, I think it is good we consult, so that we can have the Clerk to the National Assembly rather than the PBO.

Also on that note, I urge you to ask the Serjeant-at-Arms to shut down the air conditioner (AC) because we do not have quorum in the House and it is very cold.

Hon. Wamunyinyi: What did you say? You said we do not have quorum.

Hon. Gaichuhie: No, I said we do not have enough people in the Chamber to make us warmer. I am talking of the AC. It is supposed to be on when we have a full House. The Member is trying to be mischievous.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): He is talking about the place being cold. Thank you. Let me give a chance to the Vice-Chair of the Budget and Appropriations Committee to make comments after your consultations on Part (b).

Hon. (Ms.) Otucho: Hon. Temporary Deputy Chairlady, this is a good amendment, but we wish to take into consideration the concerns of the Leader of the Majority Party. After consultations, we feel that we need to further amend this Clause 5(b) to read as follows:

“A public officer or national government entity shall upon request in writing by the Parliamentary Budget Office, through the Clerk’s Office, provide information in such manner as may be specified by the Parliamentary Budget Office for the better carrying out of the functions specified under subsection (1).

(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)*

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

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Since Hon. Mutava Musyimi’s amendment has been carried, Hon. Jude Njomo’s amendment has fallen.

Can you move your amendment, Hon. Omondi?

Hon. G.W. Omondi: Hon. Temporary Deputy Chairlady, this guy sat here and kept on talking about his county.

(Laughter)

I am wondering whether we cannot amend Clause 5 further instead of asking the Budget Office to help county governments in their budget process.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Member, allow me to give you information on why your proposed amendment has fallen. Hon. George Omondi, what the Chairperson has done is to delete Clause 5 and bring a new clause. Therefore, having passed it as a Committee of the whole House, your amendment has fallen. There is nothing you can amend. We have already deleted Clause 5.

Hon. G.W. Omondi: Okay.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you for understanding. The Leader of the Majority Party, do you want to add something to the information?

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, because he says ‘any public entity’, county assemblies are included. That is why we wanted county assemblies to get that help.

(Proposed amendment by Hon. G.W. Omondi dropped)

(Clause 5 as amended agreed to)

(Clauses 6 and 7 agreed to)

Clause 8

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

THAT, Clause 8 be amended by inserting the following new paragraph immediately after paragraph (b)—

“(c) by inserting the following new subsection immediately after subsection (7)—

“(8) Three (3) months prior to a general election, no procurement shall be carried out by the national and county governments, or their respective entities, in respect of their respective development votes unless with the approval of the National Treasury.”

The gist of this amendment is to ensure that there are some controls in Development Expenditure around the election period, so that we do not have cases of imprudent application of resources. We are saying that under subsection (8), we amend Section 17 of the principal Act, which is under the responsibility of the National Treasury to administer the Consolidated Fund. It seeks to introduce a provision aimed at stoppage of all activities with regard to development at both the national and county governments, at least, three months to the general election. This is very important. I am saying this because this House has the responsibility of appropriating resources. That is why this afternoon, I tabled the 2017/2018 Budget Estimates. We are saying three months to the general election. Just like the way the National Government Constituency Development Fund (NG-CDF) accounts are frozen, all Development Votes must be controlled. That is why we are giving the National Treasury a leeway. There might be an emergency. The KDF might be faced with an emergency within the three months' period. There might be a challenge in security. There might be an outbreak of a disease in a county. We are giving a leeway for such specific scenarios, in which case the approval of the National Treasury shall be sought. This is a new law. We never had it before. I think we are under obligation, just like we protect other resources, to protect the resources of the people of Kenya from the political class at both the national and county levels.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Kanduyi, do you want to comment on this amendment?

Hon. Wamunyinyi: Hon. Temporary Deputy Chairlady, this is an important amendment. I want to support it with reservations.

It is clear that when we approach a general election, we need to guard against abuse and initiation of projects for purposes of securing funds. At the same time, elections should not stop development activities in our country. It is important, if there are important projects that have been planned, not to be denied the opportunity to be implemented. That is why it should be clearly provided for the National Treasury to approve projects and measures to be put in place to ensure that people vying for elective positions do not get involved in project implementation.

Like in the case of the NG-CDF, we have the Fund Account Managers, who are officers appointed by the Government and seconded to the constituencies. We do not appoint them. In other Government departments, we have people responsible for projects. The proposal is important, but we must also not stop the development cycle of the country because of elections. I support the amendment, but development must go on even as we approach elections. The Government development cycle must go on.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Kitui Central, the Floor is yours.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairlady. This is an important amendment to this law. Just to make sure that we have no fears, as has been expressed by our colleagues, three months to a general election would be around June. It would be unfortunate for any Accounting Officer to initiate a procurement process in June when the financial year is coming to a closure to pave way for a new financial year. This is just to make sure that people have procurement plans that are properly planned. One should do all his procurements before June. This law is only applicable during an election year. It is important to protect public resources.

While Members of Parliament might not have total control over the NG-CDF, there are situations where Government officials are in control over these processes. This law should not be applied selectively. It should apply both at the national Government and county governments. During an election year like this year, we do not expect people to initiate procurement processes in June. Otherwise, if the Government changes hands, the new Government might find itself having to implement projects for which procurement was done. It is only fair for people who initiate procurement processes for projects that they implement. This is something worth supporting. I urge my colleagues to support the amendment for the sake of prudent use of public resources.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Subukia.

Hon. Gaichuhie: Thank you, Hon. Temporary Deputy Chairlady. I also want to support this amendment. During an election year, you find people doing all sorts of things. The only good thing about this amendment is that it is not freezing everything. It is only that you will need approval from the National Treasury. Maybe in future, we will include a clause to specify how long it should take for such approval to be given. Otherwise, the National Treasury can decide not to approve anything. If we include a provision for the timeline within which approval should be given, it will enrich this law. However, that can come in the future.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, let us now take a vote on this.

*(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

Hon. Gikaria: Thank you, Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 13 of the Bill be deleted.

The clause proposes to amend Sections 39 and 42 of the principal Act to allow for withdrawal of funds from the Consolidated Fund in the event Parliament has not approved the same or when the Appropriations Act, the Division of Revenue Bill and the County Allocation of Revenue Bill have not been passed by 1st of July. The proposal contravenes Articles 222 and 223 of the Constitution. If maintained as it is, the Act will seemingly be amending the Constitution, which is unconstitutional.

It appears there will be a shift of power in the sense that the Executive could spend in the absence of explicit authority from Parliament. It is possible that a clause that would bar assent to the Appropriations Act on time would also not provide for the calling of a Vote on Account. This could have the effect of shutting down the Government. This clause would seem to eliminate that possibility.

The clause fails to rectify an ambiguous issue that has arisen before, which is whether the authorisation to spend 50 per cent of the Budget is against the original Estimates tabled in Parliament or the Revised Estimates after Parliament has approved the Budget and the report of the Budget and Appropriations Committee before the Appropriations Act is tabled. It would be more prudent to base this on the Estimates after they have been revised by Parliament. A situation where Parliament decides to cut the Budget for a particular Vote to 40 per cent of what the National Treasury has proposed for the year, if the Vote is authorised up to 50 per cent on what the National Treasury had tabled, it would allow expenditure beyond what Parliament would have indicated.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Omondi of Alego Usonga.

Hon. G.W. Omondi: I agree because it has taken care of my amendment that I had to delete.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Teso South.

Hon. (Ms.) Otucho: I agree because we had a similar proposed amendment. The Constitution is very clear as well as the Public Finance Management (PFM) Act. We do not want a law that weakens the role of Parliament in making decisions. What we are deleting was seeking to weaken our powers as the National Assembly when it comes to approving withdrawals from the Consolidated Fund.

I support.

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

(Clause 13 deleted)

Clause 14

Hon. Gikaria: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 14 of the Bill be deleted.

It is unconstitutional because it authorises withdrawal of funds from the Consolidated Fund without considering the prerequisite laws. So, it is just as the previous one.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Wamunyinyi.

Hon. Wamunyinyi: Hon. Temporary Deputy Chairlady, I do not want to oppose like the Leader of the Majority Party.

Hon. A.B. Duale: On a point of order.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let me get the Leader of the Majority Party. What is your point of order?

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, Hon. Wafula Wamunyinyi is one of my disciples when it comes to late-hour debates. So, he is my friend. I want the Chairman to explain further. Clauses 13 and 14 are fundamentally different. He cannot just say that Clause 13 is like Clause 14. He should explain to us and then we will know what we are voting for.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Gikaria, please, give a clarification. I know you are deleting both. Give us the import of your deletion or your amendment to Clause 14.

Hon. Gikaria: These two clauses allow withdrawal of funds from the Consolidated Fund without prerequisite laws. So, we saw that they were almost the same. Why should we have unconstitutional clauses? I want Hon. Mary and Hon. Makali to contribute because we are in the same Committee.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Very true. It is very good process to seek clarification to this even before Members debate. Let me give the Vice-Chairperson of the Budget and Appropriations Committee an opportunity.

Hon. (Ms.) Otucho: Hon. Temporary Deputy Chairlady, Clause 14 was an amendment by deletion. It seeks to delete a clause that amends Section 42 of the Act on the processing of the Division of Revenue Bill and County Allocation of Revenue Bill. Looking at Articles 228(5) and 249(2) (b) of the Constitution, it suffices to give direction on how the Office of the Controller of Budget should go about performing its constitutional mandate. Therefore, there is no need for written instructions from the National Treasury directing the Controller of Budget to approve withdrawals for transfer to counties in the event that the Division of Revenue and County Allocation of Revenue Bills have not been enacted. Also, timelines can be rescheduled as well as robust enforcement to deal with the possibility of any foreseeable failure to enact the Division of Revenue Bill and the County Allocation of Revenue Bill.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Okay. Let us get more information from the Member for Kitui Central before I go to the Member for Kanduyi.

Hon. Mulu: Hon. Temporary Deputy Chairlady, just as you said earlier on, this amendment was taking away the power of Parliament, namely, the National Assembly and the Senate in terms of Vote on Account by providing that the Government can withdraw money without Parliamentary approval on Vote on Account. Clause 14 states that in case there is a delay in terms of the County Allocation of Revenue Bill being passed by county assemblies, county governments can withdraw money on Vote on Account without the approval of county assemblies. This should be deleted, so that assemblies at both levels approve Vote on Account even before the funds are withdrawn. We need to delete it because it dilutes the power of the assemblies.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have the Hon. Member for Kanduyi after being interrupted by the Leader of the Majority Party.

Hon. Wamunyinyi: I thank you, Hon. Temporary Deputy Chairlady. I believe the interruption by the Leader of the Majority Party this time was positive because he sought a very important clarification. I agree with the amendment on that explanation because it seeks to remove any apparent contradiction with the provision in relation to the mandate of the National Assembly, which is to approve Vote on Account. Therefore, it is important for us to support this proposed amendment, so that we can protect the mandate and power which Parliament has been given.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, after debating from an informed point, I now put the Question.

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

(Clause 14 deleted)

To this effect, the amendment by the Chair of the Budget and Appropriations Committee, Hon. Mutava Musyimi, falls.

(Proposed amendment by Hon. Musyimi dropped)

Next clause!

(Clause 15 agreed to)

Clause 16

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): There is an amendment by the Chair of the Budget and Appropriations Committee.

Hon. (Ms.) Otucho: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 16 of the Bill be deleted.

This amendment seeks to delete this clause which amends Section 60 on authorisation of payment of guarantees. The justification here is that the proposed provision that the Controller of Budget shall receive a certificate from the Attorney-General as sufficient authority to approve withdrawals from the Consolidated Fund for purposes of payment of guarantees is against Article 249(2)(b) of the Constitution on the independence of the Office of the Controller of Budget.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Of course, the amendment is a deletion. There is no interest on this. Hon. Members, please, give me your interests early. The Member for Kitui Central.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairlady. What is coming out from this amendment, which I support as a Member of the Budget and Appropriations Committee, is

that the Controller of Budget is an independent office and we do not want independent offices to be under directions from other offices. We need to allow this office to do its work without any interference. If it is a matter of loans, they are aware of what they should do and the Constitution gives them the mandate to operate without directions from anybody.

I support.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Member for Seme.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairlady, I also want to support because what we see in this is the same as in Clauses 13 and 14, which are attempts to bypass the processes put to check the use of money. We have offices and check systems and if we amend to bypass them, it will not be proper.

I support.

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

(Clause 16 deleted)

*(Clauses 17, 18, 19, 20, 21, 22, 23, 24, 25
26, 27, 28, 29, 30, 31, 32, 33, 34
and 35 agreed to)*

Clause 36

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): There is an amendment by the Leader of the Majority Party.

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

THAT, Clause 36 be deleted and replaced with the following new clause—

- Amendment of section 119 of No. 18 of 2012.
36. Section 119 of the principal Act is amended—
- (a) in subsection (2), by—
 - (i) deleting the phrase “As soon as practicable” appearing at the beginning of the subsection;
 - (ii) deleting the phrase “or a bank approved by the County Treasury”;
 - (b) in subsection (4), by inserting the phrase “and by 5th of every month, the National Treasury shall publish and publicize a report on the website on levels of overdraft by county governments” immediately after the phrase “if any”.

The way it is done in the Order Paper is not tidy. It says that Clause 36 be deleted and replaced and I think it would be neater.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Leader of the Majority Party, do not move the New Clause. Move the amendment to Clause 36 on Page 133.

Hon. A.B. Duale: But I am there. It is called a learning process. I have been here for eight years and those who are here for four years have a long way to go. Hon. Jakoyo has stayed here for 10 years. I am predicting that he will come back because he has what it takes.

This is a very straightforward amendment which says that the money which goes to county governments is approved by the Controller of Budget, of course, in consultation with a number of other institutions. The National Treasury is under obligation to publicise and put in their website how much they are sending to counties and for what Vote, so that a citizen in Migori, Kitui, Garissa or Siaya counties can just go to their website on a monthly basis and see the resources that are sent to his county and its intended purposes. That is the import of the first amendment. Of course, I have some other amendments under the same section.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Member for Kanduyi, Hon. Wamunyinyi.

Hon. Wamunyinyi: Thank you, Hon. Temporary Deputy Chairlady. I support the proposed amendment by the Leader of the Majority Party. This amendment, in fact, is in line with the need for the public to access information. Many counties have received funds and the public does not know. They always say they are still waiting for funds. Any money that is disbursed should be published and put on the website, so that the citizens can see that it has been released.

Secondly, I am not sure if this also deals with the banks which county governments are using to secure funds and this may be important at some point. I think this must be secured, so that money is put in some reputable and approved banks by the National Treasury. I support this proposed amendment and we should go further and ensure that counties comply with the need to put their funds in acceptable, reputable and approved commercial banks.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): For a short comment, Member for Subukia.

Hon. Gaichuhie: I think this is right. Being an era of transparency, accountability and access to information, everything should be put in black and white. It is good that it be put on the website, so that anybody can assess the information and view it to see what the money is supposed to do.

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

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

(Clause 36 as amended agreed to)

Clause 37

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 37 of the Bill be deleted.

The justification is that the clause proposes to amend Section 123 (3) of the principal Act on the publication of the County Governments' Debt Management Strategy by removing the requirement that a copy of the statement should be submitted to the Commission on Revenue Allocation (CRA) and the Intergovernmental Budget and Economic Council. After being

published and publicised, the statements become public documents and anybody has the right to access them. Therefore, there is no need for us to say that we should give them a copy. They should access it because once it is published and publicised, it is a public document which everybody can access. There is no special requirement that they should be submitted to the CRA or the Intergovernmental Authority. It is ambiguous.

(Question of the amendment proposed)

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

(Clause 37 deleted)

(Clauses 38, 39, 40 and 41 agreed to)

Clause 42

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 42 be amended by deleting Sub-clause (b).

As usual, we are in a deleting mood because we do not want to have---

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

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): There is a point of order from the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, that is an insult to the Departmental Committee on Finance, Planning and Trade and even to the House. We are not here as late as 6.10 p.m. in a deleting mood. We are here on serious business. People listening out there think that Parliament is a conveyor belt. I am happy. The matter that we are dealing with will mainly affect county governments. One of the aspirants for the Nairobi gubernatorial seat is here, so that he can see how we are dealing with the next set of governors.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you, Leader of the Majority Party. I am sure that was on a light note after you provoked him.

Hon. Gaichuhie: Hon. Temporary Deputy Chairlady, when you make laws, you do not want to have something big like an encyclopaedia. We are trying to make it slim, so that it is something that somebody can read and understand.

The import of the deletion is that the clause proposes to amend Section 131 of the principal Act so as to limit the adjustment that county assemblies can make to Annual Estimates with regard to the Vote ceiling as approved by the county assembly in the County Fiscal Strategy Paper in Clause 42(b) to 10 per cent. This will ensure adherence to what the assembly has passed and avoid distorting county plans.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Let us have Hon. Makali.

Hon. Mulu: Hon. Temporary Deputy Chairlady, we need some details from the Vice-Chairman of the Departmental Committee on Finance, Planning and Trade. What he is deleting is in line with the practice. Even at the national level, we do not allow amendments beyond 10

per cent of the Annual Estimates. When it comes to the Supplementary Budget, one of the parameters which we look at to check whether the National Treasury is adhering to the requirements of the law is whether any of the programmes have been amended beyond 10 per cent of what was budgeted for. Unless we are saying that we want double standards for the national Government and county governments, this amendment is just aligning the practice at the national level with county governments to say that if you are serious with planning and budgeting, once you come up with your Budget, we do not allow adjustments up to 100 per cent. Otherwise, you will engage in the whole process of budgeting. You should make some assumptions, but you should be realistic.

So, I urge the Vice-Chair of the Committee to reconsider this deletion because it adds value to public finance management, but it is his amendment. I plead with him. It is an important amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): You have reservations. Hon. Jakoyo Midiwo.

Hon. Midiwo: Hon. Temporary Deputy Chairlady, I agree with Hon. Makali Mulu. This amendment takes away the discretion for free for all, and I do not think the Member for Dagoretti South, would do such things. The governors are now doing very wrong things. If you limit them to 10 per cent, they have no reason to transfer large amounts of money for purposes of transferring money for theft through contractors because at that point, they have already identified a contractor and they know which one gives and which one is stingy. I plead with the Committee Vice-Chair to withdraw the attempt to delete it or we defeat it.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The Leader of the Majority Party.

Hon. A.B. Duale: For us to stop the culture of deleting mood, we must oppose this amendment. Just look at the County Fiscal Strategy Paper, which is adopted by the county assembly. It is a very important document for prudent financial use by county assemblies. It says that it has given a ceiling of 10 per cent. The Chair is gunning for the governorship of Kericho. I think, the Vice-Chair was not aware of this. We now know where it is coming from. This is an internal House matter. So, I ask him, because he is seated next to me, to withdraw because this is a very important amendment. That is why you see the number is increasing. People are coming for serious debate. I will ask the Members to oppose when the Question is put. This is a very important clause that we should not allow to be deleted.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Members, allow me to put the Question. Of course, this is a House of debate.

Yes, Member for Dagoretti South.

Hon. Waweru: Hon. Temporary Deputy Chairlady, I want to add my voice on this. I plead with my Vice-Chairman that we need to rethink this clause. As you are aware, I am running for the position of Governor of Nairobi, and I am not in support of this amendment. It needs to be rethought through. I plead with the Vice-Chair to withdraw the amendment in the interest of the country.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Hon. Vice-Chair, do you want to withdraw it? Let me put the Question. The effect of deleting Clause 42 may be the same as withdrawing it. Hon. Members, allow me to put the Question.

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

(Clause 42 agreed to)

Clause 43

Hon. Gaichuhie: Hon, Temporary Deputy Chairlady, I beg to move:

THAT, Clause 43 be deleted.

The justification is that the clause proposes to amend Section 131 of the principal Act to allow county governments to withdraw money from the County Revenue Fund in case county assemblies delay passing the Appropriation Bill. It is similar to the amendment proposed under Clause 13 of the Bill for the national Government. The amendment should be treated the same way as Clause 13. The import is self-explanatory. It is providing that counties do not withdraw money without the authority.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you. I have listened to the import.

(Question of the amendment proposed)

Hon. Omondi?

Hon. G.W. Omondi: Thank you, Hon. Temporary Deputy Chairlady. I had an amendment there, but it is now taken care of. The whole amendment has been withdrawn.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): The last one is the Member for Teso South.

Hon. (Ms.) Otucho: I accept the amendment for obvious reasons. We are protecting the revenue, so that it is not withdrawn directly from the County Revenue Fund without passing through the county assembly for the assembly members to approve.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes, Member for Dagoretti South, have you woken up?

Hon. Waweru: Hon. Temporary Deputy Chairlady, this is a very important issue. I am supporting the deletion. There is no way we can allow people to spend money without approval. That beats the whole logic of having a county assembly. I want to put my voice to this and say that we have had issues of accountability in our counties. We have had counties and governors spending money in total disregard of the law. We have seen governors, especially in the County Government of Nairobi, condoning expenditure of public money without any accountability. We cannot allow that. We will not allow them or give them a blank cheque to spend money without the approval of the county assembly.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Thank you, but of course, Nairobi is not in the Order Paper.

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

(Clause 43 deleted)

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Having deleted Clause 43, the amendments which also propose deletion by Mutava Musyimi and Hon. George Omondi fall.

*(Proposed amendments by Hon. Musyimi and
Hon. G.W. Omondi dropped)*

*(Clauses 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56,
57, 58, 59, 60, 61, 62, 63, 64, 65 and 66 agreed to)*

I now call upon the Mover, given the time, to report progress.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, we thought the Standing Orders have been changed without our notification because we were waiting for 6.30 p.m. We will continue tomorrow.

The Temporary Deputy Chairlady (Hon. (Ms.) Mbalu): Yes. We will continue. That is why you are moving progress.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, I beg to move that the Committee do report to the House its consideration of the Public Finance Management (Amendment) Bill (National Assembly Bill No.4 of 2015) up to Clause 66 and seek leave to sit again another day.

(Question proposed)

(Question put and agreed to)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. (Ms.) Mbalu) in the Chair]*

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Hon. Members, we will start with the report on the Public Private Partnerships (Amendment) Bill (National Assembly Bill No.25 of 2016).

REPORT

THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Public Private Partnerships (Amendment) Bill (National Assembly Bill No.25 of 2016) and has approved the same with amendments. I, therefore, beg to move that the House do agree with the Committee in the said Report.

(Consideration of Report of Bill ordered for tomorrow)

PROGRESS REPORTED

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL

Hon. (Ms.) Otucho: Hon. Temporary Deputy Speaker, I beg to report that a Committee of

the whole House has considered the Public Finance Management (Amendment) Bill (National Assembly Bill No.4 of 2015) up to Clause 66, and has instructed me to seek leave to sit again another day.

Hon. Gaichuhie: I second.

(Question proposed)

(Question put and agreed to)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Mbalu): Order, Hon. Members! For the convenience of the House, after having deferred the Committee of the whole House to another day that will be given by the House Business Committee and the time being 6.26 p.m., this House stands adjourned until Thursday, 16th February, 2017 at 2.30 p.m. I thank you all.

The House rose at 6.26 p.m.