

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 18th April 2018

The House met at 2.30 p.m.

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

PRAYERS

MESSAGE

BILLS PASSED BY SENATE

Hon. Speaker: Hon. Members, I have a Message from the Senate. Standing Order No. 41(4) requires the Speaker to report to the House any message or messages received from the Senate at the first convenient opportunity. In this regard, I wish to report to the House that on Tuesday, 17th April 2018, I received three Messages from the Senate regarding passage of various Bills.

The first Message relates to the passage of the County Government (Amendment) Bill (Senate Bill No.11 of 2017) on Thursday, 29th March 2018. Among other objectives, the Bill seeks to amend the County Government Act No.17 of 2012 to “clarify on commencement of sitting of a county assembly, putting in place a legal mechanism for establishment of the Office of the Deputy Speaker of a county assembly and provide for a legal framework for assumption of Office of the Governor by the Deputy Governor and the appointment of a new deputy governor.”

Hon. Members, the second Message is conveying the passage by the Senate of the Urban Areas and Cities (Amendment) Bill (Senate Bill No.4 of 2017). The Bill seeks to “to amend the Urban Areas and Cities Act No.13 of 2011 to provide for review of the criterion for classifying an area as a city, municipality, town or market centre and their governance and management.”

The last Message is on the passage by the Senate of the Warehouse Receipts System Bill (Senate Bill No.10 of 2017). The Message states in part that “the Warehouse Receipts System Bill (Senate Bill No.10 of 2017) was published to provide a legal framework for the development and regulation of a warehouse receipt system for agricultural commodities to address marketing challenges associated with cereals and grains sub-sectors in Kenya.”

Under Standing Order No.143(1)(a) the Speaker is required to cause a Bill received from the Senate to be read a First Time upon conveyance of a message from the Senate referring Bills to the National Assembly. Accordingly, I direct that the three Bills be read for the First Time at the next Sitting of the House.

Hon. Members, paragraph 2 of Standing Order No.143 provides that “Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution.” The opinion envisaged under Standing Order No.143(2) is a pronouncement by the Speaker as to whether a Bill originating in the Senate is a money Bill in the terms of Article 114 of the Constitution. In this regard, I have requested the

Clerk of the National Assembly to refer the three Bills to the Parliamentary Budget Office to offer advice that will enable the Speaker to form the opinion contemplated in Standing Order No.143(2). Thereafter, I shall guide the House on how to proceed with consideration of the said three Bills from the Senate.

Thank you, Hon Members.

PETITION

QUALIFICATION AND DISQUALIFICATION FOR ELECTION AS PRESIDENT

Hon. Speaker: Hon. Members, pursuant to Standing Order No.225 (2)(b), I wish to convey to the House that my office is in receipt of a petition signed by one Mohamed Mohamed Sheikh, a resident of Wajir County. The petitioner is praying that the National Assembly exercises its legislative authority under Articles 95 and 96(1) of the Constitution by introducing and passing a Bill to amend the Constitution to set age limit of eligibility to run for election as president of the Republic of Kenya at 70 years.

Hon. Members, the petitioner contends that Article 260 of the Constitution classifies a president as a State officer and by extension a public officer who like other State officers, exercises delegated authority for the people of Kenya. He further contends that other State officers are subjected to a retirement age. Therefore, it is reasonable and viable in an open democratic society to introduce a retirement age for the president and set age limit to qualify as a presidential candidate.

This Petition therefore stands committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee is requested to consider the petition and report its findings to the petitioner and to the House in accordance with Standing Order 227(2). The Committee is also at liberty to introduce the Bill, if it is persuaded to do so, in the House proposing to make the amendments as requested by the petitioner and should undertake to hear the petitioner among other members of the public.

Hon. Members, I have 30 minutes within which comments and clarification maybe entertained. Certainly, do not seek clarification from me about this Petition. I am under a duty to report a petition that is presented to me. I see the Member for Endebess intends to seek a clarification certainly not from me. Hon. Pukose.

Hon. (Dr.) Pukose: Hon. Speaker, this Petition seems to target certain individuals in this country. The other day, Uganda amended its law on the presidential age limit because the people who drafted it were targeting to eliminate somebody. We should not make laws to target certain individuals; we should make laws for posterity.

As much it is good for us to receive petitions, this Parliament is also very busy with other issues. A petition must meet a certain criteria for it to be forwarded to a committee. It is going to take the Committee's time. It is going to take up parliamentary business. After the handshake, we do not need to go this direction as a country. We must continue healing ourselves; moving in a direction that our country is able to reconcile and for us to look at how best we can take this country forward. So, this Petition to me is misplaced. I urge that if it is possible, this Petition is rejected in totality. It should not waste Parliament's time.

That is my position.

Hon. Speaker: Very well. Of course when citizens write, the Committee is at liberty to look at the petition and look at the Constitution on qualifications and disqualification to run for

president and in fact write directly to the petitioner their views. The Committee is at liberty. If I do not read out this kind of Petition, then the petitioners will start writing through other avenues such as social media claiming that the Speaker is sitting on their petitions. They may think that those are great ideas. Hon. Abdullswamad.

Hon. Nassir: Thank you, Hon. Speaker. First of all, I congratulate you for following the Constitution to the letter. There is a need for every single petition however dubious or obvious it may seem, to be considered by this House. I am sure that this is a House of great men and women. Mine is to plead with the Departmental Committee on Justice and Legal Affairs whom you have directed this matter to, to take hardly five to 10 minutes because even this petitioner is aware that parliamentarians' time is time that is owned by the people of Kenya. So, when a petitioner comes up with a petition like this which is...I am looking for the right English terminology; I am afraid that I may be ruled out of order for using any other term. I urge ladies and gentlemen from that Committee to peruse it and take about three minutes so that this petitioner can feel that he was accorded time. It will also be equally important when they are giving their recommendations to the House, to indicate that they took three minutes to discard this Petition. The reason is simple so that other dubious petitions can stop being brought to this House either by that gentleman known as Mohamed Sheikh or maybe he is alias Mohamed Sheikh. Will the real Mohamed Sheikh please stand up in the real manner and not use the Constitution to try and gain some form of mileage?

Thank you.

Hon. Speaker: In essence, this would require an amendment to the Constitution. Nevertheless, it is good for the Committee to address itself to what the gentleman is saying.

The Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Speaker, for reading that Petition. It is within the right of every citizen to bring a petition. In fact, this Petition needs that petitioner to be given more time and very good recommendations made.

Hon. Nassir is the son of a former Minister. His father was a very tough politician. At one time, he said: "*Wapende wasipende.*" From the way he is talking, that Mohamed Sheikh from Wajir must be given three minutes, it reminds me of *wapende wasipende*. We should not run the House like that. Tomorrow, another Member from Migori, Garissa, Nairobi or Mombasa will bring a petition. This is a platform provided for by the Constitution. Maybe he does not know the law. There may be many other people who think like him. I will be very happy if the Committee interrogates that Mohamed Sheikh and does a very good report that becomes a record of this House so that nobody else in the subsequent Parliaments will go back and bring the same Petition.

The idea of a Member saying that we deal with it in three minutes is not possible. In a committee, by the time you read the prayers, the three minutes are over. It is the 11th Parliament and this 12th Parliament that introduced the provisions of petition. You have even seen people bring memoranda to the committees of the House in various stages. There are people who send emails. They bring any sort of document when the Public Appointments (Parliamentary Approval) Act says you must swear an affidavit. Still, at times we look at those documents. I agree with the Members that this is not a very good petition. It is misplaced. As Hon. Pukose said, let us not use powers we enjoy under the Constitution to deal with the citizens to demean them. Maybe that guy used his time and energy to do a petition to Parliament and walked from his place all the way to the Clerk's Office. The Legal Department has looked at it. That is why the Speaker is under obligation to read it to the House.

Hon. Speaker, let us not scare Kenyans. Kenyans, please, bring as many petitions as possible. The relevant Committee of the House and our Legal Department will look at the petitions and deal with them accordingly. Hon. Nassir, you know fathers of some of us were not even chiefs. So, maybe, the father of that Mohamed has no post office box. So, please, because your father was a Minister, do not intimidate or threaten petitioners.

Hon. Nassir (*Off-record*)

Hon. Speaker: No! Hon. Nassir, if you want to rise on a point of order, you know the only way is to press the intervention button. If you just keep shouting, “point of order!” from where you are sitting, it will be ignored more or less similarly in the manner you are suggesting the Petition be ignored.

(Laughter)

Like I have said, Article 137 of the Constitution is very clear on qualifications and disqualifications. So, why are we agitated? You must have faith in your own Committee, chaired by a very able lawyer, Hon. Cheptumo. Why are you worried?

Hon. John Mbadi.

Hon. Ng’ongo: Thank you, Hon. Speaker.

The House has a rare privilege. The Members of Parliament who sit in this House have a rare privilege of being the only organ in this country that is given the responsibility to deliberate on and resolve issues of concern to the people. This gentleman from Wajir feels that he has a concern. His concern is that any Kenyan who is above the age of 70 years should not be President of this country. That is his right. We need to respect that right. That is why many Kenyans fought so hard. Yesterday, we were eulogising a great Kenyan; a hero who really fought so hard for us to have the space we are enjoying today where any Kenyan can bring whatever Petition he feels is important to be resolved by this House. As a House, we have that privilege; we have that responsibility.

Contrary to what Hon. Nassir said, I think the Committee should give this gentleman enough time to appear before them and indicate to Kenyans why he feels that anyone above the age of 70 years should not be President and, draw empirical comparisons from across the globe and even within. That is because we are privileged in this country. Apart from the sitting President, all the other Presidents have served when they took over either after the age of 70 years or have served beyond 70 years. We know what they have been able to do. The first President of the Republic of Kenya served way beyond the age of 70 years. The second President started when he was relatively younger, at the age of 50 years plus but ended up serving almost to the age of 80 years. Of course, the immediate former President took over after the age of 70 and served beyond that time.

So, we can just draw those comparisons. The sitting President is very young or relatively younger. My point is clear: let Cheptumo’s Departmental Committee on Justice and Legal Affairs deal with this matter and listen to this Kenyan and, probably counsel and advise him. Maybe he has a problem with old people. Some of us have problems which are caused by our backgrounds. I know there are people who hate men because, probably, their fathers mistreated them when they were young. There are people who hate women because, probably, they did not get the love they expected from a mother. This Kenyan, probably, has that problem but he does not know how to deal with it. We expect this Committee to appreciate that there is something in

age. Wisdom comes with age. If his father is still alive, just remind him that there is certain wisdom that his father possesses which he does not.

Thank you, Hon. Speaker.

Hon. Speaker: Going by the examples that Hon. John Mbadi was giving, maybe the petitioner was born and brought up under some octogenarian who mistreated him. Maybe that could be his gripe.

Hon. Cheptumo.

Hon. Cheptumo: Thank you, Hon. Speaker.

Let me give some assurance to this House. Some of us have said this Petition is misplaced, misguided and mischievous. Whatever description you give to this Petition, the truth of the matter is that it is a petition by a Kenyan, brought to this House under the provisions of the Constitution and the laws of this land. Those proceedings are live. It may even be possible that the petitioner is actually listening to us. So, I want to appeal to my colleagues that as we receive those petitions, having gone through the process and the Speaker approving them, let us allow the process that is within our Standing Orders to be concluded. I want to assure the petitioner that we will give him enough time. It may be three minutes, or 10 minutes, but he will be given sufficient time to address the Committee and explain why, in his opinion, he thinks that a person of 70 years and above cannot qualify to be a President of this country. That is his right.

I assure the House, as requested by the Leader of the Majority Party and Hon. Mbadi, that we are going to give this petitioner ample time to give his views and we will report back to the House. This should be the way for all petitions so that Kenyans have confidence that this is their House. They can come forward to bring petitions. However mischievous they might be, it is the Committee to make that decision and, indeed, the House.

Thank you, Hon. Speaker.

Hon. Speaker: I was a bit hesitant to allow you, Hon. Cheptumo, to comment because you started by saying, I think, this is mischievous and frivolous. Obviously, what came to my mind is that the first application the petitioner will make is that the Chairman should recuse himself because he has already expressed himself on the Petition. I suspect that the Hon. Cheptumo is not looking for a way of leaving the chair to his deputy. There is a possibility that the petitioner might say: "Mr. Chairman, you have already expressed yourself. I feel I will not receive sufficient justice." I was a bit hesitant. Members of that Committee who I can see are desirous of wanting to comment, do not put yourselves in that trap? I can see the Member for Kandara intends to speak. She has even removed the jacket she was putting on to prosecute her ideas.

(Laughter)

Proceed, Hon. Wahome.

Hon. (Ms.) Wahome: The problem with the Speaker is... No! The Speaker can never have a problem because...I want to say thank you very much. I was hoping I would do the business you have talked about without catching your eye.

(Hon. Nassir withdrew from the Chamber)

I had pressed the intervention button because I wanted to object to what the Hon. Member for Mvita Constituency, who is now leaving, had said. It was because of his statement.

He was attempting to direct the Committee to prosecute its business in three minutes. That is why my intervention button was on. The Committee works for the House. While that is so, the House can only have the luxury to determine the way the decision will go after the Committee has worked. That was my concern. I think we should encourage more Kenyans to bring petitions because one of our mandates is to deal with issues of concern to Kenyans. Kenyans need not be educated to bring a petition. Therefore, I support Hon. Mbadi when he says this person must be given time, room, space and comfort to prosecute his petition before the Committee. Discussing the merits and demerits of that petition at this stage is to prejudice and pre-empt the business of the Committee.

Therefore, I urge Members to agree that the matter needs to rest at this stage.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, this is just one innocent Kenyan. Let us not appear to lambast him because it is fair that we remember what Hon. John Mbadi started by saying. He made reference to Article 95 (1) and (2) about debating, discussing and resolving issues of concern to Kenyans and representing people of the constituency and other special interests. If we appear to tell Kenyans not to come here, then they will start wondering whether they should go to county assemblies which may not be able to deal with such matters. Let us just allow...

Hon. Ng'eno, please, do not try to intimidate this Kenyan.

Hon. Kipyegon: Hon. Speaker, I just want to be the only sympathetic person in this House to support this great Kenyan who has gone to the lengths of making a decision for so many other Kenyans who think along that line, among them is me. We are in Africa where people want to rule forever if given an opportunity. Some people may want to be leaders forever. If in Opposition, they want to be leaders of Opposition forever, if they become presidents, they want to be presidents forever and others want to be in politics forever. I think if we can imagine that a civil servant has a limit, we are not saying they are senile, but there is a limit of doing correct things, if they can reach that limit, why not politicians? Why do we want to imagine that politicians are God sent, or think like God. They also make mistakes. That is why I support this gentleman in saying that we need to have a limit in presidency.

When you look at the history of Presidents who have been above 70 years, they have been almost senile and the people running the country are not the Presidents sitting. Look at the American President now, the country is reckless because the guy is old and making reckless statements. Without prejudice, even when our former President was in his late years, other people were running this country. It is the same case with President Moi. When he was in those ages, other people were running this country and that is why this country became corrupt at that period and we keep on blaming the former president yet we know that he was no longer running the country because he had reached menopause of leadership.

(Laughter)

I was thinking that even in this House, we should reach a stage where we should have a limit. Either we limit the number or terms Members of Parliament are elected or we limit the age. There are Kenyans who are bright, sharp and would want to serve this country but because we occupy those positions, either through manipulation or corruption, we cannot allow them. There are upcoming Kenyans who want to be presidents of this country and we strangle them. I want to associate this idea with what is happening now where dynasties would want to rule then another dynasty will come and so on. I am thinking of meeting this guy so that he can introduce

another amendment to the Constitution that we have rotational presidents in this country like in the case of Nigeria. Otherwise, we are going to be having one to three communities running the show yet we have people...

Hon. Speaker: Now you are breaching two Standing Orders. The first one is Standing Order No. 87. If you want to discuss the President of another friendly country you know how to do it. Then there is the rule of relevance. This petitioner has only brought in the issue of age, now you are bringing in other issues. I want us to be guided by our own Standing Orders. This is a House of rules, traditions and procedures. It is not fair. Please, speak to this Petition. Remember it is only comments and clarifications.

Hon. Kipyegon: Hon. Speaker, with your guidance I wish to say that this Kenyan has a right because this is a House that is mandated by the law to look at anything below the sun. Not above the sun. This Kenyan deserves to be given an opportunity. We cannot judge him as having thought wildly. This is the thinking of every Kenyan so every Kenyan has a right to bring anything to this House, petition and discussion to this House.

I support this Kenyan.

Hon. Speaker: I will stop at that because I can see the rule of relevance will be violated. We may need to have another induction workshop, but I do not know what we shall do with a Member who is doing his second term. Obviously, there is nowhere under the Constitution or any other law that governs politics in this country, which says that politicians are gods. There is nothing wrong. The petitioner has quoted the definitions found in Article 260. Let him appear. Obviously, he may have a lot of following. Let the Committee deal with the Petition.

Let us move with the next Order.

PAPERS LAID

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

Report of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June 2017, and the certificates there in:

1. Tourism Regulatory Authority
2. Kenya Vision 2030 Delivery Secretariat
3. The Third and Fourth Annual Report of the Office of the Director of Public Prosecutions for the Financial Year 2014/2015 and 2015/2016 respectively.

Thank you.

NOTICE OF MOTION

ESTABLISHMENT OF SPORTS ACADEMIES IN EVERY CONSTITUENCY

Hon. Osotsi: Hon. Speaker, I beg to give notice of the following Motion:

THAT, aware of the socio-economic benefits of sport; recognising that sports can and does make great and positive economic, health, social and cultural impact on individuals, communities and wider society; further aware that sports can be a major source of employment and foreign exchange earning in Kenya, with potential to improve the country's economy on a large scale if it is well harnessed; deeply concerned that the standards of sports in Kenya in many disciplines remain low due to among other things, inadequate investment, scouting, nurturing of

talent; cognisant that Section 33(4) of the Sports Act 2013 establishes the Kenya Academy of Sports, and further Section 34 (a) of the Act provides that the function of the academy shall be among other things establish and manage sports training academies; appreciating that Article 6(3) of the Constitution of Kenya provides that a national State organ shall ensure reasonable access to its services in all parts of the Republic, so far as it is appropriate to do so having regard to the nature of the service. This House urges the Government through the Ministry of Sports, Culture and Arts to establish sports academies in every constituency.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF BILLS

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Hon. Speaker, I beg to move the following Motion:

THAT, notwithstanding the provisions of Standing Order 120, this House resolves to reduce the publication period of the following Bills from 14 to 8 days—

1. The County Governments Retirement Scheme Bill (National Assembly Bill No. 10 of 2018);
2. The Tax Laws (Amendment) Bill (National Assembly Bill No. 11 of 2018);
3. The Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 12 of 2018);
and
4. The Statute Law (Miscellaneous Amendments) (No. 2) Bill (National Assembly Bill No.13 of 2018).

Hon. Speaker, as you chaired the House Business Committee (HBC) and looking at the calendar of the House, the HBC last night felt that we reduce the publication period so as to allow those Bills to be read the first time and thereafter be committed to the relevant departmental committees for serious public participation. Those Bills emanate from the Executive and were already considered and evidence provided for in the Cabinet.

Because the whole month of May we will be on recess, we felt that during that period the relevant committees can conduct serious public participation and that by the time we come back in June, among other Bills in the queue, the House can consider those Bills at Second Reading and Committee of the whole House. That is the decision of the HBC.

Just to highlight, the Tax Laws (Amendment) Bill seeks to amend the Income Tax Act, the Stamp Duty Act and part of the Value Added Tax. That is why we want to give the finance committee opportunity to relook at it and conduct serious public participation. One of the two Statute Law (Miscellaneous Amendments) Bills seeks to do minor amendments of 13 Acts of Parliament and the other one over 29 to 39 Acts of Parliament.

We are remaining with only next week. The other week, 1st May will be a public holiday which is Labour Day and the 2nd of May, as you gave Communication yesterday, is when the President will give the State of the Nation Address. So minus those two parliamentary days, Tuesday and Wednesday, then basically we are remaining with not more than six sessions excluding tomorrow. That has made HBC to make that wise decision that as we go on recess those Bills are committed to the relevant committees to conduct public participation.

With those many remarks, I ask the Leader of the Minority Party, who was with me last night in the HBC meeting, to second.

Hon. Speaker: Hon. John Mbadi.

Hon. Ng'ongo: Thank you, Hon. Speaker. In seconding, I just want to say one thing. The HBC made a resolution which we communicated to this House and which is in line with provisions of the Standing Orders, that we will strictly take to Second Reading only those Bills where a committee report is ready. Given that we are going for a long recess of one month, we felt it is important that we commit some of those Bills to various committees so that when we come back after the recess, the reports shall be ready and we will be able to take the Bills to Second Reading. This is basically a procedural Motion reducing the number of days of publication from 14 to eight to allow the Bills to proceed to the First Reading which, if this House approves this Motion under Order No. 8, then the Members can see that Order Nos. 9 to 12 are basically the First Reading of the same Bills that we are talking about under this Motion.

With those remarks, I urge the House to support the Motion and allow those Bills to proceed to the various committees for consideration and for public participation.

Thank you, Hon. Speaker. I second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Very well. It is the demand of the House.

(Question put and agreed to)

BILLS

First Readings

THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL

THE TAX LAWS (AMENDMENT) BILL

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL

(Orders for the First Readings read – read the First Time and ordered to be referred to the relevant committees)

COMMUNICATION FROM THE CHAIR

CONSIDERATION OF STATUTE LAW (MISCELLANEOUS
AMENDMENTS) BILLS BY COMMITTEES

Hon. Speaker: Hon. Members, I just wish to make a communication. If you look at Standing Order 217(2)(f), the Liaison Committee, which is chaired by Hon. Deputy Speaker, is given certain mandates with regard to determination of what business may be considered by what committees from time to time, apart from the regular communications from the Hon. Chair. In

this regard, the Deputy Speaker, in his capacity as the Chair of the Liaison Committee, will be communicating to various chairs of Departmental Committees with regard to which Committee will consider which aspect of the last two Bills – the Statute Law (Miscellaneous Amendments) Bill Nos.12 and 13. If you read through them, you will appreciate that both seek to amend a raft of existing legislations. Therefore, to avoid a situation where a proposal to amend a law dealing with agriculture and another one dealing with organisation of the courts would be considered by one Committee - and for efficiency purposes - the Deputy Speaker will be communicating which committee will be dealing with which aspects of each statute that is to be amended. This is so that even when we engage with the public during the public hearings, the stakeholders who will appear before committees will be clear. Sometimes it may be very frustrating when medical doctors are told to appear before the Departmental Committee on Justice and Legal Affairs to be told about the hierarchy of the courts and the jurisdictions each has.

That is just to clarify. If you read through those two Bills, you will see that they propose to amend, not in very significant ways but very many Bills. One of the two Bills requires only consideration by this House yet the other one would require consideration by both the National Assembly and the Senate. Therefore, Hon. Deputy Speaker will, the soonest possible – maybe, in the cause of tomorrow or early next week – make that communication.

Next Order.

MOTION

REPORT ON THE VETTING OF THE NOMINEE FOR APPOINTMENT AS MEMBER OF THE JUDICIAL SERVICE COMMISSION

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of the nominee for appointment as a Member of the Judicial Service Commission (JSC), laid on the Table of the House on Thursday, 12th April 2018, and in furtherance to the provisions of Article 171(2)(c) as read together with Article 250(2)(b) of the Constitution. This House resolves as follows:

(i) THAT, taking cognisance that the *ex parte* conservatory High Court orders of 27th March 2018 prohibited the National Assembly from vetting Hon. Justice Mohamed Abdullahi Warsame for appointment as a Member of the Judicial Service Commission, and prohibited the House from exercising the vetting and approval requirements under Article 250(2)(b) of the Constitution pending the outcome of the court case;

(ii) THAT, recognising that the *ex parte* conservatory High Court order of 27th March 2018 also prohibited the House from exercising the vetting and approval requirements set out in Sections 3, 6, 7 and 8 of the Public Appointments (Parliamentary Approval) Act 2011, within the time period established by Section 8 and 13 of the said law;

NOW THEREFORE, the National Assembly having been prohibited from confirming the suitability of Hon. Justice Mohamed Abdullahi Warsame for appointment as member of the Judicial Service Commission, as contemplated under Article 250(2)(b) of the Constitution within the period set out in law, is unable to approve his appointment as a member of Judicial Service Commission.

(Hon. Cheptumo on 17.4.2018)

(Debate on Motion as amended concluded on 17.4.2018)

Hon. Speaker: Nominated Member No.001, take a seat close to you. Member for Wajir, do not just walk around.

Hon. Members, debate on this Motion was concluded yesterday. What remained was for the Question to be put, which I hereby do.

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the vetting of the nominee for appointment as a Member of the Judicial Service Commission, laid on the Table of the House on Thursday, 12th April 2018, subject to deletion of Recommendation No. (iii) appearing on page 19 of the Report, and in furtherance to the provisions of Article 171(2)(c) as read together with Article 250(2)(b) of the Constitution, this House resolves as follows –

(i) THAT, taking cognisance that the *ex parte* conservatory High Court orders of 27th March, 2018 prohibited the National Assembly from vetting Hon. Justice Mohamed Abdullahi Warsame, (Judge of Appeal) for appointment as a member of the Judicial Service Commission, and prohibited the National Assembly from exercising its approval authority as required under Article 250(2)(b) of the Constitution, pending the outcome of the court case;

(ii) THAT, recognising that the *ex parte* conservatory High Court orders of 27th March, 2018 also prohibited the House from exercising the vetting and approval requirements set out in sections 3, 6, 7 and 8 of the Public Appointments (Parliamentary Approval) Act, 2011 within the time period established by sections 8 and 13 of the said law;

(iii) NOW THEREFORE, the National Assembly, having been prohibited from confirming the suitability of Hon. Justice Mohamed Abdullahi Warsame (Judge of Appeal) for appointment as a member of the Judicial Service Commission, as contemplated under Article 250(2)(b) of the Constitution, within the time period set out in law, is unable to approve his appointment as a member of the Judicial Service Commission.

Hon. Speaker: Next Order.

BILL

Second Reading

THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL

(Hon. A.B. Duale on 17.4.2018)

(Debate concluded on 17.4.2018)

Hon. Speaker: Hon. Member's debate on this Bill was concluded last evening and what remains is the Question to be put, which I hereby do.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)

Hon. Speaker: Before we move to the Next Order, I am told that there is some application to be made by the Chair of the Departmental Committee on Agriculture and Livestock. Is it the communication that he made to the secretariat that he is not aware of?

Hon. Yussuf Adan: Thank you Hon. Speaker, I seek extension of the consideration period for the Irrigation Bill for one more day owing to the fact that we still have the input from stakeholders that are quite overwhelming. Therefore, we needed to run it first to the Ministry and other stakeholders so that we can accommodate all those views. So, I rise to seek extension by one more day.

Thank you.

Hon. A.B. Duale: On appoint of Order, Hon. Speaker.

Hon. Speaker: What is it, Leader of the Majority Party?

Hon. A.B. Duale: Hon. Speaker, the Chair of the Departmental Committee on Agriculture and Livestock is out of order. The Irrigation Bill is mine. In the first place, it is only me who can ask for an extension. I have had to do this because another Chair will follow suit tomorrow.

The Chair came to my office and talked to me about the Executive. He said that he wants to go and consult. I told him the Executive does not run the affairs of Parliament, and more so when I am the Leader of the Majority Party. I told him that as we continue with the Roads Bill, which is very long, I would consult. Any Member has a right to bring an amendment. Let him come and convince us. So, if we do not reach the Irrigation Bill, it is the House Business Committee which has the powers to reschedule business.

We have said that the Irrigation Bill and the Energy Bill will be dealt with tomorrow, if we do not reach them today. I am sure that if we start with the Roads Bill, we might not reach there because of the many clauses. All the same, let him prepare his amendments and those of other Members for tomorrow. At the end of the day, Questions will be put and it is the House to decide whether to agree with the Chair or with the individual Members who will bring amendments.

However, we have the Roads Bill, which is lengthy. Therefore, we might take the greater part of this afternoon and deal with the Irrigation Bill tomorrow. I agree with the Chairman but Hon. Speaker, you need to tell him that he has no power, under the Standing Orders, to ask for deferment of the Bill when its owner is seated next to him.

Hon. Speaker: I think the Member is appropriately advised, apprised and guided. Hon. Members, before we read the next Order, I want to make this Communication because I have seen a group of Members in the usual way come in, take a bottle of water and walk out as having fulfilled their mandate of sitting in the Chamber.

I think it is good for the public and for Kenyans to know where we are headed. The Kenya Roads Bill is very important. Kenyans know their representatives are supposed to be in this House, not unless they have some other serious engagement. The Committee of the whole House is where we make laws. I look this way and that way...but of course all of you over the

weekend, including the whole of next week and Labour Day celebrations will be saying you passed this law.

The people who elected you are looking to see whether you are actually... The Committee of the whole House is where we make laws. Legislation is such an important function for Members. I was not expecting this having looked at the Report of the Committee responsible for this Bill and the proposed amendments by both the Committee and individual Members and having read through the Bill.

There is no place without roads. I am sure even in Seme there are roads. I can see the Member for Seme has withdrawn to sit in a different position. I am sure he must be consulting with the Hon. Prof. Honestly, roads are an important topic like water and irrigation. Members come in and walk out casually like they have not looked at the Order Paper to know serious business is being transacted. Hon. Members, just try to talk to your colleagues. The Leader of the Majority Party, the Leader of the Minority Party and the Whips, try to implore your colleagues that when we get to Committee of the whole House... In the Second Reading we hear a Member contributing and saying that at Committee stage they will be proposing an amendment to a certain clause.

We come here to see whether the Member who threatened to introduce an amendment is carrying out his threat. Many of those who said they are going to introduce amendments have walked out. Committee of the whole House is a very important stage of law making.

Next Order!

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

[The Chairman (Hon. Cheboi) took the Chair]

THE KENYA ROADS BILL

Hon. Chairman: Hon. Members, you have heard the Speaker. I can see you are still in your seats as this process begins. We are dealing with the Committee of the whole House on Kenya Roads Bill (National Assembly Bill No.47 of 2017). Hon. Members, since it is a very long one we will move very fast. So, Members should be attentive.

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

Hon. Chairman: Yes, what is it, the Leader of the Majority Party.

Hon. A.B. Duale: The Chairman is going to move many amendments and he is very far. It will be good if he can come and sit somewhere here.

Hon. Chairman: Yes, that will be fine.

Hon. A.B. Duale: He is in the middle of...

Hon. Chairman: Obviously, I am not going to give him that seat, but he can temporarily seek refuge there. He can even sit next to Hon. Pukose, but that is a good place for him.

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

Clause 7

Hon. Chairman: Hon. Pkosing.

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 7 of the Bill be amended in sub-clause (1) by deleting paragraph (h) and substituting therefor the following new paragraph—

“(h) the Engineers Board of Kenya;”

Hon. Chairman: That is good but you need to propose the amendment and give some justification so that Members can be up to speed with you.

Hon. Losiakou: I do not know whether I will be in order by taking you to Clause 2 because there are amendments from the Committee on it.

Hon. Chairman: Clause 2 will be the last one. We are doing well.

Hon. Losiakou: Hon. Chairman, I stand guided. The Committee through public participation is proposing this amendment of introducing the Engineers Board of Kenya in the Public Roads Standard Board because it was not there. Looking at the Institute of Engineers, it is rather amorphous. The Engineers Board of Kenya is clear and has a lot of structure.

(Question of the amendment proposed)

Hon. Chairman: I will give two Members starting with the Leader of the Majority Party and then one more Member.

Hon. A.B. Duale: This amendment does only one thing. It ensures that the Engineers Board of Kenya is represented in the Public Roads Standards Board as opposed to the Institute of Engineers. This is basically, what it is doing.

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

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

(Clause 7 as amended agreed to)

(Clauses 8 and 9 agreed to)

Clause 10

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 10 of the Bill be amended in the marginal notes by deleting the words “Classification of national trunk and county roads” and substituting therefor the words “Classification of public roads”.

This is a nominal amendment making clarification.

(Question of the amendment proposed)

Hon. Kisang: Thank you, Hon. Chairman. I rise to support. This will ensure we know the public roads, county roads and national roads. We have problems when dealing with the Kenya Rural Roads Authority (KeRRA). Some people cannot differentiate between KeRRA roads and county roads. This Bill will make this very clear and assist our people.

Hon. Chairman: That is fairly straightforward

*(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 10 as amended agreed to)

(Clauses 11 and 12 agreed to)

Clause 13

Hon. Chairman: I see there are two amendments proposed. There is one amendment and a further amendment. We will start with the Chair of the Committee, Hon. Pkosing and then Hon. TJ.

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 13 of the Bill be amended in sub-clause (2) by—

- (a) inserting the words “including through public private partnerships” at the end of paragraph (a);
- (b) inserting the words “Classes S, A and B” immediately after the words “national trunk roads” appearing in paragraph (b);
- (c) inserting the words “Classes S, A and B at the end of paragraph (c);
- (d) inserting the words “and any other regulations under this Act” immediately after the word “Act” appearing in paragraph (d);
- (e) inserting the following new paragraph immediately after paragraph (d) –
“(da) controlling, operating and managing toll roads under its jurisdiction;”
- (f) inserting the words “Classes S, A and B” immediately after the words “national trunk roads” appearing in paragraph (f);
- (g) inserting the words “Classes S, A and B” immediately after the words “national trunk roads” appearing in paragraph (g);
- (h) inserting the words “Classes S, A and B at the end of paragraph (h);
- (i) inserting the words “Classes S, A and B at the end of paragraph (i);
- (j) inserting the words “Classes S, A and B at the end of paragraph (j); and
- (k) inserting the words “Classes S, A and B at the end of paragraph (k).

Hon. Chairman, we are adding two things to KeNHA. We are adding that when they are building the road, they should have that power to do it through public private partnerships (PPP).

That was not there in the law and of course nowadays we are moving to PPPs. I am introducing it there.

Secondly, if you look at the functions which are provided for in the original Bill, it did not have Classes S, A and B as part of the KeNHA. That is why we are introducing it at that level so that it is very clear that one of the functions is to develop the roads in S, A and B.

(Question of the amendment proposed)

Hon. Chairman: I will give two Members an opportunity to speak. The first one is Leader of the Majority Party and then I will go to the minority.

Hon. A.B. Duale: Hon. Chairman, I really want the Chair to explain those amendments clearly for Members to follow. This amendment, which I support, seeks to ensure that the functions of KeNHA in terms of constructing, upgrading, rehabilitating and maintaining of roads under their jurisdiction also get an extra function that they can do under PPP. The second amendment for the Members to follow is that they now have extra jurisdiction on roads of class SA and SB. So that we do not waste much time the Chair should explain. Classes SA and SB are new classifications which are given to KeNHA. It is as clear as that so that we do not have...

Hon. Chairman: That is the beauty of him being very close to where you are seated so that you can keep consulting. However, he had also explained somehow.

Let me give an opportunity to one Member from my left. Hon. Osotsi is top on the list. I see there is no Member who wants to speak on this other side. Hon. Millie Odhiambo, it surprises me if you really do not want to say anything.

Hon. (Ms.) Odhiambo-Mabona: Hon. Chairman, I really wanted to speak to it but Hon. Duale is distracting me by saying that I was chased for three days.

Hon. Chairman: By who?

Hon. (Ms.) Odhiambo-Mabona: I do not know. I am not a stranger. I think Hon. Duale has missed me but now he knows I am back. He can be ready. I am back.

Hon. Chairman: Hon. Millie, you know I cannot be able to confirm the issue of being chased for three days because it depends on where you were being chased. If it was outside the Chamber, that becomes a problem because I will not be able to really know your whereabouts.

Hon. A.B. Duale: Hon. Chairman, I think Hon. Millie Odhiambo was sent away yesterday by the Speaker. I think we need to confirm with the HANSARD whether she was chased for the remaining three days of the week or she was chased for the session of yesterday. She just only sneaked when the substantive Chair had left. I am telling the Leader of the Minority Party that he is sitting next to a stranger.

Hon. Chairman: Ordinarily, Hon. Millie Odhiambo is never chased for three days. She is always chased only for the remainder of the day.

(Laughter)

This is because when she reappears, she is as perfect as you can see now. There would, ordinarily, be no reason to chase Hon. Millie for three days.

There will be a problem somewhere. That was for the remainder of the day. Leader of the Minority Party, let us hear you and then come back again.

Hon. Ng'ongo: Hon. Chairman, I just wanted to confirm that really the communication from the Speaker was very clear. As Hon. Millie was walking out, he even reconfirmed that she would be out for the remainder of the sitting. So, Hon. Millie is perfectly here. Actually, she did not sneak in. She has been around even when the substantive Speaker was here.

Hon. Chairman: She was only sitting slightly far and it can be understood.

Hon. Ng'ongo: I wonder why the Leader of the Majority Party does not want me to consult with Hon. Millie. She is a very resourceful person in my coalition and I need to consult with her. Remember she comes from Homa Bay County and Suba for that matter.

Hon. Chairman: Rulings always against Hon. Millie are consistent. They are for the remainder of the day. Let us leave that. I really wanted to give Members a chance to contribute but we went to sideshows. So, let me take it back to Hon. Pkosing to explain those SA and SB just in one word.

Hon. Losiakou: Hon. Chairman, the explanations of those roads were in the First Schedule. If you allow me, I can read as it is. For Members to understand, those are roads that carry traffic from one city to another, for example, here to Thika. It might not be joining other countries, which is Class A. Members need to understand that roads that join our country to another are Class A roads. That is automatic, but there are also other important roads which carry traffic between cities. Those are Class S. That is the difference that Members need to understand.

Hon. Chairman: Do SA and SB depend on the volume or something?

Hon. Losiakou: There is no Class SA. There are three classes. S is one class; A is another class and B is another class. I have given an explanation but if I can repeat it is that the Class B roads are the ones that connect the old provincial headquarters. I have to use layman's language for people to understand. That is how it is. So, the one that connects major cities like here to Thika is Class S. The one connecting us to another country is Class A and that which connects provincial headquarters is Class B. I think that is very clear, Hon. Chairman. I cannot be clearer than that but I can be if need be.

Hon. Chairman: It is okay. It is now clear. So, let me dispose of that one. What is it Hon. Nyikal.

Hon. (Dr.) Nyikal: That amendment goes to (d) as well and it just adds after the word "Act" the words, "and any other regulations under this Act." I was wondering. If it is a regulation, why would the regulation be necessary to be put because it is assumed this will be the rest of the Act? Then it will work under that. Why do we need to specify and say "and any other regulations?"

Hon. Chairman: I think it is a valid question. Repeat it for the Chair.

Hon. (Dr.) Nyikal: Under (d) it would end and say "under the Traffic Act." However, it says after that you add the words: "and any other regulations under this Act." The assumption is that whatever is put here is subject to this Act. Why do we want to just add the words: "and any other regulations under this Act?"

Hon. Chairman: Yes, Hon. Pkosing.

Hon. Losiakou: Hon. Chairman, it is actually to reaffirm so that people do not misunderstand what you are exactly referring to. We are referring to the Act itself. So, it is clarity.

Hon. Chairman: Hon. Members, let me dispose it.

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

We will now move to the further amendment proposed by Hon. TJ Kajwang’.

Hon. Kajwang’: Hon. Chairman, I beg to move:

THAT, Clause 13 of the Bill be amended in sub-clause (2) by inserting the following new paragraph immediately after paragraph (b)—

“(ba) overseeing roadside developments to ensure compliance with the provisions of this Act and guidelines as may be prescribed by the Authority.”

Hon. Chairman: Give a brief summary. What is it that you intend to achieve, Hon. Kajwang’?

Hon. Kajwang’: This is to give an additional power to the Authority over the road reserves and management. The Constitution has given the Roads Authority the ownership of those roads. We need a legislation that actualises that ownership by the Constitution which now gives them the power to manage the road reserves and the roadsides. It is just that simple.

Hon. Chairman: I hope the Members have understood.

(Question of the further amendment proposed)

I will give the first shot to the Chair to see if he is in agreement.

Hon. Losiakou: Yes, Hon. Chairman. We are in agreement. We consulted and deliberated together.

Hon. Chairman: Is there any other Member who wants to speak to this one?

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

Now that we have dispensed with the proposed amendment by Hon. Pkosing and the further amendment by T.J. Kajwang’, let me put the Question.

(Clause 13 as amended agreed to)

Clause 14

Hon. Chairman: There are two proposed amendments to this Clause. Let us start with Hon. Pkosing.

Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 14 of the Bill be amended –

(a) in sub-clause (2) by—

(i) deleting the words “from amongst the members appointed under paragraph (f) appearing in paragraph (a);

(ii) deleting the word “five” appearing in paragraph (f) and substituting therefor the word “two”;

(iii) deleting sub-paragraphs (ii),(iii)and(v) appearing in paragraph (f); and

(iv) inserting the following new paragraph immediately after paragraph (f) –

“(g) two persons appointed by the Cabinet Secretary through a transparent and formal process taking into consideration the regional and ethnic diversity of the people of Kenya.”

(b) in sub-clause (3) by deleting the word “Authority” and substituting therefor the word “Board”.

(c) in sub-clause (4) by deleting the figure “(1)” and substituting therefor the figure “(2)”.

(d) in sub-clause (5) by deleting the figure “(1)” and substituting therefor the figure “(2)”.

There are two reasons to support this. One, we are trying to make it a hybrid board. The reason is that the earlier boards were like a class of elitists comprising of different organisations and leaving out the people of Kenya. The Committee is trying to make it a hybrid to bring in the people of Kenya - who are the road users - to manage their own roads.

The second reason is to attain that constitutional requirement of regional balancing. There is a danger that if we populate those boards through institutions of professionals, we might end up having people from one region leading the boards. That is why we thought that we should propose to this House that there should be a hybrid way of populating the board.

Finally, the Chairman of those road institutions like KeRRA and the Kenya National Highways Authority (KeNHA) should be appointed by the President. The President did not appoint the chairmen in the original Act. It was done by certain institutions rather than the President. That is why through public participation, the Committee proposes that, as it is in corporate management under the law, the Chairman should be appointed by the President. That should be very clear.

(Question of the amendment proposed)

Hon. Chairman: Hon. T.J, do you want to speak to this or will you wait for yours?

Hon. Kajwang’: No. I just want to amplify what the Chair has said.

As you know, I have taken time to look at this and we spent a whole day with the Chair trying to reconcile those amendments. The intent of the drafters was to incorporate what is now known as Mwongozo Policy - good governance in management of boards. The first thing is public participation and public-private partnership so that we release governance and also incorporate the public sector. It has been a problem in the National Assembly.

Every time we have those pieces of legislation, how do we now bring in those people? A body like the Kenya Private Sector Alliance (KEPSA) is not known to law. It has been difficult. How do we bring in those people? The thinking in the 10th Parliament was to bring in institutions so we brought in the Law Society of Kenya (LSK), the Kenya Medical Association (KMA) and the like. Over time, we found that institutions have taken control of the management of boards and so it has become a job rather than a policy work.

This time, the Committee has dispensed with this type of appointment and stated that the Cabinet Secretary will appoint those people. In Clause 22, which is ahead, you will find that there is a criterion for those appointments. We have stated that it should take cognisance of regional and ethnic diversity of the people of Kenya. We do not want to see a CS waking up and it is always Otieno, Onyango, Omondi or Wangui, Kinuthia, Wangui who are appointed without Omar and Shabin. It is music to the ears of the Leader of the Majority Party. We now have an opportunity to have a transparent system in which those things are dispensed with. A Kenyan like Omtatah could go to court and claim that the people of North Eastern or Garissa have not been appointed to the board. This is the interest of the Chair in the proposals that have been passed.

Hon. Chairman: It is now clear but next time you should pronounce the name “Wangui” properly. When you say “Wangui” it is completely different from “Wangui”. It means completely different things for those people who understand that language.

What is it Hon. Millie Odhiambo? I just wanted this lady to be on record today and then we can proceed.

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Chairman. Let me go on record now that I was mentioned severally. I have listened to what Hon. T.J. Kajwang’ has said. Going by the spirit of the Constitution where we give the CS a chance to make an appointment, I would be more comfortable if we provide for those appointments through an open and competitive process. Otherwise, when you give too much power to one person, it does not matter how good they are, they tend to abuse that power.

Hon. Chairman: You have been heard and you are on record.

*(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)*

We proceed to Hon. T.J. Kajwang’s further amendment.

Hon. Kajwang’: Hon. Chairman, I beg to move:

THAT, Clause 14 of the Bill be amended—

(a) in sub-clause (3) by deleting the expression “(1) (b) to (d) and substituting therefor the expression “(1) (b), (c) and (d)”;

(b) in sub-clause (4) by inserting the word “each” immediately before the words “submit three”;

I love legislation and legislative drafting. The amendments you see here are purely just to clean up the grammar. The rationale is just to clean the law. I found a Committee which may not have benefited from ranking Members like T.J. Kajwang’ and so, instead of saying (b), (c), (d), they said (b) to (d). We are just cleaning up the language.

In sub-clause (4), the word “each” allows the nominating bodies to nominate a specific number of people to the CS who will then make an appointment.

(Question of the further amendment proposed)

Hon. Chairman: What is it Hon. Chair?

Hon. Losiakou: Now you are the Chair here, Hon. Chairman. You almost said that I am the deputy yet I am the Chair. Kajwang’ has just introduced the word “(c)”. There was nothing else. That is what he did. Everybody knows where Kajwang’ is coming from. I agree with him. He is just introducing the word “(c)” because the Bill initially read “(b) to (d)” so the “(c)” was not there. That is the only thing and I agree with him. There is no problem. Knowing where he is coming from, I agree with him.

Hon. Chairman: What do you mean? Everybody knows Hon. Kajwang’ comes from Ruaraka. Which other place are we talking about just in case we are lost out somewhere? Let us leave it at that. He has said that he loves legislating. I have known Hon. Kajwang’ for a long time. I know what he loves. Let us proceed.

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

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

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

(Clause 14 as amended agreed to)

(Clause 15 agreed to)

Clause 16

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 16 of the Bill be amended in sub-clause (2) by—

(a) inserting the words “including through public private partnerships” at the end of paragraph(a);

(b) inserting the following new paragraph immediately after paragraph (b)—

“(ba) overseeing roadside developments to ensure compliance with the provisions of this Act and guidelines as may be prescribed by the Authority.”

The reason for the amendment is that we have added one more role for the Kenya National Urban Roads Authority which is what people know as Kenya Urban Roads Authority (KURA). It has been renamed. We have added more roles. Their functions will also include Public Private Partnerships. It never used to be there. We have introduced PPP to the Kenya National Highways Authority (KeNHA), so that they can proceed clearly and comfortably.

Hon. Chairman: That one is very clear.

(Question of the amendment proposed)

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

(Clause 16 as amended agreed to)

Clause 17

Hon. Chairman: This Clause has two proposed amendments. Let us start with Hon. Pkosing, the Chair.

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 17 of the Bill be amended —

(a) in sub-clause (1) by—

(i) re-numbering the existing sub-clause (1) as sub-clause (2); and

(ii) inserting the following new sub-clause (1) —

“(1) There is established the Board of the Kenya National Urban Roads Authority”.

(b) in the proposed new sub-clause (2) by—

(i) deleting the words “from amongst the members appointed under paragraph (f)” appearing in paragraph (a);

(ii) deleting the word “five” appearing in paragraph (f) and substituting therefor the word “two”;

(iii) deleting sub-paragraphs (ii),(iii)and(iv) appearing in paragraph (f);

(iv) deleting the word “Physical” appearing in sub-paragraph (v) of paragraph (f) ;and

(v) inserting the following new paragraph immediately after paragraph (f)

—
“(g) two persons appointed by the Cabinet Secretary through a transparent and formal process taking into consideration the regional and ethnic diversity of the people of Kenya.”

(c) in sub-clause (3) by —

(i) re-numbering the existing sub-clause (2) as sub-clause (3); and

(ii) deleting the words “Authority” in the proposed new sub-clause (3) and substituting therefor the words “Board”.

First of all, we have established the Kenya National Urban Roads Authority before stating its functions or composition. The original Bill provided for the composition of KeNURA before its establishment. The proposed amendment has brought the establishment first.

Hon. Chairman: Are the functions of the Kenya National Urban Roads Authority at Clause 17?

Hon. Losiakou: Yes.

Hon. Chairman: So, the creation is at Clause 16.

Hon. Losiakou: Yes. It comes earlier as it is in the Order Paper. We have reorganised the clause. The composition of the board was there before its establishment. How do you bring in the composition of the board before you create it? You have to create the board and then bring its composition. That is what I am doing.

Hon. Chairman: Agreed.

(Question of the amendment proposed)

I am trying to see if there is any Member who wants to contribute to this clause. There is none.

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

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

Question, that the words to be inserted be inserted,

put and agreed to)

Let us proceed to Hon. T.J. Kajwang's proposed amendment.

Hon. Kajwang': Hon. Chairman, I beg to move:

THAT, Clause 17 of the Bill be amended—

(a) in sub-clause (2) by deleting the expression “(1)(b) to (d) and substituting therefor the expression “(1)(b), (c) and (d)”; and

(b) in sub-clause (3) by inserting the word “each” immediately before the words “submit three”;

Hon. Chairman: What is it, Hon. Kajwang'?

Hon. Kajwang': A far ranking Member saw this. We want to include (c) and include the word “each”. Those two things are very important in explaining those pieces of legislation. Thank you, Hon. Chairman.

(Question of the further amendment proposed)

Hon. Chairman: Leader of the Majority Party.

Hon. A.B. Duale: Hon. Chairman, Hon. T.J. is not a ranking Member. For you to qualify to be a ranking Member, you must have been in this House for three terms. You are serving your second term. So, you have a long way to be a ranking Member. I want to confirm that is why he was the only one who could swear *Baba* because he is very articulate on matters of drafting legislation. That is why Hon. Kaluma and the rest took off.

Hon. T.J. Kajwang' seeks to correct the error in the referencing of the paragraphs in sub clause 3.

Hon. Chairman: It seems to be also clear.

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

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

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

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

Clause 19

Hon. Chairman: Hon. Chair, move the clause quickly so that we can move fast. The Members have got the gist of the proposed amendments.

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 19 of the Bill be amended –

(a) by deleting the words “and D” in sub-clause (1);

(b) in sub-clause (2) by–

- (i) inserting the words “including through public private partnerships” at the end of paragraph (a); and
- (ii) inserting the following new paragraph immediately after paragraph (b)—
 “(ba) overseeing roadside developments to ensure compliance with the provisions of this Act and guidelines as may be prescribed by the Authority.”

For Members to understand, the Kenya National Secondary Roads Authority is what used to be called the Kenya Rural Roads Authority (KeRRA). They are in charge of Class C roads. It was not there in the original Bill. We have brought it to say that their mandate is on Class C roads.

(Question of the amendment proposed)

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

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

(Clause 19 as amended agreed to)

Clause 20

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 20 of the Bill be amended—

(a) in sub-clause (2) by—

(i) deleting the words “from amongst the members appointed under paragraph (f)” appearing in paragraph (a);

Hon. Chairman, this amendment deals with the appointment of the chair, which was not there. We have addressed that in the other board. We are now doing it for what used to be KURA, which is now the Kenya National Secondary Roads Authority. The President has a responsibility to appoint the chair of the board.

(Question of the amendment proposed)

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

Hon. Chairman: Let us have Hon. Nyakwar Nyakwamba to move the further proposed amendment.

Hon. T.J. Kajwang’: Hon. Chairman, I beg to move:

THAT, Clause 20 of the Bill be amended —

(a) in sub-clause (3) by deleting the expression “(1) (b) to (d) and substituting therefor the expression “(1) (b), (c) and (d)””; and
 (b) in sub-clause (4) by inserting the word “each” immediately before the words “submit three”;

Hon. Chairman: For clarity, Members are saying that on record it should be Hon. T.J. Kajwang'. He is also called Hon. Nyakwar Nyakwamba. Proceed.

Hon. T.J. Kajwang': Hon. Chairman, I am proud because I became the grandson of Nyakwamba. So, I am Nyakwar Nyakwamba.

The addition of the word "each" in sub clause 4 is very important because without it, then the nominating organisations would only propose three names as it has happened in the others. In this case, it is now very clear that each nominating organisation will present three names to the CS. I did not go to school for nothing.

(Question of the further amendment proposed)

Hon. Chairman: If the Committee is fine with the proposed amendment, then I do not need to spend a lot of time on it.

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

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

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

(Clause 20 as amended agreed to)

(Clause 21 agreed to)

Clause 22

Hon. Chairman: Hon. Pkosing.

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 22 of the Bill be amended –

(a) in sub-clause (1) by –

(i) inserting the words "in engineering, accounting, law, survey, planning or management" immediately after the words "degree" appearing in paragraph (a); and

(ii) deleting the words "the relevant field" appearing in paragraph (b) and substituting therefore the words "in engineering, accounting, law, survey, planning or management".

(b) in sub-clause (2) by inserting the word "or" at the end of paragraph (d).

(c) by deleting sub-clause (3).

We have given the qualifications of the person to be the chair. We have given engineering, accounting and law, so that it is broader. So that people who have not studied the relevant field can also not become chairs of this institution. That is what we have done. We have introduced clarity.

(Question of the amendment proposed)

Hon. Chairman: Leader of the Majority Party.

Hon. A.B. Duale: Hon. Chairman, this is a very good amendment. It seeks to provide for the relevant fields or a degree of experience for qualification for appointment to the board. We need to move because these institutions are important. They receive huge budgets from Parliament. They are accountable to the Auditor-General. We want a board that can add value by not appointing anybody to them. If we appoint a conflict management expert to the Kenya National Highways Authority or to the Kenya Urban Roads Authority, they will add no value. That is why we are very specific. We have enriched this law than we did during the 11th Parliament. I thank the current chair and his Members.

Hon. Chairman: Departmental Committee Chair, Hon. Wambura.

Hon. (Dr.) Nyikal: Hon. Chairman, I support this amendment. Apart from getting the correct people, these are people who have regulatory authority that can take them to task should something go wrong.

I support the amendment.

*(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)*

Hon. Chairman: I ask Hon. T.J. Kajwang' to prosecute his further amendment.

Hon. Kajwang': Hon. Chairman, I beg to move:

THAT, Clause 22 of the Bill be amended in sub-clause (1) by—

(a) inserting the words “in engineering, survey, planning or management” immediately after the words “a degree” appearing in paragraph (a); and,

(b) deleting the words “the relevant field” appearing in paragraph (b) and substituting therefor the words “engineering, survey, planning or management”;

In the same spirit that Members have now got to the drift of these amendments, I want to thin it further that there must be core disciplines of study that are core to the mandate of these organisations. If you bring an ICT technician, there is already somebody employed as an ICT person who advises the organisation. If you bring an environmentalist, there are already environmentalists who are employed to inform these people.

You can then see that my amendment is to further thin what the Chair has said and remove some of the disciplines which are not core to the mandate of KeNHA. These are accounting and law. I am a lawyer. As a lawyer, when I go before the board, I am professionally obliged to perceive that there are already people who can do the same job.

So, my amendment is to confine the board members to people of disciplines of engineering, survey, planning and management, as it appears in the Order Paper.

(Question of the further amendment proposed)

Hon. Chairman: Let me give this time to other Members. They should be declaring their interest. Let us start with Hon. Cecily Mbarire.

Hon. (Ms.) Mbarire: Hon. Chairman, I stand to oppose the proposed amendment by Hon. T.J. Kajwang. You will agree with me that although we have officers with the same professional backgrounds in these institutions, we know that most of the board members need to be adequately trained in certain fields. If you asked me, I would say that accounting is key. We always have an audit sub-committee of the board that looks into the accounts of the institution. So, I propose that we go by the Committee's amendment.

Hon. Chairman: Let us listen to the Leader of the Majority Party first, then I will give a chance to four other Members.

Hon. A.B. Duale: Basically, in a layman's language, what Hon. T.J. Kajwang' has done is removing the law and accounting professions. I agree that he has messed up the whole thing. We must have somebody with an accounting background to chair the audit committee or the finance committee of the board. They must be people who can read books of accounts and even advise the board on what is going on.

Secondly, these organisations are involved in serious contracting business with companies. So, apart from using lawyers from the State Law Office, they must have somebody within the board who has some legal experience. That is why we have lawyers appointed as company secretaries, who sit in management boards as secretaries.

I ask Hon. T.J. Kajwang' to withdraw his amendment so that we do not take so much time. We have many other amendments. I ask him to withdraw it.

Hon. Chairman: Let us listen to Hon. Kimunya and then the Member for Igembe North.

Hon. Kimunya: Hon. Chairman, I do not want to even speak as a Member of the Institute of Certified Public Accountants of Kenya (ICPAK). The Chair of the Committee brought an amendment in which we deleted the words "the relevant field" and replaced it with specific qualifications. First of all, the amendment that Hon. Kajwang' seeks to bring under Clause 22(b) has already been overtaken by events because the words "relevant fields" were deleted by the Chair. We passed that amendment.

The first one of inserting the word "planning" after the word "degree", I am not sure where he is adding it unless he is doing it after. If he is introducing planning so that we have engineering, accounting, law, survey or management and planning, then that is different. However, if we allow his amendment as it is, it will read, "inserting engineering, accounting, law, survey or management planning". That is what the amendment will do. It is not crafted to continue in the spirit of the first amendment. It is a fresh amendment. It is not a further amendment and, on that basis, we suggest it be dropped. He has an opportunity to re-draft it at an appropriate point in the future so that we do not mess a good law through some bad drafting.

Hon. Chairman: The Member for Igembe North will be last one on this amendment. We will then dispense with it.

Hon. Maore: Hon. Chairman, I also oppose the amendment. If you look at the motive of the amendment, you will see that it does not add value. Those of us who do not have historical amnesia know that in the history of the last quarter of the Century, the two Ministers for Finance who performed so well, that even the base interest rate dropped to 9 per cent, were Hon. Simeon Nyachae and the late Hon. Mwiraria. They never studied economics or finance and budgeting processes, but they did a very good job. Do not lock out people from specific jobs. This one is about management of money. We need them. Even "relevant fields" should have been retained

but since it has already been removed, let us not allow this amendment. It will mess up everything.

Hon. Chairman: I am actually surprised because you have contradicted yourself by saying that there is no need for specific qualifications and then you said that you need specific people. You have been heard anyway. What did you say? According to me, you said that the late Hon. Mwiraria and so-and-so did not have that particular background.

Hon. Maore: The people you are trying to lock out are the best. That is what I meant.

Hon. Chairman: Let me hear, lastly, Hon. Omboko Milemba.

Hon. (Dr.) Nyikal: On a point of order, Hon. Chairman.

Hon. Chairman: What is out of order, Dr. Nyikal?

Hon. (Dr.) Nyikal: Hon. Chairman, I have seen in the past that when we have two amendments, namely, the committee amendments and a Member's amendments, and they seem to be conflicting, you normally give direction that if one amendment passes, automatically the other one falls. I thought that would have applied here. You can guide on that.

Hon. Chairman: True, on many occasions, that would happen but the amendments and the further amendments by the Committee and Hon. Kajwang' are completely different. One has not so much impact on the other. Let us finalise it. We are almost finishing. Let us have Hon. Milemba as the last one.

Hon. Milemba: Thank you, Hon. Chairman. We should not do it from the basis of the interest of our professions. What Hon. Kajwang' was trying to do was that we can hire a lawyer. We do not need to bring him on board. In fact, the Hon. Member who has just spoken has given credit to this. If you look at Ministers for Finance who performed well, they may not have been guys in that profession, but under them, there were technocrats who were helping them to perform. Moving forward, whereas I do not believe in exclusion *per se* - that we should just exclude the person for these particular purposes, Hon. Kajwang' was correct that we can hire a lawyer and he comes in when we need him.

Thank you.

(Loud consultations)

Hon. Chairman: Hon. Members, you will have your say. Hon. Kajwang'.

Hon. Kajwang': Of course, Hon. Chairman, I have a right of reply. First of all, the speech by my friend, Amos Kimunya, is misconceived. It should have begun the way Hon. Nyikal did. When you see the text of the two amendments, the amendment by the Committee Chair is wider in scope than the amendment raised by Hon. Kajwang'. In normal circumstances, we would have reconciled them and started with the one which is of a smaller scope and then go into the amendment which is of a larger scope. Even though the Chair has a right of precedence over a Member, where there are conflicting amendments, we would start with the smaller scope and go to the bigger scope. Anyhow, now that we have it here, I will tell you this: When we were debating this thing, the Chair rose to say something which bought my heart into this. He said that these boards have been taken over by professionals. In fact, if you go to the HANSARD, he said that they have become cartels. I thought about it. I said yes, it could be that professionals are taking over these boards. That was the spirit of Clauses 14,17 and 20. We have to identify the core disciplines that make a road go through Harambee Avenue as it goes to Naivasha. We have to be clear about that. If we are going to say that somebody must have experience, then we

should have relevant experience. With this, it would be everybody because we are including some people.

Hon. Chairman: Hon. Kajwang', of course, you have brought it well, but as you discuss, I am just thinking aloud: Are you suggesting, by any means, that a physical planner cannot be employed?

Hon. Kajwang': This is why I have put a planner.

Hon. Chairman: We are talking about the board. There could be a planner in the institution just like you would have a lawyer, an accountant and anybody else. I wanted to be clear on that, then we dispose it.

Hon. Kajwang': Hon. Chairman, you are absolutely correct. What we need is policy making. What we need to have is a board that can make policy which is designed to the core mandate of the organisation. If we needed everybody else, why would we not have environmentalists? Because theirs is a profession called Environmental Science for which somebody has a degree. If we needed computers, why would we not need computer engineers?

Hon. Kimunya: *(Inaudible)*

Hon. Kajwang': Hon. Amos, just allow me to conclude. I can see you are fairly agitated about this. Just allow me to finish my thinking.

Hon. Chairman: When it is a point of order, it becomes a problem for me to ignore.

Hon. Kajwang': Is it a point of order?

Hon. Chairman: Yes, he is on a point of order.

Hon. Kajwang': Okay.

Hon. Kimunya: Hon. Chairman, I am obviously concerned that Hon. Kajwang' is misleading this Committee. If he stuck to his amendment, it becomes very clear that his amendment is trying to remove everyone else. The new law would read: "The person holds a Bachelor's Degree in Planning, Civil Engineering". That is what his amendment is trying to do. The amendment will only be inserted into the law as it is here. When you insert this amendment into the current Bill, it will read: "Holds a Bachelor's Degree in Planning, Civil Engineering, Master's Degree from..." The Chairman has already amended all that. The Chairman has already removed the amendment in (b), which was talking of relevant experience.

Hon. Chairman: Why do we not dispose of this amendment?

Hon. Kimunya: He is now confusing us.

Hon. Chairman: Just wind up, Hon. T.J., and then we put it to vote.

Hon. Kajwang': Hon. Chairman, I had my right. In fact, right of reply, if I remember from my days when I served in the Panel, should be heard without interruption, but he interrupted me. I do not see words called "civil engineering" here unless my friend is putting them. I spent a whole day with this Committee and that needs to be acknowledged. The Chair will tell you, and that is why he has not made a speech, that we had agreed on these amendments. Anyway, now this is before the plenary and we have to dispose of it, it is for you. We need to decide what is core. If we decide that everybody else sits on it, so be it! If you decide that every diploma student sits on it, so be it! You do not pass clauses 14, 17 and 20, taking away organisations such as the Law Society of Kenya (LSK), the Kenya Institute of Planners (KIP) and the Institution of Surveyors of Kenya (ISK), and when it comes to the criteria of choosing those people, then you decide that it is open for Kenyans. What it means is that you have done nothing to those clauses that you have changed. Period! Anyway, it is your say, vote on it!

Hon. Chairman: I will proceed to put the Question. Members, you heard yourselves.

*(Question, that the words to be inserted
be inserted, put and negatived)
(Clause 22 as amended agreed to)*

Hon. Chairman: I must congratulate Hon. Kajwang' for trying especially with the voice call.

(Clauses 23, 24, 25 and 26 agreed to)

Clause 27

Hon. Chairman: Hon. Muchiri is absent. What is it, Chair?

Hon. Losiakou: Hon. Chairman, we had agreed with him that he drops it.

Hon. Chairman: Do not even bother. I will simply drop it because he is absent.

(Proposed amendment by Hon. J.M. Nyaga dropped)

(Clauses 27 and 28 agreed to)

Clause 29

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 29 of the Bill be amended by deleting sub-clause (4) and substituting therefor the following new sub-clause—

“(4) The Director-General shall be appointed for a term of four years and may be eligible for re-appointment for one further term of four years.”

What the Committee has done is to add one more term for the Director-Generals of the three institutions, which are KeRRA, KURA and KeNHA. The motivation is that this is a very unique field. This is an engineering field. This is design. For one to do proper work and that Director-General to see his or her impact, it requires a road to be designed, look for money and implement it. By the time the Director-General will be doing those things, his or her term will be coming to an end. That is why it was in the wisdom of the Committee to ask that we add him or her one more term. He or she should be eligible for a renewal of one more term. This is an engineering field. You need design. It is not like any other field or running any other institution. This is engineering where you need to design. For one to design a road, nine months are required. For example, there is a design going on now of a road between Kitale and Lodwar. It takes nine months to design a road before money is looked for. By the time the Director-General is sitting down to implement it, the term has expired. That is why we are asking the House to agree with this Committee to add them one more term, so that they can do proper work and feel they have done good work.

I thank you.

Hon. Chairman: Okay.

(Question of the amendment proposed)

I will give Hon. Kangongo the first slot.

Hon. Bowen: Thank you, Hon. Chairman. I want to support the Chairman of the Committee. I also want to say that even as we renew the terms of the heads of these institutions,

there should be a policy so that we have the employees in line to take over from those who are exiting. We have seen cases where, when a CEO leaves office, those who were deputies and seniors in that department are left out and some other people are brought from elsewhere. The Committee should also consider that one or there should be a policy to that effect.

Thank you, Hon. Chairman.

Hon. Chairman: Okay. I am not seeing anybody who wants to contribute. Is there anybody else? Hon. Wambura.

Hon. Members (*Off-record*)

Hon. (Dr.) Nyikal: Hon. Chairman, I support this amendment. I see, increasingly, we are giving...

Hon. Chairman: Hon. (Dr.) Nyikal is Hon. Wambura. Can you confirm that?

Hon. (Dr.) Nyikal: Yes. I am Dr. James Wambura Nyikal.

Hon. Chairman: Proceed.

(Laughter)

Hon. (Dr.) Nyikal: Hon. Chairman, I support this because, increasingly, I am seeing we tend to live in fear that, when we give officers jobs to do, we think they should not be there for too long. Actually, experience and time to plan and implement is necessary in certain areas.

I support.

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

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

(Clause 29 as amended agreed to)

(Clauses 30, 31, 32, 33, 34, 35, 36, 37 and 38 agreed to)

Clause 39

Hon. Kajwang’: Hon. Chairman, I beg to move:

THAT, Clause 39 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “may” and substituting therefor the word “shall”;

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

(c) in sub-clause (3) by inserting the words “in writing” immediately after the words “Cabinet Secretary nominate”.

The amendment is singular in each of the instances in sub-clause 1, sub-clause 2 and sub-clause 3. It is to remove the word “may” and substitute therefor “shall”. That is making it clear who controls the common seal and how it will be appended to minutes or documents. Therefore, it brings clarity to the law.

Hon. Chairman: Okay.

(Question of the amendment proposed)

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

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

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

(Clause 39 as amended agreed to)

(Clauses 40, 41, 42, 43 and 44 agreed to)

Clause 45

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 45 of the Bill be amended in sub-clause (3) by deleting the words “sixty” and substituting therefor the words “thirty”.

Losiakou is my name. I want to clear that for the people asking. That is a bull with some white head. That means there is some brain in that head as it is in mine. That is for another day.

What the Committee is doing here is to reduce the notice. A notice is given for either institutions or individuals who have put infrastructure. It may be lines or power on a road that is supposed to be constructed. These institutions or agencies give notices of 60 days. Sometimes, these guys dilly-dally until the road is not constructed. To speed up construction of roads and development, we are reducing the notice to 30 days.

I am asking Members to support this so that we can move forward.

(Question of the amendment proposed)

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

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

(Clause 45 as amended agreed to)

(Clauses 46 and 47 agreed to)

Clause 48

Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 48 of the Bill be amended –

(a) by inserting the following new sub-clause immediately after sub-clause (1) – “(1A) An Authority exercising its powers under sub-section (1) shall not be liable to payment of any levies and charges not imposed by the national government; and

(b) in sub-clause (7) by deleting the words “adequately” and substituting therefor the words “may be adequate”.

What we are trying to do here is to protect the public institution which is building our roads from unnecessary cess, rates and collections from Tom, Dick and Harry. We are saying they should. Sometimes they carry, reach a certain border of either a county or town and they are told to pay yet it is a public institution like KeRRA or KURA. We are giving them that clarity that they only pay what is provided for in the law, not this kangaroo cess which is on the roads.

I thank you.

(Question of the amendment proposed)

Hon. Chairman: Hon. Leader of the Majority Party.

Hon. A.B. Duale: I need to support this amendment. I am sure the Director-General of KeNHA is sitting here. The Government is doing a road between Garissa and Modogashe, which was delayed by more than a year because of access to materials. Many roads have been hampered in our country because certain county governments say you cannot get materials from certain places. This amendment is very important. We let it out in the 11th Parliament when we were looking at this Bill. I am sure it seeks to ensure that an authority is able to have access to material sites in the course of carrying out any works which are required under this law.

I support.

Hon. (Dr.) Nyikal: I support this amendment, but I would just like to point out that this is, probably going to bring a disagreement in the Senate. But it is desirable at this point.

Hon. Chairman: Lastly, Hon. Mbarire of Runyenjes.

Hon. (Ms.) Mbarire: Hon. Chairman, I also rise to support this amendment and I am doing it out of experience. In the last Parliament when I was Member for Runyenjes Constituency, there was a road being done by the national Government in my constituency, and the county government decided to levy the contractor for every track of murrum he was bringing to the road. This levy was going to make the cost of murrum per track increase by almost 100 per cent. He could not continue with the work. For that reason, the road stalled for a very long time. So, I think this is important and I hope that when it gets to the Senate, they will see the reasoning behind these amendments because it is a critical one.

Hon. Chairman: Let me put the Question.

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

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

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

Hon. Chairman: Let us have Hon. T.J. Kajwang

Hon. Kajwang': Hon. Chairman, I beg to move:

THAT, Clause 48 of the Bill be further amended by inserting the following new sub-clauses immediately after sub-clause (6)—

(6A) For avoidance of doubt, nothing contained in this section shall absolve any Authority from liability to compensate owner or occupier of land just compensation or overt market value of any soil, clay, rock, gravel, murrum, lime, sand, shale, shingle, slate, surface soil or any other material for the construction of any road.

(6B) where the quantum of compensation made under sub-section (6A) is disputed either by the owner, occupier of land or the Authority, the parties may enter into mutual arbitration within sixty days of the dispute or in accordance with the law relating to Arbitration.

(6C) Despite the provisions of sub-section (6B), the Authority may in lieu of arbitration acquire such land compulsorily in accordance with the provisions of the Constitution and the Land Act, 2012.

There are a lot of ways of looking at this. The Majority Deputy Whip is concerned about the contractor who had to pay a levy per track of lorry of murrum. She may also reflect about thousands of Kenyans who own murrum and soil and that is all they own. Because these contractors already take the cost of making the road in their BQs, the money is already there for them, yet when they come down to that person who owns just some little sand or murrum, a whole hill of murrum or sand will cost Kshs30,000, when this guy would have made money if every truck that leaves will be paid according to the...

Hon. Chairman: There are now two issues, but the important one is, I think you should be prosecuting yours because you obviously misunderstood Hon. Cecily Mbarire. She was talking about levies on murrum on tracks. You are fighting very hard for Ruaraka residents in terms of gaining out of it. I was thinking your proposal was to make sure that they are paid well. I thought that was your proposal.

Hon. Kajwang': Hon. Chairman, it happens that in Ruaraka we have quarries. That is why I am talking excitedly. The proposal here is that for avoidance of doubt, a Kenyan will be paid for what belongs to him. If you take sand or murrum from my land, even if I am a drunkard and I do not know how to make those complicated agreements, you will pay me according to overt market value and a just compensation. You can see that nothing will absolve all these agencies from preying on just compensation and overt market value of materials that are released from their property. If you look at (b), if there is a problem of the quantum and if for any reason, you do not want to pay me, please, acquire my land compulsorily. The Constitution has allowed you to acquire my land compulsorily.

(Hon. A. B. Duale consulted loudly)

The last one is, if there is dispute, then let us refer it for arbitration, so that Kenyans do not have to come to Nairobi to the National Land Commission. If the Leader of the Majority Party was attentive, I would be very pleased.

(Hon. Sudi walked out of the Chamber and back)

I know, Hon. Chairman, you are very attentive, except this Member who walks in when we have dispensed with this. He is the Member for Kapseret. I was seeing him from behind so I could not tell who he was, but when he faced me, I knew he was the Member for Kapseret.

Hon. Chairman: Order, Hon. Sudi!

Hon. Kajwang': Hon. Chairman, the Leader of the Majority Party should hear this. If you do not want to pay me, please, acquire my land compulsorily because the Constitution allows you to. Somebody must not come from Garissa to the National Land Commission, so that his murrum or clay is paid at the value which represents what has been taken from him. This is why we are very spirited in this. For avoidance of doubt, Clause 48 has said that there will be compensation. So, that legislation is clear that for avoidance of doubt, everybody will be paid a just compensation or the market value of everything that is removed from his land.

Thank you.

Hon. A. B. Duale: *(Inaudible)*

Hon. Chairman: Let me propose the Question and give you the first shot to speak.

(Question of the further amendment proposed)

Hon. Chairman: Hon. Leader of the Majority Party.

Hon. A. B. Duale: Let Hon. Amos Kimunya deal with it, then I will follow. We have agreed on it.

Hon. Chairman: Hon. Kimunya, though that is not how it should be done.

Hon. Kimunya: Hon. Chairman, I have listened to Hon. Kajwang' and he has done a very good job in trying to prosecute a case for people to be fairly compensated. Unfortunately, he is bringing the amendment in the wrong clause. I would like Hon. Kajwang' to have the Bill. Sub-clause 6 says that compensation shall be payable by a road Authority to the owner or the occupier of land for any damage done to buildings, crops or otherwise in the exercise for damage. You are amending sub clause 6.

Sub-clause 6 of Clause 48, which he is seeking to amend, refers to compensation arising out of damage. It does not at all refer to compensation arising out of acquisition. So, we are using the right tools, but to amend the wrong clause. I think we should give him an extra opportunity to amend that clause at some appropriate point in future when he will amend the right clause. As far as I am concerned, whatever he has brought is null and void to the extent that it is seeking to amend a clause that does not need amendment in the same fashion.

Hon. Kajwang': You know we have spent a lot of time with legal counsels and clerks of this House. So, do not underrate them when they bring these things in the Order Paper in the manner they are in.

Hon. Chairman, we are not amending sub clause 6, we are adding. Simple. After you have done what you have in sub clause 6, we are adding. I am simply saying that Clause 48 is what it is, fine, but for avoidance of doubt, that a Kenyan will be paid a just compensation at the market value of his murrum and soil. That is all we are saying.

Hon. Chairman: Now let us have the Leader of the Majority Party.

Hon. A.B. Duale: Hon. Chairman, Hon. T.J. Kajwang' is right. He has introduced sub clause 6(a), (b) and (c). So, he is not dealing with Clause 48(6). So, you are right. But Hon. T.J. Kajwang' is seeking to provide further provisions on compensation to the owner or the occupier

of the land of any soil, clay, rock, gravel or murram. This House cannot legislate in vain. Before this House, there is a law called the Land Index Bill, which seeks to have a standard for compensation.

Hon. Kajwang’: On a point of order, Hon. Chairman.

Hon. A.B. Duale: What is out of order?

Hon. Kajwang’: I rarely stand on points of order and you know it.

Hon. A.B. Duale: You are particularly challenging the Leader of the Majority.

Hon. Chairman: Where he is happily being represented.

Hon. Kajwang’: Yes, despite the handshake, I am still a venerable Member of this side of the House. Is it in order for the Leader of the Majority Party to refer to a Bill which has not been read in this House for the First Time? Whatever happens in his office and the Executive, how will a Member like me know which Bill is in the pipeline until it is published and read for the First Time before us?

Hon. A.B. Duale: Hon. Chairman, that Bill has been read for the First Time. The Second Reading has been done and we are about to do the Third Reading.

This Parliament and this House has a serious well taken care of website. But because he was very busy doing the mock swearing in when we were dealing with that Bill... Now that the handshake took place, you should, in fact, be a loyal Member even to the Leader of the Majority Party.

Having said that, the biggest problem that we are facing, and let us call a spade a spade, is that we are unable to do major projects in our country because of issues like these. People will say that this soil was of my great grandfathers. If you go to the pastoral communities, they will even say that these roads are passing next to the graves of our great grandfathers. We must decide, as a country, whether we want to develop our road networks, infrastructure, water and electricity. You have seen that the Standard Gauge Railway (SGR) is unable to move. That is why this House deals with scandals of compensation. Every time Mohamed Swazuri is called either to the Senate or the National Assembly, it is about compensation. The Auditor-General has raised issues a number of times on compensation.

I think the Chair has done it very well. For the second time, I want to ask my colleague to let us not go into who owns the soil. County governments can do that. The law is very clear. County governments can be consulted.

Hon. Kajwang’: (*Off record*)

Hon. A.B. Duale: No, there is no deal between the Chair and Hon. Kajwang’. Hon. Chairman, I want you to rule Hon. T.J. out of order. When it comes to the Committee of the whole House, it is this House to decide. Whatever you have agreed with the Chair of the Departmental Committee on Transport, Public Works and Housing... I know once you convince the Chair, he will throw you under the bus. So, we oppose and we want to move forward. We want you to put the Question.

Hon. Chairman: Let me put the Question. Members, make your decision.

Hon. (Dr.) Nyikal: Hon. Chairman...

Hon. Chairman: You had already had your say, Hon. Nyikal. So, I will put the Question.

Hon. (Dr.) Nyikal: Hon. Chairman, I...

Hon. Chairman: Hon. Nyikal, I have just given you an opportunity, now you want to take us back. I will put the Question.

Hon. (Dr.) Nyikal: Hon. Chairman, it is a different one.

Hon. Chairman: No. If it is on a different one, you will put it differently.

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

I must warn the ones who, in voting, add some shouting: That does not become voting anymore.

(Laughter)

(Clause 48 as amended agreed to)

(Clauses 49, 50 and 51 agreed to)

Hon. Chairman: Hon. Members, now that we are midstream, we should put more fuel into our debate and move faster.

Clause 52

Hon. Chairman: Hon. Pkosing.

Hon. Hon. Losiakou: Hon. Chairman, I beg to move:

THAT, Clause 52 of the Bill be amended in sub-clause (4) by inserting the words “as prescribed by the Cabinet Secretary” at the end of paragraph (b).

[The Chairman (Hon. Cheboi) left the Chair]

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

Hon. Temporary Deputy Chairman, this is to put it very clear that in terms of standards, it should be the standards as prescribed by the CS. The person who is prescribing standards according to the Fourth Schedule to the Constitution is the national Government. And in this case, the national Government in terms of roads is the CS responsible for roads. That is what we are trying to say here so that there is no ambiguity in law. It should be very clear that it is as prescribed by the CS.

I thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

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

(Clause 52 as amended agreed to)

Clause 53

The Temporary Deputy Chairman (Hon. Mariru): Hon. Pkosing.

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 53 of the Bill be amended in the opening sentence to sub-clause (2) by inserting the word “furniture” immediately after the words “road”.

I am introducing something called roads furniture. Sometimes people in this country misunderstand that the road is what you see as either murrum or tarmac and they forget the signage and the guard rails. So, we are trying to bring all of them together so that it is understood as it is within the description of a road.

I thank you.

(Question of the amendment proposed)

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

(Clause 53 as amended agreed to)

Clause 54

The Temporary Deputy Chairman (Hon. Mariru): Hon. Pkosing.

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 54 of the Bill be amended—

(a) by re-numbering the existing Clause (1) as sub-clause (1);

(b) in the proposed new sub-clause (1) by inserting the words “bridge or tunnel” immediately after the words “national trunk road”; and

(c) by inserting the following new sub-clause immediately after the proposed new sub-clause (1)—

(2) Subject to sub-section (1), no free alternative shall be provided for any national toll road, bridge or tunnel.

That amendment is to deal with toll. We are going the PPP way and once we have the PPP, then you have also a toll station. But if you look at the primary Bill, it did not have tolling stations, particularly after a tunnel or a bridge. For example, if you build a bridge through PPP, what do you do? So, I am saying that if you build a bridge or a tunnel, the road authority in charge of that can have a toll station under a bridge or after a tunnel. It is just as clear as that. It was not there before.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Mariru): Yes, Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I just want to make it very clear that this amendment by the Chair seeks to provide a declaration of a national toll road by the CS to also include the provision of a bridge or a tunnel.

Secondly, this amendment seeks to ensure that there are no freer alternatives which are required for any declared road tolls. As we go ahead, I am sure Hon. Musimba is listening to me, we will link his amendment to this amendment.

The Temporary Deputy Chairman (Hon. Mariru): Hon. Musimba, you have the microphone.

Hon. Musimba: Thank you, Hon. Temporary Deputy Chairman. I think this particular clause is here erroneously. I would want to stand guided. The history of this country is that we abolished toll stations, indeed, road tax, in favour of fuel levy. So, while he has been able to bring a substantive amendment to cater for tolling, we have not dealt with the issue of whether the tax called fuel levy will stand. I think we are going to be in contradiction with ourselves as we move. So, I needed clarity on that particular provision.

I think that is part of the reason why when we built the Thika Superhighway when Hon. Kimunya was in charge of the finance docket, it was with the intention that it was in partnership with the Chinese, so that we could provide for tolling. However, at the tail-end of the project, this could not be done. For that particular purpose, we had the fuel levy fund in place so that we could collect wholesomely and fund whatever roads we were building from that perspective.

Thank you, Hon. Chair.

The Temporary Deputy Chairman (Hon. Mariru): Is there any other person who wants to speak to that one? I am sure the Departmental Committee Chair at some point will speak to it as well.

Yes, Hon. Kimunya.

Hon. Kimunya: Thank you, Hon. Temporary Deputy Chairman. I hear the comments by Hon. Musimba. However, I believe that the amendment coming here is to facilitate the provisions for roads being done in future using a PPP framework where we would then have to allow a private investor, who does a road that is not being done by the national Government, to recoup his investment through tolling. That has nothing to do with the existing roads that have been constructed through national funding. That is the difference between the Thika Superhighway, for example, and a road that might be done between Kipipiri and Nyahururu by a private person, who will have to recoup their investment through tolling. However, if the law does not provide for such arrangement, we will not even attract such person in the first instance to construct the road. Therefore, this law is opening the window for PPP roads to be done and for private investors to charge toll while the rest of the Government roads continue to operate under the fuel levy fund and other mechanisms. The two roads are very different.

The Temporary Deputy Chairman (Hon. Mariru): Departmental Committee Chair, I will come to you. Let me give a chance to Hon. Nyikal.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairman, as much as I have got the explanation by Hon. Kimunya, if you read Clause 54 as it is, there is no way it would be talking about a new road. It looks like the CS can have authority to even apply the law on the existing tunnels and bridges. If that is so, we are introducing a major change in the infrastructure policy in this country. It would not be fair to change the policy by an amendment to an existing Act. That is a major policy shift. As we bring in the private sector, we must think of public interest.

The Temporary Deputy Chairman (Hon. Mariru): I will give the last chance on this matter to the Departmental Committee Chair.

Let us hear Hon. T.J. Kajwang'.

Hon. Kajwang': Hon. Temporary Deputy Chairman, if I understand Hon. Nyikal, he seems to be saying that during the Committee stage, we need to make amendments which just clarify the Bill. If we want to make huge amendments, which should have been the subject of debate in stakeholder consultations, it becomes a problem. This is the point we are making, that PPP is a good thing and we should support it. However, it is a major shift in the infrastructural policy. It is something that needs public participation, according to the Constitution. So, to bring an amendment as though the one Hon. Kajwang' would bring on changing "c" and "and" cannot

be comparable to one which diametrically changes the whole architecture of infrastructure. That is the point, and it is valid.

Thank you.

The Temporary Deputy Chairman (Hon. Mariru): Departmental Committee Chairman.

Hon. Losiakou: Hon. Temporary Deputy Chairman, it is good that you have given me the last opportunity so that I can make some clarifications. I wish they had appeared before the Committee during public participation so that they could raise those issues.

First of all, I do not want to correct Hon. Kajwang' because he is a 'chief justice' of another calibre. However, because I am the Departmental Committee Chair, I want to help him. First, the PPP law is in existence. We are not introducing any new law. Secondly, this is not an introduction of an amendment on the Floor of the House. It was done during public participation. This is a product of public participation. Remember the law provides for public participation at the Committee level. This Bill went through public participation. Members of the public came for debate and that is why the Committee went ahead to adopt it.

We are trying to make things clear and safer for this country. The truth is that we have been having a problem implementing the PPP on roads. The investor is interested in knowing how they will get their money even if it means after 30 years. What legal framework is in place for one to be sure that they can invest on the roads? We have had problems because the roads law does not take care of this scenario. That is why we are providing that if an investor builds a bridge or a tunnel, they can be sure of having a toll at that place in order for them to recoup their money.

Should the House pass this Bill, this country will move at a very high speed. We will go back to what was done by the Government. This is a new arrangement. Therefore, this gives clarity and surety to our investors, that they will recoup their resources should they go the PPP way.

The Temporary Deputy Chairman (Hon. Mariru): Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I have done some soul searching. The point Hon. Musimba has raised is very valid. However, we cannot treat it in this Bill. This is because in the Finance Bill that will come to this House in September, we must find out that where you build a road using PPP and then charge toll, there will be the element of double taxation. If I have paid tax through the Road Maintenance Levy Fund, once I leave Nairobi heading to Kisumu, by the time I reach Nakuru, I get to a road for which I will have to pay toll, the issue of double taxation will arise. However, the Chair has tried to introduce the element of covering bridges and tunnels. When it comes to passing the Finance Bill, which deals with taxation, we will deal with the matter of the Road Maintenance Levy Fund and make a clarification. That involves the National Treasury and the Cabinet Secretary for Transport. This Bill is not dealing with how we can deal with an anticipated double taxation.

The Temporary Deputy Chairman (Hon. Mariru): I have to put the Question on this one because I have given all of you some chance.

*(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)

(Clause 54 as amended agreed to)

(Clause 55 agreed to)

Clause 56

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 56 of the Bill be amended –

(a) in sub-clause (2) by inserting the words “designing, constructing, operating” immediately before the words “maintaining” appearing in paragraph (a);

(b) in sub-clause (4) –

(i) by deleting paragraph (f) and substituting therefor the following new paragraph–

“(f) the manner in which the proceeds of the charges shall be collected, administered and allocated;” and,

(ii) by inserting the following new paragraphs immediately after paragraph (f) –

“(fa) the collection of user related charges by a private party under a public private partnership arrangement; and,

(fb) the remittance of all collected user charges in a manner prescribed by the Cabinet Secretary responsible for finance.”

(c) by inserting the following new sub-clause immediately after sub-clause (4) –

“(5) Regulations made under sub-section (4) may prescribe a penalty in respect of any contravention of any provisions thereof.”

The reasons are very clear. I am trying to cure the problem where somebody may ask what the levy is for, for example, when you are doing PPP and tolling. The amendment seeks to ensure that road user charges levied are also for purposes of recovering the cost of designing, construction and operating a road so as to take care of investor interest in a PPP arrangement.

That will give confidence to investors. We are bringing these amendments because of experience. This country introduced the PPP arrangement sometime and we have not even taken off because people ask many questions. Remember, we are not even paying for the designs. They are coming to design and construct the road, so that the levies that we will do shall also cover the cost of designing, construction and maintaining the road.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Mariru): I will give you a chance, Hon. Nyikal.

Hon. (Dr.) Nyikal: Thank you, Hon. Temporary Deputy Chairman. We are making very major infrastructure changes in this country and are leaning more towards dealing with the private sector. At this point, to use a majority for stifle reason is not good. As I said, all roads and bridges are not protected. We are now talking about designs. Why do we want to go into details? If a road is being built, there must be a design among other things.

You are telling me that when it comes to costing the road and levying, we will say design and construction has cost this much. This may not be good for this country. The right way to go is thinking of protecting the public. In this country, most public dealings have gone private. This is happening to the health sector and university education. This is very major and I liked the original Bill. These are things which should have been cast further. I know not all of us go for public participation, but this needs broader discussion. I oppose this amendment.

The Temporary Deputy Chairman (Hon. Mariru): Order, Hon. Nyikal. Are you addressing this amendment or the previous one?

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairman, there is a trend... I have addressed the first one. I am opposing this amendment, but I am alerting the House and Kenyans at large that we are not protecting public interests against private interests adequately.

The Temporary Deputy Chairman (Hon. Mariru): Order, Hon. Nyikal. That is why we are here to engage and debate. If you have reasons, convince your colleagues to come to your side. The final decision made by the House is the right decision.

Yes, Hon. Musimba, on this amendment. Let us be brief. Remember this is not the Second Reading, but Committee of the whole House.

Hon. Musimba: Hon. Temporary Deputy Chairman, you must accept that during the Second Reading, these amendments were not there. There was no opportunity for us to ably address ourselves. As Hon. Nyikal has said, these are pretty substantive issues being raised and canvassed here. We just passed the Public Private Partnerships (Amendment) Bill. I believe under it, all these issues concerning collection of funds, administering, conformity with county governments, the National Treasury and existing tax policies is there. We are discussing roads. So, Clause 56...

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

The Temporary Deputy Chairman (Hon. Mariru): Order, Hon. Musimba. We have a point of order and I have to offer him the opportunity.

Hon. A.B. Duale: On a point of order, Hon. Temporary Deputy Chairman. Hon. Musimba is misleading the House. The Public Private Partnerships (Amendment) Bill before the House is dealing with how PPP can be devolved and the role counties will play. It is not exactly what Hon. Nyikal has said. It is totally a different thing. The law before the House is specifically giving an avenue for county governments to engage donors, investors and the private sector to do certain projects. It can be a mango factory in Garissa or Tana River. So, it has nothing to do with this.

Hon. Temporary Deputy Chairman, I want you to rule. The Chair should listen to me. Amendments of the Chair are drawn from public participation. It is not him as a person who brings these amendments. They are amendments of his Committee based on public participation. What this law is seeking to do, as we have done with the previous amendments when Hon. Cheboi was on the Chair, is putting a framework in the event of one, four or 20 years. We want to use PPP in infrastructure, building roads, bridges or tunnels. When this framework is in place, it will be used and we are not saying it may be tomorrow.

If there are issues of double taxation, I want to go on the HANSARD that we do not sort these issues in this Bill, but through the Finance Bill, which comes 90 days after the Cabinet Secretary of the National Treasury reads the Budget. We need to move on. You cannot oppose the framework of PPP being used in the Kenya Roads Bill, which is being created by this House for posterity and for many generations to come. We cannot just brook a framework. What is

being provided here is that when the CS wants to use this framework, then we can raise it at the opportune time in the Finance Bill, on how to deal with the element of double taxation.

The Temporary Deputy Chairman (Hon. Mariru): Very well. Hon. Musimba, you had the Floor. The practice is always to be brief during the Committee of the whole House. If you noted, the Report of the Committee during the Second Reading has a schedule of these amendments. So, it is assumed that Members had time to read them. You have the Floor.

Hon. Musimba: Thank you, Hon. Temporary Deputy Chairman. I am ably guided and, indeed, I have substantially read the whole Committee Report. The amendment of the Chair seeks to change the name ‘Kenya Urban Roads Authority (KURA)’ to a new one, purely to adopt the issue of PPP and this is already captured in the Bill. We are talking about a national road, which is going to be affected by the causal effect of the amendments in Clause 53 to Clause 56. We ought to be very careful. We do not want litigious points which will make the House look like it is making laws in vain just to be cut down. That is why I oppose Clause 56 to the extent that many things we are canvassing here would have been better captured within the framework of the PPPs, which already exists in law.

The Temporary Deputy Chairman (Hon. Mariru): Very well. The Members have a right to vote on it.

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

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

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

(Clause 56 as amended agreed to)

The Temporary Deputy Chairman (Hon. Mariru): Hon. T. J. Kajwang’, that is quite an innovative way of voting.

(Clauses 57, 58 and 59 agreed to)

Clause 60

Temporary Deputy Chairman (Hon. Mariru): Hon. Pkosing.

Hon. Losiakou: Hon. Temporary Deputy Chairman. I beg to move:

THAT, Clause 60 of the Bill be amended by inserting the words “regulations made by” immediately after the words “and”.

This is just to clean up the original Bill. This amendment seeks to introduce a regulation which was not there before. I used to work for the Government and it communicates through regulations. That is why I have amended Clause 60.

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Hon. Mariru): There is a further amendment by Hon. Kajwang'. You have the Floor.

Hon. Kajwang': Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 60 of the Bill be amended by deleting the words "and National Treasury" and substituting therefor the words "and the Cabinet Secretary responsible for matters relating to the National Treasury".

Hon. Temporary Deputy Chairman, you can see I have invented a very innovative way of voting today. When you are facing voting machines, you must find how...

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

The Temporary Deputy Chairman (Hon. Mariru): What is it, Leader of the Majority Party?

Hon. A.B. Duale: Hon. T.J. needs to withdraw and apologise. It is very unfortunate that Hon. Nyikal and he are the only ones representing the minority. It is not that they have been restricted by the officers from the Serjeant-at-Arms, they decided not to come. So, if the Jubilee Members are around, you need to ask Hon. T.J. that we are not voting machines. He needs to withdraw and apologise. If he does not, then you invoke the necessary Standing Orders.

The Temporary Deputy Chairman (Hon. Mariru): Clearly, Hon. Kajwang' we cannot debate that. I can even hear Hon. Nyikal saying he is not extremely happy about what you have just said.

Hon. Kajwang': They are not voting machines. They are voting voices.

(Loud consultations)

The Temporary Deputy Chairman (Hon. Mariru): Order! Order! Order, Hon. Kajwang'. Order, Hon. Members! The Chair is already seized of this matter. Order, Hon. Kajwang', please, do not go round that. Withdraw.

Hon. Kajwang': Hon. Temporary Deputy Chairman, I withdraw unconditionally and apologise.

The Temporary Deputy Chairman (Hon. Mariru): You have the Floor.

Hon. Kajwang': We are all interested in quality legislation. We are not interested in rabble rousing. Even if Hon. Nyikal and I were to be here ourselves, just the two of us, we will be the two last men standing and we are here for the love of legislation in this country. So, it does not matter.

The rationale here is to make the correct reference in legislative practice to the National Treasury. That is number one. Secondly, it is to locate ministerial responsibility to a Cabinet Secretary. Hon. Kimunya has lobbied me on this and it is normal. He has asked me to drop this amendment on the basis that once you have referred to the National Treasury, which has been recognised by the Constitution, then now we know that there is somebody called the National Treasury and two, if the CS may, for one reason or the other, be away, then these responsibilities will not be done. I beg to differ. You have seen that the amendment by the Chair is about regulations. So, we now have regulations in the law. Two, we are dealing with approvals. These are ministerial functions of making regulations and approvals. Everybody who is dealing with these people must know, as an administrative law, who, therefore, has the ministerial responsibility of making that regulation. So, it does not matter if the CS is away. Even if that regulation is made by juniors, lawyers in his office or whoever, it becomes an appendage of the

CS. So, in legislative practice as we know it, we refer to it as the CS responsible for matters of the National Treasury. That is how it is unless I am reading the law in different terms.

So, I propose.

The Temporary Deputy Chairman (Hon. Mariru): I thought the line you are pursuing is to withdraw. In that case then, I will propose the question.

(Question of the further amendment proposed)

Yes, Hon. Kimunya.

Hon. Kimunya: Hon. Temporary Deputy Chairman, I had actually sought to assist Hon. Kajwang' with the interpretation of the institutions because the Bill, after the amendment, will refer to regulations made by the National Treasury. What Hon. Kajwang' now wants to do is to change that to regulations made by the CS responsible for the National Treasury. The National Treasury is a bigger institution than the CS. We need to look at the bigger picture that regulations made by the National Treasury go beyond the work of a specific individual being the CS for the National Treasury. There is an institution and there is a person. That is why we wanted to draw the line in opening this thing because the Constitution has created that office called the National Treasury. It is defined within our Constitution and within the public financial management and here we are talking about investment of funds by a public body. There is already a law that creates all that.

Hon. Kajwang': On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Mariru): Order, Hon. Kimunya! What is out of order, Hon. Kajwang'?

Hon. Kajwang': Hon. Temporary Deputy Chairman, you know Hon. Kimunya is senior than me. In the words of the Leader of the Majority Party, he is a ranking Member, but that does not dispose you from how you are able to read the legislation. The Chairman has just made an amendment by which the words "regulations made by" have been inserted. If we were to make the further amendment, the amendment would read: "regulations made by the Cabinet Secretary responsible for the National Treasury". So, it is not regulations made by the National Treasury anymore. It is regulations made by the CS responsible for the National Treasury.

So, is it in order that my learned friend, Member for Kipipiri, should mislead the House that we are dealing with regulations made by the National Treasury when we are actually dealing with regulations by the CS responsible for the National Treasury?

The Temporary Deputy Chairman (Hon. Mariru): That does not sound like a point of order. It sounds like a point of information.

Hon. Kimunya: Hon. Temporary Deputy Chairman, I can now appreciate why Hon. Kajwang' is confusing himself. He is limiting his thinking to his own amendment which has not even passed. An amendment that has passed was very clear, that as the matter stands, it is "regulations made by the National Treasury." What Hon. Kajwang' is trying to further amend is now to remove reference to the National Treasury and bring in the CS responsible for matters of the National Treasury. All we are now saying is I would rather stick with the National Treasury than with the CS in charge of the National Treasury because the National Treasury is bigger than the CS in charge of the National Treasury. We are looking at institutionalising this thing rather than personalising it to just the CS. It is regulations made by the National Treasury. This authority is not unique. We are not going to do one for the roads authority and one for KenGen or any other institution. There is a law that guides how investment of excess funds can be made

and that has been done by the National Treasury. So, let us not do one way and the others in a different way.

The Temporary Deputy Chairman (Hon. Mariru): Hon. Kajwang', be brief on this one.

Hon. Kajwang': Before I was on a point of order. Now I have a right of reply. That may be very well. Member for Kipipiri is making very good submissions on this. My point of departure is very simple. As delegated legislation, there must be a singular person with ministerial powers, and anybody sitting in the Committee on Delegated Legislation will tell you that they are dealing with legislation made by a single individual called a CS however big that institution is. So, there must be somebody that we hold onto as law as having made either those regulations or those approvals. It is an issue of administrative law.

The Temporary Deputy Chairman (Hon. Mariru): Let Members make a decision on this one now. Hon. Nyikal, you have the Floor. Be brief.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairman, I support Hon. Kajwang's amendment not because we are only the two of us here. That is beside the point. Really, when you talk of Government institutions and you are making a law, it is better to be specific. If you are to go and do something at the National Treasury, who do you go to? There are a myriad of officers and a myriad of departments there. So, you would want somebody who is senior enough and whose authority represents that institution. Remember the words "National Treasury" is basically a department. We could change it. When the President makes orders, actually he can reorganise the National Treasury and make departments. So, you then will want somebody who is actually directly responsible. I think this makes it neat. I plead with my colleagues that it looks like now we seem to be working across the divide. We are very happy that we are doing something together not in the spirit of the handshake, but this would be the neatest thing to do. We need to assign it to an office.

The Temporary Deputy Chairman (Hon. Mariru): The points are made now. I will put the Question.

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

(Clause 60 as amended agreed to)

The Temporary Deputy Chairman (Hon. Mariru): Hon. Members, I know we have been here for some time this afternoon. I will put the Question again. Let us be keen.

(Clauses 61, 62 and 63 agreed to)

Clause 64

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 64 of the Bill be amended –

(a) by re-numbering the existing Clause (1) as sub-clause (1);

(b) in the proposed new sub-clause (1) by inserting the words "and the state department responsible for infrastructure" immediately after the words "Kenya Roads Board"; and

(c) by inserting the following the new sub-clause immediately after sub-clause (1) –

“(2) The annual road works programme under sub-section (1) shall not include roads developed or managed under a public private partnership agreement.”

We have simply brought in the department responsible for infrastructure in terms of approval of the work plans. This is almost related to the budget. When you do not bring in the Principal Secretary responsible for infrastructure, there will be a problem because he is the accounting officer and he needs to approve this in relation to the budget. The amendment is only cleaning up the Bill so that it is very clear who does what.

(Question of the amendment proposed)

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

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

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

(Clause 64 as amended agreed to)

Clause 65

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 65 of the Bill be amended in sub-clause (1) by inserting the words “including road projects intended to be developed through public private partnerships” immediately after the words “road investment program”.

This amendment seeks to ensure that public-private partnership projects are entrenched and distinguished very clearly from budget-based programmes when the Cabinet Secretary is preparing the Road Investment Programme. There are two types of roads. There are those which are funded by our normal Budget through the Exchequer and others which are funded by PPP. When the CS is making that programme, going forward and coming to the House, it should be very clear which ones fall under PPP and which ones are funded by the Exchequer.

Hon. Member: Put the Question!

The Temporary Deputy Chairman (Hon. Mariru): Before I put the Question, I will propose it.

(Question of the amendment proposed)

Let us have Hon. Nyikal.

Hon. (Dr.) Nyikal: Once again, I see introduction of structural changes. There will be a distinction on how you deal with roads that are constructed purely by public funds and those ones where there is PPP. Looking into the future, it seems like structures within the Ministry may require that you have a department dealing strictly with those roads constructed under the PPP. I would like to be assured that, that is in the works because if we do that, it will be difficult to monitor who is dealing with certain roads. I need to be informed now before I make a decision.

The Temporary Deputy Chairman (Hon. Mariru): Hon. Cecily Mbarire, you seem to have a reply.

Hon. (Ms.) Mbarire: Hon. Chairman, he is dealing with administrative issues here. The Ministry will know how to handle it if they want a separate department for PPP away from those roads funded by the Government or donors. That is up to the Ministry. We cannot administrate in the House which is what he is attempting to do. We are making laws.

The Temporary Deputy Chairman (Hon. Mariru): Hon. Nyikal was seeking clarification. He seems to have heard it.

Hon. Kajwang': On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Mariru): Order, Hon. Member! What is it Hon. Kajwang'?

Hon. Kajwang': Hon. Temporary Deputy Chairman, we need respect and proper management of the affairs here. If a Member is asking for clarification, that clarification can only come from the Chair of the Committee who is seized of the information that he got from the public participation. Any other Member here might not know that same information. There is a tendency - which may or may not amount to bullying on the Floor of the House - which we cannot accept.

The Temporary Deputy Chairman (Hon. Mariru): Order, Hon. Kajwang'. There can never be bullying here. In fact, Hon. Nyikal would have asked that he specifically wanted clarification from the Chair of the Committee. He just sought clarification and Hon. Mbarire gave the clarification. If Hon. Mbarire gives the clarification, Hon. Nyikal, we have to draw a line. Hon. Chairman, would you want to say a point on that?

(Loud consultations)

Hon. Losiakou: I have the microphone. Hon. Nyikal can listen to me now that I have the microphone. Hon. Mbarire is a leader of our side. She is my leader. When she talks, she is the Deputy Whip of the Minority Party. She is a serious Member. You cannot look down on her. She is my leader.

Hon. Nyikal is introducing a discussion which we should not have in the House. These are administrative matters. Let us leave it to the CS to say that this department will be headed by so and so. What do we have to do with it in this House? We are only dealing with amendments and should only speak to them. In terms of administration, whoever chairs the PPP can advise the CS in charge of infrastructure. At another date - even tomorrow - when we pass the Bill and it becomes law, he can advise Hon. Macharia. In this one, we are dealing with the law and I support my leader. Hon. Mbarire. This is a leader of Jubilee so do not talk like that. I am around.

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

(Clause 65 as amended agreed to)

The Temporary Deputy Chairman (Hon. Mariru): What is it Hon. Musimba?

Hon. Musimba: Hon. Temporary Deputy Chairman, you have to be seen to be an independent arbiter. There are very few Members in the House. We are raising substantive issues. If you rush it over and we are trying to address ourselves to a certain Clause...It can be passed but I will make this point. When you exclude the PPP programmes from an annual work plan by the Ministry, this is what you are inviting - if you have a stretch of road which is for

instance, 200 kilometres and in between you have segments of 20 kilometres that the Ministry says that there will be PPP frameworks to cater to those particular roads and open them up to tolling, this particular amendment which we have passed right now - and you are not giving us discourse to express ourselves...

The Temporary Deputy Chairman (Hon. Mariru): Order, Musimba. Your point is made. In subsequent discussions, you will get your space. That is already done.

Hon. Musimba: It is important that we say it because as we move forward, we need to be heard. I invite for that particular Clause to be recommitted at some point.

The Temporary Deputy Chairman (Hon. Mariru): Absolutely. Your point is made. What is it Leader of the Majority Party?

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, with a lot of respect to my good friend, Musimba, what he has said and has gone on record is not true. Clause 65 seeks to ensure that the PPP projects are entrenched - and that means they will be documented - and distinguished from the budget-based programmes when the CS is preparing the Road Investment Programme.

This is simple English, Hon. Deputy Chairman. Relax Hon. Musimba because I am on my feet. I am a ranking Member. It says that the Road Investment Programme will be documented. If the Cabinet Secretary appears before a Committee in Parliament, he must outline the projects under the budget-based programmes. He must say the projects he wants to do under public private partnerships. That is the crystal clear essence of that amendment. You are not begging anybody.

(Hon. Musimba spoke off record.)

The Temporary Deputy Chairman (Hon. Mariru): Order, Hon. Musimba. I interrupted the Leader of the Majority Party halfway because we are dealing with a clause that the House has already made a decision on. Your point is made, Hon. Musimba. You will get a chance to contribute on every clause.

Order, Hon. Musimba. It is good to be clear on a point of procedure. The House has already made a decision on that clause. We cannot re-open it. It is already done.

Clause 66

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 66 of the Bill be amended by deleting the word “the” and substituting therefor the word “sound”.

This amendment is for cleaning up the Bill so that it becomes very clear and adopt international financial management practices. Thank you.

(Question of the amendment proposed)

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

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

(Clause 66 as amended agreed to)

Clause 67

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 67 be amended—

(a) by re-numbering the existing Clause (1) as sub-clause (1);

(b) by inserting the following new sub-clause immediately after the proposed new sub-clause (1) —

“(2) Despite sub-section (1), under a public private partnership arrangement, the terms of the project agreement shall prevail.”

This amendment also seeks to clean up the original Bill because of the PPP. It will ensure that an authority’s power to impose any levy, charges or fees for any of its services or for the use of the roads reserve under its jurisdiction is to the terms of PPP agreement, if it is a PPP management. That is very clear. We are cleaning up so that it makes sense. Those people who will get these roads will not ask what happens here and there. They will not take our institution to task. They know what will happen on PPP roads.

I thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Mariru): Let me propose the Question of the amendment first and then I give Hon. Nyikal the opportunity to contribute.

(Question of the amendment proposed)

Hon. Nyikal.

Hon. (Dr.) Nyikal: I seek guidance of this proposed amendment. If you have a road under PPP, then there is a road reserve, fees can be levied by the people or the private partners on the use of that road reserve. If my understanding is correct, that is a very major change and you cannot be quite sure what will happen on the road reserves when we have a lot of roads under PPP.

The Temporary Deputy Chairman (Hon. Mariru): Hon. Nyikal, when you ask for clarification, I know whom you are asking. Hon. Chairman, you look like you want to say something.

Hon. Losiakou: I do not know whether he asked me. He sought clarification.

Hon. A.B. Duale: What is the clarification about? I will answer.

Hon. Losiakou: Can you re-state so that it is clear?

The Temporary Deputy Chairman (Hon. Mariru): Hon. Nyikal.

Hon. (Dr.) Nyikal: What I get from this proposed amendment is that if you have a road under PPP, some charges can be levied on the road reserve along that road. Is that so? I want some clarification and then I will be okay.

The Temporary Deputy Chairman (Hon. Mariru): Leader of the Majority Party.

Hon. A.B. Duale: Hon. Nyikal is a medic, so, he wants things in details. This amendment says that all those services, including the road reserve, must be indicated in the terms of the PPP so that there will be no ambiguity when that PPP is launched. That is what it says.

Have I answered your question?

Hon. Kajwang’: Hon. Temporary Deputy Chairman, this is one of those amendments that I want to support the Chair of the Committee. The reasoning comes from what the Leader of the Majority Party had said before but not what he has said now. In a subsequent Finance Bill, we will discuss the extent and scope of PPP. Clause 67 talks about roads. It has not limited itself on anything, including those roads which may be subject to tolls or PPP. It will then be a situation in which somebody levies fees for some reasons without a direction. I am more persuaded by the way this section begins.

Clause 67 of the Bill says: “Each authority may, subject to the approval of the Cabinet Secretary, impose any levy, charges or fees for any of its services or for the use of road reserves under their jurisdiction.”

That is how we will make the CS answerable under the Finance Act. We will tell him whether it is under a toll road or under PPP. So, according to the Finance Bill, we decline to give you the authority to levy fees because it will be double taxation or levy.

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

*(Question, that the words to 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 Chairman (Hon. Mariru): There is a further amendment by Hon. Tom Kajwang’.

Hon. Kajwang’: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 67 of the Bill be amended by deleting the word “their” and substituting therefor the word “its”.

The proposed amendment will enable us to have good English and grammar in the Bill. If you come from the lakeshore, you will always know when English is being broken.

(Question of the further amendment proposed)

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

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

(Clause 67 as amended agreed to)

Clause 68

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 68 of the Bill be amended by deleting the words “section 45” and substituting therefor the words “section 67”.

This is for cross referencing and cleaning up the Bill.

(Question of the amendment proposed)

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

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

(Clause 68 as amended agreed to)

Clause 69

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 69 of the Bill be amended by deleting the words “section 55” and substituting therefor the words “section 54”.

The reason is to correct a cross referencing error which was in the original Bill.

*(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 69 as amended agreed to)

Clause 70

The Temporary Deputy Chairman (Hon. Mariru): There is no amendment to that Clause.

Hon. Kajwang’: On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Mariru): Yes, Hon. Kajwang’.

Hon. Kajwang’: Hon. Temporary Deputy Chairman, I do not know what may have happened here. I had an amendment to Clause 70. These amendments are reconciled in the Clerk’s Office. I had an amendment to clean it up or recast Clause 70, the way it is. I am raising a point of order and this is between me and the Clerks-at-the-Table. I had an amendment, and I have notes here with which I had submitted. I do not know for what reason it is not in the Order Paper.

The Temporary Deputy Chairman (Hon. Mariru): What is it, Leader of the Majority Party?

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, you should not entertain Hon. T.J. Kajwang’ to take us in a circus. The only document that is available for the transaction of business in the Chamber is the Order Paper. He cannot come and start fishing for an amendment which has not been captured in the Order Paper. Twenty four hours to the afternoon sitting, the Order was on the website of Parliament. He cannot just come and waste our time by saying that

he had an amendment and that he does not know where it is. Let us treat the House with some decorum and seriousness. You need to rule him out of order.

The Temporary Deputy Chairman (Hon. Mariru): I have the letter by Hon. T.J. Kajwang' on the amendments and Clause 70 is not one of them.

(Clause 70 agreed to)

Clause 71

The Temporary Deputy Chairman (Hon. Mariru): Hon. Pkosing.

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 71 of the Bill be amended by inserting the following new sub-clause immediately after sub-clause (3) –

“(3A) Despite sub-section (3), any agreement entered into by an Authority relating to programmes financed by the Fund shall be made in consultation with the Kenya Roads Board.”

I am bringing the Kenya Roads Board into any negotiation between the authorities, if they want to transfer functions. It means that, if for example, KeNHA has agreed with KeRRA that KeRRA maintains the road then the Kenya Roads Board is brought on board so that everything is in sync, so that people do not do what they do in the village or on the ground yet the Fund's authority is not aware. I have brought KRB into the discussion.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Mariru): Hon. Nyikal.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairman, a lot of clarification has been on roads in accordance with agreements between the Authority and the county governments. Clause 71 says that despite sub-section 3, any agreement entered into by an authority relating to the programme among the Fund shall be made in consultation with the KRB. So, basically, you are now having a tripartite agreement – between the KRB on one hand and the Authority and the county government on the other. Is that the gist of this amendment?

The Temporary Deputy Chairman (Hon. Mariru): Hon. Chair.

Hon. Losiakou: Hon. Nyikal has said it. The principle of this amendment is that you cannot talk about a levy fund – and these are authorities – without the KRB's approval. That is actually the gist of the amendment. Hon. Nyikal is a senior Member of this House. He should know that this is bringing on board the person who controls the Fund. I hope he knows that KRB collects the money for the Fund, on behalf of the authorities. This is not a development fund. It is a maintenance fund.

The Temporary Deputy Chairman (Hon. Mariru): What is it, Leader of the Majority Party? It is very clear.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, to make my good friend, Hon. (Dr.) Nyikal to go sleep over this matter comfortably, in Article 187 of the Constitution on transfer of functions and powers between two levels of government, Article 187(1)(b) says, “the transfer of the function or power is not prohibited by the legislation under which it is to be performed or exercised.” What we are doing is legislation.

(Question, that the words to be inserted)

be inserted, put and agreed to)

(Clause 71 as amended agreed to)

Clause 72

The Temporary Deputy Chairman (Hon. Mariru): Hon. Pkosing.

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 72 of the Bill be amended by inserting the words “Subject to approval by the Cabinet Secretary” at the beginning of the Clause.

My reason for the amendment is to ensure that any cost-sharing agreements made between Authority and any other person, including a county government, are made with the approval of the Cabinet Secretary.

(Question of the amendment proposed)

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

(Clause 72 as amended agreed to)

Clause 73

The Temporary Deputy Chairman (Hon. Mariru): Hon. Pkosing.

Hon. Losiakou: Hon. Temporary Deputy Speaker, I beg to move:

THAT, Clause 73 of the Bill be amended in sub-clause (1) by inserting the words “Subject to approval by the Cabinet Secretary” at the beginning.

The reason for this is that I am bringing the approval of the Cabinet Secretary.

(Question of the amendment proposed)

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

The Temporary Deputy Chairman (Hon. Mariru): We have a further amendment by Hon. T.J. Kajwang’.

Hon. Kajwang’: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 73 of the Bill be amended in sub-clause (2) by deleting the word “must” appearing in paragraph (a) and substituting therefor the word “shall.”

This is for good English, good legislative language and good lexicon.

(Question of the amendment proposed)

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

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

(Clause 73 as amended agreed to)

Clause 74

Hon. Kajwang’: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 74 of the Bill be amended by deleting the words “relevant/respective” and substituting therefor the word “relevant”.

In the Bill, the grammar was “relevant/respective.” I am sure that an engineer must have drafted this Bill. Now, lawyers are in the House. We can now come back to what legal practice is.

(Question of the amendment proposed)

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

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

(Clause 74 as amended agreed to)

Clause 75

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 75 of the Bill be amended—

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

(1) A county government shall obtain the respective Authority’s written approval if it intends to carry out road works on a county road or make changes to the management of a county road where the works or changes would—

(i) require the carrying out of road works on a national trunk road;

(ii) otherwise have a significant adverse impact on a national trunk road; or

(iii) have a significant impact on the planning of a national trunk road or a future national trunk road.

(b) in sub-clause (9) by deleting the words “chief executive” and substituting therefor the words “Director General”.

I am trying to correct a drafting arrangement error in the Bill.

(Question of the amendment proposed)

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

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

(Clause 75 as amended agreed to)

Clause 76

Hon. Kajwang’: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 76 of the Bill be amended—

(a) by deleting sub-clause (1) and substituting therefor the following new sub-clause—

(1) A county government may exercise in relation to a national trunk road in its area all the powers that it may exercise in respect of a county road in its area:

Provided notification of the actions or powers intended has been provided and consented to by the National Agency with delegated powers over the road.

(b) by deleting sub-clause (3) and substituting therefor the following new sub-clause—

(3) If there is no contract of the kind mentioned in section 72 between the Authority and a county government, a county government shall not exercise any of its powers on a national trunk road within its area of jurisdiction.

(c) by deleting sub-clause (4);

(d) by deleting sub-clause (5);

(e) by deleting sub-clause (6).

The proposal is to recast what was otherwise a very poorly drafted legislation in Clause 76 to accord with the legislative practice and to be understood clearly by the readers of this law.

(Question of the amendment proposed)

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

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

(Clause 76 as amended agreed to)

(Clause 77 agreed to)

Clause 78

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 78 of the Bill be amended—

(a) in sub-clause (1) by inserting the words “or a private party under a public private partnership arrangement” immediately after the words “Authority’s”;

(b) in sub-clause (2) by inserting the words “or a private party under a public private partnership arrangement” immediately after the words “Authority”;

(c) in sub-clause (3) by inserting the words “or a private party under a public private partnership arrangement” immediately after the words “Authority”;

(d) in sub-clause (4) by inserting the words “or a private party under a public private partnership arrangement” immediately after the words “Authority”; and

(e) in sub-clause (5) by inserting the words “or a private party under a public private partnership arrangement” immediately after the words “Authority”.

My motivation is to give recognition to private parties contracted under PPP arrangement and also to ensure that the provisions on offences apply to both the contracting authority and the private party.

Thank you.

(Question of the amendment proposed)

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

(Clause 78 as amended agreed to)

Clause 79

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 79 of the Bill be amended in the opening sentence to sub-clause (1) by inserting the word “furniture” immediately after the word “road”.

I am just trying to clean up. As we said earlier, road furniture had been forgotten for a while. Therefore, when you are talking about road, you should know that there is also road furniture. That is why I am bringing it under that clause.

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

(Clause 79 as amended agreed to)

(Clauses 80, 81, 82, 83, 84, 85, 86, 87, 88 and 89 agreed to)

Clause 90

Hon. Kajwang’: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 90 of the Bill be amended by deleting paragraph (b) and substituting therefor the following new paragraph—

- (a) by affixing the notice in a conspicuous place at the office of the Director General; or

While drafting this legislation, those who touched it talked about service of notices. We all know service of notices maybe personal, by post office or by affixing a notice in a conspicuous place. The words which are in the Bill are not known to law, they are known to laymen leaving a notice in the office of the Director General. I propose that clause be amended accordingly.

(Question of the amendment proposed)

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

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

(Clause 90 as amended agreed to)

(Clauses 91, 92, 93, 94, 95, 96, 97, 98, 99 and 100 agreed to)

Clause 101

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 101 of the Bill be amended by deleting the words “being either a department or division”.

I am trying to strengthen and upgrade the authorities in the counties. It used to be something small under a department yet it is becoming an authority after this Bill. So, we are making them independent and stronger through the amendment.

(Question of the amendment proposed)

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

(Clause 101 as amended agreed to)

Clause 102

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 102 of the Bill be amended –

(a) in sub-clause (2) by –

(i) deleting the word “and” appearing immediately after the words ‘Kenya National Highways Authority’; and

(ii) inserting the words “and the Kenya National Urban Roads Authority” at the end.

(a) in sub-clause (5) by deleting paragraph (d) and substituting therefor the following new paragraph–

“(d) the annual estimates of the former Kenya National Highways Authority, Kenya Urban Roads Authority and Kenya Rural Roads Authority for the financial year in which this Act commences shall be deemed to be the annual estimates of the Kenya National Highways Authority under this Act and the annual estimates of the former Kenya Urban Roads Authority shall be deemed to be the annual estimates of the Kenya National Urban Roads Authority and the annual estimates of the former Kenya Rural Roads Authority shall be deemed to be the annual estimates of the Kenya National Secondary Roads Authority for the remainder of that financial year.”

It is on transition. Now that we have renamed KURA to Kenya National Urban Roads Authority, what happens to the staff? We are bringing the staff members who were in KURA to move to the Kenya National Urban Roads Authority. That is all. Regardless of the change of name, the staff remains the staff.

Thank you, Hon. Temporary Deputy Chairman.

(Question of the amendment proposed)

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

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

(Clause 102 as amended agreed to)

(Clauses 103 and 104 agreed to)

First Schedule

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the First Schedule of the Bill be amended—

- (a) in Part A, by deleting the classification of Secondary National Trunk Roads and substituting therefor the following new classification—

Secondary National Trunk Roads	Class C Roads forming important regional routes, linking county headquarters or other regionally important centers, constituency headquarters, municipal or town council centres and other towns to each other and to Class A, B, H or J roads. Required to collect regional and local traffic and channel it to class A, B H and J roads.
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- (b) in Part B, by inserting the following new classification at the beginning—

Class D	Roads meant to collect traffic from lower class roads and channel it to the higher class roads. They are required to provide lower level of services than arterial roads at lower permissible speed over shorter distances with limited access control. Meant to collect traffic from lower roads and connect it with Class C roads.
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We are taking road class D to counties. That is what happens in that discussion. This was informed by a lot of discussions and negotiations between the county governments and the national Government. It was agreed at that level. In that agreement, we are bringing those discussions between the national Government and the county governments into the law. Further, we are reworking it and putting it very clearly that the definition and functions under Class D are as it is in the *Kenya Gazette* Notice of 2012.

So, we are taking roads of Class D to counties and retaining those of Class C in the national Government.

The Temporary Deputy Chairman (Hon. Mariru): I note that the same amendment, word for word is what Hon. Kajwang' has proposed. Hon. Kajwang', could you confirm that? It looks the same to me.

Hon. Kajwang': In view of the Chairperson's amendment, I drop this amendment.

The Temporary Deputy Chairman (Hon. Mariru): Yes, Hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I think the Chair of the Committee did not specify. The county governments and the national Government meet at a body called the

Intergovernmental Budget and Economic Council (IBEC), it is recognised in the County Governments Act. It decides on many things including the Division of Revenue Bill. It was agreed in principle that Class D roads become a function of the county governments. We need to clarify that this is their road and it is the only place they can spend money on.

I am sure those of us who were in the 11th Parliament remember the Governor of Machakos County purported to build a road which was not under his jurisdiction. He explained that he built it at a quarter of the price of the national Government. I had the opportunity to go and see that road. When I came back and asked the then Cabinet Secretary (CS), Kamau, what was going on, that road did not even last for two or three months. Now, this Bill gives percentage of allocation to KeRRA, KURA under the new name and county governments 16 per cent. Am I right? It is 16 per cent. The Senate and all of us who are leaders have the opportunity to put to task our governors and ask them: “This Road D is impassable because you have failed.” It is good to tell the country.

There was a mix-up of who is supposed to do what and what before. This Bill has now clarified it. They can only use the money they are given on Class D roads.

I confirm that Hon. Kajwang’ dropped his amendment but he needs to withdraw. Is it withdrawn? Yes, confirm that.

Hon. Kajwang’: I am on HANSARD that in view of the amendments proposed by the Chair, I withdraw mine.

The Temporary Deputy Chairman (Hon. Mariru): What you had done earlier was dropping it.

(Proposed amendment by Hon. Kajwang’ withdrawn)

(Question of the amendment proposed)

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

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

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

(First Schedule as amended agreed to)

(Second Schedule agreed to)

Third Schedule

The Temporary Deputy Chairman (Hon. Mariru): Before Hon. Pkosing, we have the Hon. Leader of the Majority Party.

Hon. A.B. Duale: I beg to move:

THAT, the Third Schedule be amended by inserting the following row immediately after the proposed amendment to section 6(2) of the Kenya Roads Board Act No.7 of 1999 —

Delete and substitute therefor with the following—

- s.12 “(2) A person shall be qualified for appointment as the Executive Director if that person—
holds a Master’s degree in finance, accounting, law or engineering from a university recognised in Kenya;
has knowledge and at least ten years’ experience in a relevant field; has served in a senior management position for a period of at least five years; and
satisfies the requirements of Chapter Six of the Constitution”

Hon. Kajwang’ (*Off-record*)

Hon. A.B. Duale: No, I can say “as it is on the Order Paper” but...

The Temporary Deputy Chairman (Hon. Mariru): Order, Leader of the Majority Party. What is it Hon. Kajwang’?

Hon. Kajwang’: Hon. Leader of the Majority Party, I am just assisting your very good self. Hon. Temporary Deputy Chairman, if you look at the amendments proposed by the Chair, they are touching on issues on paragraphs 2, 4 and 6. The Leader of the Majority Party’s amendment touches on paragraph 6(2). In terms of precedence which is in the Standing Orders, the Chair has the first precedence. So, let him push his amendment then we will come to the Leader of the Majority Party.

The Temporary Deputy Chairman (Hon. Mariru): You are hawk-eyed, Hon. Kajwang’. That is appreciated. Yes, Hon. Pkosing. You are consulting far away from where you ordinarily sit.

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Third Schedule to the Bill be amended in the proposed amendment to section 6(2)(d) of the Kenya Roads Board Act No.7 of 1999, as follows—

(a) in paragraph (2) by deleting the words “Thirty (30 %)” and substituting therefor the words “twenty eight (28 %);

(b) by deleting paragraph (4) and substituting therefor the following new paragraph—
“(4) Sixteen (16%) per centum is allocated to the county governments equally as conditional grants in respect of county roads;” and

(c) in paragraph (6) by —

(i) deleting the words “six (6%) per centum” and substituting therefor the words “seven (7%) per centum; and

(ii) inserting the words “and training” immediately after the word “development” appearing in sub-paragraph (a).

THAT, the Third Schedule to the Bill be amended in the proposed amendment to section 6(2)(l) of the Kenya Roads Board Act No.7 of 1999 by inserting the following new paragraph immediately after paragraph (k) —

“(ka) every five years conduct an inventory and condition survey of all public roads and submit copies of the report to the Cabinet Secretary and the National Assembly for consideration.”

THAT, the Third Schedule to the Bill be amended by inserting the following new amendment immediately after the proposed amendment to section 17A of the Kenya Roads Board Act No.7 of 1999 —

Insert the following—

s.30 “(1) The Board may withhold funds of any road agency or county government that fails to comply with the public road standards prescribed by the Cabinet Secretary.”

I want to be on record. Basically we are adding money to counties from 15 per cent which was in the original Bill to 16 per cent. We are taking that money from what used to be Kenya Rural Roads Authority (KeRRA) to the counties. We are also adding one per cent to the Cabinet Secretary in charge of the Ministry of Roads for emergencies and to the President to enable him implement some roads.

Before that, I know people may have questions on why and how the 16 per cent is going to the counties. The engineers, the Ministry in charge and ourselves have done studies and said 11 per cent is sufficient for counties to maintain Class D roads. That has to be very clear so that tomorrow there is no outcry of people asking why it is 16 per cent. In fact, even 15 per cent is an overdose. Anything above that is a bonus to the counties. I know when they get 16 per cent they will be crying and saying that they need 80 per cent. I also want to be on record that this money is not for construction or building roads, it is for maintenance of roads. This means that there is different money allocated for development. People may misunderstand and say that we are giving them little money and they would need money to develop roads. This is for maintenance of roads that already exist. For them to maintain them, they only require 11 per cent. What the national Government has done is to give them 16 per cent. This is a big credit. The Jubilee Government is keen on promoting devolution. I know that there is devolution conference next week but this is the gist of the matter, the Hon. Members here are in love with the counties. We do not want any misunderstanding that somebody will be thinking that we have given them little money. If you take a difference between 11 per cent and 16 per cent you can see the difference. That is the gist of the amendment to the Third Schedule and it has to be very clear and on record that everything has been done above board and is supported by studies.

I thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Mariru): Hon. Nyikal.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairman, I am getting low on sugar. It would be better if the Chair went line by line and said this is doing this and this is doing that. He is doing a summary and you can see that in some places it is going from 30 per cent to 28 and in other places it is going to 35 per cent. He is talking of the sum total but it would be easier for Members particularly myself, if you went line by line because this is a very important aspect.

The Temporary Deputy Chairman (Hon. Mariru): Hon. Chair, would you want to have a minute?

Hon. Losiakou: Hon. Chairman, it is in the Bill and I have done it. I said we will have additional one per cent going to the counties to become 16 per cent and another one per cent to the Cabinet Secretary. It is in the Bill and it used to be in the Bill. It is only those three and I have removed the money from what used to be KeRRA. It is here and it is very clear.

The Temporary Deputy Chairman (Hon. Mariru): Hon. (Dr) Nyikal do not cross the Floor use the Chair to ask the questions you want.

Hon. (Dr.) Nyikal: I stick to details. Details are what make things happen. When Members are passing this Bill and money, it will be known that we have dropped what used to be

given to KeRRA from 30 to 28 per cent. What is this? So that is not general. Two minutes will be very important.

The Temporary Deputy Chairman (Hon. Mariru): What is it, Hon. Kajwang’?

Hon. Kajwang’: On a different issue, I could see that you are just about to put this to vote. I just wanted to make you see that the Third Schedule is in different respects. One touches Roads Act Section 6 and the other touches different sections of the Act. It will therefore be neater if we voted one package after the other. For example the first package which goes up to a, b, and c and the next one which goes to (ka) and the last one which is the insertion. It is usually neater if we go that direction.

The Temporary Deputy Chairman (Hon. Mariru): Well, Hon. Kajwang’ let us not dichotomise. The amendment by Hon. Pkosing came as a block. That is what we want to put to vote. After that, we will go to further amendments.

*(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)*

We have a further amendment. Hon. Leader of the Majority Party.

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

THAT, the Third Schedule be amended by inserting the following row immediately after the proposed amendment to section 6(2) of the Kenya Roads Board Act No.7 of 1999 —

s.12 Delete and substitute therefor with the following—

“(2) A person shall be qualified for appointment as the Executive Director if that person —

(a) holds a Master’s degree in finance, accounting, law or engineering from a university recognised in Kenya;

(b) has knowledge and at least ten years’ experience in a relevant field; has served in a senior management position for a period of at least five years; and

(c) satisfies the requirements of Chapter Six of the Constitution”

Basically, this amendment is setting out the qualification for appointment of the Executive Director of the Kenya Roads Board.

(Question of the further amendment proposed)

Hon. Kajwang’: Hon. Chairman, today I have seen the Leader of the Majority Party sit in this House in the Committee of the whole House from the beginning to the end. He is doing a good job and he is setting a good example to his leadership. I wish my leaders were here to know how cold we feel being in this side of the divide and fighting so that the law is clear. I am obliged to the Leader of the Majority Party. He has been persuading me since we started this; I just want to persuade him on a very small issue of this amendment. Let these people have degrees. The Leader of the Majority Party, just listen to me, I am sure I will persuade you. I am capable of doing that. According to the Bill that we already have, we have already put a standard

of degree in law for all the Director General's including the boards that we were fighting about here. We said a degree in various fields. This will be the only person who will be the most educated in the establishment, unless we have a very good reason why this fellow must just have Master's degree. I do not know the number of people in Turkana who have Masters' degree in the relevant fields here. I just want to invite the Leader of the Majority Party. This is the last item we are doing. We can just give and take. Have a further amendment just to drop the word Masters' because if these things are special to people, to a training or a degree, then it goes away.

Hon. Kimunya: *(Inaudible)*

Hon. Kajwang': You are fixed about this further amendment, he can further amend his own further amendment and say that he wants to drop the word "Master's" and have "holds a degree" in all these things. I beg the Leader of the Majority Party to conclude because we have stayed here for more than two hours. This is a small thing to give Kenyans an opportunity that anybody with a degree. Of course if you have a Masters' degree, you have an added qualification.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Mariru): Hon. Cecily Mbarire, then I will give you, Hon. Chair.

Hon. (Ms.) Mbarire: Hon. Temporary Deputy Chairman, I listen to the Leader of the Majority Party and he knows very well that many times we like to listen to what he has to say, but this in my view should not be the case. In fact, a Master's degree should just be an added advantage at the point of interview. Otherwise if we say that here, then we need to change all the other Executive Directors, if you ask me. We are even seeing whole governors of counties who are leading an entire government with a bare minimum of a degree. I want to urge the Leader of the Majority Party to reconsider this amendment so that we have a fair playing ground across the Government. Let Master's degree just be an added advantage. I really want to beg the Leader of the Majority Party to reconsider this.

The Temporary Deputy Chairman (Hon. Mariru): I see Hon. Sankok behind you. I always like giving you opportunity last. Hon, Sankok.

Hon. Members, nothing stops anyone from proposing a further amendment.

Hon. ole Sankok: Hon. Temporary Deputy Chairman, I have been quiet for quite some time but on this one, for sure most Executive Directors in our country are persons with degrees only. Master's degrees are just an added advantage. For sure, the chair of this board is supposed to have a degree. And he is the one above the CEO. Let us have those Master's and PhD holders taken to the universities to teach. In leadership positions, some people are good with just a degree. So a degree is enough.

The Temporary Deputy Chairman (Hon. Mariru): I will give only Hon. Murwithania and then the chair.

Hon. Rindikiri: Thank you, Hon. Temporary Deputy Chairman. I think we should not be seen to be more discriminative, particularly in the process of doing a Bill like this. We have maintained a standard and we should not try to give some special preferences to some specific positions. What am I saying? Let the minimum qualification, as we have maintained throughout the Bill, be a degree. If you have a Master's degree or a PhD, that is an added advantage. We should not be seen to be preparing some ground for some individuals wherever they are. That is a dangerous trend. For the first time I have differed with my majority leader. This one, Leader of the Majority Party, it is the majority who are speaking. So adjust your amendment and then we support you. You need us.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Mariru): We must move on. Hon. Nduati, can you just take half a minute? I suspect you will just take half a minute.

Hon. Ngugi: Thank you very much, Hon. Temporary Deputy Chairman. What I wanted to say is that we should drop this requirement. Since we have agreed that the other directors will have a basic degree, I am wondering why this specific person should have a Master's degree. We know most people doing very well in these organisations have only a basic degree. So we should drop the Master's aspect so that we do not create a position for someone. That is what I suspect.

Thank you.

The Temporary Deputy Chairman (Hon. Mariru): Yes, Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, this amendment belongs to the Government, so I have no interest. I only bring amendments from the State Law Office. So I have no interest absolutely. There are in this Bill other qualifications of Master's degree. I need you guys to read it. But for convenience sake, and this is the last amendment, I will do a further amendment to clause (a) which says:

“holds a degree in Finance Accounting Law or Engineering from a recognised University”,

So, I have just deleted “a Master's degree”.

Hon. Temporary Deputy Chairman, where I have an interest I always declare it. So, those who are imputing improper motive should rest assured that I have absolutely no interest. I always defend my interest, unlike those who do not.

Hon. Temporary Deputy Chair, I beg to move that the proposed amendment to the Third Schedule be moved in an amended form by deleting the word “Masters” appearing before the word “degree” so as to read as follows:

THAT, the Third Schedule be amended by inserting the following row immediately after the proposed amendment to section 6(2) of the Kenya Roads Board Act No.7 of 1999 —
s.12 Delete and substitute therefor with the following—

“(2) A person shall be qualified for appointment as the Executive Director if that person –
(a) holds a degree in finance, accounting, law or engineering from a university recognised in Kenya;

(b) has knowledge and at least ten years' experience in a relevant field;

(c) has served in a senior management position for a period of at least five years; and,

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

The Temporary Deputy Chairman (Hon. Mariru): Leader of the Majority Party, for purposes of tidying up our work, I take it that you have moved that Motion as amended, just like you have just indicated on the record.

Hon. Kajwang': On a point of order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Mariru): What is it? Let us have Hon. Kajwang' then I will get to the Chair.

Hon. Kajwang': Hon. Temporary Deputy Chairman, when we take hours in this Chamber to do what we know best is when we learn. I am sure there are Members who are participating in Committee of the whole House proceedings for the first time. Today I am a stickler of the Standing Orders. If I remember the Standing Orders properly, the amendment introduced by the Leader of the Majority Party to the original proposed amendment to the Third Schedule becomes a further amendment. So, we should deal with the further amendment to the original amendment, vote on it and dispose of it. Thereafter, we can come back to the original

amendment and dispose of the whole Question. The Temporary Deputy Chairman is a man I owe a lot of respect to. I am sure he will uphold that as the correct position, unless he is advised differently.

Let us hear Hon. Pkosing. I will, of course, give guidance afterwards.

Hon. Losiakou: I want to support my leader after seeing the mood of the House. However, I want to go on record that the other Director-Generals have gone through the requirement of having Master's degrees. So, let it go on record. Clause 29(2)(a) states that a person shall be qualified for appointment as Director-General if that person holds a Bachelor's degree in Civil Engineering, a Master's degree from a University recognised in Kenya and is registered by the Engineers Board of Kenya. I opt to protect the Leader of the Majority Party by facts so that Members can make decisions on the basis of knowledge.

In addition, in the Public Service, where I was serving this country before coming to Parliament, there was a requirement that for you to cross from Job Group "P" to "Q", you must have a Master's degree. When you are at the level of Director-General or Executive Director, you are at the apex of the institution's leadership. We are not making laws for certain individuals. Do we want certain people to become CEOs even before they get Master's degrees?

I am not taking anybody back but I want to set the record straight so that people can make decisions in future with information. That is my responsibility and why I am here. This is my area and I have to say the truth. Members need to make a decision one way or another with information.

The Temporary Deputy Chairman (Hon. Mariru): Let me be clear so that we debate within a clear context. I want Members to note that I had not proposed the Question or put the Question on the first amendment by the Leader of the Majority Party. I shall propose the Question on the further amendment by the Leader of the Majority Leader, so that Members can debate as Hon. Pkosing is doing.

(Question of the further amendment proposed)

The Temporary Deputy Chairman (Hon. Mariru): Hon. Members, the Floor is open, Hon. Pkosing you can engage within that context.

Hon. Losiakou: I had engaged.

The Temporary Deputy Chairman (Hon. Mariru): Very well. Order Hon. Pkosing! That is clear.

*(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)*

(Third Schedule as amended agreed to)

NEW PART

The Temporary Deputy Chairman (Hon. Mariru): Hon. Musimba. You need to move the Second Reading of the New Clause 11A.

Hon. Musimba: Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill is amended by inserting the following new Part immediately after section 11-

Registration of private roads	11A. (1) A person who intends to construct a private road shall apply to the Cabinet Secretary for registration of the road. (2) An application under subsection (1) shall- Indicate the function to be served by the road; Indicate the class of road to be constructed in accordance with the First Schedule to this Act; Be accompanied by the construction plans; Be accompanied by the prescribed fee; and Contain any other information that may be prescribed by the Cabinet Secretary. (3) If the applicant meets the prescribed requirements, the Cabinet Secretary shall approve the construction of the road. (4) Upon completion of the road construction and inspection of the road by the Cabinet Secretary, the Cabinet Secretary shall register the road and publish such registration in the Gazette.
Inspection of private roads	11B. The Cabinet Secretary may, from time to time, inspect a private road to ensure that the prescribed standards are complied with.

The Temporary Deputy Chairman (Hon. Mariru): Hon. Musimba, you are moving the Second Reading of the New Clause which is 11A. We are separating 11A and B. Let us deal with 11A first.

Hon. Musimba: I think for congruence and I stand guided, for me to move Part 11A we need to introduce the whole definition of a private road. Otherwise, the import is...

The Temporary Deputy Chairman (Hon. Mariru): Order, Hon. Musimba! You need to move first, and then you can engage and debate so that it is rightly on the Floor.

Hon. Musimba: The import of this is to introduce private roads and bring congruence. What we have been trying to do with the introduction of PPP frameworks is to address the issue of scarce resources to enable us to develop roads and indeed infrastructure for the public good. This is with precedence because within the water sector we have private water suppliers and in the security sector we have private security suppliers despite this being a Government function.

Within the wildlife area we have wildlife sanctuaries which are indeed private but are there to boost the public good in terms of preservation of tourism and so forth. In the instance of roads, I would want this to be captured under the Bill for purposes of making a law in posterity for 20 years. We are all moving into a digital world. I need to capture roads from a geographical perspective. This is where the whole world is. We have GPS networks such that it tells you where you can move from point A to point B. If we do not capture private roads, which are also an extensive network within this country, then we will be losing out in the whole listing.

More importantly, when we have emergencies you would want to know the fastest way you can move say a victim of an accident from Point A to Point B and we realise that the traditional road network that was set in the colonial time traverses vast areas which are held by private land owners. The population has now grown. At Independence we were less than five million people. Now we are dealing with an expanded population in excess of 45 million that have encroached into these areas. Indeed, even when we were discussing the Nairobi Metropolitan Bill it was trying to address the same issues of Nairobi as it was or indeed metropolitan areas were not moving into these localities. So, in moving this particular clause, I want to capture the current realities that one, Government does not have the resource. Even if it

identifies that this is a particular route that needs to be followed, it will not have the money to have compulsory acquisition of those particular properties.

As such if we allowed privateers... It is already within practice. When I pass through Ngong Road and I want to access the road to Makini, you will find yourself passing through a mall and you already pay for it. When I go to the airport, which is a public road, we still pay at the point of entrance. So, this is not a new issue. That is why I want to move. Hon. Temporary Deputy Chair, indulge me for a while. Do not be in a hurry. There are such initiatives by Government which were even captured under the Big Four agenda which were annuity programmes that were supposed to entice the banks and indeed the private sector to come and invest in roads and be able to recoup this over a period of time. This then becomes clear because then people do not have to worry about the ownership. The ownership resides with you but it remains open to the public but at a fee.

I beg to move.

(Question of the new part proposed)

(New part read the First Time)

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

The Temporary Deputy Chairman (Hon. Mariru): Yes, Leader of the Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I really indulge my good friend, Hon. Musimba, to drop this amendment. The import of what he is saying is exactly what we have provided for in this Bill under the PPP. We do not want to create a situation where a rich Kenyan... I know you are a man of means and you can build a road leading to your house and then you start charging these poor Kenyans who live around that village. What you want to do is where a road can be built by a private entity then it should be provided under the PPP so that it is even better where the toll system is used. I think your amendment has already been covered under the PPP. I really ask you, Hon. Musimba. Thank you for being here this afternoon. Just drop this because it has been provided for.

The Temporary Deputy Chairman (Hon. Mariru): Hon. Musimba, you will get a chance. Let us hear Hon. Pkosing.

Hon. Losiakou: Hon. Temporary Deputy Chairman, I ask my good friend, Hon. Musimba, to drop this amendment. I talked to him almost for the whole of last week. I want him to do it in good faith. He is a very good friend of mine. I play one of the best games in the world with him and I respect him there. That is not an important game. We play a game called golf, which is played by gentlemen and that is why I request him as a gentleman to drop this amendment.

The Bill before us is on public roads. He is speaking to a different Bill. This is not a private roads Bill. This is the Kenya Roads Bill, 2017. I had even spoken to him. He is polished. I hope he does not even continue. He should drop the amendment. I request him as our Hon. Member to drop the amendment but he is speaking on a different Bill. This is a public roads Bill.

The Temporary Deputy Speaker (Hon. Mariru): We have to move on this. Hon. Musimba, are you dropping the amendment? What do you have to say? We will then have the House make a decision.

Hon. Musimba: It is important to put this in perspective. I just want to respond to the comments of the Leader of the Majority Party and Hon. Pkosing who, as he said, is a friend. We are held to higher standards. First, it is not mandatory to use those roads. Using them is optional.

Second, just to address Hon. Pkosing, the title of the Bill...

The Temporary Deputy Chairman (Hon. Mariru): Could you conclude on that one?

Hon. Musimba: I am just about to conclude. The title of this Bill before us is the Kenya Roads Bill. It does not make a distinction between what is public and what is private. We are trying to create this for posterity. I just wanted us to clarify those two points. I want us to ventilate in the normal way. The minority which I belong to - and I think I am in the minority of minorities as an independent - will have their say and certainly the majority will have their way.

*(Question, that the new part be read a second Time,
put and negatived)*

The Temporary Deputy Chairman (Hon. Mariru): Hon. Members, we literally only have 10 minutes on this one. I am not rushing the Members but just appreciate that reality.

New Clause 11B

The Temporary Deputy Chairman (Hon. Mariru): We have dealt with New Clause 11A. Hon. Musimba, if you could be kind enough to---

(The Temporary Deputy Chairman consulted with the Clerks-at-the-Table)

Well advised. Since New Clause 11A has fallen, New Clause 11B also falls.

Hon. Kajwang': That is not the correct procedure.

The Temporary Deputy Chairman (Hon. Mariru): What is it, Hon. Kajwang'?

Hon. Kajwang': Hon. Temporary Deputy Chairman, even if we, Members, know that it is tied to New Clause 11A, that is a point of debate. It is Hon. Musimba who is the owner of that amendment. Members take a lot of time to research and propose amendments. If we do not have time, let us just report back to the House and resume House proceedings. This Member has had his time. Let us go back to him. If he wants to withdraw the amendment, let it be his own decision to do so. Our job is to make a decision. We cannot bully him and decide that his amendment falls. That is bullying.

The Temporary Deputy Chairman (Hon. Mariru): Order, Hon. Member. It is very clear. The first amendment by Hon. Musimba in New Clause 11A was about registration of private roads. That has fallen. In that case, the inspection of private roads that had been envisioned in New Clause 11B cannot take place since the private roads do not exist. It is my responsibility as Chair to give guidance because we do not want to take time in vain. New Clause 11A was about registration of private roads. That has fallen. There cannot be inspection of private roads that had fallen in New Clause 11A. It is just a matter of direction on that.

New Clause 73A

Hon. Kajwang': Something is really wrong with the Clerk-at-the-Table. A few strange things have happened.

I had an amendment but I did not see it. Hon. Musimba is being forced to drop an amendment. Three, I have been told that I have an amendment but I do not have one. A few things have happened today that are strange. I am concerned about the strange things which have happened today.

The Temporary Deputy Chairman (Hon. Mariru): Let me confirm from the Clerks-at-the-Table whether we have New Clause 73A. Hon. Kajwang', that has been confirmed that it was a typo. You do not have an amendment to that clause.

Hon. Kajwang': So there was a typo by removing my amendment...

The Temporary Deputy Chairman (Hon. Mariru): Order, Hon. Kajwang'.

Clause 2

Hon. Losiakou: Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended—

(a) by deleting the definition of the words “county roads agency” and substituting therefor the following new definition—

“county roads agency” means a roads agency established by a county government which shall be responsible for the management, development and maintenance of a county road.”; and

(b) in the definition of the words “Road Fund” by deleting the word “Road”.

This amendment seeks to ensure that county roads agencies are established as independent but not as departments or divisions under county executive as it was in the original Bill.

(Question of the amendment proposed)

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

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

The Temporary Deputy Chairman (Hon. Mariru): Hon. Kajwang', you have a further amendment in Clause 2. I hope this time it is correct.

Hon. Kajwang': It is correct. I have a further amendment.

Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 2 of the Bill be amended by inserting the following new definition in their proper alphabetical sequence—

(a) “city” means an area conferred with the status of a city under Section 8 of the Urban Areas and Cities Act No. 13 of 2011;”

(b) “owner” means a person registered as a legal owner of land under the relevant written laws;”

The words “city” and “owner” have been used. They have been defined positively.

(Question of the further amendment proposed)

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

put and agreed to)

The Temporary Deputy Chairman (Hon. Mariru): Just as I had made direction and ruling on the earlier amendment by Hon. Musimba, he had a further amendment but it was touching on private roads. That had fallen earlier. So, it does not stand.

Hon. Kajwang', we are completely on course.

(Proposed amendment by Hon. Musimba dropped)

(Clause 2 as amended agreed to)

Title

The Temporary Deputy Chairman (Hon. Mariru): Hon. Musimba has an amendment on the long title.

Hon. Musimba: Hon. Temporary Deputy Chairman, my intention was to have congruence in the Bill by removing the word "public" from the long title and simply leave it as "roads". This will open up the whole issue of private and public roads. As it is, it is an exercise in futility to move the amendment.

The Temporary Deputy Chairman (Hon. Mariru): Is the amendment withdrawn?

Hon. Musimba: Yes, it is withdrawn.

(Proposed amendment by Hon. Musimba withdrawn)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairman (Hon. Mariru): Mover.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee do report to the House its consideration of the Kenya Roads Bill (National Assembly Bill No. 47 of 2017) and its approval thereof with amendments.

(Question put and agreed to)

(The House resumed)

[The Deputy Speaker (Hon. Cheboi) in the Chair]

CONSIDERATION OF REPORT

Hon. Deputy Speaker: I know we are just dead on time, but having waited the whole afternoon I think we can extend for a few minutes. So let us have the Chair to move reporting of the Bill.

Hon. Mariru: Hon. Deputy Speaker, beg to report that the Committee of the whole House has considered the Kenya Roads Bill (National Assembly Bill No. 47 of 2017) and approved the same with amendments.

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the House do agree with the committee in the said report. I request Hon. Pkosing, the Chair of the Departmental Committee on Transport, Housing and Public Works to second the Motion.

Hon. Pkosing seconded.

(Question proposed)

Hon. Members, I know we are really eager to have this dispensed with but unfortunately we are short of the required quorum. Therefore, that will be put in the next most convenient time.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, the time being 7.03 p.m., the House stands adjourned till tomorrow Thursday, 19th April 2018, at 2.30 p.m.

The House rose at 7.05 p.m.