

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 6th August 2013

The House met at 2.30 p.m.

[Hon. Deputy Speaker (Dr. Laboso) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

INDUCTION RETREAT FOR MEMBERS OF NATIONAL ASSEMBLY

Hon. Deputy Speaker: Hon. Members, I have a Communication regarding an induction retreat for Members of the National Assembly on 8th to 12th September, 2013 to be held at a venue to be confirmed in due course. This will be the second induction workshop organized for Members of the National Assembly.

Hon. Members, we have invited speakers from other Parliaments in the region, Cabinet Secretaries from various Ministries and other senior Government officials. Resource persons will be obtained from Ghana, United States of America and Germany, as well as our own local resource persons.

The retreat is intended to review progress made by the National Assembly during the first part of the First Session in addition to considering other essential topics including overcoming the common problems being faced by new Members, guiding Members on how to marshal and co-ordinate the Executive's business in the House, helping Members understand bicameralism as a concept foundation of the National Assembly, establishing a common framework for driving business in the National Assembly, the budget-making process, discussing the necessary tools for parliamentary oversight including synergy with the Auditor-General, how to manage transition with emphasis on the Constituencies Development Fund (CDF) infrastructure and health. The retreat will also touch on the role of Parliament in the management of national security.

Hon. Members, you are encouraged to take note of this and reserve the dates for this intended workshop. The programme for the retreat will be posted on the Parliamentary Website and will also be available at the reception from the week starting 11th August 2013.

For any further information on this, feel free to contact the Office of the Clerk of the National Assembly for any assistance.

I thank you.

(Several hon. Members stood at the Bar)

MESSAGE

SEEKING CONCURRENCE ON COUNTY ALLOCATION OF REVENUE BILL

Hon. Deputy Speaker: Order, hon. Members! I will allow Members two minutes to sit before I give the Message.

Hon. Members, we have a Message from the Senate. Standing Order No.41 (2) relating to Messages requires the Speaker to convey to the House any Message received from the Senate. In this regard, I wish to convey the following Message received from the Senate by the Speaker's Office on Thursday, 1st August 2013 at 1423 Hours. The Message is titled "The County Allocation of Revenue Bill, 2013". It reads as follows:

"That, the County Allocation of Revenue Bill, 2013, Senate Bill No.1 of 2013, was published in the *Kenya Gazette* Supplement No.67 of 7th May 2013, as a Bill originating in the Senate and was passed by the Senate on Wednesday, 31st July 2013, in the form attached hereto and, further, that the Senate now seeks the concurrence of the National Assembly to the said Bill as passed by the Senate."

Hon. Members, the aforementioned is a Message relating to a Bill passed by the Senate and requiring the concurrence of the National Assembly.

Therefore, pursuant to Standing Order Nos.41 (6) and 143, I have directed that this matter be put on today's Order Paper for consideration in the House. In this regard, therefore, the County Allocation of Revenue Bill, 2013 is listed in the Supplementary Order Paper for today for First Reading, Second Reading and Committee of the House. It is envisaged that all the three stages will be dealt with today.

Hon. Members, at this moment, I wish to remind the House of the requirement pertaining to consideration of this Bill. Article 111(2) of the Constitution and Standing Order No.15 (1) provide that any amendment or veto to this Bill will require a resolution supported by, at least, two-thirds of the Members of the Assembly.

Consequently, any Member who may wish to make amendments to this Bill is advised to present the amendments to the Clerks-at-the-Table for assistance and guidance before we proceed to the Committee of the whole House.

I thank you.

(Several hon. Members stood at the Bar)

Hon. Members, I have a Petition to present but I am waiting for hon. Members to settle down. Members at the door, please, settle down.

PETITION

STATUS OF IMPLEMENTATION OF COURT ORDER

Hon. Deputy Speaker: Hon. Members, Standing Order No.225 (2) requires the Speaker to report to the House any Petition to the Assembly other than those presented through a Member. I, therefore, wish to convey to the House that my office has, through the Clerk's Office, received a Petition regarding the enforcement of a court order in winding up Case No.10 of 1987. This Petition drawn on 5th April 2013 is addressed to the

Clerk, National Assembly and is signed by the Petitioner, Mr. Adam King'ori Mwangi praying that the National Assembly:

(a) conducts an investigation on the status of implementation of the court order and directs the dissolution and winding up of the case be stayed until the amount of Kshs140,000 together with the interest therein from 1986 is paid to the petitioner; and

(b) compels the Attorney-General to comply with the court order.

Hon. Members, this Petition therefore shall stand committed to the Departmental Committee on Justice and Legal Affairs for consideration. Pursuant to Standing Order No.227(2), the Committee is required to consider the Petition and report its findings within 60 days.

REQUESTS FOR STATEMENTS

SHORTAGE OF TEACHERS COUNTRYWIDE

Hon. Mwadime: Hon. Deputy Speaker, pursuant to Standing Order No.44(2)(c), I wish to seek a Statement from the Chairperson of the Committee on Education, Research and Technology concerning the shortage of teachers countrywide. This is interfering with quality of education in the country. For instance, in Mwatate Constituency and in Taita Taveta County, there is a shortage of 134 primary school teachers and 353 secondary school teachers and yet, we were only given 15 primary school teachers and 78 secondary school teachers. This is of concern as some teachers will also retire this year, thus compounding the problem.

In the Statement, the Chairperson should inquire into and report on the long-term measures the Ministry of Education has put in place to ensure that there are sufficient teachers in primary and secondary schools to ensure there is continuity in the learning process.

Hon. Deputy Speaker: The Chairperson of the Committee on Education, Research and Technology?

Hon. Melly: Hon. Deputy Speaker, we will give a comprehensive Statement on that immediately after the recess.

Hon. Deputy Speaker: Hon. Melly, you are anticipating debate. Just give us an indication of when you will do it.

Hon. Melly: Hon. Deputy Speaker, we will issue the Statement after two weeks.

Hon. Deputy Speaker: After two weeks, it shall be. I believe the Member will be satisfied with that timeframe. Hon. Abdikadir Aden!

FATE OF KENYANS LIVING AND STUDYING IN FOREIGN COUNTRIES

Hon. Aden: Hon. Deputy Speaker, I wish to request for two Statements. Pursuant to Standing Order No.44(2) (c), I hereby request for a Statement from the Chairperson of the Departmental Committee on Defence and Foreign Relations concerning the fate of Kenyans living and studying in foreign countries. Some of those Kenyans are facing challenging situations with seemingly no assistance or very little assistance from the Government.

For instance, on 19th July 2013, Mr. Abdi Ali Aden, a final year Medicine and Surgery Kenyan student at Kampala University was attacked and seriously injured while walking to his hostel at around 11.30 p.m. at the campus. The Chairperson should inquire into and clarify to the House two issues, namely:

(i) Have any investigations been conducted following the attack on Mr. Abdi Ali Aden or on any other similar incidents to Kenyans studying abroad, including details of that particular case of Mr. Abdi Ali Aden? He should give details including any arrests that have so far been made and the identities of the suspected assailants; and

(ii) He should also clarify if any support has been accorded to the family in rescuing the student who needed and still needs to be treated at intensive care unit.

Hon. Deputy Speaker: Hon. Aden, are the two Statements going to the same Committee Chair?

Hon. Aden: Hon. Deputy Speaker, the second one is to the Committee on Health.

Hon. Deputy Speaker: So, can we first get indication when the first one can be responded to? Is the Chair or the Vice-Chair of the Committee on Defence and Foreign Relations here, or a Member of that Committee?

Hon. Onyonka: Hon. Deputy Speaker, I will consult with the Chair. This is a question that requires a lot of gathering of information and most probably, the Statement will be issued after the recess.

Hon. Deputy Speaker: Let us forget about recess because that is in the Order Paper and we have not reached there. Just give us an indication of how long you think you will require.

Hon. Onyonka: Hon. Deputy Speaker, we require two weeks.

Hon. Deputy Speaker: A period of two weeks. Of course, you know the reason why I gave you a chance, it is because you were in that Ministry before.

Hon. Simba: On a point of order, hon. Deputy Speaker. Is hon. Njomo properly dressed to come to this House? He should stand up so that we can see how he is dressed.

Hon. Deputy Speaker: Hon. Njomo!

Hon. Njomo: Hon. Deputy Speaker, I think hon. Arati should be sensitive to the weather and respond to it. He should understand that the weather is also a risk that requires mitigation.

Hon. Deputy Speaker: I do not know what criteria hon. Arati was using in determining whether hon. Njomo is properly or not properly dressed. According to what I see, he has a jacket, tie and shirt. I think you are properly dressed, hon. Njomo. Please, allow us to continue. I think we have more serious business.

Please, continue, hon. Abdikadir!

INTENSIVE CARE UNIT BED SPACE IN PUBLIC HOSPITALS

Hon. Aden: Thank you, hon. Deputy Speaker. Pursuant to Standing Order 44(2)(c), I hereby request for a Statement from the Chairperson of the Departmental Committee on Health concerning the insufficient intensive care unit bed space in our public hospitals.

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members! Please, can we reduce the level of consultations so that we can hear the request by hon. Aden?

Hon. Aden: Hon. Deputy Speaker, Kenyans are facing a challenging health situation without adequate number of available medical facilities in public institutions. Kenyans continue to face high cost of treatment after seeking alternative forms of treatment. For instance, on 19th July 2013, a final year Medicine and Surgery Kenyan Student by the name Abdi Ali Aden, studying at the Kampala University was attacked and seriously injured while walking to his hostels at around 11.30 p.m. at the campus. He subsequently needed treatment in the Intensive Care Unit (ICU).

Hon. Deputy Speaker, the Chairperson should inquire into the matter and clarify to the House on the following:

(i) The reason for insufficient bed spaces in the ICU in public hospitals, especially the largest referral hospital; that is, Kenyatta National Hospital, causing that citizen, Mr. Abdi Ali Aden and his family to seek treatment elsewhere at a very expensive cost; and

(ii) What plans the Government has to ensure that public hospitals are able to accommodate and take care of needy Kenyans, like that student, Mr. Abdi Ali Aden.

Hon. Deputy Speaker, because of the situation of that particular student and knowing about the ability of his family, I urge the Chairperson of the Departmental Committee on Health to address this issue with great concern as the student continues to accumulate exorbitant bills in private hospitals, which the family cannot afford.

Hon. Deputy Speaker, I beg that this issue be given the most urgent attention. Thank you.

Hon. Deputy Speaker: The Chair of the Departmental Committee on Health, the Vice-Chair or any Member of that Committee can take the responsibility. It seems we do not have any Member of that Committee in the House. Hon. Gesami, have I seen your hand raised? Okay, you can speak on behalf of your Committee.

Hon. Ondicho: Hon. Deputy Speaker, we shall try to answer his question in the next two weeks. I will pass the message to the Chair of the Committee.

Hon. Deputy Speaker: The Statement will be answered in the next two weeks, hon. Abdikadir. Next request is from David K. Bowen.

SUSPENSION OF STUDENTS FROM SOUTH EASTERN UNIVERSITY COLLEGE

Hon. Bowen: Hon. Deputy Speaker, Pursuant to Standing Order 44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Education, Research and Technology regarding the suspension of five students from South Eastern University College (SEUCO). The five students were suspended for five academic years on allegation of their involvement in inciting their fellow students to go on strike.

Hon. Deputy Speaker, in her statement, the Chairperson should inquire into the following issues:

(i) Why the students were not given an opportunity to appear before the university disciplinary committee which is a norm in every university here in Kenya;

(ii) Find out whether the university carried out internal investigations to confirm if those five students were actually involved in the incitement; and

(iii) Whether the university can check on any other disciplinary action it can take on the five students other than suspending them for five academic years, given that those are young men and women and suspending them for five years will ruin their lives.

Thank you.

Hon. (Ms.) Gathogo: On a point of order, hon. Deputy Speaker. Thank you for the opportunity. My point of order is on what we are doing right now. So many hon. Members have been requesting for Statements and once they are told they will get a response, nothing happens.

I remember at the beginning of last month, I had a request to the Ministry of Transport and Infrastructure. I was told that I will be called to the Committee, but up to now I have not been called. Accidents are happening every day. So, my question to the Chairperson of the Departmental Committee on Transport, Public Works and Housing is: What happened to my request because I have not got an answer?

Thank you.

Hon. Deputy Speaker: Okay. Is the Chairperson of the Committee here? If you remember the Communication from the Chair, there are so many requests for Statements going to the Chairpersons of Committees. They have to sit and prioritize which one will come before the other. Ms. Gathogo, I am not saying that yours is not important but I am just saying that we must also realize that we are having this dual role of not being Cabinet Secretaries and, therefore, you are answering on behalf of a Ministry whose Cabinet Secretary you have not been able to meet. So, I think we agreed that we should be giving the Chairman some leeway in terms of how long they will take to respond to a request for a Statement because of the process that it takes for them to get answers. Otherwise, the request made by hon. Bowen was to which Committee Chair? Hon. Bowen, you have to say which Committee you request a Statement from.

Hon. Bowen: Hon. Deputy Speaker, it was to the Committee on Education, Science and Technology.

Hon. Deputy Speaker: The Chairperson of the Departmental Committee on Education, Science and Technology, when can you respond? Who is responding on behalf of the Departmental Committee on Education, Science and Technology? When can hon. Bowen receive a response?

Hon. (Ms.) S.W. Chege: Thank you, hon. Deputy Speaker. We are going to give an answer in three weeks' time. We are already doing some investigations within the other universities. So, in three weeks' time, we will be ready.

Thank you.

Hon. Deputy Speaker: Okay. It shall be ready, hon. Bowen. We have finished with you. You can seek further clarification when the time comes.

Hon. Bowen: Hon. Deputy Speaker, three weeks is too long!

Hon. Deputy Speaker: Well. I said that you have to give time to the Chairs because they are not the Cabinet Secretaries. They have to go and seek information from elsewhere and not the Legislature. Next, let us hear from hon. John Chege.

FORCEFUL ACQUISITION OF LAND BY GANGS

Hon. J.N. Chege: Hon. Deputy Speaker, pursuant to Standing Order 44 (2)(c), I wish to request for a Statement from the Chairperson of the Committee on

Administration and National Security regarding the prevalence of criminal gang activities in Njiru District. The district has been experiencing an increased number of incidents where criminal gangs forcefully take over private land, sub-divide and sell it and then use the proceeds for criminal activities. For instance, some private land has been converted into a quarry and some land belonging to Roysambu Land Buying Company, Giathieko Njiru Farm and Njiru Ageria has been taken over by the gangs.

In some incidents, security personnel have not taken action, but instead they have partnered with those criminals and, therefore, they are the beneficiaries of the crime.

Hon. Deputy Speaker, in the Statement by the Chairperson, he should state:

(i) The measures the Government is taking to identify and immobilize those gangs;

(ii) Whether any Government official has been found colluding with such criminal gangs and the action taken against the said official; and

(iii) The steps being taken to restore illegally acquired land or property back to the rightful owners.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Chege that is going to the Committee on Lands.

Hon. J.N. Chege: No, it is to the Committee on Administration and National Security.

Hon. Deputy Speaker: Hon. Kamama, when can they get the response to their Statements?

Hon. Abongotum: Thank you, hon. Deputy Speaker. Considering the gravity of the matter where gangs are actually taking possession of people's land, I think we should be able to fast-track and give the report in a week's time.

Hon. Deputy Speaker: In one week's time, you can see that the Committee is taking the matter very seriously. I hope you will be able to call him when you are calling the Cabinet Secretary so that he can give any further clarifications.

Hon. Benson Mbai, you can take the Floor.

SAND HARVESTING IN EASTERN REGION

Hon. Mbai: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No.44(2)(c), I wish to seek a Statement from the Chairperson of the Committee on Environment and Natural Resources concerning sand harvesting in various parts of the country, especially in the Eastern region.

Sand harvesting is causing serious environmental degradation in our rivers and roads, especially in Ikaatini, Kangonde, Kivaa and Muthesya locations in Masinga Constituency. As a result, water has become scarce and the roads have been destroyed by the heavy commercial lorries carrying sand. Sand harvesting has also contributed to high incidences of school drop-outs and drug abuse in the areas affected.

In his Statement, the Chairperson should inquire and report on:

(i) Whether environmental impact assessments are normally carried out before such harvesting and what the outcomes are; and

(ii) The measures the Ministry has undertaken to stop sand harvesting and whether thorough environmental audits in the areas already affected are conducted.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Which Committee?

Hon. Mbai: The Committee on Environment and Natural Resources.

Hon. Deputy Speaker: Environment and Natural Resources, how long does the Chair need for that? Is the Chair or the Vice-Chair of the Environment and Natural Resources Committee present? I see no response. Is there a Member of that Committee? Hon. Njomo, are you a Member of that Committee? Where is your card? Okay your card is there.

Hon. Njomo: Thank you, hon. Deputy Speaker. That request will be attended to by our Committee on Environment and Natural Resources. Like I had mentioned the week earlier, there is quite an amount of work to be done by the Committee and what I know is that the next four weeks will be used for the previous requests for Statements and investigations that are going on. I would request the Member to give us about four weeks to respond.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay, hon. Member, you have heard their response. You will be waiting for the next four weeks for your response.

Hon. Abdikadir Ore Ahmed, you may take the Floor.

ALLEGATIONS OF KDF INVOLVEMENT IN CHARCOAL TRADE IN SOMALIA

Hon. A.O. Ahmed: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No.44(2)(c), I wish to seek a Statement from the Chairperson of the Departmental Committee on Defence and Foreign Relations regarding allegations of the involvement of Kenya Defence Forces (KDF) in charcoal trade in Somalia as contained in the United Nations Monitoring Report released recently. Their involvement---

(Loud consultations)

I am being interrupted, hon. Deputy Speaker.

Hon. Deputy Speaker: Order Members! Members please, do not consult loudly.

Hon. A.O. Ahmed: Their involvement in the business has caused public outcry in Somalia and the matter is before the Parliament of Somalia. The KDF were sent there as peace keepers to help root out *Al Shabaab*, who had greatly contributed to the insecurity in the region, and not being charcoal barons.

The Chair should inquire into the matter and report to this House on:

(i) Whether the allegations of the involvement of KDF in the charcoal trade as contained in the report is true;

(ii) Confirm that their involvement in the business does not compromise their competence as they discharge their duties; and

(iii) They should also report to this House measures that have been taken or will be taken against those involved in this action.

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

Hon. Deputy Speaker: Hon. Serut is on a point of order, hon. Ore. Let us hear the point of order by hon. Serut.

Hon. Serut: Thank you, hon. Deputy Speaker. I stand on a point of order. I have listened to what my colleague is trying to raise. My concern is that, as a Member of

Parliament who is representing his constituency in this country, whose interest is he representing? Is he representing the Somali interest or the Kenyan interest?

(Applause)

Hon. Deputy Speaker: Every Member is free--- What do you want him to do? To declare his interest?

Hon. Members: Yes.

Hon. Deputy Speaker: Hon. Member, do you have an interest to declare? Order, Members! Let him first declare.

Hon. A.O. Ahmed: Thank you, hon. Deputy Speaker. I have an interest because we have our boys there. We are talking of their security and that is an interest to Kenya as a nation.

Hon. Deputy Speaker: So, your interest is for Kenya, is that not so?

Hon. A.O. Ahmed: Absolutely.

Hon. Deputy Speaker: Alright.

Hon. A.O. Ahmed: I continue, hon. Deputy Speaker. The Committee should also tell this House whether the Government should consider redeploying KDF as that matter is grave and may jeopardize the stay of KDF in Somalia.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Is the Chair of Defence and Foreign Relations Committee there? A Member of the Committee, the General himself, Nkaissery, will respond.

Hon. (Maj-Gen.) Nkaissery: Thank you, hon. Deputy Speaker. We will consider the matter, but we cannot bring some issues that are not true about the defence forces of the Republic of Kenya, based on another country's interest. At the same time, we have no report from the United Nations. It is only recently---

Hon. Deputy Speaker: Are you already prosecuting the Statement?

Hon. (Maj-Gen.) Nkaissery: I want to explain a point. Only the other day, our Commander-in-Chief was in Kampala discussing the issue of the African Union Mission to Somalia (AMISOM), which KDF is part of. The hon. Member has specifically said he has a report from the United Nations. I would like him to table that report to the Committee so that we can consider it. If what the hon. Member is alleging is untrue, sanctions should be taken against him for bringing disrepute to KDF.

Thank you, hon. Deputy Speaker.

(Applause)

Hon. Deputy Speaker: Order, Members! The General himself has spoken, but he is speaking as a Member. What is your point of information hon. Chair of Administration and National Security Committee?

Hon. Abongotum: Thank you, hon. Deputy Speaker. I rise on a point of order to inform my good friend, hon. Member for Kajiado Central, hon. Maj-Gen. Nkaissery Joseph, that this matter was ventilated by the leaders of the region and it was found out that the report on KDF was baseless and unfounded. They have confirmed and the leadership of that country has actually endorsed that KDF should actually stay. They are there to stay and actually prosecute their mandate.

Hon. Deputy Speaker: Hon. Members, he has just requested for Statement. Can I just ask that anybody with information can help us to get the response enriched by going to the Committee and ensuring that when the response comes, it comes with a comprehensive Report? Committee on Defence and Foreign Relations Chairperson, a Member of your Committee has already spoken. Please, give us further information as you bring the Report. We have a lot of business to transact today, as you are aware.

I want to finish with Requests for Statements. I will give this chance to Joe Musyimi Mutambu.

REPOSSESSION OF DUTY-FREE SHOPS BY KENYA AIRPORTS AUTHORITY

Hon. Mutambu: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No.44(2)(c), I hereby request for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing concerning the recent move by Kenya Airports Authority (KAA) to repossess the Duty-Free Shops owned by Diplomatic Duty Free (DDF) Limited Company. The decision by KAA to repossess the Duty-Free Shops was in defiance of a court order issued on 30th July 2013, prohibiting them from repossessing or attempting to repossess the premises rented to DDF Limited under a lease dated 5th March 2007 and 14th September 2007. Innocent Kenyans who were operating under sub-leases from DDF Limited lost properties worth millions of shillings due to the inhumane manner in which they were ejected from the premises. The Chairperson should inquire into reports of unlawful ejection of tenants of the Duty-Free Shops following the court order, with a view to investigate whether KAA or DDF Limited is liable for compensating the tenants.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Shebesh, I can see an intervention from you.

Hon. (Ms.) Shebesh: Thank you, hon. Deputy Speaker. I would like to thank the hon. Member for requesting for the Statement because the matter mostly affects residents of Nairobi. I hope that the Chairperson of the Committee is in the House. Only last week, I sought a Statement on the issue of evictions on Langata Road. Again, the eviction of tenants of DDF Limited has happened. The clarification that I would like to seek from the Committee is how an airport that is supposed to have a 24-hour security can be invaded by 350 unknown persons who were used to illegally evict tenants within the Duty-Free Shops. I would also like to know whether there are closed-circuit television cameras within the premises that can show us who those hooligans were, and who led the operation to evict the owners of Duty-Free Shops. We really need to know this because Jomo Kenyatta International Airport (JKIA) is supposed to be a secure place. It is an international airport. How can a court order that was in the name of the Ministry of Transport be used to evict the tenants?

Hon. Deputy Speaker: Hon. Members, I can see that the level of interest on this matter is very high but I will give a chance to only two other people to seek further clarifications. We had agreed that you do not seek further clarifications on Statement requests but, given the level of interest on the matter, I am inclined to give a chance to just one or two hon. Members to seek further clarifications. Jude, is yours a further clarification on the same matter or is it a different Statement request?

Hon. Njomo: Mine is a different Statement request, hon. Deputy Speaker.

Hon. Deputy Speaker: You have to wait.

Leader of Majority Party, is yours a further clarification on the same matter?

Hon. A.B. Duale: Yes, hon. Speaker.

Hon. Deputy Speaker: Okay, you have just a minute.

Hon. A.B. Duale: Hon. Deputy Speaker, I want the Committee to further clarify the interests of the country and, more so, the airport, *vis-a-vis* the Duty-Free Shops; the interests of the investors and the users of the airport *vis-a-vis* the many years that the Duty-Free Shops have operated there. The Committee should give us the opportunity cost of having the Duty-Free Shops at JKIA *vis-a-vis* the interests of JKIA as an economic hub of our country.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, let us have the last person seeking a further clarification on this matter. Hon. George Theuri, is yours a clarification on the same matter?

Hon. Theuri: Yes, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay. I am inclined to give Nairobi Members of Parliament opportunity to seek further clarifications because most of the affected persons are their constituents.

Hon. Theuri: Thank you, hon. Deputy Speaker. I would like to know whether goods were removed from the customs bonded warehouse with a joint inventory and in the presence of customs officers.

Hon. Deputy Speaker: Hon. Cheboi, is yours also a further clarification on the same matter or on a different one?

Hon. Cheboi: Hon. Deputy Speaker, mine is not a clarification. It is only a concern because I heard hon. Mutambu say that there was an illegal eviction, pursuant to a court order. I found the statement a bit difficult to understand. That is probably something which needs to be clarified by hon. Mutambu himself because if there was a court order, you cannot call it an illegal eviction. That is just what I wanted clarified.

Hon. Deputy Speaker: Hon. Cheboi, you know, some of the statements may not be written in the manner that lawyers like yourself do.

Hon. Mutambu, do you want to respond to that one?

Hon. Mutambu: Yes, hon. Deputy Speaker.

Hon. Deputy Speaker: Okay, proceed.

Hon. Mutambu: Hon. Deputy Speaker, indeed, there was a court order issued on 30th July 2013, prohibiting KAA from evicting those people. But KAA went ahead and evicted them. In this country, many leaders do not obey court orders.

Hon. Deputy Speaker: Hon. Mutambu, you have clarified your statement. It is now clear. You have answered him. Kindly, let us leave the matter there until the Statement is brought to the House. You can seek any further clarifications on it.

Hon. Members, please, allow me to move on with the business of the House. I have given chances to a few hon. Members. With the clarifications that have been sought can we, please, find out from the Chairperson of the Committee when he intends to respond? Hon. Njoroge, you have already spoken. Your sentiments have been expressed. You will give more information when the Report on the matter comes to the House.

Committee Chairman, can you make an undertaking?

Hon. Kamanda: Hon. Deputy Speaker, I do not know whether we are breaking for recess today.

Hon. Deputy Speaker: Hon. Kamanda, do not talk about recess. That one is in the Order Paper. Just talk about the time you need.

Hon. Kamanda: Hon. Deputy Speaker, I will respond within a week.

Hon. Deputy Speaker: Hon. Members, the Chairperson of the Committee has taken the matter very seriously. So, he will try to bring a response within a week.

Hon. Jude Njomo, you have been persistent on your Statement request.

INFLATED COST OF POWER GENERATION BY INDEPENDENT POWER PRODUCERS

Hon. Njomo: Thank you, hon. Deputy Speaker. Pursuant to Standing Order No.44(2)(c), I would like to request for a Statement from the Chairperson of the Committee on Energy, Communication and Information regarding the cost of power generation by Independent Power Producers (IPPs). The cost of power generation has increased.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, please, lower the levels of consultations.

Hon. Njomo: Thank you, hon. Deputy Speaker. Around here especially, the level of noise is very high.

Hon. Deputy Speaker: Yes, hon. Njomo is unable to even hear himself.

Hon. Njomo: Hon. Deputy Speaker, the cost of power generation has increased massively, and that cost has been passed over to consumers. There is need to review the price in this sector to avoid disadvantaging consumers further. The Chairperson of the Committee should inquire into and clarify to the House the following:

(i) Why Kenya Electricity Generation Company (KenGen) has continued to purchase power from IPPs and yet, it is very expensive;

(ii) The reasons for KenGen to continually purchase from one supplier instead of tendering again for new players in the market to bid;

(iii) Give a comparison report on the prices of IPPs and other sources of power; and

(iv) Explain measures, if any, that KenGen is putting in place to reduce the cost of electricity for Kenyans.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, Committee Chairman.

Hon. Kamau: Thank you, hon. Deputy Speaker. We should be able to provide a response in two weeks.

Hon. Deputy Speaker: Okay. Two weeks it shall be. Hon. Members, I would like us to continue with the business. For the other Statements that have not been given, please, we can give them when the House sits next so that we can move on. Is that okay, hon. Richard Onyonka?

Hon. Onyonka: Hon. Deputy Speaker, even while I agree with you, there is a very critical issue that I wanted to find out which is why we do not have fuel at the

airport. I think it is an important question that we need to ask the Chairman of the Departmental Committee on Transport, Public Works and Housing to tackle.

Hon. Deputy Speaker: Richard, but you know the procedure for asking Statements. However short it may be, but it could be good if we could get it approved so that it can be tackled. However, I am sure the Chair of the Departmental Committee on Transport, Public Works and Housing has heard and you know that committees are not obliged to only react to Statements. They can take up a matter.

Hon. Onyonka: Thank you, hon. Deputy Speaker. He has heard.

Hon. Deputy Speaker: Hon. Members, I would like us to move to the next Order, please. Leader of the Majority Party, take the Floor.

PROCEDURAL MOTIONS

REDUCTION OF PUBLICATION PERIOD OF A BILL

Hon. A.B. Duale: Thank you, hon. Deputy Speaker. I beg to move the following Procedural Motion:

THAT, pursuant to the provisions of Standing Order 120, this House resolves that the publication period for the Constituencies Development Fund (Amendment) Bill (National Assembly Bill No. 24 of 2013) be reduced from 14 to 4 days.

Hon. Deputy Speaker, this is a very small Bill and touches on the Constituencies Development Fund (CDF). It is originating from the CDF Committee of Parliament. Looking at the Bill, we have found out that it requires reduction in its publication period. It is not like the Police (Amendment) Bill. I will ask my colleague, the Chair of the CDF Committee of Parliament to second.

Hon. Lessonet: Thank you, hon. Deputy Speaker. I stand here to second this Procedural Motion to reduce the publication period from 14 days to four days so that we can access our resources more quickly and prudently.

With those remarks, I second.

(Question proposed)

(Question put and agreed to)

Hon. Deputy Speaker: Next Order, hon. Leader of Majority Party.

EXEMPTION FROM PROVISIONS OF STANDING ORDER 127

Hon. A.B. Duale: Thank you, hon. Deputy Speaker. I beg to move the following Procedural Motion:

THAT, pursuant the provisions of Standing Order 256, this House resolves to exempt the Constituencies Development Fund (Amendment) Bill (National Assembly Bill No. 24 of 2013) and the County Allocation of Revenue Bill (Senate Bill No. 1 of 2013) from the provisions of Standing Order 127.

Hon. Deputy Speaker, this is also a Procedural Motion. The County Allocation of Revenue Bill is very very important to our counties, for them to access money as fast as possible this financial year. The Constituencies Development Fund Bill is very important in the running of the CDF among Members of Parliament.

I beg to move.

Hon. Deputy Speaker: Leader of Majority Party, who is seconding?

Hon. A.B. Duale: Hon. Kamama.

Hon. Abongotum: Hon. Deputy Speaker, I wish to second this Procedural Motion and confirm that the CDF is, I would say, the only and the most important development concept ever formulated in any country in Africa and so, I wish to second so that we can make progress.

(Question proposed)

(Question put and agreed to)

Hon. Deputy Speaker: Next Order.

BILLS

First Reading

THE TRUTH, JUSTICE AND RECONCILIATION (AMENDMENT) BILL

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, the levels of consultations are too high. Order, hon. Members!

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

Hon. Deputy Speaker: What is your point of order, James Opiyo Wandayi?

Hon. Wandayi: Hon. Deputy Speaker, really, I did not intend to interrupt the flow of the House programme, but then I have got a little difficulty. If you look at the Order in question, which is Order No.10, about the Truth, Justice and Reconciliation (Amendment) Bill, if I may seek your indulgence for just two minutes, the Truth, Justice and Reconciliation Act was enacted sometime in the year 2008. We all know the genesis of this Act. It followed the tragic events of 2007/2008. Subsequent to this amendment, the Truth, Justice and Reconciliation Commission was formed, which commission spent huge amounts of taxpayers' money going around the country collecting views. The Commission finally did a report, which report found its way into the public domain. Therefore, the Amendment Bill that is being brought before the House has got the effect of trying to change the goal posts long after the TJRC report was published.

Hon. Deputy Speaker: Now, hon. Opiyo, I am inclined to really cut you short because you are doing exactly what you did the other time. This Bill has been there. It has matured. It has gone through the number of days it is supposed to go before publication and now it is in the First Reading. All the information that you are providing now should come in the Second Reading. Allow the Bill to be before the House. That is

the only way. First Reading means that it is now properly before us in this House. Reserve your energy, hon. Opiyo and bring it up when it comes for the Second Reading.

Hon. Wandayi: Hon. Deputy Speaker, I do not intend to really dispute your ruling but I have got a pertinent issue.

Hon. Deputy Speaker: Thank you, Opiyo. I think let us leave that matter to rest, please, so that we can move on.

Hon. Wandayi: Hon. Deputy Speaker, can I be heard?

Hon. Deputy Speaker: You will really have your time. I have really tried to indulge you to see whether there was something different that you were doing but it is like you want to stop the First Reading of the Bill. So, bring in your issues when it comes up for the Second Reading. Now, hon. Members, can we then move onto the next Order?

(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)

First Readings

THE CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL
THE COUNTY ALLOCATION OF REVENUE BILL

(Orders for First Readings read – Read the First Time – Ordered to be read the Second Time today by leave of the House)

Second Reading

THE CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL

(By leave of the House)

Hon. Lessonet: Hon. Deputy Speaker, Sir, I beg to move that the Constituencies Development Fund (Amendment) Bill, No.24 of 2013 be now read a Second Time.

This Bill involves a very simple amendment. The net effect is basically to correct errors in the Bill which we know we passed earlier this year in a hurry. One of the amendments is to delete Section 4(2) which we found to be misplaced in this particular Bill. The principal Act as it does restrict the number of employees that each constituency can employ to five.

We have already been restricted by the amount of monies which you can use to pay salaries and other emoluments. So, we only want to leave the restriction to the amount of money available. That is why we are deleting the limitation of five employees that each constituency can employ, so that a constituency can employ as many as its funds can allow. That is the effect of this amendment. I request hon. Members that there should be no contest here.

Hon. Deputy Speaker, I also want to request my colleagues who are here that let us focus on those basic items of the Bill at this stage. We are aware that Members have very many concerns over the CDF Act---

(Hon. Onyonka bowed to the Chair near the Dispatch Box)

Hon. Deputy Speaker: Hon. Richard Onyonka, this is not the point where the Bar is! It is very clear where the Bar is. I know you have tried to be respectful by bowing to the Chair but that is not where the Bar is. The Bar is at the back.

(Hon. Onyonka went to the Bar and bowed to the Chair)

Hon. Lessonet: Hon. Deputy Speaker, I was saying that let us focus on those basic items of the Bill. I am aware that Members have very many observations in terms of election of those committee members. Let us not bother about that now. We shall have the rest of the year to look at that or to prosecute that later this year.

I only want to make a small correction. I know that hon. Members have received circulars in their constituencies telling them that the District Accountant is a signatory. This Act is very clear in terms of who is a signatory, and the Board will shortly make a correction on that circular so that the signing of hon. Members' CDF accounts will be in accordance with the Act.

(Applause)

Hon. Deputy Speaker, if anybody insists on that circular that the District Accountant will be a signatory, he will be inviting the wrath of this House.

(Laughter)

Currently, we have been allocated Kshs21.9 billion. Out of that money, about a Kshs1 billion or about 5 per cent is used by the CDF Board in Nairobi for administration. We remain with Kshs21.8 billion to be shared among all the constituencies. I also want to inform hon. Members that there will be a further Kshs1.1 billion which, when the Treasury was printing the Estimates, it erroneously reduced. They have confirmed to us that, that money will be available, maybe, this week. We will table allocations again towards the Kshs1.1 billion which we had not been notified as of last week.

Hon. Deputy Speaker, I do not want to say more than that. I want to invite the Vice-Chairlady of this Committee to second this Bill.

Hon. (Ms.) Gathogo: Thank you, hon. Deputy Speaker. I rise to second this Bill. As the Chairman has said, we have been having problems with the CDF Act. There are very many things that Members have been questioning about the Act.

One, when we were doing the elections, we really faced very many problems because we needed to have regional balance like in my constituency, which is cosmopolitan. This was not easy because the members who were required to be gazetted were very few. Now that we are going to employ some members, we should not be limited because we have very many people that we will have to consider. We also have to consider regional balance, religion, age and gender.

Hon. Deputy Speaker, I second this Bill.

(Question proposed)

Hon. Cheptumo: Thank you, Hon. Deputy Speaker. I rise to support this Bill. Reading the section that we intend to amend, that is 4(2), all monies allocated under this Act is additional revenue to the county governments under Article 22 of the Constitution. That particular provision, in my very humble view, gives the impression that CDF money should also be treated as money that should be controlled by the county governments.

This particular amendment shall, therefore, make this provision very clear so that nobody, whether the governor or Senator shall, in any way, imagine that the CDF money should be controlled by the county governments.

Therefore, it is prudent and important that we pass this amendment, so that the CDF funds shall be managed by the Members of Parliament as it is provided for in the Act.

I beg to support.

Hon. Oyugi: Hon. Deputy Speaker, I rise to support this amendment. The import of this amendment is that, first, it makes the CDF Act now constitutional and it saves the Members the headache that we have been going through with the county governors. Article 206 now gives us the chance to make sure that there is no conflict in terms of the additional funding. The funding is going to directly support the Members in their work. This will help to harmonize functions in the county governments. This amendment cures a lot of mischief that was done in terms of enacting the CDF Act. Some of the people who were putting in provisions of this Act did intend that the Members of Parliament do not benefit in terms of using the funds to develop their various constituencies. I am happy that the Chair of this Committee has already highlighted a couple of sections that need to be looked into. There is the section, for example, that deals with the elected ward representatives. Their role within the CDF Act is not clearly defined and the ward representatives, apart from the members selected to the CDFC, have no role. So, they need to have the roles engrained within the Act, so that, at least, they also feel part of development in the constituencies.

The second thing that needs to be looked at, and we will push this with the Chair, is the issue of the Constituency Liaison Committee. Now that the CDF is going to be at the discretion of the Members of Parliament, forming a County Liaison Committee might not be within the interest of the Members of Parliament. However, it is important for the county representatives and the Members of Parliament to be in harmony in terms of the projects that they implement, but that will be doing away with the need for a County Liaison Committee.

Lastly, I welcome the proposal of the CDF Committee that the number of employees need not be restricted. If you also look at the job descriptions that were highlighted in terms of the people who were supposed to be employed as CDF employees at the constituency, those job descriptions are not in tandem with what the CDF Act hopes and anticipates. So, amongst many other things, apart from just extending the purview of the number of employees that we can have at the constituency level, we also need to properly re-look at how we can have the job descriptions to be in tandem with what the CDF Act anticipates.

With those remarks, I beg to support.

Hon. Chanzu: Hon. Deputy Speaker, I support the amendments. This House has made a lot of gains in the last few years, but within a very short time, we have been

losing on the gains that the House has made from the time we got the Parliamentary Service Commission. We are even getting into trouble with the issue of the funds. We are getting into trouble and there has been a lot of hullabaloo about the money meant to maintain roads. These are the measures which were put in place because we thought that a Member of Parliament, as a representative of the constituency, must have a say in what goes on in the constituency. For example, when we were going for elections, there---

(Loud consultations)

Hon. Deputy Speaker: Order, Members! The consultations have risen again.

Hon. Chanzu: Hon. Deputy Speaker, when we were heading for the elections, this is when we got into the problem that we are correcting now. The Minister for Planning, National Development and Vision 2030 was going to be a governor and he did not want the CDF to remain with the Members of Parliament. The Chairman of the CDF Committee wanted to be a Senator. This is when we got into this problem. It is good that now we are clear and we can work on this and make many more corrections which are in the Bill.

Again, although I am a Member of the Committee, something drastic has happened about the allocations. My constituency got about Kshs86 million last year, but this year I am getting Kshs51 and the people are asking me what is happening. I do not know what happened with the money. We need to look at it and get more money to the constituencies. The governors will be given money and will not be able to take care of all the constituencies. So, the ideal position is the constituency. If you look at the money that we gave to the councillors---

(Loud consultations)

Hon. Deputy Speaker: Order, Members! We can hardly hear the Member contributing!

Hon. Chanzu: Hon. Deputy Speaker, we never saw what the Local Authority Transfer Fund (LATF), which we allowed in this House to go to the county councils, was doing. We have only realized what the CDF has done. In fact, the same councillors were not talking about the LATF money but about the CDF. They never allowed us even to talk about the LATF money. So, it is important that the Members support these amendments. Further amendments should come, so that we put them in the Act, so that this country can develop faster than has happened in the past.

Hon. (Ms.) Mbarire: On a point of order, hon. Deputy Speaker. Since we seem to have consensus on this particular amendment, would I be in order to request that you call upon the Mover to reply, so that we move to the next business?

Hon. Deputy Speaker: Hon. Members, is that the feeling of the Members, that we call upon the Mover to reply?

Hon. Members: Yes!

Hon. Deputy Speaker: The hon. Chair of the CDF Committee can you, please, respond?

(Question, that the Mover be now called)

upon to reply, put and agreed to)

Hon. Members, you have just heard the consensus that has been achieved. I am not trying to gag anybody. That is why we put the Question.

Hon. Lessonet: Hon. Deputy Speaker, I wish to thank the Members for their contributions. I have taken note of the issues the Members have highlighted. We will not be able to move amendments on them now, but I wish to note that the Members wish to have the CDF increased from 2.5 per cent to another rate. That may not happen today, but it is a debate that we can have another time. That is a weighty matter for this session.

Article 114 of the Constitution provides that for any increase of the CDF and any other money Bill, for that matter, it has to have the consensus of the Budget and Appropriations Committee and also the Cabinet Secretary in charge of Finance. Essentially, that would be a money Bill and we do not want to go into those waters now. We just want to focus, just like the Members have mentioned, on the basics of the Bill.

With those remarks, I beg to move.

(Question put and agreed to)

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

Second Reading

THE COUNTY ALLOCATION OF REVENUE BILL

(By leave of the House)

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the County Allocation of Revenue Bill, (Senate Bill, No.1 of 2013) be now read a Second Time.

Drawing from Article 218(1)(b), the Senate has been given the powers. That is why today, for the first time, we see the Senate Bill No.1. This is the first Bill the Senate has done since its inauguration. If you look at Article 217(1) of the Constitution, it says:

“217. (1) Once every five years, the Senate shall, by resolution, determine the basis for allocating among the counties the share of national revenue that is annually allocated to the county level of government”.

This Bill concerns the Kshs210 billion that, within the Division of Revenue Bill, the House allocated the county governments. In sharing this Kshs210 billion, the Constitution is very clear. Article 217(2) gives the criteria in which the Kshs210 billion will be shared. If you look at Article 217(3), and with your indulgence, I will read it for the country to know, it says:

“(3) Within ten days after the Senate adopts a resolution under clause (1), the Speaker of the Senate shall refer the resolution to the Speaker of the National Assembly”.

That is why this Bill is today here before the National Assembly.

But again, Article 217 (4) it says:

“Within sixty days after the Senate’s resolution is referred under Clause (3), the National Assembly may consider the resolution, and vote to approve it, with or without amendments, or to reject it.”

Hon. Deputy Speaker, I want to say from the outset that for the National Assembly to amend this County Allocation of Revenue Bill, we require two-thirds majority. So, this Bill originates from the Senate and in the allocation in the counties, of course, the Constitution is very clear; it talks about the consultation between the governors, the Cabinet Secretary for National Treasury and any other organizational structure within the county.

I think it is good that the country should know from the outset that when Kenyans asked for devolution, they did so at all levels. When we talk of devolving to the county governments, within the county there are a number of structures. The CDF which has been tested and has worked very well for many years is the most efficient unit of devolution. This must come out very clearly. The Chairman of the Commission on Revenue Allocation, former Central Bank Governor, Micah Cheserem, the Transition Authority Chair, the Chairman of the Commission on Implementation of the Constitution (CIC) and other relevant Ministries must come to the realization that devolution under this Constitution can be at the ward level, the constituency level and it starts with the county level. That is why the framers of the Constitution talked about dividing revenue between the two levels of Government; the National and the county. Within the county government, we have several levels of devolution. That notion must be clear.

Secondly, the country learned yesterday that of the county governments that sent applications for functions to be transferred, they are hardly 20 counties; they are only 13. So, we want to tell our brothers; the governors, that devolution is not about politics or attending a political rally or a funeral and saying that devolution is being killed. Devolution is sitting in the office and looking at the allocation of revenue to see how much you have been allocated. If you have been allocated Kshs4 billion, which this House will pass, then go to your county, sit in your office with your county assembly, county executive committee members and deliver service to the people of Kenya.

Hon. Deputy Speaker, we should not see people busy in workshops in Naivasha or Mombasa talking about CDF and devolution. Devolution is about delivering service to our people at the smallest unit of governance at the county. I know there is an amendment which is not very good that was done to the PFM Act, Section 17. I am sure this is a House that legislates; 90 per cent of the laws of this country are legislated by this House and this must be a fact; in fact, 99 per cent. Today, tomorrow and the next four years, we have the opportunity to amend, repeal and make laws. That is why on 4th March 2013, the people of Kenya decided to give the 349 hon. Members opportunity to do that work.

Hon. Deputy Speaker, this Bill was sent to the Speaker on Thursday at 3.45 p.m., when people knew that this House was going on recess. They are lucky because we were not paid our money; we had to come back today. The idea was to send a signal that the National Assembly of Kenya is fighting devolution. That is why we have decided to take leave of the House so that we deal with this Bill at all the three stages and they will see the powers of the National Assembly in terms of reduction of publication period and everything else. So, I want to urge my colleagues, today even if it means extending the sitting of the House, we sit here and dispose of the agenda so that our county governments get the necessary resources for this financial year.

Hon. Deputy Speaker, I beg to move and ask hon. Junet Nuh to second.

Hon. Deputy Speaker: Hon. Leader of Majority Party, let us allow the Chairman of the Budget and Appropriations Committee to second, but hon. Nuh Junet will have the first opportunity to speak on the Bill.

Hon. Musyimi: Thank you, hon. Deputy Speaker. I thank you for giving me this opportunity. I beg to second. It is important that we move with speed to pass the County Allocation of Revenue Bill.

Hon. Deputy Speaker, you will note that July has already passed; that is the first month of this financial year and the counties are yet to receive their money. We do not wish to stand in the way of the counties receiving the money. Standing Order 234 requires that whenever the County Allocation of Revenue Bill is referred to this House by the Senate, the House considers the Bill within 10 days. Therefore, I urge this House to move with speed and conclude its consideration of the Bill so that funds can be released to our counties as soon as possible.

Hon. Deputy Speaker, I want to take this opportunity to thank my committee, I had a long meeting this morning. We will be bringing three amendments. First of all, the Bill before us talks about a non-existent column in the Bill. I quote the Bill, Article 6 Section 3, the total estimates that caused the functions to be transferred, “which shall form the basis for the county budget as set out in column (e) of the Third Schedule”. Column (e) of the Third Schedule does not exist. So, we will be asking that to be amended.

Hon. Deputy Speaker, we shall also be asking that the Bill be given more certainty and predictability because, although functions are being valued, we are not being told who will do the costing or indeed, who will do the calculations related to the costing. But most critical, there is an amendment to the Public Finance Management Act which this Bill proposes.

I think we shall all remember the ruling of the Chair, I believe in the last Parliament that basically, you cannot go outside the provisions of the published Bill. In the published Bill, the amendments to the Public Finance Management Act, 2012, were not anticipated and yet we see them being sneaked in through the back door. Such amendments have huge implications and we are being asked to suggest or rather accept that monies can move from the Exchequer to the counties every month. That is outside the established protocol provided for in the Act that I have mentioned. We have given this matter some thought and we will be coming back to suggest that we tame some of the provisions that are proposed by the Senate.

Hon. Deputy Speaker, as I conclude, it is also important that we realise that we have done our job. We need to pass this Bill today so that, as I said, the money can go to the counties. I take this opportunity to assure hon. Members of this House and the public that we are fully committed to devolution. We will continue to ensure that the county governments are accorded the necessary support and continue to receive their due share of the national revenue. It is, indeed, the responsibility of this august House, as the representative of Kenyans, to ensure that devolution works for their benefit.

With those remarks, I beg to second.

(Question proposed)

Hon. Deputy Speaker: Hon. Junet, I had indicated that I would give you a chance. Please, proceed.

Hon. Nuh: Thank you, hon. Deputy Speaker, for giving me the opportunity. I support the Bill.

As hon. Members are aware, the immediate former President left behind the legacy of the new Constitution. The soul and the heart of the new Constitution is devolution. It is devolution that makes the difference in the current Constitution. Therefore, we have to guard devolution by all means. It is only through devolution that this country might achieve the dream of inclusiveness. There are many parts of this country which have been making news over under-development since Independence. I believe that if devolution is implemented properly, every part of this country will develop to the required standards.

We have a good scenario in this country today where counties receive billions of shillings and the representatives of the people sit in the county assemblies and decide what to do with that money. We have been using the centralised system for the last 50 years, which has not worked to the expectations of many Kenyans. I believe that devolution is part of the healing process in this country since every part of the country will be receiving its money. Some people are saying that the money that has been allocated to the counties is little but I am sure that their Budget will go up next year.

I am told that the allocation to the counties now is 35 per cent of national revenue because there is some revenue which has been audited. Once we audit the accounts for Financial Year 2011/2010, the allocation to the counties will be bigger than it is today. The lives of Kenyans in every village will improve. There is no doubt that what this country has been crying about for many years, in terms of development, is devolution. So, I am requesting the Members of this House to guard devolution. We should not be seen as people who are against devolution because devolution does not belong to anybody else.

Devolution does not belong to the Senate or the governors. Devolution belongs to all of us, as Kenyans. All of us are going to benefit from devolution. If money is taken to your village, you benefit. We are Members of the National Assembly for five years. Thereafter, one might lose one's seat and go back to the village. When you find development happening in your village, through devolution, you will be very happy. So, I am requesting Members of the National Assembly to come out strongly in support of devolution, so that this country can move to the next level.

If we are going to receive 40 per cent of the national Budget while seated in our village, it will not be necessary for anybody to come to Nairobi to ask for anything. People will have everything at their doorsteps. They will have any kind of development that they may require. The only thing that Kenyans need to do is putting in place good managers who can properly manage the monies at the village and county levels.

Therefore, in supporting the Motion, I would like to say that the Government should increase the level of funding to the devolved governments. We are going to support and defend devolution so long as it will do good work as envisaged in the Constitution. So, I urge all hon. Members to support the Bill. Let us be pro-devolution from today.

With those remarks, I beg to support.

Hon. Deputy Speaker: Yes, hon. Gichigi!

Hon. Gichigi: Thank you, hon. Deputy Speaker. I also rise to support the Bill.

As stated by the speakers before me, this is the first time we see devolution taking place in its current form in this country. We hope to see a lot of development in our respective constituencies. I have a few challenges though. I have not heard any statement from the national Government or the governors indicating that the counties have proper information on what exact functions have been devolved. The Transition Authority did cost the so-called devolved functions but we do not know whether the budgets that have been prepared by the respective county governments actually tally with the devolved functions. The danger is that, instead of devolved governments preparing budgets according to the devolved functions, they may use the money given to them as they wish, without considering that there were certain activities that were going on even before devolution came into being.

The other issue I have is that, under the Constitution, any money Bill can only originate in the National Assembly, and must go through the Budget Committee. By introducing Clause 12A, the Senate has actually introduced a money Bill yet we know that they do not have that particular mandate. In my opinion, that is irregular.

[Hon. Deputy Speaker left the Chair]

*[The Temporary Deputy Speaker
(Hon. Cheboi) took the Chair]*

So, as much as this House may not be able to raise the two-thirds majority to amend this particular Bill, if we pass it as it is, we will be countenancing an illegality. We will actually be setting a bad precedent. The next thing we might hear is that the Senate is seeking to amend the Constituencies Development Fund Act or any other Act they may not have been mandated to amend.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Onyonka, are you on a point of order? I can see your intervention.

Hon. Onyonka:*(off-record)*

The Temporary Deputy Speaker (Hon. Cheboi): Did you want to take shortcut? Continue, hon. Gichigi.

Hon. Gichigi: Thank you, hon. Temporary Deputy Speaker. I have no issue with the way the Senators divided the money amongst the counties but let them know one thing; the TA which is supposed to have costed the devolved functions has not given this country its own findings. So, it might be indicated that money has been allocated to the counties but, as we have seen, the counties might end up saying that they do not have the capacity to utilise it. I am hoping that this House and the Senate will go back to the drawing board and come up with the necessary laws that will deal with the vacuums that we have in this country. Otherwise, I am hoping that my county of Nyandarua is going to get the money as fast as it can for the functions to be undertaken.

Thank you, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Mbadi.

Hon. Ng'ongo: Thank you, hon. Temporary Deputy Speaker. I rise to support this Bill. First of all, if you read Article 96(3), it says:

“The Senate determines the allocation of national revenue among counties, as provided in Article 217, and exercises oversight over national revenue allocated to the county governments.”

So, in my view, if there is any Bill in terms of sharing of revenue where the Senate has super powers then it is through the County Allocation of Revenue Bill and many of us have spoken to this. The drafters of the Constitution deliberately made provision for Article 96(3) and also made provision for Article 95(3).

Hon. Temporary Deputy Speaker, this particular provision gives the Senate more powers in terms of deciding on the County Allocation of Revenue Bill. Therefore, my view would be that this House--- For us to even make amendments to any Bill, we require a two-thirds majority which is not very easy. I think this was deliberate. The role of the Senate is to determine allocation of revenue among the counties and that is the role that the people of Kenya gave it through a referendum in 2010.

Hon. Temporary Deputy Speaker, I know that there are few provisions in this Bill that probably in our view as the Budget and Appropriations Committee should have not been there. There is the issue of trying to amend the Public Finance Management Act. I was one of the people who were very instrumental in coming up with the Public Finance Management Act when it was still a Bill and one of the provisions was that the Act will supersede any other legislation when it comes to public finance management in this country. Therefore, it is not tidy to attempt to amend this Act through legislation.

Hon. Temporary Deputy Speaker, I am one of the people who believe that trying to amend other Acts using different Acts is actually not very right. It is actually wrong because when you are amending the specific Act, then you take into consideration that particular Act in totality. Trying to amend Section 17 of the Public Finance Management Act through this Bill probably could contradict other provisions of the Act. I know that when it comes to cash flow and releasing of cash to counties, it is a function of Intergovernmental Budget and Economic Council, which council incorporates all the governors and also includes even the Deputy President and the Treasury. So, when you just make amendments to that Act without considering other provisions, it is not very tidy. However, because of the time limitation, it is wrong that the Senate could keep this Bill this far too long. This Bill was with the Senate in April. Actually, there is no justification why the Senate could only send this Bill to the National Assembly on Thursday last week.

Hon. Temporary Deputy Speaker, I know and probably want to believe that what I read in the media is not true, someone wanted to portray the National Assembly as fighting devolution. You do not need to do that. I think this country needs to move forward. This country needs to be doing things that are beneficial to the voters and not things that portray us as superior to each other. If that was the reason, then it is unfortunate. It is least expected from a House that calls itself the Upper House. If you are Upper House, then you should behave like an Upper House but if you are behaving like a Lower House, then we will start calling you the Lower House. I know that there is no upper or lower house but if your behaviour portrays that you are a lower house, then we will call you a lower house but we do not want to call the Senate a Lower House. Therefore, they should legislate with responsibility. That, to me, needs to go out very clearly.

Hon. Temporary Deputy Speaker, because of that and because probably someone wanted this House to appear like we are fighting devolution, I think we can pass this Bill as it is and this offending clause in the Public Finance Management Act can again be amended later. This House can do a separate amendment to the Act. So, I have contrary view to what some of my colleagues are saying; that we must make amendments today. Getting a two-thirds majority to make amendments to the County Allocation of Revenue Bill, may be a tall order.

Hon. Temporary Deputy Speaker, one thing that I also wanted to talk about concerning this Bill is that we had differences with the Senate over how much to allocate to counties. No one is now asking why the counties, through the governors, are requesting the national Government not to give them Kshs70 billion to pay salaries. These are some of the things we are talking about. Before you even tell us to give the Senate Kshs200 billion or Kshs300 billion - they may need even Kshs400 billion - do the costing of the functions. That is very important. Once you do the costing of the function and you have the benefit of that, then it is very easy to agree as a country that this is the amount that we need to run our counties. Actually, there is no Member of Parliament here who will want the counties to fail. If at all that Member of Parliament is here, then I think he is living in history. These Members of Parliament should strive to ensure that the counties succeed. I call upon the Senate, the Transition Authority, the Commission on Revenue Allocation (CRA) and the Council for Governors to sit down and come up with the costing of the functions.

Hon. Temporary Deputy Speaker, finally, I am disturbed by the way the Government through various offices is politicising devolution. I am concerned because we need to do things as per the law. We need to devolve according to the law and if something has not been devolved, say so. If it is devolved, say so. This issue about road funds is not tidy. I think we need to be very clear on where the money for roads is. For me, I have heard some people saying that there are lucrative tenders for roads. No Member of Parliament here even in the Tenth Parliament participated in the tendering for the roads. What Members of Parliament were doing is that they were deciding that this road should get this much because of its importance. The rest are done through the Kenya Rural Roads Authority (KeRRA). That is the tendering and everything else. I never knew who they picked until those contractors were on site when I would supervise them. So, our issue is not who is in charge or who is tendering, our issue is: Is there money for the roads? These governors insist that they have money for roads and yet when you look at their budgets, there is no provision for maintenance of our roads at all. We cannot have one year without roads being maintained. I have looked at my county, for example, the money that is allocated for roads is for opening and grading of new 12 kilometres of roads per ward but we have the roads that are in existence. Like in my constituency there is not even a single kilometre of a tarmac road. All the roads are maintained through KeRRA funds. How am I going to explain to my constituents when these roads are not maintained? Am I going to tell them that the governor was supposed to get the money, he did not get it but lied that he had the money? The officers who are supposed to advise the Government accordingly are playing politics. In fact, this may not sound as sweet music in the ears of my friend, hon. Duale and the Jubilee side of this House but let me say this-

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The Temporary Deputy Speaker (Hon. Cheboi): Your time is up but you have one more minute as you wind up.

Hon. Ng'ongo: Hon. Temporary Deputy Speaker, Sir, I was saying that it may not be really palatable. Some truth needs to be told. The Cabinet that the President has is incompetent. If I was advising the President, I would have told him to dissolve this Cabinet and form a new one. This is because you cannot have a Cabinet that does not even make decisions and a Cabinet that requires you to always be calling people at State House and in Karen to make simple decisions that are already in law. This is a Cabinet that should go home and we reconstitute another one. If possible, we can even amend the Constitution so that Ministers can come from Parliament. These people we picked---

The Temporary Deputy Speaker (Hon. Cheboi): You asked for one minute and it is over now!

Hon. Abongotum: Hon. Temporary Deputy Speaker, Sir, first of all, I want to thank the Senate for bringing this Bill. I want to complain that they took too long. They should be much more efficient than they are now. They should learn a lot from the National Assembly.

I want to support this Bill. I want to say that as Members of the National Assembly, we support devolution in word and in deed. Quite a number of politicians have gone around the country trying to portray Members of Parliament as being anti-devolutionists. We are for devolution. Some of us participated in the enactment of the Act on Devolution. So, for people to peddle rumours, innuendo and propaganda that we are against devolution is being cheap and I want them to rise above this. I also want them to understand that we support devolution in every meaning of the word.

Let me slightly talk about the CDF. The CDF is a Kenyan development concept that came from this House. This concept is the most popular development concept in the entire continent; from the Gulf of Sirte to the City of Cape Town. Many countries have come to Kenya to learn or to get schooled on the workings of the CDF. So, for somebody to even imagine that the CDF should go to another level is being unpatriotic. We want the CDF to work in the constituencies because it is already devolved.

Hon. Temporary Deputy Speaker, Sir, as I talk about devolution, I want to appeal to our governors that they should economize this money. They should also deliver and give us value for our money. What we see at the moment is a bit scaring. This is because we even hear of a county that used over Kshs100 million to procure furniture. You even hear of a county or some governors who went out of their way to buy sniffer dogs, chase cars--- We saw this and we can name them at the opportune time and not now.

So, we want to see devolution benefit our people because we did not vote for this money to have people display power to peasants who are suffering and live on one Dollar per day. I want to say that we support the Bill. We want the Senate, if there is any Bill coming to this Upper House, to fast track it. Let them not take too long to bring the Bill to this House.

Hon. Temporary Deputy Speaker, Sir, with those few remarks, I support the Bill.

Hon. Aden: Thank you, hon. Temporary Deputy Speaker, Sir. I rise to support this Bill. As I do so, I want to re-emphasize what my colleagues have said. Indeed, this honourable House or the National Assembly has never been and will never be fighting devolution at any time. We will stand to support devolution. Looking at the speed at

which this particular Bill has gone through the process, being a Member of the Budget and Appropriations Committee, and bringing it to the Floor of the House with the intention of ensuring that we pass it today is, indeed, the most clearest of intentions that this House stands to support devolution. It should never be said by anybody that the National Assembly is fighting the Senate.

We are saying that the Senate needs to understand its role. When it has done its work ably like the Bill it has done now, though with very limited time, we want to say that we will stand with the Senate when it is doing its work. What is left now is good governance. It is one thing to have Kshs5 or Kshs6 billion in the accounts of those governors, the biggest challenge that Kenya should be very worried about is how this money will be managed. As watchdogs on the utilization of public funds and advocates for the interests of our people or Kenyan people, I want to urge hon. Members to stand firm and ensure that we scrutinize the expenditure of this money to the last penny. We should ensure that this money is spent for the projects it was intended.

Hon. Temporary Deputy Speaker, Sir, I concur with the hon. Member who stood before me and said that if you look at the budgets of many of our county governors, you will read signs of mischief. You will also read signs of misplaced priorities when Kenyans want water and hospitals; when Kenyans are crying for medicines in the shelves of the hospitals but you buy sniffer dogs and chase cars. What are the sniffer dogs and chase cars for?

We see governors putting around themselves cronies or people close to them, sometimes with the lowest of competence. I want to say that all these are indications of things going in the wrong direction. All these are indications of a plan that appears not to be in a very focused mind to manage these monies properly.

Hon. Temporary Deputy Speaker, I would like to congratulate the new Chairman of Kenya Anti-Corruption Authority (KACA) because we have one now. I want to tell him that he has a lot of work. Previously, although not a Member of this House, I used to see KACA chase hon. Members of Parliament who, indeed, through the CDF have done Kenyans the best of the developments that can tangibly be seen today in our rural constituencies. These developments include hospitals, schools and water points that are today the lifeline of many Kenyans out there. I have seen in the past KACA look for those Members of Parliament. I want to tell it that there is a bigger challenge now. There are Kshs210 billion out there which KACA should ensure that it is appropriately utilized and that there is no corruption involved.

Going by the very statistics that is talked about every now and then, 30 per cent of the monies used is usually lost through corruption. If that is anything to go by and looking at the Kshs210 billion that has been appropriated today, we are saying that Kshs63 billion is at a threat of being misappropriated.

I want to be the first to blow the whistle today and tell KACA that they already have a lot of work on their plate and they should start to look at the structures of the county governments as they form now. Indeed, they should scrutinize the competencies of some of the people who have been placed to manage the resources. We have seen Form Four leavers with grades D-(minus) and no other proven record of academic qualifications put as Finance and Development Secretaries. Seriously, we need to think very carefully about devolution and our governors need to know what we are looking for. The process of the oversight role does not mean that our governors should tell us to wait

and see how they will spend the money and then we see whether they have spent it wisely or not. Oversight includes looking through to the process of wanting to implement your budgets. That is something that we need to be involved in. No amount of excuses should be given for misappropriation of public funds. Some of the governors that I have had discussions with and asked whether they do not know whether they are on the wrong by doing certain things say, “sorry *mheshimiwa*, but you know I did not know this”. Ignorance is not a defence under the law. No amount of excuse can be given for misusing public funds.

As I end, indeed, I support the passage of this Bill. I have agreed with my Chairman of the Budget and Appropriations Committee on the few issues that we have raised concerns on. We had agreed that we move an amendment, but knowing that a two-thirds majority is needed, I support that we pass the Bill as it is, but with the warnings of the issues that I have raised.

I beg to support.

Hon. Mwangi: Hon. Temporary Deputy Speaker, Sir, I rise to support the Bill as it is. From the outset, I would like to state that it should not be seen as if this House is against devolution. This is not a fallen State and we only introduced devolution to take development to our counties. It is a big shame that today, we are fighting about money yet it is provided in the Constitution that the transition period should take three years. Before we were given letters from KeRRA to go and appoint Constituency Road Committees (CRCs) we should have been told that the money is with the governors. Nobody is fighting this. The money should go to our people.

Secondly, the Senate should not misuse this House. The reason why the Senate stayed with this Bill for four months until we are about to go on recess is to make this House appear as if it is fighting devolution. It should be known by everybody that even us, who are in the former Central Province, are for devolution and we are not fighting it. We are for it. So far, many of our counties do not have the ability to chew what we have already given them. We should give them money in bits and within three years, they will be able to accommodate whatever we shall have given them. Even if we give them Kshs4 billion, Kshs10 billion or Kshs60 billions per county, they will be able to accommodate it, but we need to teach them how to manage the money slowly by slowly. Some of these MCAs are former councillors and are the same people who misused LATF.

Before I sit down, I would like to urge this House to inquire into the former properties of county and municipal councils. When we were winding up the councils, funds were stolen. I urge the governors to look into all land that belonged to county councils. For example, in my constituency, a piece of land was stolen. I understand that the governor is about to buy it yet it was stolen from the council. I am telling them from the Floor of this House that, that is wrong.

With those few remarks, I beg to support.

Hon. Onyonka: Asante sana, Bw. Naibu Spika wa Muda, kwa kunipatia fursa hii ili nichangie jambo muhimu kama hili kuhusu ugatuzi na mahali ambapo tumefika. Jambo hili limewakera wananchi mno lakini sisi kama viongozi katika Bunge hili, tumekuwa tukilizungumizia na kuna mambo fulani ambayo ningependa kusema.

Hapa Bungeni, vyama vyote kama vile Jubilee na CORD, tunakubaliana sisi sote ni lazima ugatuzi uendelee. Hatuna tashwishi kuhusu vile hela za Serikali yetu zitagawanywa mashinani. Tunajua kuwa kuna tashwishi kuhusu vile hela kutoka kwa

Serikali kuu zitaenda mashinani ambako magavana na wanaojishughulisha katika serikali za kaunti watakuwa wakizitumia. Kuna uovu mwingi. Hata mkaguzi wa hesabu amesema kuwa hana uwezo wakati huu wa kuangalia vile hela ambazo zinaenda kwa magavana zitatumia. Kwa hivyo, ni lazima tuende pole pole. Kama vile Wabunge wenzangu wamesema, ni lazima tuende pole pole. Katiba inasema kuwa ugavi wa mali katika serikali ya ugatuzi ni lazima uchukue miaka mitatu. Hala hala ni ya nini?

Tumewapatia magavana Kshs210 bilioni. Katika eneo langu la Kisii, tuna maeneo tisa. Eneo la Kisii limepewa Kshs6.1bilioni. Ukigawa hela hizi kwa maeneo tisa, kila eneo litapewa Kshs450 million. Hii Kshs450 million kwa miezi sita, itatumikaje? Hili ndilo jambo ambalo sisi kama viongozi katika Bunge hili tunalizungumzia. Ningependa kuwasihii ndugu zetu Senators wajue kwamba hatuwapigi vita. Wengine wetu tukitoka hapa, tungependa kuenda kule juu pengine tuwe Senators kwa miaka ijayo. Pia, tungependa kwenda kule chini tukakae na magavana. Wengine wetu tungependa kuwa magavana. Hatutaki kuharibu sheria za nchi hii ili ukipewa kazi kama hiyo miaka ijayo, ushindwe kuifanya. Nia na haja yetu ni safi. Tungependa ugatuzi ufanyike mahali ambapo magavana wana utu, heshima na wanachunga mali ya wananchi. Pia, wahakikishe kuwa ugavi huu unafuata sheria na unaleta mawasiliano, maelewano na maendeleo mashinani nchini Kenya. Mpaka sasa, hatujui ni nani atakayekuwa akitengeneza barabara.

Hon. Lessonet: On a point of order, hon. Temporary Deputy Speaker, Sir. Considering that we have adequately ventilated on this issue, and that there has been an equal measure of input by the Jubilee and CORD hon. Members, and that there is no dispute as of now, I wish to request that the Mover be called upon to respond.

The Temporary Deputy Speaker (Hon. Cheboi): From where I am seated, I can see quite a lot of requests. That shows that we have a lot of interest. Let us ventilate a little more then we can look at that. I understand we have got a very heavy afternoon, but since there is a lot of interest, let hon. Onyonka proceed; we will have a few more contributions.

Hon. Onyonka: Bw. Naibu Spika wa Muda, vile ndugu yangu alivyosema, katika kumalizia, ningependa kusema kwamba hela ambazo zimegawiwa maeneo ya uwakilishi Bungeni, ambazo ni za CDF, ni lazima Bunge hili lihakikishe kwamba hela hizo haziondolewi kamwe. Hizo hela zinasaidia wananchi; sisi ndio tunajenga shule na barabara. Hayo ndio maendeleo wananchi wanatarajia mashinani.

Jambo lingine ambalo linaleta shida ni kuwa kama gavana hataweza kuleta maendeleo yale tunayotarajia katika maeneo ya uwakilishi Bungeni, katika sehemu za kaunti tutafanya nini? Hapo ndipo CDF itasaidia.

Kwa kumalizia, ninaunga mkono Mswada huu na ninatoa hisia zangu kwa hisani. Ningependa kutoa hisia kwamba tuhakikishe, tumalize na kupitisha huu Mswada ili kaunti ziendelee na wananchi wa Kenya wahisi vizuri na maendeleo kupatikana mashinani.

Hon. Murungi: On a point of order, hon. Temporary Deputy Speaker, Sir. I am seeking your indulgence. Maybe, you can consider reducing the time being allocated to hon. Members to contribute, so that more hon. Members can express their feelings that we are not against devolution. Under this arrangement, I request that you start with me.

The Temporary Deputy Speaker (Hon. Cheboi): I think that is a reasonable proposal. We reduce time to three minutes that an hon. Member takes to contribute, so

that as many hon. Members as possible can contribute to the Bill. So, hon. Sakaja, you are the first “victim”.

Hon. Sakaja: Thank you, hon. Temporary Deputy Speaker. I wish I could speak for some more time because this is an area of great interest for all of us.

But quickly to the point, I want to thank the Senate for finally having given us the County Allocation of Revenue Bill. I think a month or so ago, I brought a Procedural Motion, so that we could speak on this issue because the Senate had actually stayed with this Bill for too long. We are glad that it is here.

Hon. Temporary Deputy Speaker, Sir, if you remember, during the clamour for the new Constitution in this country, devolution, indeed, was a popular objective. Devolution is something that all Kenyans need because the promise of devolution really ensures that no part of this country will ever be sidelined or ignored. Each county will have power and resources devolved, so that the people of that county can make decision on their own.

Hon. Temporary Deputy Speaker, principles of devolution need to be adhered to; Article 174(c), which I will read, says that one of the principles or objective is to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them.

In addition to devolving resources to the counties, a very important component has really been ignored, and that is public participation. Members of the public in the counties need to participate because the essence of devolution is the fact that we saw that one-sided approach is never adequate for this country. The priorities in Homa Bay are different from the priorities in Nairobi and they are different from the priorities in other parts of the country. That is the reason why we wanted public participation on this matter.

Hon. Temporary Deputy Speaker, Sir, I would also like to state that, indeed, we need co-operation between all the institutions that have been charged with the mandate to take care of devolution and to look at the interest of the people. We have seen a circus in this country where it has become a battle of wits---

Hon. (Ms.) Shebesh: On a point of order, hon. Temporary Deputy Speaker, Sir. I am sorry to interrupt my good friend, hon. Sakaja. I think this is a very important point of order because there are papers that are circulating here. I do not know we have been given which part of the Supplementary Order Paper. First of all, they should be verified by the relevant Chair of the Committee, to whom it has been written; this is hon. Kamanda. We have documents which are being circulated and which are, in my opinion, misleading this House.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Shebesh, I might not be very helpful in that. One, you have not even indicated what these papers are. Really, you specifically know the Chairman of that particular Committee; I think the best thing is for you to approach him or her and have some confirmation in one way or the other. In the meantime, kindly, let us concentrate on this issue. I believe that is something about which hon. Shebesh can approach the Chair and it might be sorted out.

Proceed and conclude, hon. Sakaja.

Hon. Sakaja: Thank you hon. Temporary Deputy Speaker, Sir. You gave me three minutes; I will try and rush.

The Temporary Deputy Speaker (Hon. Cheboi): You have one minute to go!

Hon. Sakaja: With your indulgence, please.

The Temporary Deputy Speaker (Hon. Cheboi): Yes, one minute. Actually, you realize that your time had already been used up. Just conclude.

Hon. Sakaja: Let me then state what I have in point form. One, devolution is not about competition between the Senate and the National Assembly. That is a message that needs to be taken very seriously in this country. Neither is it competition between the national Government and county governments; we need each and every institution that is charged with a role to play it well.

Hon. Temporary Deputy Speaker, Sir, the reason why the National Assembly stated that the Division of Revenue Bill needed to go directly to the President was a matter of law. I think we need the spirit of inclusiveness and co-operation between different institutions; even in that case before the Supreme Court. I am sure we will not be getting to the contents of it because that will be *sub judice*. The National Assembly, the Senate and the Executive should have gone to say that devolution is something new and we want to look for clarity together. If we adopt a competitive approach to devolution, we will not be able to achieve what Kenyans really want.

Hon. Temporary Deputy Speaker, if you ask yourself which institution is more needed--- It is like a bird asking which wing is more important, the right wing or the left wing. We need all the institutions.

The Temporary Deputy Speaker (Hon. Cheboi): Your time is over, hon. Sakaja.

Hon. Ogalo: Thank you hon. Temporary Deputy Speaker, Sir. I support the Bill and thank the Senate for sending it to us. I would like to state that these House and other arms of the State support devolution. No institution should pretend to be a champion of devolution; devolution concerns everybody.

Hon. Temporary Deputy Speaker, I ask my fellow hon. Members, if we get a recess after this sitting, we build rapport with the governors in their counties. We do not need competition or bad blood between governors and Members of Parliament.

Hon. Temporary Deputy Speaker, Sir, in Homa Bay County before the National Rainbow Coalition (NARC) Government came in, we had never seen a project worth Kshs1 billion. Now we are happy because we are seeing Kshs5.7 billion going there, courtesy of this Bill. In four years to come, a minimum of Kshs80 billion will go to our region. So, we support devolution and it is one of the many things this Parliament is helping in.

Every time hon. A.B. Duale speaks, he says 32 per cent or 34.5 per cent of our resources have been devolved. That is the letter of the Constitution. The spirit of the Constitution is that 34 per cent of the sharable revenue for the current financial year should be devolved. I know that the law says that it is based on the last audited accounts; when we talk of devolving 34 per cent of the national revenue, everybody expects that we will be devolving 34 per cent of the sharable revenue for the current financial year. If the Senators want to collect signatures, let them do so to change the Constitution to make it mandatory that 32 per cent or 15 per cent of the national sharable revenue for a particular financial year is devolved.

I want to end by saying that I have already forwarded an amendment to the Constituencies Development Fund Committee on the Constituencies Development Fund Act. Let me point out the fact that the Bill was sent to the Speaker over three months ago. If we are going to take three months to process little amendments, as a House, we are

going to be impeded. The Speaker should ensure that his office supports Members of Parliament to play their legislative role effectively.

Hon. Temporary Deputy Speaker, Sir costing of devolved functions is the role for the National Treasury, the TA and all the governors. We need to make the Commission on Revenue Allocation ensure that whenever we get the division---

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, many times we hear shouts of “gender balance” from amongst you, but it has become difficult for me to apply that principle because I cannot see requests from any Member from the other gender in the first 10 requests. That is an issue I have to point out. We are all hon. Members. So, we should strictly go by the order in which the requests have been placed. As I said, I do not have any Member from the other gender amongst the first 10 requests. So, even if I were to sympathise with the other gender, I would do so at a slightly later stage. I just have to put that point into perspective. I can see that there are quite a number of interventions.

What is it, hon. Kajwang?

Hon. Kajwang’: Hon. Temporary Deputy Speaker, something is still bothering me. Did you hear the Member for Nairobi County claim that there are papers being circulated in the House? Could we know what kind of papers they are? If they are love letters, are they being circulated amongst hon. Members to the right side of the Chair only? Could we also have them circulated to hon. Members to the left side of the Chair? What are the letters being circulated in the House for?

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Kajwang’, I do not want hon. Shebesh to respond to that one at this particular point in time, but if there is any letter that is going round, you will have an opportunity to contribute to it. If it is relevant to the particular order at which we are transacting business, you can mention it, so that hon. Members can benefit.

Yes, hon. Gikaria!

Hon. Gikaria: Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this debate. I support the Bill.

Just to echo what the Leader of Majority Party has said, it is surprising that only 13 counties have been able to comply with the requirements of devolution. Of course, as a House, we are also trying to avoid contravening Standing Order No.234, which gives us 10 days to deal with the County Allocation of Revenue Bill. If possible, we should pass it by the end of today.

Hon. Temporary Deputy Speaker, looking at the amendments that have been proposed to the Public Finance Management Act, 2010, under Section 17 they want the disbursement to be done within a month. I want to agree with the Senators because according to the law, disbursement is supposed to be done quarterly in advance. I think the Senators have realised that if we give governors this money three months in advance, they might misuse it. Money meant for salaries may not be there by the second month. So, the Senators have done a good thing by proposing that the money should always be given within a month.

Secondly, I want to agree with hon. Mbadi that the costing of the devolved functions ought to have been done. The TA has indicated very clearly that most of the counties are not able to undertake the devolved functions. However, since the governors and the Senators are bickering about these issues, we should give them the benefit of the

doubt. It is my stand, however, that the costing of the devolved functions should have been done in advance.

Hon. Temporary Deputy Speaker, Sir, the other point I want to make is about the money meant for roads. Eighty per cent of the membership of this House is new people. They came here neither on the platform of this money nor that of the CDF money. I want to agree with former speakers that with the passage of this Bill, we will be confirming that money for roads will not be with us anymore. I remember the Cabinet Secretary indicated that money for roads and electricity had already been given to the counties. He also indicated that he was going to use Article 187 to bring back the money, but if we pass this Bill---

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Gikaria, your time is over.

Yes, hon. Mutinda Mule.

Hon. Mule: Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this debate.

(Loud consultations)

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Members! The consultations are a bit too loud. That is probably an indication that we might have to wind up this debate. Please, consult in lower tones.

Proceed, hon. Mule.

Hon. Mule: Hon. Temporary Deputy Speaker, before I contribute to this debate, I want to thank all the Members of Parliament who stood with me last week when I lost my sister. They came in handy. At the same time, certain people purport to have snatched my seat from me. I want to welcome you when we begin campaign.

The Temporary Deputy Speaker (Hon. Cheboi): Are you the Mule of Matungulu?

Hon. Mule: Definitely yes, hon. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Hon. Cheboi): Okay, proceed.

Hon. Mule: Hon. Temporary Deputy Speaker, this Bill is timely. It has taken a long time to be brought to the House. It is important that, as Members of Parliament, we deal with this Bill fast to allow the county assemblies to have funds. As I have said before, there is no fight between the National Assembly and the devolved governments. Devolution is a choice of Kenyans. As Members of the National Assembly, we should make sure that devolution becomes a reality to Kenyans. It is only our duty to make sure that we pass this Bill with speed, so that money can go straight to the counties to enable the county assemblies to have money---

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Mule! I can see an intervention from hon. Esther Murugi. Do you have a point of order?

Hon. (Ms.) Mathenge: Hon. Temporary Deputy Speaker, it is not a point of order. I just wanted to say that I have been waiting to contribute.

The Temporary Deputy Speaker (Hon. Cheboi): You are obviously out of order. You are waiting in the wrong direction.

Proceed, hon. Mule.

Hon. Mule: Hon. Temporary Deputy Speaker, as a House, we need to move with speed to make sure that the allocation to the county assemblies is disbursed, so that, as Members of Parliament, we can be on good terms with Members of the County Assemblies. We will be able to combine the amount of money we have from CDF with that which will come through the county assemblies, and undertake development. The time for politicking is gone. The time for looking behind is gone. Kenyans are looking upon us to deliver services to them.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, since we have been looking forward to hon. Members of the other gender coming forward and contributing, and given that hon. Murugi has volunteered, let us proceed in that direction. Let us proceed in that direction. Yes, I can see a point of order from hon. Kaluma.

Hon. Kaluma: On a point of order, hon. Temporary Deputy Speaker, Sir. I need to contribute to the Motion but I rise on a point of order to draw the attention of the House, as hon. Shebesh distributes the letters mentioned, to the fact that the “President” the majority of us voted for on 4th March is in the House. I was going to ask whether we could really adjourn briefly to meet *Jakom* outside and say hi.

(Applause)

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): Now, proceed hon. Mathenge; hon. Kaluma, you are free to quietly leave and meet the *Jakom* you are talking about.

Hon. (Ms.) Mathenge: Thank you, hon. Temporary Deputy Speaker. I also wanted to contribute in support of this Bill. In supporting it I want to assure the governors and the Senators that we, as Members of Parliament, are actually the beneficiaries of devolution. This is because since the governors will take on various functions, we can divert our CDF into other things; they will take over some of our other functions. For example, they have taken over the youth polytechnics, which means that the funding that we had allocated to youth polytechnics can now go to something else that will be of more value to our constituents.

Hon. Temporary Deputy Speaker, Sir, as I support them, I want to urge them not to be crying babies. Every time there is an issue, they start crying. This reminds me of a small child who throws tantrums and he is given a lollipop by the father. I would urge our President and the Deputy President not to listen to them on a daily basis, and should tell them to go back to their counties and work, because that is where we need them.

Finally, hon. Temporary Deputy Speaker, I have a feeling that Senators and governors actually did not read and comprehend the Constitution and the roles that they are supposed to play. Could they start doing that so that when we come back from recess, we do not have the hullabaloo that we have been having?

Hon. Temporary Deputy Speaker, I support this Bill. Thank you.

The Temporary Deputy Speaker (Hon. Cheboi): I think this should really be the last shot. We need to make progress. I see Jimmy Angwenyi there. Please, be as brief as possible, so that we finalise this issue; I can see a lot of requests.

Proceed, Jimmy.

Hon. Angwenyi: Thank you, hon. Temporary Deputy Speaker. I stand to support this Bill simply because it is *fait accompli* as far as the National Assembly is concerned. As you notice, this Bill was held by the Senate for five months and they decided to send it over to the National Assembly on a day when we were supposed to go on recess. They wanted to ambush us, so that we would be seen as people who are against our devolved governments. We should send a very powerful message that we are going to consider this Bill as an exception. If they attempt to do the same thing next time, we will not pass their Bill. We will go to our constituencies and discuss the working of the Senate.

Hon. Temporary Deputy Speaker, as my sister said, it looks as if those people who sought positions in the Senate and the governorships never read the Constitution well. Could you be kind enough to organise a retreat of one month, so that we take them through training? Our Parliamentary Service Commission (PSC) has a training institution out there in Karen. We will take them through the Constitution for a whole month, so that they can know their roles, functions and relationship with the National Assembly.

The Temporary Deputy Speaker (Hon. Cheboi): Your three minutes are over, except that you are contributing from the Dispatch Box.

I think I will simply have to put the Question. Before I do that, let me call the Mover to respond.

(Hon. A.B. Duale stood up in his place)

Yes, the Mover has responded in a quite language; therefore, I will put the Question.

(Question put and agreed to)

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

The Temporary Deputy Speaker (Hon. Cheboi): Yes, I see the hon. Leader of Majority Party has a Procedural Motion.

Proceed and prosecute it, hon. A.B. Duale.

PROCEDURAL MOTION

EXTENSION OF SITTING TIME

Hon. A.B. Duale: Thank you, hon. Temporary Deputy Speaker. I beg to move the following Procedural Motion:

THAT, pursuant to the provisions of Standing Order No.30(3)(a), this House resolves to extend its sitting time today Tuesday, 6th August 2013 until the conclusion of business appearing on the Order Paper, except for business under Order No.14.

Hon. Temporary Deputy Speaker, Sir, we have serious Orders ahead of us, which include the Constituencies Development Fund (Amendment) Bill at the Committee stage and the County Allocation of Revenue Bill at the Committee stage. I urge my colleagues

that we stay longer and finish the business appearing on the Order Paper. I need their indulgence, so that we can say that we have done our bit for the first part of the year.

I beg to move.

The Temporary Deputy Speaker (Hon. Cheboi) Do you have a Seconder?

Hon. Sakaja seconded.

(Question proposed)

Hon. Kato: On a point of order, hon. Temporary Deputy Speaker. Even though I fully support the Procedural Motion, I just need clarity. If you look at the Order Paper, and specifically the numbering of the Motions, Order No.14 is repeated; I am sure the Leader of Majority Party was referring to the last one which should be Order No.16. So, just for record purposes, I think the Microfinance (Amendment) Bill should be Order No.16 and not Order No.14.

The Temporary Deputy Speaker (Hon. Cheboi): That is a really good contribution. Really, we have two Order No.14, and I think if we proceeded without you pointing it out, we probably would have removed even the one we have just transacted. Let us put it that the last Order No.14 is Order No.16.

I will put the Question.

(Question put and agreed to)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Deputy Speaker (Dr. Laboso) left the Chair]

IN THE COMMITTEE

[The Temporary Deputy Chairlady

(Hon. (Ms.) Shebesh) took the Chair]

THE VALUE ADDED TAX BILL

*(Resumption of consideration in
Committee interrupted on 1.8.2013)*

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we are now in the Committee of the whole House. We will be considering three Bills namely; the Value Added Tax Bill (National Assembly Bill No.9 of 2013); the County allocation of Revenue Bill (Senate Bill No.1 of 2013) and the Constituencies Development Fund (Amendment) Bill (National Assembly Bill No.24 of 2013).

Hon. Members, you will remember that last time we were on Clauses 3 to 11 of the VAT Bill.

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

Clause 12

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

THAT, Clause 12(1) be amended by inserting the following new paragraph immediately after paragraph (a)—

“(aa) the date a certificate is issued by an architect, surveyor or any other person acting as a consultant in a supervisory capacity”.

Clause 12 talks about the time of supply for the purposes of the VAT. The stakeholders, especially those with large contracts, made a proposal and the Committee agreed that it should move this amendment which says that time of supply in such contract is at the time when the certificate is issued by the consultant, so that payment can be made.

(Question of the amendment proposed)

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

(Clause 12 as amended agreed to)

Clause 13

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

THAT, Clause 13(3) be amended by inserting the word “or” at the end of paragraph (a).

(Question of the amendment proposed)

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

(Clause 13 as amended agreed to)

(Clauses 14, 15 and 16 agreed to)

Clause 17

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

THAT, Clause 17(2) be amended by deleting the word “three” appearing in the proviso and substituting therefor the word “six”.

The explanation is that the taxpayers are supposed to claim import VAT. They proposed that in the event that the taxpayer does not hold necessary documentation at the time, he or she be given three months to look for documentation, come and then claim.

However, the Committee sat with the stakeholders and we agreed that, that time is short. That is why we are proposing an increase from three months to six months, so that they will be given more time to be able to claim. That is in relation to documentation.

(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 17 as amended agreed to)

*(Clauses 18, 19, 20, 21, 22, 23, 24, 25,
26, 27, 28 and 29 agreed to)*

Clause 30

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

THAT, Clause 30 be amended by deleting the word “three” appearing in the proviso and substituting therefor the word “twelve”.

For the benefit of the House, there will be a situation where the taxpayers will fail to pay taxes by error. Therefore, we must claim the tax from the taxpayer. It was proposed that such a claim must be done within three months but after deliberations the Committee and the stakeholders agreed that we extend the period from three months to twelve months. This is because according to some experts, most of the errors are discovered during the audit exercise. Therefore, we agreed that we increase the period from three months to twelve months, so that the taxpayers are given enough time.

(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 30 as amended agreed to)

(Clauses 31, 32, 33, 34 and 35 agreed to)

Clause 36

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

THAT, Clause 36(1) be amended by deleting the word “seven” appearing immediately before the word “days” and substituting therefor the word “thirty”.

Basically, this deals with a situation where somebody no longer supplies goods which are supposed to be levied VAT and they are supposed to deregister. The proposal in the Bill says that you must deregister within seven days, but the Committee said that, that is a short period for one to be able to deregister the goods. We agreed to give them 30 days.

(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 36 as amended agreed to)

*(Clauses 37, 38, 39, 40, 41, 42, 43,
44, 45, 46, 47 and 48 agreed to)*

Clause 49

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

THAT, Clause 49 be amended—

(a) in subclause (1), by deleting the words “without warrant” and substituting therefor the words “with warrant”;

(b) by inserting the following new subclauses immediately after Subclause (10)—

“(11) Any audit or examination of the records of a registered person pursuant to this section shall be finalized within six months from the date it commences.

(12) In the event that the audit or examination is not completed within six months as contemplated in subsection (11), an authorized officer may request the Commissioner to extend the period for conducting the audit or examination and, if such extension is granted, the authorized person shall inform the registered person accordingly.

(13) Where an audit or examination is not concluded upon expiry of six months from the date of commencement of the audit or examination, a registered person or his or her authorized representative shall, upon request, be issued with an interim certificate indicating the progress made during the audit or examination.”

(c) by inserting the following new subclause (2) before the existing Clause 2 and renumbering sub-clauses (2) and (10) accordingly:

“Notwithstanding subsection (1) the Commissioner or an authorized officer may prior to obtaining a warrant, secure premises for the purpose of ascertaining whether this Act is being complied with.”

This section basically gives the Commissioner power to enter into your premises when he suspects that you are doing something wrong as far as tax is concerned. After deliberations, we were saying that he can enter without a warrant, but people came and said that this can be unconstitutional as far as the Bill of Rights is concerned. So, we are proposing the amendment, so that he must have a warrant, but we have given him some powers under (c). Under Clause 49, I have (a), (b) and (c). We are saying that he must have a warrant, but under (c) of the same, notwithstanding lack of a warrant he will have power to secure the place pending obtaining the warrant, so that we do not lose tax, but we obey the Constitution at the same time.

(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 49 as amended agreed to)

*(Clauses 50, 51, 52, 53, 54, 55, 56, 57, 58,
59, 60, 61 and 62 agreed to)*

Clause 63

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, there are two amendments to this clause, one by hon. Priscilla Nyokabi and another one by hon. Langat, who is the Chair. We will start with hon. Nyokabi’s amendment. If that amendment is carried, then we will drop the amendment by hon. Langat.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairlady, on the clause that you have called, Clause 63 on regulations, I would prefer that we go with the Chairman’s amendment and I will come back to the new parts.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Nyokabi, you have to then withdraw your amendment. Just say that you withdraw, so that we can take hon. Langat’s amendment.

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairlady, I withdraw the amendment.

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

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:
THAT, Clause 63 be amended by—
(a) renumbering the existing provision as subclause (1);
(b) inserting the following new subclause immediately after the renumbered subclause (1)—

“(2) Regulations made under this section shall be tabled before the National Assembly for approval before they take effect.”

This section gives power to the Commission or the Cabinet Secretary to make rules and regulations. We are saying that these rules should be approved by the House before they take effect. That is what was agreed by the Committee; the House should see those rules.

(Question of the amendment proposed)

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

(Clause 63 as amended agreed to)

Clause 64

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, again, we have two amendments, one by hon. Langat and one by hon. Priscilla Nyokabi. They are not similar and so, we start with the proposed amendment by hon. Langat.

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

THAT, Clause 64 be amended by inserting the following new subclauses immediately after subclause (3)—

“(3A) Where a remission of tax was granted under the repealed Act on any taxable goods or services, such remission shall continue to remain in force for a period of five years from the date of commencement of this Act.

(3B) Where a tax was due to be paid or refunded under the repealed Act but was not so paid or refunded, it shall be paid or refunded as though it were a sum due under this Act”.

Basically, this is to achieve two things. One is to give a transitional effect to any of the VAT refunds which exist as per the current VAT Act. So, once we transit to this new Bill, they continue being refundable to whoever was supposed to get them. Two, there is a normal programme by the Government to do tax remission so as to encourage investments. Where such a programme was existing, we should give it time to mature.

(Question of the amendment proposed)

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

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairlady, I have had a conversation with the Chairman and I wish to withdraw my amendment to Clause 64. I am duly advised.

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

(Clause 64 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I wish to let the House know that we have concluded with the substantive clauses that had amendments. Now we are going to new clauses.

New Clause 2A

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairlady, this was intended to be an objects clause, but it is adequately covered in the memorandum. So, I also wish to withdraw the amendment.

(Proposed New Clause 2A withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, New Clause 2A stands withdrawn. Hon. Kanyua, so that we can be faster, what about the New Parts 59A, B, C, D and E?

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairlady, Clause 59A is also going to be withdrawn because it is covered. The offences in 59A are spread over different parts of the Bill. But I will make submissions on 59B, 59C, 59D and 59E.

(Proposed New Part 59A withdrawn)

New Part

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

THAT, the following new Part be inserted immediately after Clause 59, and before Part XVI—

59B. A member of the Authority, staff or other person having any duty to perform pursuant to any written law relating to any matter under this Act—

Offences by members
and staff of Authority

(a) makes, in any record, return or other document which they are required to keep or make, an entry which they know or have reasonable cause to believe to be false, or do not believe to be true;

(b) wilfully refuses to do anything which they know or have reasonable cause to believe is required to be done by them under this Act or other written law;

(c) interferes with any other person or process under this Act, so as to defeat the provisions or requirements of this Act;

(d) where required under this Act or any other law to do anything to give effect to the provisions of this Act, fails to do such thing;

(e) without reasonable cause does or omits to do anything in breach of his or her duty under this Act;

(f) wilfully contravenes the provisions of this Act to give undue advantage or favour to another person;

(g) fails to prevent or report to the Authority or any other relevant authority, the commission of an offence committed under this Act, commits an offence and is liable, on conviction, to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years, or to both.

Liability of
employers and
officers of
companies.

59C. (1) Where any offence under this Act is committed by an employee or agent, the person by whom that employee or agent is employed shall also be culpable for that offence unless he or she proves to the satisfaction of the court that he or she did not know, and could not reasonably be expected to know, that the act or omission constituting the offence was taking place and that he or she took all reasonable steps to ensure that the offence was not committed.

(2) Where an offence under this Act has been committed by a body corporate, every person who, at the time of the commission of the offence, was a director, general manager, secretary, or other similar officer of the body corporate, or was acting or purporting to act in that capacity, shall also be culpable for that offence, unless he or she proves that the offence was committed without his or her consent or knowledge and that he or she exercised all the diligence to prevent the commission of the offence that he or she ought to have exercised having regard to the nature of his or her functions in that capacity and in all circumstances.

Burden of
proof.

59D. In any proceedings, whether criminal or civil, under this Act, the burden of proving that any tax has been paid or that any goods or services are exempt from payment of tax shall lie on the person liable to pay the tax or claiming that the tax has been paid or that the goods or services are exempt from payment of tax.

General penalty

59E. A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding one million

shillings, or to imprisonment for a term not exceeding three years, or to both.

Thank you, hon. Temporary Deputy Chairlady. In proposing these amendments, and especially Clause 59B, that covers offences by members and staff of the authority, I am guided by the experience we had with the Independent Electoral and Boundaries Commission (IEBC) during the elections. The elections that were recently conducted, very hefty penalties were included in the law for the staff who would work for the IEBC. Not only would they be under duty and authority to take us through the elections, but they would also be found personally liable for many of the matters that would not be properly attended to during the elections.

Hon. Temporary Deputy Chairlady, that particular regime of law works very well. The authority and the personnel that we employ have just got to follow the law. If we intend, as the Jubilee Government intends, to raise money through VAT then it is important that the staff of the authority stand guided and really duty-bound to implement this law in its entirety.

Hon. Temporary Deputy Chairlady, in Kenya tax evasion happens a lot because the staff colludes with the tax evaders. This is what the section seeks to cure. The offences created require the staff to make sure that the records are up to date, and to ensure that they will fully undertake their tasks and that they do not in any way seek to obstruct the collection of tax. The clause also requires that this Act is not contravened by the staff. If contravention of law will occur, it will need to be done by people other than the staff of the Authority. I wish to move that this particular Part be part of the law, and then we are going to have a better tax regime where the officers of the Authority will be duty-bound to ensure that the provisions of this law are really obeyed.

In Clause 59C, after creating the offence in 59B, Clause 59C covers the liability of employers and officers of companies. Again, taxation is a matter of individuals, but it is also a matter for corporate bodies. If a corporate body evades tax, then the employers and the officers of that company should also be held liable by the law. Again, the intention is to ensure that if you have a choice between paying tax and evading paying it, you will choose to pay tax because the penalties are going to be hefty, and will reach to officers of the companies and not just the company that is going to be surcharged. This tax regime will be better implemented that way.

On Clause 59D, the burden of proof is shifted to the person who says they have paid the tax. If you claim to have paid tax on certain goods and services, the burden is upon you to prove that you actually paid the tax. This again makes it easier for the officials handling the tax regime to do their work well. They will not always go around proving in court that you are a defaulter. If you are claiming you have paid, it is up to you to bring documents that will indicate that you have paid tax.

On Clause 59E, there are many offences that are created, and they range from failure to disclose goods and services, changing records and documents and not issuing receipts for goods. All of those offences require a general penalty. There are many offences created within the body of the law and the only way to penalize those particular matters is to create a general penalty. If there is an offence created in the body of the Bill for which no penalty has been provided, then the general penalty in Clause 59E will apply.

Hon. Temporary Deputy Chairlady, the general penalty is Kshs1 million for evading tax or imprisonment for a term of three years or both. This again, is supposed to make people really feel the need to pay tax. It is going to be a very bad country when you choose not to pay VAT. If you choose not to pay VAT and you are caught, then the penalty will be very high. The law bites and it should bite; that is why it is important that these penalties are included in this particular Bill.

I beg to move.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I want to make it clear that when new clauses are introduced, I will be reading these new clauses for the second time, so that there is more ventilation on the same. I just want it to be clear to hon. Members that the new clauses that have been introduced by hon. Nyokabi touch on offences by members of staff of the Authority, employers and officers of companies, the burden of proof and general penalty.

It is important that when new clauses are introduced to a Bill, the House knows what the new clauses speak about.

(Question of the New Part proposed)

(New Part read the First Time)

*(Question, that the New Part be read a
Second Time, proposed)*

Hon. Kajwang: Thank you, hon. Temporary Deputy Chairlady. The amendments sought by my learned friend, hon. Nyokabi, are sound; the only thing is that because they are punitive in nature, there is need for further clarity. For example, what is “staff”? The word “staff” should have been defined either in the interpretation section, or you could still define it within the meaning of this section. If you do not get it clear, its ambiguity may bring a problem in criminal proceedings. Two, the Commissioner should also be part of the staff. If I am counsel representing the Commissioner, I can really find a way of exculpating the Commissioner from being staff under this provision.

Secondly, the provision under Clause 59E, on general penalty--- In normal penal systems, the general penalty would be a little less than the specific penalty. You have the penalty on 59B, a fine not exceeding Kshs1 million or imprisonment for a term not exceeding three years; one would have expected that the general penalty would be less.

While I want to support my friend, hon. Nyokabi, the Kshs1 million or three-years imprisonment looks to be a deterrent measure. That should be a general penalty; I am suggesting to my learned friend to increase the specific penalty on Clause59B to be something a little more than the general penalty that she is proposing, otherwise it should not be the same thing. In fact, then there should be no need for Clause 59E as such.

Hon. Temporary Deputy Chairlady, I do not know if at this stage it would be possible to propose an amendment to an amendment so as to define the word “staff.” If that is possible, I am sure hon. Nyokabi, though I do not see her, can quickly coin something to define “staff” and make it clearer.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Amendment to amendment is allowed on the Floor. If you have an amendment, you can bring it

personally or, as you have done, you can consult with the Mover of the original amendment.

Hon. Chachu, do you have a point of order?

Hon. Ganya: Yes, hon. Temporary Deputy Chairlady. I just want your guidance as to whether hon. Simba Arati has adhered to the dress code of this House.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, he has. That matter was clarified earlier on by the Speaker.

Yes, hon. Sakaja.

Hon. Sakaja: Thank you, hon. Temporary Deputy Chairlady. I rise to support the amendment by hon. Priscilla Nyokabi, but before I do so I want to address the fears of hon. Kajwang. If you read the entire description of Clause 59B, where it says: “A member of the Authority, staff or other person having any duty to perform pursuant to any written law relating to any matter under this Act---” this, in itself, is even wider than the small description of “staff” because the staff have a duty to perform under the law that creates the KRA and this particular Act. So, it is defined in the mother Act. There is no need for that amendment.

Having said so, I want to support the amendment by hon. Nyokabi. Globally, Kenya ranks 164 out of 185 countries in tax compliance because of distortions and leakages due to corruption. The KRA staff themselves are complacent in most of the cases of corruption. A member of staff can tell you that you have defaulted but if you do not want to pay, you can pay something small. In order for us to achieve the objective of this Bill, which is not only to increase revenue collection but also overhaul the entire VAT system and the VAT regime, we must support this amendment. Companies spend more than 234 hours just trying to comply. It gives a lot of problems to our companies. Therefore, there must be penalties that are hefty to members of staff or anybody else who is complacent in such crime, as described very well in this amendment.

Therefore, I want to assure hon. Kajwang on the fears that he has. I would like him to read the part that says “---any other person having any duty to perform pursuant to any written law relating to any matter under this Act---”. That is wider than the brief description of “staff”. Staff members are already negligent. There is no need of amending this clause any further.

With those remarks, I beg to support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kajwang, I hope you were listening. Consult hon. Sakaja.

Yes, hon. Nyikal.

Hon. (Prof.) Nyikal: Hon. Temporary Deputy Chairlady, I would like to move the amendment as it is on the Order Paper.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Nyikal, I gave you the Floor because I thought you wanted to contribute to the new clause that has been proposed by hon. Nyokabi. I want to be clear to those whom I will be giving the Floor that we are dealing with hon. Nyokabi’s new clause.

Yes, hon. Gikaria.

Hon. Gikaria: Hon. Temporary Deputy Chairlady, I rise to support hon. Nyokabi’s amendment. Just as hon. Sakaja said, this country ranks very poorly in terms of tax compliance. The very hefty penalties that have been proposed on members of staff and any other persons who will be involved in aiding a person to evade paying tax, are

welcome; they will go a long way to assist this country, especially the Jubilee Government, to collect enough money so that they can actualise the pledges they have made to Kenyans. I totally agree that most of the KRA staff members are complacent in corruption. You find that somebody who has been rounded up for not paying tax is asked to part with something small and then he gets away with the crime. In the process, the Government loses millions of shillings. So, this amendment will go a long way in correcting such behaviour. It will serve as a warning to any person who intends to evade paying tax, or any person who intends to assist somebody to evade paying tax.

With those remarks, I beg to support the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Simba Arati, do you have a point of order?

Hon. Simba: Yes, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): It had better be a point of order, hon. Arati.

Hon. Simba: Hon. Temporary Deputy Chairlady, if I remember very well, last week, we extended the calendar of this House for only two reasons. We had resolved not to discuss the VAT Bill until there was a guarantee that we would get our car grants and salaries. On today's Order Paper, there is business on Kenya Urban Roads Authority (KURA) and Kenya Rural Roads Authority (KeRRA), among other businesses. I would want to caution the Chairperson of the Committee on Finance because last week we were assured that by today---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Arati, what exactly is out of order? We are looking for a point of order. When you rise on a point of order there must be something that is out of order. So, far, I have heard points of arguments from you, and not a substantive point of order.

Hon. Simba: Hon. Temporary Deputy Chairlady, is it in order for us to continue discussing this business whereas last week---

Hon. Sakaja: *(Off-record)*

Hon. Simba: Hon. Temporary Deputy Chairlady, protect me from hon. Sakaja. He does not represent anybody in this House, except his political party and his godfather.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Arati, you had a good opportunity to raise that matter earlier, before we moved into the Committee of the whole House. We are going to continue with the business of the Committee. That is an issue you can raise after we have finished the business of the Committee.

Yes, hon. Chepkonga.

Hon. Chepkonga: Hon. Temporary Deputy Chairlady, I appreciate the sentiments raised by hon. Simba Arati. He has at least raised a very important point today.

Having said that, I would like to support the amendment by hon. Priscilla Nyokabi, particularly the one in Clause 59B. We know that members of staff of the KRA have, for a long time, avoided or evaded responsibility when they were expected to do their work in accordance with their terms of employment. At least the amendment now seeks to make it criminal for them to refuse to report matters which they see are obviously against the law. I also support the amendment in respect of the proposed Clause 59C(1).

With regard to the proposed amendment to Clause 59C(2), I have a little bit of difficulty supporting it. This is a sweeping amendment requiring employees of limited liability companies to bear the brunt of liability for actions of the directors of the companies. I would have been happy if this was left at the point of director and secretary, but not general manager and others. In respect of the employees of limited liability companies, I propose that “a general manager or any other officer” be deleted and we retain “director and secretary” as suggested by hon. Kajwang.

Lastly, the proposal regarding Clause 59D sounds very interesting. I hope that hon. Nyokabi is listening. In my view, this amendment is draconian. It seeks to change the entire criminal justice system in this country. The Criminal Procedure Code is very clear. The burden of proof rests with the state. It is not discharged until the prosecutor proves otherwise. We are seeking to amend the Criminal Procedure Code without stating so in this particular clause. I am a little bit unprepared to accept this amendment because its passage will change the Criminal Procedure Code. Therefore, I propose that in Clause 59D we remove the words “whether criminal or civil”, and retain the words “in any civil proceedings under this Act” and delete the word “criminal” to avoid going against the Criminal Procedure Code. I have a seconder on this matter.

Hon. Temporary Deputy Chairlady, can hon. Kamanda listen? I am making a proposal for an amendment to Clause 59D and I have a Secunder. I have made a proposal for amendment by deleting the word “criminal” and replacing it with the word “civil”. My Secunder is hon. Waiganjo.

Thank you, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chepkonga, I know you are aware how amendments are done. You need to approach the Table here; I will give a chance to hon. Kajwang who has prepared his amendment.

Hon. Kajwang: Thank you, hon. (Ms.) Temporary Deputy Chairlady. I seek the indulgence of the House to move an amendment to the New Clause 59B in the following terms:

THAT, the New Clause 59B be amended by deleting the words, “one million” appearing in paragraph (g) after the word “exceeding” and substituting therefor the words “one million five hundred thousand”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Do you want to elaborate.

Hon. Kajwang: Thank you, hon. Temporary Deputy Chairlady. Yes, that is the gist of the amendment. Just to show hon. Members this will increase the penalty that a member of staff of the authority will be fined. It is a little bit more serious than the sanction against the members of the public. It is in good sense because members of the Authority are expected to be a little keener in doing their work under the Act rather than members of the general public.

My friend, hon. Member of Kabete, hon. Muchai will second it.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): debate in the Committee stage does not need seconding; so it is okay.

(Question of the amendment proposed)

I could allow a little ventilation on this particular amendment by hon. Kajwang to the new clause by hon. Nyokabi.

Hon. Muchai, take the Floor.

Hon. Muchai: Thank you, hon. Temporary Deputy Chairlady. I want to support the amendment as put by hon. Kajwang. In so doing, I would like to observe that this particular section is talking about offences by members and staff of the Authority. These are the people charged with the responsibility of operationalizing the law, or enforcing the law, and they are generally expected to be well versed with the provisions of the law, and to be well versed with the consequences of acting contrary to the requirements of the law.

For this reason, these are not persons who can be assumed to have done something in error. I insist that any contravention of the law by these persons is deliberate, calculated and is normally through connivance with other parties. So, persons falling under this category must be met with the deterrent measures as proposed in the amendment. Therefore, I support the amendment as moved by hon. Kajwang.

(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 Chairlady (Hon. (Ms.) Shebesh): There is a proposal for amendment on New Clause 59D by hon. Chepkonga.

Hon. Chepkonga: Thank you, hon. Temporary Deputy Chairlady. The reason for proposing this amendment is so that it can be in line with Article 50 of the Constitution.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Chepkonga, please propose the amendment first; read it as you would like it to appear.

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

THAT, the New Clause 59D be amended by deleting the words “whether criminal or civil” and retaining the rest of the clause.

The reason for proposing that is because the burden of proof, under Article 50 of the Constitution lies with the State; you cannot shift the burden of proof as this is inconsistent with the Constitution and also the Criminal Procedure Code. We can make it consistent with the Constitution by saying “in any proceedings;” in this case it will be civil proceedings.

Thank you, hon. Temporary Deputy Chairlady.

(Question of the amendment proposed)

Hon. Kajwang: My card is not working.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Please hon. Kajwang, approach the Table.

Hon. Kajwang: Thank you, hon. Temporary Deputy Chairlady. My learned friend, hon. Chepkonga is correct in the sense that the Constitution has fixed the presumption of guilty, but I think he needs to couch his amendment properly. If the

amendment says “in any proceedings” then you still do not get where you want to go. I think what he is talking about is “civil proceedings arising out of this Act”. I think he needs to couch it that way because only criminal proceedings are underpinned by the Constitution. Civil proceedings are not underpinned by the Constitution and sometimes the burden can shift. I think he needs to couch it that way, so that we are able to support it.

Hon. Members: Why not just leave it the way it is?

Hon. Kajwang: Well, if you may.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Hon. Members, we are still allowing some ventilation on the same but I hope hon. Chepkonga is listening.

Yes, hon. Cheboi.

Hon. Cheboi: Hon. Temporary Deputy Chairlady, I am saying hon. Kajwang has brought up something which I really wanted to bring up. Hon. Chepkonga has a very good point but he actually wants to amend this particular provision and leave it the same which, in my opinion--- We need to indicate specifically “civil” and not “any other proceedings”.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Hon. Chepkonga, I am waiting to see whether you agree with your two other learned colleagues; see if you can rephrase it to achieve what it is you are saying.

Hon. Chepkonga: Thank you, hon. Temporary Chairlady. You know time was of essence when we were trying to draft this and I just could not understand also why we should retain “in any proceedings”. If I can then rephrase my amendment, I would like to propose the following amendment. I will say “in any civil proceedings”, and then we delete the words “whether criminal or civil”; that is all.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Let me now read it to the House the way it has been amended. The New Clause 59D reads:

“In any civil proceedings under this Act, the burden of proving that any tax has been paid or that any goods or services are exempt from payment of tax shall lie on the person liable to pay the tax or claiming that the tax has been paid or that the goods or services are exempt from payment of tax.”

I will therefore put the Question.

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

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

(The New Part was read a Second Time)

*(Question, that the New Part be added
to the Bill, put and agreed to)*

First Schedule

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, there are six amendments to this First Schedule. I will start with the amendment by hon. Langat. Hon. Members, if the House carries the amendment by hon. Langat, the amendment by hon. Gladys Wanga will be dropped; also, Items 29 and 30 of hon. Nyokabi will be dropped. Am I clear? Let me repeat it. If the House carries hon. Langat's amendment then we will be dropping the amendment by hon. Gladys Wanga and also hon. Priscilla's amendments 29 and 30 will also be dropped. So, we will only be able to move to Item 28. The other amendments by hon. Nyikal, hon. Gatobu and hon. Tonui will be prosecuted after we have concluded with hon. Langat.

Hon. Cheboi: On a point of order, hon. Temporary Deputy Chairlady. I do not know if you have noticed that when you put the Question, we only have one Member responding with "Ayes," and that is hon. Pukose. I do not know whether we are supposed to interpret the silence of these Members; I realised that he was the only one responding.

(Laughter)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Maybe you can also add to his voice; I guess that is a wake-up call to the Mover of the Bill to get more people to respond, so that we can say that your Bill has acceptance.

Yes, hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move:
THAT, the First Schedule be amended –

(a) in Section A of Part 1-

(i) in item 25, by deleting the expression "and 1005";

(ii) by inserting the following new items immediately after item 27 -

"28. Taxable supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in the construction of a power generating plant, by a company to supply electricity to the national grid approved by Cabinet Secretary for National Treasury upon recommendation by the Cabinet Secretary responsible for Energy.

29. Tax supplies, excluding motor vehicles, imported or purchased for direct and exclusive use in geothermal, oil or mining prospecting or exploration, by a company granted prospecting or exploration license in accordance with Geothermal Resources Act (No. 12 of 1982), production sharing contracts in accordance with the provisions of Petroleum (Exploration and Production) Act (Cap. 308) or mining license in accordance with the Mining Act (Cap. 306), upon recommendation by the Cabinet Secretary responsible for energy or the Cabinet Secretary responsible for mining, as the case may be."

30. Taxable supplies imported or purchased by any company which has been granted a mining prospecting license.

2941.10.00. Penicillins and their derivatives with a penicillanic acid structure; salts thereof.

2941.20.00 Streptomycins and their derivatives; salts thereof.

2941.30.00 Tetracyclines and their derivatives; salts thereof.

2941.40.00 Chloramphenicol and its derivatives; salts thereof.

2941.50.00 Erythromycin and its derivatives; salts thereof.

2941.90.00 Other antibiotics.

3001.20.00 Extracts of glands or other organs or of their secretions.
3 001.90.10 Heparin and its salts.
3001.90.90 Other human or animal substances prepared for therapeutic or prophylactic uses, not elsewhere specified or included.
3002.10.00 Antisera and other blood fractions and modified immunological products, whether or not obtained by means of biotechnological processes.
3002.20.00 Vaccines for human medicine.
3002.30.00 Vaccines for veterinary medicine.
3003.20.00 Medicaments containing other antibiotics not put up in measured doses or in forms or packings for retail sale.
3003.31.00 Medicaments containing insulin, not put up in measured doses or in forms or packings for retail sale.
3003.39.00 Other medicaments, containing hormones or other products of heading No. 29.37 but not containing antibiotics, not put up in measured doses or in forms or packings for retail sale.
3003.40.00 Medicaments containing alkaloids or derivatives thereof but not containing hormones or other products of heading No. 29.37 or antibiotics, not put up in measured doses or in forms or packings for retail sale.
3003.90.10 Infusion solutions for ingestion other than by mouth not put up in measured doses or in forms or packings for retail sale.
3003.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of two or more constituents which have been mixed together for therapeutic or prophylactic uses, not put up in measured doses or in forms or packings for retail sale.
3004.10.00 Medicaments containing penicillins or derivatives thereof, with a penicillanic acid structure, or streptomycins or their derivatives, put up in measured doses or in forms or packings for retail sale.
3004.20.00 Medicaments containing other antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.31.00 Medicaments containing insulin put up in measured doses or in forms or packings for retail sale.
3004.32.00 Medicaments containing adrenal cortical hormones, put up in measured doses or in forms or packings for retail sale.
3004.39.00 Other medicaments containing hormones or other products of heading No. 29.37 but not containing antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.40.00 Medicaments containing alkaloids or derivatives thereof but not containing hormones, or other products of heading No. 29.37 or antibiotics, put up in measured doses or in forms or packings for retail sale.
3004.50.00 Other medicaments containing vitamins or other products of heading No. 29.36 put up in measured doses or in forms or packings for retail sale.
3004.90.00 Other medicaments (excluding goods of heading No. 30.02,30.05 Or 30.06) consisting of mixed or unmixed products ,for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.
3004.90.10 Infusion solutions for ingestion other than by mouth put up in measured doses or in forms or packings for retail sale.

3004.90.90 Other medicaments (excluding goods of heading No. 30.02, 30.05 or 30.06) consisting of mixed or unmixed products, for therapeutic or prophylactic uses, put up in measured doses or in forms or packings for retail sale.

3005.10.00 Adhesive dressings and other articles having an adhesive layer impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

3005.90.10 White absorbent cotton wadding, impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

3005.90.90 Other wadding, gauze, bandages and similar articles (for example, dressings, adhesive plasters, poultices), impregnated or coated with pharmaceutical substances or put up in forms or packings for retail sale for medical, surgical, dental or veterinary purposes.

3006.10.00 Sterile surgical catgut, similar sterile suture materials and sterile tissue adhesives for surgical wound closure, sterile laminaria and sterile laminaria tents; sterile absorbable surgical or dental haemostatics.

3006.20.00 Blood-grouping reagents.

3006.30.00 Opacifying preparations for X-ray examinations; diagnostic reagents designed to be administered to the patient.

3006.40.00 Dental cements and other dental fillings; bone reconstruction cements.

3006.50.00 First-aid boxes and kits.

3006.60.00 Chemical contraceptive preparations based on hormones or spermicides.

3006.70.00 Gel preparations designed to be used in human or veterinary medicine as a lubricant for parts of the body for surgical operations or physical examinations or as a coupling agent between the body and medical instruments.

3006.91.00 Appliances identifiable for ostomy use.

3006.92.00 Waste pharmaceuticals.

8309.90.90 Aluminum pilfer proof caps with EPE liner

8802.11.00 Helicopters of an unladen weight not exceeding 2,000 kg.

8802.12.00 Helicopters of an unladen weight exceeding 2,000 kg.

8802.20.00 Aeroplanes and other aircraft, of an unladen weight exceeding 2,000 kg.

8802.60.00 Spacecraft (including satellites) and suborbital and spacecraft launch vehicles.

8805.21.00 Air combat simulators and parts thereof.

8805.10.00 Aircraft launching gear and parts thereof; deck-arrestor or similar gear and parts thereof.

8805.29.00 Other ground flying trainers and parts thereof.

9619.00.10 Sanitary towels (pads) and tampons.

1101.00.00 Wheat or meslin flour.

0402.99.10 Milk, specially prepared for infants.

0402.91.10 Milk, specially prepared for infants.

0402.29.10 Milk, specially prepared for infants.

0402.21.10 Milk, specially prepared for infants.

2106.90.20 Food preparations specially prepared for infants.

1102.20.00 Maize (corn) flour.

1006.30.00 Semi-milled or wholly milled rice, whether or not polished or glazed, Ordinary bread, Gluten bread, Unleavened bread.

Hon. Temporary Deputy Chairlady, I think this is where a lot of interest came in this Bill. This one deals with exemptions. First of all, I want to ask you to support this amendment because when we support, the first thing it will do is that it will exempt maize seeds which we use for planting, and which actually is good for the farmers.

Number two is that there is the issue of drugs. The Bill as it was, was not exempting medicaments and I think this is what was causing a lot of problems. We sat down with my Committee and consulted the other stakeholders, including the Treasury, Kenya Revenue Authority and others, and agreed that we need to exempt medicines and the list is here. It is a very long list. I know that Dr. Nyikal will be bringing an additional list which I will respond to at that stage; this is basically to exempt medicaments which are listed here.

Hon. Temporary Deputy Chairlady, there is also the issue of food which brought a lot of issues. This is why we are exempting maize flour, milk and bread. I also want to say to our ladies that there was a serious push from them that we also exempt sanitary towels. In fact, I heard some of the lady hon. Members in this House say that ladies sanitary towels are more important than food. The way it was put was very moving and we agreed, as a Committee, that really our ladies should not be complaining. Let us exempt sanitary towels.

Hon. Temporary Deputy Chairlady, we also said food should be exempted. Some of the people who came from outside there brought *ugali* to the gate while demonstrating. For that reason, we thought maybe we should really also exempt *ugali* and maize flour, so that we take care of their interests.

We also heard presentations from air operators and we agreed that we should exempt the hiring, leasing and chartering of aircraft. We have a long list of exemptions; I know hon. Wanga will accept to withdraw hers because I have already taken care of it. I cannot see Nyokabi but I am sure she will also agree with me.

Hon. Members, in the spirit of our consultations and bringing everybody on board, we agreed we exempt some of the items which were bringing controversies to this Bill. I want to tell Members that this is really what they have been complaining about. We have heard you and have accepted your concerns. Therefore, we are bringing these amendments to cushion Kenyans against any negative impact which the Bill, as it was, would have had.

I want to say this is good news to my colleagues on the other side, hon. Chris and hon. TJ. They were among those who said during the Second Reading that we should withdraw the Bill. I think on this one now hon. TJ is convinced beyond reasonable doubt that this Bill now needs to be taken forward; all your concerns have been taken care of. I can see hon. A.B. Duale wants to second.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: You do not need any seconding. I will just first propose the amendment and then will allow ventilation.

(Question of the amendment proposed)

Hon. Members, in order for you to follow clearly, even as the other Members contribute, study the Order Paper from pages 268 to 272, so that you are aware of the proposed amendments by hon. Langat.

Yes, Leader of Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, today the Chair of the Committee, in consultation with the coalition, is happy. This is because we needed an efficient and effective VAT Bill. We wanted to be ahead of the region in enacting the first modern VAT Bill, and at the same time cushion our poor citizenry against a high cost of goods. I am happy to see that the most controversial aspect of this Bill has been done away with by the Committee, and we support that. We are talking of medicine, seeds, sanitary pads, the famous bread, *unga* and milk. I hope that those out there who wanted to call an *Unga* Revolution will hold their horses today. They better look for another revolution. This is because the *Unga* Revolution has been crippled by Parliament through the Departmental Committee on Finance, Planning and Trade.

Hon. Temporary Deputy Chairlady, I think this is a good VAT Bill. It could have survived in the last Parliament but the then Minister for Finance, hon. Githae, withdrew it. I am sure that hon. T.J. Kajwang will know today that you do not judge a book by its cover. The VAT law had good aspects and the Jubilee Government has listened to the people of Kenya. Today, its membership is here and I am sure that they will support it. The life of the *Unga* Revolution has come to an end. Civil society people who are paying the *Unga* Revolution guys had better look for another revolution.

(Laughter)

Thank you.

Hon. Kajwang: On a point of order, hon. Temporary Deputy Chairlady. Did you hear the Leader of Majority Party say that the Jubilee Government has heard the cry of the people, and has stifled the *Unga* Revolution? Does it mean that the Jubilee Government is reactionary? It waits for *wananchi* to cry before it is able to do what it is supposed to do; it waits for Mathare and Ruaraka people to make noise and feel that they have---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. T.J. you know that, that is not a point of order. However, you have made the point that you wanted to pass across.

Yes, hon. (Ms.) Kajuju!

Hon. Bosire: On a point of order, hon. Temporary Deputy Chairlady. I am a little bit confused. I am wondering whether the Leader of Majority Party is implying that committees, as they are constituted, are Jubilee committees. We ventilated on every item as a Committee and as leaders belonging to various parties. We were handling a matter that was relevant to the people of Kenya. Is the Leader of Majority Party in order to term a committee decision as a Jubilee decision?

Hon. (Ms.) Kajuju: Thank you, hon. (Ms.) Temporary Deputy Chairlady for giving me this opportunity to support these amendments. I congratulate this Committee because we presented our application before it as far as women are concerned and it responded positively. I am very happy that this is a sensitive Committee that was able to

look at the fact that the women of Kenya need sanitary pads and tampons; it has now agreed with our application.

A Member has asked whether it is possible to compare sanitary pads with food. I am advised that it was hon. Waititu. I am saying that if we do not have sanitary pads, we cannot even eat food. This is because sanitary pads are our life.

Hon. Temporary Deputy Chairlady, I also notice that there are several items that have been considered in this amendment. Therefore, with all my heart and soul, I support this amendment.

Thank you, hon. Temporary Deputy Chairlady.

(Applause)

Hon. Simba: On a point of order, hon. (Ms.) Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Arati, and it had better be a point of order and not a point of argument.

Hon. Simba: Hon. (Ms.) Temporary Deputy Chairlady, when we talk about maize flour, which one is this to be specific?

Hon. Members: No! No!

Hon. Simba: Hon. Temporary Deputy Chairlady, for those who are making noise, let them read the Bill. I want to understand because there is the flour that we get from the posho mill and the flour which is sifted and is sold in shops.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Arati, I think your point has been made. I think the Chair of that Committee can clarify that. Hon. Langat, I will give you an opportunity to clarify that point and move any further amendment.

Hon. Langat: Hon. (Ms.) Temporary Deputy Chairlady, I think it means everything. This is because VAT is not levied on the *unga* you get from the posho mill. It is only flour that is processed. This is processed *unga*.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Langat, you have brought it to our attention that you would like to withdraw a certain part of the amendment which you have moved.

Yes, hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairlady, if you look at the First Schedule, you will see Item Nos.28 and 29. Everything else is okay except No.30, which I want to withdraw. Item No.30 is actually a duplication of what is in item No.29. I withdraw Item No.30 to make the Bill cleaner; No. 30 is covered under Item No.29.

(Proposed Item No. 30 withdrawn)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I want you to be very attentive in the Committee stage. I have told you to study your Order Paper. Hon. Langat, who has brought the proposed amendment, is withdrawing Item No.30 in the amendment to the First Schedule; it talks about taxable supplies imported or purchased by any company which has been granted a mining prospecting licence.

Hon. Langat: Hon. Temporary Deputy Chairlady, this should not have been typed. I am saying that Item No.30 is a repetition of Item No.29. I am making the Bill to be clean because it has already been captured under Item No.29.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): We now want to dispose of the Committee's amendment. Members, remember that Item 30 which I read has been withdrawn. Hon. Langat's explanation is that the issue has already been captured in Item 29. Therefore, he is just making the whole Bill neater by withdrawing it.

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

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

Hon. (Ms.) Nyasuna, you have therefore dropped your proposed amendment because we have carried hon. Langat's amendment.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairlady, I am happy to have my amendment dropped since hon. Langat's amendment is carried, although I thought that we were voting for him to withdraw Item No.30, and then we contribute to the remaining amendment. Have we carried the entire amendment? I thought we just voted to withdraw Item No.30 as he had requested.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Nyasuna, I explained to the House and we seemed to be in agreement that hon. Members understood what hon. Langat was withdrawing. Therefore, I put the Question on the whole amendment. That is why I am saying that now that it has been carried, we are going to drop your amendment because it is catered for in the amendment by hon. Langat.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairlady, I am guided and I am happy to drop my amendment, because my intention has really been taken care of. I would like to thank the Committee for listening to the voice of the women of this country and granting us this bigger "ugali" than the other *ugali*. I really thank them for exempting sanitary towels and tampons from this tax.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Nyokabi, I also want to inform you that your amendments to Item Nos. 29 and 30 have been taken care of by the amendment by hon. Langat. They have also been dropped, but you can now move Item 28.

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

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

THAT, the First Schedule be amended in Section A of Part 1 by inserting the following new items immediately after item 27—

“28. Maize (corn) seed of tariff no.1005.10.00.

I wish to join hon. Wanga in thanking the Committee for catering for women in relation to sanitary towels, maize or corn flour and many other products that they have included in the list. In moving Item 28, I am actually doing what we call double caution. The double caution here applies because in Section A, there is No.25, which refers to cereals in Chapter 10. In the report that hon. Langat has tabled, there is also reference to seeds. Maize seeds, in my part of the country, are extremely important. Farmers that I represent in this House live on nothing but maize seeds. So, it is very necessary that, although it is a matter of style in terms of where to put the maize seeds, I feel that maize/corn seed, with its own tariff in Item No.28 needs to be put in line with the other seeds that have been included. There are seeds which are included in that Section A. If you look at No.15, you will see sunflower seeds, No.14, mustard seeds, No.13, sesame seeds and other seeds that are in that list. I feel that it is very necessary that in my part of the country and many other persons who plant maize seeds--- For avoidance of doubt, and to do the double caution, we put No.28 - maize/corn seed as tariff No.1005.10.00, so that it is clear to all that maize seeds are also exempt from taxation. That way, I will be serving the people of Nyeri County who sent me to this House to represent their interests. I will also be serving other Kenyans who plant maize, and who feel that for the cost of maize flour to come down, maize seeds must also attract lesser charges.

I want to thank the Committee for the work that it has done on this Bill. I also want to thank the various bodies that have been involved in collection of taxation and for informing the VAT Bill. I am hopeful that with these amendments, the Bill will be implemented and the VAT regime in this country will be streamlined as is envisioned.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Members, hon. Nyokabi has given a very clear explanation why she is proposing the amendment. Are there interventions or is it clear?

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

Prof. Nyikal: Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the First Schedule be amended in Section A of Part I by inserting the following new items immediately after item 27 –

28. Syringes, with or without needles of tariff no. 9018.31.00
29. Disposable plastic syringes of tariff no. 9018.31.10
30. Other syringes with or without needles of tariff no. 9018.31.90.
31. Tubular metal needles and needles for sutures of tariff no. 9018.32.00
32. Catheters, cannulae and the like of tariff no. 9018.39.00.
33. Blood bags.
34. Blood and fluid infusion sets.

The import of this is to include in the Schedule syringes of all types as indicated there, and all other equipment that is used in medication, particularly to give medication to people who are extremely ill. I appreciate, and I am most grateful on behalf of

Kenyans, that after the noise we heard, a law has been put in place that takes care of the vulnerable people.

Although the Leader of Majority Party was keen to attribute this to the Jubilee Government, the truth of the matter is that had we passed this as it was, Kenyans would have suffered. As much as the amendments that we have just passed have contained a lot of medications and drugs, what was missing, which has been brought in by the new amendment, is that if all those drugs are to be given to the people who are extremely ill, they will not take them orally. There will be need for syringes, giving sets and all the equipment to be used. This normally makes medication very expensive, particularly for those who are gravely ill. Therefore, I wish to move this amendment, as I appreciate the other amendments which were moved earlier in relation to medication and medicines. This now makes it complete and when you go for treatment, you will get relieved.

I must also put, at this point, as a general issue, that although we have done this, in a liberalized economy, we have to be very careful so that the savings that come out of these exemptions are not kept by businessmen to have large profits. If you were to ask me and I know nobody would support that, I would add on top of this price controls. I know we are in a liberalized economy.

I beg to move the amendment and ask Dr. Pukose to support it.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You do not need a seconder. I will open it up to the House. Let me just make it clear, hon. Members; if you look at the proposed amendments, you will see the interest of various hon. Members of Parliament. You will see where Ms. Kanyua, Dr. Nyikal and Gatobu's interests lie and this really is the work of this House.

(Question of the amendment proposed)

Hon. (Dr.) Pukose: Thank you, hon. Temporary Deputy Chairlady. I rise to support the amendment as proposed by hon. Dr. Nyikal, who is my senior colleague in the profession. But when it comes to this issue of disposable plastic syringes, cannulae, catheters, blood bags and infusion sets, when you look at the First Schedule, we have exempted the issue of infusions. If we cannot exempt the infusion bag to which the infusions are carried or the blood bag to which we are able to carry the blood, then we will be doing disservice to Kenyans.

Most of us will remember that whenever we go to our constituencies, most hon. Members contribute to medical bills of our constituents. They come to us and ask that we hold *harambee* for their sick patients. So, in case we are not able to assist them, we are going to raise the medical bill and it will be beyond reach of most Kenyans. The essence of this is actually to make healthcare affordable. When you go to almost every health centre, dispensary or hospitals, if we do not make syringes, infusion bags and cannulae available, then even when we have an emergency our hospitals will not be able to conduct those emergencies. So, it is important for hon. Members to realize that giving something that can save life is a good service to these Kenyans.

Hon. Temporary Deputy Chairlady, as my colleague, Dr. Nyikal will say, at times we make laws that can kill millions of populations, but if we make good laws they can also save millions of populations.

So, I rise to support this amendment.

Thank you.

Hon. Dawood: Thank you, hon. Temporary Deputy Chairlady. I wish to support this amendment. I am in the Departmental Committee on Finance, Planning and Trade and I believe healthcare is very expensive as it is, it can affect our people. With this amendment, I think we will go a long way to help our people. I would like to stress what hon. Bosire talked about. We did it as a Departmental Committee not as Jubilee or CORD. We worked tirelessly on this Bill and we want it passed with everybody's input. With regard to Dr. Nyikal's amendment, we are very comfortable with it.

Thank you.

Hon. Langat: Thank you, hon. Temporary Deputy Chairlady. I wish to say that I support the amendment by Dr. Nyikal because we had a list but it was not exhaustive. I want to say it is very good to have such professionals in the House. I want to support what he has proposed because our intention was really medicine; all the medical chemists are on the list. Maybe, we missed it by some reason, but I want to say that I support that amendment that we move together.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): There is a further amendment by hon. Kinoti Gatobu.

Hon. Kinoti: Thank you, hon. Temporary Deputy Chairlady. I am rising to move an amendment on the schedule of the VAT Bill. I beg to move:

THAT, the First Schedule of the Bill be amended in Section A of Part I by inserting the following items immediately after item 27.

- (a) 28 Text books;
- (b) 29. Exercise books;
- (c) 30 Chalks

Hon. Temporary Deputy Chairlady, I am moving this amendment in line with the spirit of this country. Fifty years ago, we started building a nation with a vision to eradicate illiteracy, disease and poverty.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Please, can you do your consultation quietly; we need to listen to amendments by hon. Gatobu.

Hon. Kinoti: Fifty years ago, we started building a nation with the aim of eradicating illiteracy, disease and poverty. I am happy the amendment just passed is an endeavour to eradicate disease. His Excellency the Retired President Mwai Kibaki started Free Primary Education (FPE) through which we have raised so many children from poverty.

I have been a teacher for the last eight years, and something that I wish to note is that FPE has changed the life we have been nurturing down there. First, the text books, exercise books and chalks which we have been receiving under the FPE have been tax exempt. They have not been taxed for the last 10 years. That is how, using allocation of the FPE, we have been able to buy books and chalks for the schools. In the same way,

we have been supporting children to go to colleges under the bursaries that we have passed. We have been able to purchase, for instance, a book of medicine which costs up to Kshs15,000 or Kshs20,000 each.

Over the fifty years, textbooks, exercise books and chalks have not been taxed. If we pass this amendment, it would mean these books which have not been taxed for the last 50 years will now start to be taxed. My amendment is that we include textbooks in an endeavour to boost education of the children of this country. In my constituency, I have been donating books for the last eight years. Through the board of education welfare, we have been able to produce the best candidate in the Kenya Certificate of Primary Education (KCPE), that is Joe Kinoti, who was at Friends Academy. We source for the best revision books in this country. A decent KCPE revision book currently goes for about Kshs700 and if you introduce taxation, it will double.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gatobu, this is the Committee of the whole House, it is not time for debate. You just give the reason why you are moving the amendment. I think your reason has been heard.

Hon. Kinoti: That is the reason for supporting literacy in the dear nation of Kenya.

Thank you.

(Question of the amendment proposed)

Hon. Ganya: Thank you, hon. Temporary Deputy Chairlady. I really want to oppose this amendment. First, most of these institutions of higher education are charging very exorbitant fees for tuition. We should not exempt them unless they will pass those exemptions to our students. But they will not because most of them are commercial.

Hon. Temporary Deputy Chairlady, I do not see any value in this amendment and, therefore, I oppose.

Hon. Kamau: Thank you, hon. Temporary Deputy Chairlady. I do have a lot of respect for this young man called hon. Gatobu especially for his passion for education. But on this particular amendment, I seem to have a problem with it. It looks like the beneficiary at the end of the day may not be those children that are actually benefiting from the textbooks. Maybe, the publishers will gain more than the children. There is no guarantee that these particular exemptions will actually go to the primary schools to help them. I strongly oppose this particular amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Gatobu, you have a point of order.

(Hon. Angwenyi consulted loudly)

Hon. Angwenyi, I am hearing you.

Hon. Kinoti: Hon. Temporary Deputy Chairlady, is hon. Jamleck Kamau in order to say that I am trying to shield the publishers whereas I said that once we tax textbooks, something which has not been done for years, the cost of taxation will be passed over to the child? What hon. Kamau is not getting is the fact that, last year, for instance, we gave every child in primary school Kshs100 for textbooks, meaning that you can only purchase a textbook if you bring together six children. If we tax textbooks and the sale price of the

same goes to Kshs2,000 per copy, you can only buy a copy, under the Free Primary Education (FPE) programme, if you bring together 20 pupils.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You have made your point, hon. Gatobu. Hon. Jamleck was explaining to you his reasoning. So, that is a point of argument, hon. Gatobu. Hon. Jamleck still has a right to his own argument.

Hon. Jamleck, please, complete in a minute.

Hon. Kamau: Hon. Temporary Deputy Chairlady, with all due respect to my good colleague, there is absolutely no clear way of understanding that if these people are exempted from taxation, the children will actually benefit. Besides, we have the FPE programme in place. Textbooks are bought by the Government. So, I think we are playing some game here.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Jamleck, your point has also been made.

Yes, hon. Rachael Amollo!

Hon. (Ms.) Amolo: Thank you, hon. Temporary Deputy Chairlady. I rise to oppose the amendment. Exempting publishers from taxation will not help any of our children in school. We should bear in mind the fact that we are talking about free education for all our children. Very soon, they will be having e-books, e-learning and e-library. So, I do not see why we should not levy VAT on textbooks. That way, we can also control the publishers.

With those remarks, I beg to oppose the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Jimmy Angwenyi.

Hon. Angwenyi: Hon. Temporary Deputy Chairlady, I rise to oppose the amendment.

The Government of Kenya has in place the FPE programme, through which it should provide all those items. So, we do not want to go back to where former President Kibaki took us from. President Kenyatta must continue with the FPE programme and enhance it.

With those remarks, I beg to oppose the amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Dennis Waweru.

Hon. (Dr.) Pukose: On a point of order, hon. Temporary Deputy Chairlady. I do not know whether one of my colleagues, hon. Simba Arati, is properly dressed. Has he conformed to the dress code of this House?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, honestly, if you ask about the dress code again, I will rule you out of order. The same question cannot be asked in the House three times. I have said, and earlier on the Speaker said hon. Arati is properly dressed, so was hon. Njomo.

Proceed, hon. Dennis Waweru.

Hon. Waweru: Hon. Temporary Deputy Chairlady, we are from a situation where we had more than 300 items exempted from VAT. I do not think that is the direction we want to take. We are not sure that if we exempt publishers from VAT, they will pass that benefit to the end user. Also, my friend, Gatobu, is digital, unless he wants to tell us otherwise. The direction we want to take, as Jubilee, is e-books. That is why we are introducing laptop computers in primary school.

Therefore, I strongly oppose the amendment.

(Loud consultations)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Order! Order, hon. Members! Standing Order No.107 talks about gross disorderly conduct, and an example of disorderly conduct is raising a false point of order. I am now going to take this provision a bit more seriously because we need to be a bit serious when we are in the Committee of the whole House. Unlike when we are in plenary, this is the stage when you raise substantive issues; not political issues or frivolous points of order.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, we have another amendment by hon. Tonui. Let us be very clear that hon. Gatobu's amendment has been negated. Let us now have the amendment proposed by hon. Tonui.

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

THAT, the First Schedule be amended in Part I- Goods, (Section A), by inserting the following items, descriptions and tariffs numbers, thereof:-

28. Other sugars, including invert sugar and other sugar syrup, blends containing in the dry state, 50% by weight of fructose of tariff No.1702.90.00.

Hon. Temporary Deputy Chairlady, we discussed this amendment in the Committee of Finance, Planning and Trade and approved it. When I asked why it was not part of the amendments that were to be dealt with, I was told that it was a typing error. So, I thought there was need for it to be reinstated in the Order Paper because amongst the basic common commodities for the common man is this one.

Hon. Tonui: I have already inquired from the staff of the National Assembly. They are the ones who authored it.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Order, hon. Tonui! Have you moved your amendment?

Hon. Tonui: Yes, I have moved.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Do not engage Members directly. Do so through the Chair. Have you completed your explanation?

Hon. Tonui: He is only distracting me.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Okay. Continue.

Hon. Tonui: I wanted to explain that I clearly went and sought advice from the Legal Department of Parliament and they sought advice from the Budget Office of Parliament. The KRA was contacted and they are the ones who provided information on how table sugar should be worded as per their requirements. That is how this one has been worded. My people in Bomet Central gave me clear instructions that we enjoy a cup of tea. We need sugar to be exempted so that we can enjoy that cup of tea. That is why I am moving this amendment today that we allow everyone and especially the poor to

enjoy a cup of tea even if they cannot enjoy something else. That is what I am trying to move. I will ask---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You do not need a seconder. Hon. Members, let me be clearer that what hon. Tonui is proposing in his amendment is to exempt household sugar from Value Added Tax (VAT). I, therefore, propose that the First Schedule be amended as proposed by hon. Tonui.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I am going to take a few people but I really need to know who wants to speak on this particular issue because you are not removing your names from the previous requests. Hon. Gladys Wanga.

Hon. (Ms.) Nyasuna: Hon. Temporary Deputy Chairlady, it is very difficult to know that it is household sugar. It is called “other sugars”, “invert sugar”, “sugar syrup”. Is this normal sugar that we use in the house? It is also called fructose. I would support if this is the sugar that is on the table of the poor person in Homa Bay. If it is not, then I am inclined to oppose. I would like the Mover to clarify. Could you clarify?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tonui, can you clarify whether this is the household sugar that we get on the table of the poor person in Homa Bay or it is something else? Can you be clear that that is the sugar that you are speaking about?

(Loud consultations)

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, please, I am asking for order. I will give you opportunity but after I have allowed the Member who is proposing the amendment to be heard clearly.

Hon. Tonui: Thank you, hon. Temporary Deputy Chairlady, let me make it clear. I inquired and I am interested in only sugar from sugarcane and this is the one, excluding the one which is imported. This is from sugarcane. That is all.

Hon. Washiali: On a point of information, hon. Temporary Deputy Chairlady

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Washiali.

Hon. Washiali: Thank you, hon. Temporary Deputy Chairlady. What we produce in this country is table sugar. I think this business of syrup sugar is a foreign product and this is what actually has undermined the production of sugar in this country. For the sake of farmers, if we zero-rate this sugar that means that the farmers will not be able to sell their own sugar and that is why we have had a problem. Therefore, I oppose this amendment.

The Temporary Deputy Chairlady (Hon. Ms.) Shebesh): The Chair of the Committee, hon. Langat, can you please give clear guidance on what your position would be?

Hon. Langat: Thank you very much, hon. Temporary Deputy Chairlady. I want to say that hon. Tonui’s intentions are very good but unfortunately, he is trying to exempt something else and not the sugar that we know. He has good intentions but I think maybe there was a problem in this. In fact, I had advised him earlier that he can do a further

amendment so that it is really sugar but this one is a different kind of sugar. I appreciate his wishes but unfortunately, we will be actually hurting the sugar industry if his amendment passes.

(Hon. Tonui stood up in his place)

I wish you could protect me because he is standing while I am standing and you have not given him the Floor.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Member, two people cannot be on their feet at the same time. Hon. Tonui, allow the Chair to complete his explanation.

Hon. Langat: Thank you very much, hon. Temporary Deputy Chairlady. In any case, I think in this country for those of us who come from the sugar belt region, the rise of sugar prices is usually because of some cartels that hoard sugar. Sometimes the prices rise two times in two years and not because of VAT. So, I think let us really differentiate these issues. Let us oppose this amendment hon. Members. I also ask the Members from the other side that since we have been moving together, let us also move together in this. Let us oppose it.

Hon. Tonui: On a point of order, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You have risen on a point of order, hon. Member. Please tell me what is out of order?

An hon. Member: Hon. Temporary Deputy Chairlady, is the hon. Member in order to try to mislead us that he is trying to help the poor when this fructose is actually industrial sugar which is basically used by multinationals who do not originate from this Republic and who are out to exploit us and make more profits? Could we be told whose interests the hon. Member is trying to serve in this particular matter? Could we actually call it what it is?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tonui, could you kindly approach the Table so that we can give advice on whether---

Hon. Kamau: On a point of information, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Who would you want to give information to hon. Jamleck Kamau? He was on a point of order. Just ventilate.

Hon. Kamau: Thank you, hon. Temporary Deputy Chairlady. I think it is important for us to really understand where this thing is coming from. We have already done our research and we want to inform the House what invert sugar is. It is actually a mixture of equal parts of glucose and fructose resulting from the hydrolysis of sucrose.

(Laughter)

It is found naturally in fruits and honey and produced artificially for use in the food industry. That is the information.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Tonui, make your request.

Hon. Tonui: Thank you, hon. Temporary Deputy Chairlady. To avoid confusion, what is written is not mine.

(Laughter)

The amendment I gave to the Legal Department read “household sugar”. Let us get it clear. They inquired from KRA and the words which they inserted here were from that inquiry. I want to move an amendment to this to read “household sugar made from sugarcane”. That is all.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I hope you have clearly heard hon. Tonui’s amendment to the amendment he had given. He is now proposing “household sugar made from sugarcane”.

Hon. Tonui, could you stand up and move your amendment to the House once more?

(Loud consultations)

If you were a bit quiet---

Hon. Member: We are!

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): I think if you stopped shouting at the Chair from where you are seated, you could probably hear hon. Tonui’s amendment. It is a very critical amendment. Therefore, let us take it seriously.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mbadi, I will give you a chance to raise your point of order once I hear what hon. Tonui is proposing.

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

THAT, the First Schedule be amended in Part I - Goods, (Section A), by inserting the following words, descriptions and tariffs numbers, thereof:-

28. Household sugar from sugarcane.

That is the amendment I want to move.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Langat, please comment on the new proposal by hon. Tonui in his amendment.

(Loud consultations)

Hon. Members, let us hear the Chair of the Committee so that we can be clear and move on.

Hon. Langat: Hon. (Ms.) Temporary Deputy Chairlady, I think I said in this House that the rise of prices of sugar - and it is common knowledge in this country - is usually because of cartels. In fact, if we allow this amendment, we will give a field day to importers. I request the House that we oppose both the amendment and the further amendment.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let the House know that the amendment by hon. Tonui has been negatived. Hon. Members, there is another

amendment by hon. Tim Wanyonyi. This amendment was initially meant to be on the Second Schedule, but hon. Tim Wanyonyi has indicated that he would like it exempted. Therefore, he would like to move the amendment in the First Schedule. Is hon. Tim Wanyonyi here? Is there anybody holding brief for hon. Tim Wanyonyi? Please, move the amendment that hon. Tim Wanyonyi wanted to move in the Second Schedule, so that it is exempted instead of being zero-rated.

Hon. Ng'ongo: On a point of order, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, let me take a point of order from hon. Mbadi who seems to raise a point of order on everybody who speaks.

Hon. Ng'ongo: Thank you, hon. Temporary Deputy Chairlady. As you have noticed, my points of order are now two because they have accumulated.

On the first one, hon. Tonui made a very serious allegation that the amendment on the Order Paper was not his amendment. That is a very serious allegation that this House needed to deal with. It is a very serious legislative anomaly if your amendment can be changed.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mbadi, I think I can answer that immediately. Hon. Tonui said that he consulted the legal drafters in the House. He also consulted the KRA and the Committee. So, he was saying that he was guided in terms of the technicality of writing it. Note that it was not his intention.

Hon. Ng'ongo: I really doubt that, hon. Temporary Deputy Chairlady. I think, sometimes, we bring amendments which we do not understand. However, let me move on to the next point of order.

Amendments to a Bill can only be moved on your behalf with a written permission from the Mover. In the event that we do not have that and since hon. Tim Wanyonyi is not here, we will just move on unless the hon. Member is authorized in writing. That is what our Standing Orders say.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. T.J. Kajwang, do you have a written authorization from hon. Tim Wanyonyi that you move this amendment on his behalf?

Hon. Kajwang: Yes, I do, hon. Temporary Deputy Chairlady.

Hon. Members: Then move it!

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Please, let us be patient with each other, hon. Members. Hon. Kajwang has said that he has the consent of the hon. Member. So, go ahead and move the amendment.

Hon. Kajwang: Hon. Temporary Deputy Chairlady, on behalf and with the consent of the Member for Westlands, I beg to move:

THAT, the First Schedule be amended in Part B by inserting the following new item immediately after item 27-

(1) Subject to paragraphs (2) and (3), materials, articles and equipment, including motor vehicles, which—

(a) are specially designed for the sole use by disabled, blind and physically handicapped persons;

(b) are intended for the educational, scientific or cultural advancement of the blind for the use of an organisation approved by the national Government for purposes of exemption.

- (2) The exemption under paragraph (1) shall only apply—
 - (a) once in every two years; and
 - (b) to a person who has not enjoyed another exemption under the provisions of this Act.
- (3) Paragraph (1)(b) does not apply to motor vehicles.”

The gist of this amendment is to exempt some of those materials that are needed by the physically challenged people to make their life comfortable. You have seen the Member for Westlands come to the House every morning, but because the vehicular equipment he has is designed in such a way that he is unable to sit in front, he has been sitting at the back. That makes it very uncomfortable. He has gone home right now to be able to rest his back. We are here talking about empowerment of the disabled persons, the blind, the physically disabled and the disabled. If we will give sanitary pads to our children and have affirmative action for our women and youth, we must have affirmative action for the disabled.

Unless something is wrong here in terms of finance, I urge that the issue on paragraph (b) on educational, scientific or cultural advancement of the blind for the use of an organization approved by the national Government – and those are Government institutions - for purposes of zero-rating, be taken seriously. The last one is that he has said in sub-section 3 that there are situations where the exemptions will not apply to motor vehicles.

I beg to move.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, let me be clear on this amendment. Please, use your Order Papers. Hon. Tim Wanyonyi had proposed earlier to amend the Second Schedule, but now that we are amending it on the First Schedule, the import is that he is asking for exemption rather than zero-rating. Those of you who want to understand the difference, zero-rating has an element of asking for refunds and exemption does not. Therefore, we are going to tidy up his amendment. It will be in the First Schedule. The wording on page 272, will be the First Schedule rather than the Second Schedule. It will read that the First Schedule be amended in Part B by inserting the following new item immediately after item 27. Now it is after Item 27 rather than Item 9.

Also, in the First Schedule, the title will not be necessary because we do not have titles in the First Schedule. Therefore, the title that had been recommended will not be there. It will go straight to the substantive amendments. In Sub-clause 2, we will be talking about the exemption rather than zero-rating. In Sub-clause 2(b), also, where it talks about zero-rating, it is exemption. So, I will take a few Members who are interested in ventilating on this issue.

Hon. Mbadi, just because you are on your feet and not because you have anything extra than anybody else. It is just that you are on your feet.

Hon. Ng’ongo: Hon. Temporary Deputy Chairlady, now you see, you are violating the House Standing Orders. But anyway, I will allow you the luxury. I support this amendment. When you make it an exemption, it is very easy now because it will not

be misused. If it was zero-rated, you would have to be paid or refunded for any parts used in the making of the vehicle. But now that you are only exempting, then it means that the vehicle that is used by the disabled with not attract VAT, but the parts which are imported will be subjected to VAT as usual. In my view, this is very important and I support. Given that it is for the disabled, I do not see why we should object. That is why I have even abandoned my point of order under Standing Order No.6.

Hon. Gikaria: Hon. Temporary Deputy Chairlady, I rise to support the amendment as moved by hon. T.J. Kajwang. I also want to thank you. Sometimes, we do not get the difference between exemption and zero-rating. We have also had an opportunity to understand the difference between the two. More so, the disabled people will also get an opportunity to get all the things that the able people can get.

I support.

Hon. (Dr.) Nyikal: Hon. Temporary Deputy Chairlady, I rise to support this. This is something that we should all support. Even now, in terms of policy and law, we try to find provisions that support the disabled including the houses and premises where they live. Therefore, this is justified. It is in practice now and they have to seek exemption when they need such equipment. Generally, in law we exempt the disabled persons from some other taxes. This is just streamlining what we should be doing. The only area that I have concern with is the period of two years, which would be rather too short if we are talking about vehicles. I would propose that we amend that by saying, once every two years except in the case of vehicles where we should put a minimum of three years. I support the amendment, but I ask the Mover to propose an amendment and where you have every two years, you should say once in every two years except in the case of vehicles where it should be three years.

Hon. Nakara: Hon. Temporary Deputy Chairlady, I rise to support this amendment. I am supporting this amendment to show that the Jubilee Government is responsible for the physically disabled persons. The Minority will support us this time. The Jubilee Government has created a conducive environment for the physically disabled persons. So, I support.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Chairlady, I support the proposed amendment by hon. Wanyonyi. I would like hon. Members to---

(Hon. Members shouted at the Chair)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, shouting at me will not give you this position. I have seen you and I will give you a chance at the right time.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Chairlady, I would like to bring to the attention of Members the provisions of Article 27(6) of the Constitution. If you allow me, it reads:

“(6) To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination”.

The disabled and the blind are part of the class we would say that past Governments have not looked at in terms of provision of basic needs. Therefore, this is a very progressive amendment that has been brought to the House. I support.

Hon. Iringo: Hon. Temporary Deputy Chairlady, I rise to support this amendment. I also want to thank the Chair of the Committee, for a job well done. We, as a Committee, did our best to bring this Bill this far. I also thank Members who have contributed positively to its amendments. This is a bravo for us all as a House.

I agree with hon. Wanyonyi in this amendment because affirmatively, if we are looking at ladies in terms of sanitary towels, we should also look at the disabled persons affirmatively because they have their weaknesses, which are not their wish. They have their shortcomings. We have been informed that the Mover of this amendment is not here because of some physical challenges. That is why he had to leave hon. Kajwang to move the amendment. That should move this House to pass this amendment without much ado. If he was fit as we are, he could be sitting with us here. Therefore, we should exempt tax on the items which are vital to them.

However, I wanted some confirmation. When we talk about vehicles, are we talking of motor vehicles or the same vehicles that they use? If they are the motorized vehicles that they use, Dr. Nyikal has talked of three years and as a medic, he could be having more information about their durability. But if it was a motor vehicle on the road, I would think of a different period. If it is those motorized vehicles, I am comfortable with two years.

I beg to support the amendment.

Hon. Kamau: Thank you, hon. Temporary Deputy Chairlady. I wish to move a further amendment to the proposed amendment to Section A of part I. I beg to move that the First Schedule be further amended by deleting the word ‘two’, appearing in paragraph two and substituting therefore, the word ‘four’. The reason for this is that, when you talk about motor vehicles after every two years, it is a very short time, indeed. I think we cannot exempt vehicles after every two years. We might get into a situation whereby we might misuse that privilege. Therefore, to me, after every four years will be good and reasonable time.

Thank you.

(Question of the further amendment proposed)

Hon. Kimaru: Thank you hon. Temporary Deputy Chairlady. I think I would like to say that, as we proceed, there is a category of disabled people who have been totally left out; the deaf and dumb. These also require special gadgets to enable them go about their normal lives. In particular, those who are partially deaf require hearing aid and that is a very vital group of the disabled. I know that there are people who require gadgets that cost a lot of money, and leaving them out will really not do any service to the disabled category.

Therefore, I would propose a further amendment that the deaf and the dumb be included because they also require special gadgets---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kimaru, I wish you had brought that particular amendment because the procedure of this House; as you have seen hon. Jamleck Kamau, T.G. Kajwang and others do earlier, is to bring the

amendment to that amendment drafted as a further amendment. We have now passed the amendment by hon. Tim Wanyonyi and we are now debating the further amendment by hon. Jamleck Kamau.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, I stand guided.

*(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)*

Hon. Kajwang: Thank you. Hon. Temporary Deputy Chairlady, I know we are now experiencing what is called in economics the law of diminishing returns. Hon. Prof. Nyikal, Member of Parliament for Seme, in his amendment, if I listened correctly, had proposed a further amendment to Sub-section A. I do not know whether it was captured. If it was not, I want to propose a further amendment to the further amendment by hon. Dr. Nyikal.

Hon. Member: We have passed that one!

Hon. Kajwang: No! No! We have not passed it. We can still work on it because I am still proposing and we are still on Sub-section A. We have not put the Question on Sub-section A. The issue here is---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. T.G. Kajwang, are you speaking about the further amendment by hon. Jamleck Kamau? Is that what you are speaking on?

Hon. Kajwang: Yes, that is what I am speaking on.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay then. Continue.

Hon. Kajwang: I am speaking on paragraph A and it borrows--- In Sub-section 1, they have put materials and articles, equipments including motor vehicles. There could be materials, articles, equipment that the blind and the physically disabled persons would want to have every two years or so often. I understand when hon. Members say that motor vehicles should come after four years, because it can be abused. I understand.

So, I can now propose that we can further amend hon. Jamleck Kamau's amendment to say that, "once in every two years, except for motor vehicles which shall be exempted only once in every four years."

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Let me take a few suggestions on that as you approach the drafters on that particular amendment.

Hon. Langat: Hon. Temporary Deputy Chairlady, I think there is need for some clarification. If you look at the amendment by hon. T. Wanyonyi, it actually excludes few motor vehicles. If you look at paragraph 3 of that amendment---

Hon. Member: It is like that one. This is paragraph 1B.

Hon. Langat: Okay. Then I support the further amendment by hon. Kajwang.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Sakaja! Anybody else who wants to contribute to this particular suggestion by hon. T.J. Kajwang?

Hon. Sakaja: Hon. Temporary Deputy Chairlady, I want to support and thank hon. T.J. Kajwang for bringing that further amendment because if we had pushed

everything to once in four years, we will not be doing justice to that group of Kenyans who are disabled. I do not think, even as a country, we have done half for them, but we should.

Also, just to note that in the parent Act, the reason why most of this was given four years, it was zero-rating. Now that it is an exemption, it may not be abused as much. So, by separating motor vehicles, I think that then solves the issue. We want to exempt the definite materials and equipments that these people may need even more often. So, we support.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. T.J. Kajwang, can you give us the amendment?

Hon. Kajwang: Thank you, hon. Temporary Deputy Chairlady. I propose that Paragraph 2 be amended further as proposed by hon. Jamleck Kamau to read as follows:

“Once in every four years, in respect of motor vehicles.”

That is enough and it will take care of it.

(Question of the further amendment proposed)

Hon. Ng’ongo: Hon. Temporary Deputy Chairlady, I am at a loss and I need clarification. I thought this House took a decision on hon. Jamleck Kamau’s further amendment. If that is the case---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): There was a point of order raised by hon. T.J. Kajwang.

Hon. Ng’ongo: That point of order by hon. T.J. Kajwang was after you had put the amendment by hon. Jamleck Kamau to question. In which case, we cannot further amend it because if you look at Standing Order 133(6), it states as follows:

“No amendment shall be moved which is inconsistent with any part of the Bill already agreed to or any decision already made by the Committee, and the Chairperson---

So, we have already made a decision as a Committee on the amendment by hon. Jamleck Kamau. It may be too bad, but procedurally, Chair, you cannot again amend what this House has already taken a decision on.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Ng’ongo, the most you have read, do you think that it is inconsistent? In our opinion, it is not inconsistent. That amendment is not inconsistent with what hon. Jamleck had proposed.

Hon. Ng’ongo: Hon. Temporary Deputy Chairlady, just listen. Hon. Jamleck Kamau had proposed four years. When you are now varying some to two years, it is inconsistent!

Hon. Member: No!

Hon. Ng’ongo: Yes!

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Mbadi, let me read for you the amendment so that you can see that it is not inconsistent with what hon. Jamleck had proposed. The amendment that hon. T.J. Kajwang has proposed is not inconsistent with the amendment that had been carried earlier. The critical matter here is consistency with the amendment that had been carried earlier on. This amendment says:

“The exemptions under paragraph one shall only apply once in every four years in respect of motor vehicles.”

Hon. Jamleck Kamau had also suggested four years, only that he had not made it clear that it should be in respect of motor vehicles. So, we can carry both amendments because they are not inconsistent with each other.

Yes, Leader of Majority Party.

Hon. A.B. Duale: Hon. Temporary Deputy Chairlady, what hon. Mbadi has said is on procedure. The Question on the further amendment by hon. Jamleck Kamau was put, and it was carried. I agree with hon. Mbadi that what hon. T.J. Kajwang did was out of order. He was trying to re-open debate on a matter that had been disposed of.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Leader of Majority Party, it was a further amendment. We have been calling amendments which are complete and then somebody would come with a further amendment. So, what hon. T.J. Kajwang has done is moving a further amendment. That is why you hear me say something like: “Hon. T. Wanyonyi’s amendment as amended by hon. Jamleck Kamau, and as further amended by hon. T.J. Kajwang.” It is correct and procedural. Therefore, I will put the Question, which is that the Schedule be amended as proposed by hon. T. Wanyonyi and further amended by hon. Jamleck Kamau, and further amended by hon. T.J. Kajwang. Hon. Joyce Laboso, are you on a point of order?

Hon. (Dr.) Laboso: Hon. Temporary Deputy Chairlady, I just wanted to clarify that until it is said: “Shall we make it part of the Bill?” you have not concluded debate on any matter. So, as long as we are still making further amendments, we are perfectly in order to continue. If she had already said that, that would conclude any further amendments on that particular amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you, hon. Deputy Speaker, for that clarification. There is another point of order from hon. Kaluma.

Hon. Kaluma: Hon. Temporary Deputy Chairlady, if you look at the amendment that hon. Tim Wanyonyi proposed, you will see that it was targeting vehicles designed for persons with disabilities, and not ordinary vehicles. Those are vehicles which waste away within a year or two. So, when we take the years to four, we will kill the intention and the benefit that was targeted.

*(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)*

Hon. Member:*(Off-record)*

Hon. Kaluma: No, not motor vehicles. Please, let us consider the amendment, which reads:

“---materials, articles and equipment, including motor vehicles which are specially designed for the sole use by the disabled---”

So, the vehicles targeted here are those for use by physically handicapped persons and not ordinary vehicles. That is why I believe that hon. Wanyonyi was saying, for purposes of those vehicles, two years would be the period within which they waste away and, therefore, they can acquire replacement. So, I was going to plead with hon. Members

to allow me to bring an amendment to reinstate the period stipulated by hon. Tim Wanyonyi's amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Yes, hon. Kimaru!

Hon. Kimaru: Hon. Temporary Deputy Chairlady, I had proposed an amendment, which the drafters took rather long to prepare, but which is now ready.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kimaru, you do not move an amendment on a point of order.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, I am doing so because I had been barred. I stand under Standing Order, No.133, in particular paragraph 3.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Are you amending something we have already agreed to be part of the Bill?

Hon. Kimaru: Yes, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): If you listened to the hon. Deputy Speaker, it is very clear that once we have agreed that a clause be part of the Bill, we cannot go back to amend it. The reason as to why we are still amending the amendment by hon. Tom Wanyonyi is that I have not yet proposed that it be part of the Bill. Please, let us follow the procedure.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, I am standing under Standing Order No.133, and in particular paragraph 3.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Please, read it out.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, it says:

“Despite paragraph 2, where an amendment has been moved to any part of the Bill in accordance with the paragraph, any Member may move an amendment to that amendment on delivering to the Chairperson the terms of his amendment in writing.”

I have already submitted the terms of my amendment to the Chair.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kimaru, are you sure that what you have read out does not apply to a proposal that has been made part of the Bill?

Hon. Kimaru: Hon. Temporary Deputy Chairlady, I had already given notice. I feel---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): You had given notice of your intention but the problem is that we have already moved to the next amendment. We are now on Tim Wanyonyi's amendment.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, my views should have been considered, having brought them to the attention of the Chair.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kimaru, many people bring such intentions to the attention of the Chair, but they subsequently consult with the Chairs of the relevant Committees and other hon. Members and drop their amendments. Meanwhile, the procedure of the House is moving on. The Standing Order you have referred to does not apply to your situation. So, we are going to the Schedule.

Hon. Kimaru: Hon. Temporary Deputy Chairlady, in my view, it applies because I gave notice of my intention. It cannot just be disregarded.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Kimaru, as much as you have a right to say what you think is your right, I have the final say on matters of procedure. Therefore, we shall now proceed to the next amendment, which is on Section B by hon. Langat.

Hon. Kimaru, I hear you but we are not able to procedurally deal with the proposal you are giving. Not even under the Standing Order that you have referred to. It does not fall under our purview to do it.

(Loud consultations)

Hon. Members, I will be coming to your amendments shortly. Please, be patient. Be guided that shouting, raising your voices and losing your temper does not help us to move this process forward. I have said that we are coming to your amendments. Please, be guided as such.

Proceed, hon. Langat.

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move the amendment to the Second Schedule as per the Order Paper.

Hon. Temporary Deputy Chairlady, what I am simply doing---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Langat, you have an amendment on Section (b) of the First Schedule. Refer to page 272 of the Order Paper.

Hon. Members, as soon as we dispose of this amendment, we will consider an amendment by hon. Opiyo. Unfortunately, hon. Opiyo's amendment is not on the Order Paper. It came when the Order Paper had already been circulated.

Proceed, hon. Langat.

(Loud consultations)

Hon. Langat: Madam Temporary Deputy Chairlady, protect me from the Leader of Majority Party.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Please, move the amendment.

Hon. Langat: Hon. Temporary Deputy Chairlady, there is a lot of noise coming from that end.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, hon. Langat needs time to move his amendment.

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

THAT, the First Schedule be amended—

(b) in Part II, by—

(i) inserting the words “and flower auction services” immediately after the words “coffee brokerage services” in paragraph 10;

(ii) inserting the following new paragraph immediately after paragraph 17—

“18. Hiring, leasing and chartering of aircraft”.

Hon. Temporary Deputy Chairlady, there is the amendment under part (i), on the same page, which I am withdrawing.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Okay. Please, read the words of the part that you are withdrawing.

Hon. Langat: Under (i), it says “inserting the words “and flower auction services” immediately after the words “coffee brokerage services” in paragraph 10.” I am

withdrawing that because flower auction services are done outside the country. So, it is really meaningless to have it here. That is the reason.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: So, please, read what your amendment reads.

Hon. Langat: I am saying “(ii) inserting the following new paragraph immediately after paragraph 17.”

Hon. Members: On which page?

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Page 272.

Hon. Langat: Hon. Temporary Deputy Chairlady, allow me some time to do some consultations because I think there is a problem here. Allow me some time to consult first on this specific amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Go ahead hon. Langat. We have no choice but to give you the opportunity because it is your amendment. Please, consult quickly because we cannot do anything else before this amendment.

(Hon. Langat consulted Committee Members)

Hon. Langat: Sorry, hon. Temporary Deputy Chairlady. I wish to move the amendment as it is on the Order Paper, but subject to what I have said. I am withdrawing Part II which reads “inserting the words “and flower auction services” immediately after the words “coffee brokerage services” in paragraph 10.” I am withdrawing that because I said flower auction services are done outside the country and not in Kenya. The purpose of that is to give exemption to hiring, leasing and chartering of aircraft for the purposes of our tourism sector.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Hon. Members, I hope you are clear on what hon. Benjamin Langat is proposing in his amendment. He has withdrawn in his amendment the whole of part (i) and, therefore, his amendment only seeks “inserting the following new paragraph immediately after paragraph 17 - Hiring, leasing and chartering of aircraft”. He has amended it by withdrawing part (i) which was talking about flower auction services. He has given his good reasons for doing so. Anybody who wants to ventilate on the same? Hon. Mbadi, let me first propose the Question and then I will give you the Floor.

(Proposed amendment under Part II(i) withdrawn)

(Question of the amendment proposed)

Hon. Ng’ongo: Thank you Chair. I support this amendment because if you subject the hiring, leasing and chartering of aircraft to VAT, it is going to affect our national carrier, the Kenya Airways and this is likely to affect employment in this country. Therefore, I support.

Hon. Temporary Deputy Chairlady, as I conclude, I would only urge and advise those of us who feel that there is something they wanted to do on what has been passed to ask for re-comittal because we have that in our procedures. I saw one hon. Member who was really agitated. I think you still have a way of asking for re-comittal of that particular

Schedule or whichever clause of the Bill that you want to be re-committed to the Committee so that we reconsider and take into consideration your views.

Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Thank you very much hon. Mbadi for that education to the Members. Hon. Member, I hope you have heard the proposal. Why do you not cross over to hon. Mbadi to give you a better gist of how you can bring your amendments?

(Hon. Kimaru crossed the Floor without bowing)

Certainly, not in that manner hon. Member.

(Laughter)

I, therefore, put the Question.

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

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh: Hon. Members, we have now completed the amendments to the First Schedule except that there was an amendment that was brought to the Office of the Clerk later than the scheduled 1.30 p.m. by hon. James Opiyo Wandayi. However, we know in this House that there is a procedure where the Mover can approach the owner of the Bill to move an amendment for him and, therefore, I will be asking hon. Wandayi on record to please put his request so that the Mover of the Bill can move the amendment for him as per our Standing Orders.

Hon. Wandayi: Thank you, hon. Temporary Deputy Chairlady. I will accordingly be asking the owner of the Bill, who is the Chairman of the Committee, to move on my behalf this amendment. This amendment proposal is basically about maize and horticultural farmers.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Langat, there is a request by a Member for you to move the amendment on his behalf as per the Standing Orders.

Hon. Langat: Because he is a young man like me, I will grant him that request. However, he should make sure that he does this in good time in future.

I beg to move:

THAT, the First Schedule be amended –

(a) in Section A of Part 1-

(i) by introducing Item No.31, that is, agricultural pest control products.

Hon. Temporary Deputy Chairlady, I think what the hon. Member is seeking to do by exempting the agricultural pest control chemicals is to make it cheaper for the farmers. So, I support the amendment on his behalf. Thank you.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, I can now allow hon. Wandayi to ventilate. I hope you will remember to thank the Chair for moving the amendment for you.

Hon. Wandayi: Thank you, hon. Temporary Deputy Chairlady. I once again want to thank the Chair for moving this amendment on my behalf. In a nutshell, what this amendment is about---

(Loud consultations)

Hon. Temporary Deputy Chairlady, please protect me from these Members.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members who are seated close to the hon. Member who is on his feet, please, give him time.

Hon. Wandayi: Hon. Temporary Deputy Chairlady, I have been keenly following the amendments being moved throughout the afternoon session and I am very happy that the Government has seen it fit to respond to the people's needs.

I belong to the school of thought that says the devil is in the details. I will say this as an expert; crop protection cost accounts for close to 30 per cent of the total cost of production in agriculture. If we do not exempt pest control products or what is commonly referred to as the agro-chemicals from this tax, we shall have the effect of bringing serious problems to the horticulture sector.

First, what will happen is that farmers will resort to using counterfeit, fake and adulterated products which will have an impact on the maximum residual levels. As you know, the horticulture export market is very sensitive, especially the European Union (EU) market where most of our products are sold. I, therefore, want to move this amendment so that it, at least, can protect our very vital horticultural industry.

On maize, one of the biggest determinants of the---

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Wandayi, we are in the Committee stage and not in full debate. As long as your point is made---

Hon. Wandayi: I am summarizing this one, hon. Temporary Deputy Chairlady.

Hon. Wandayi: Hon. Temporary Deputy Chairlady, one of the biggest determinants of the quality of maize is the quality of the maize seed. The biggest cost element in maize production is agro-chemicals. Therefore, if we do not exempt agro-chemicals from this tax, we shall be negating the gains of exempting maize and flour. I urge hon. Members to support this very meaningful amendment.

Thank you, hon. Temporary Deputy Chairlady.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. Members, for the clarity of the House, hon. Wandayi's amendment which has been moved by the Chair, hon. Langat, seeks to exempt agricultural-based control products.

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

(First Schedule as amended agreed to)

Second Schedule

Hon. Langat: Thank you very much, hon. (Ms.) Temporary Deputy Chairlady. I beg to move:

THAT, the Second Schedule be amended in Part A by deleting Item 9.

This issue has already been taken to exemption and the House has agreed to it under the exemption schedule. Therefore, I am deleting item No.9 because we have already covered it under the exemption section.

(Question of the amendment proposed)

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

(Second Schedule as amended agreed to)

(Clause 2 agreed to)

(Title agreed to)

Clause 1

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairlady, it was done.

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Hon. (Ms.) Kanyua, you will have to withdraw the amendment if your intention is to withdraw it. Hon. Nyokabi, if you have looked at the amendment and seen that it has been taken care of, you will have to voice that you are withdrawing it. So, can you be sure that this amendment that has been indicated here has been taken care of? Can you look at the Order Paper?

Hon. (Ms.) Kanyua: Hon. Temporary Deputy Chairlady, I am looking at the Order Paper. The amendment was for the one-month timeline but I withdraw it because the Chairman, hon. Langat, has already dealt with it.

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

The Temporary Deputy Chairlady (hon. (Ms.) Shebesh): There is also another amendment by hon. Langat.

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

THAT, Clause 1 of the Bill be amended by inserting the words “which date shall not be later than one month from the date of publication of this Act in the Gazette” immediately after the word “appoint”.

We are giving them the date to operationalize this Act when this Bill is signed. It should be one month after gazettelement by the Cabinet Secretary. So, this is to give it a specific date in which it will come into operation.

(Question of the amendment proposed)

(Question, that the words to be inserted be inserted,

put and agreed to)

(Clause 1 as amended agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh): Members, we have not concluded with this Bill. I will be calling upon the Mover to respond. We will not go back to the House. We will continue with the other Bills until we report together all the Bills that have been indicated on our Order Paper. Therefore, hon. Langat, move the reporting of this Bill.

Hon. Langat: Hon. Temporary Deputy Chairlady, I beg to move that the Committee doth report to the House its consideration of the Value Added Tax Bill (National Assembly Bill No.9 of 2013) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

THE COUNTY ALLOCATION OF REVENUE BILL

[The Temporary Deputy Chairlady (Hon. (Ms.) Shebesh) left the Chair]

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

The Temporary Deputy Chairman (Hon. Kajwang): Hon. Members, join me in congratulating the Member for Nairobi County for the work well done. I know fatigue could be setting in, but this is why you are Members of the National Assembly and not the other House. I want to trust on your alertness. We want to consider the County Allocation of Revenue Bill (Senate Bill No.1 of 2013). We will also consider the Constituencies Development Fund (Amendment) Bill (National Assembly Bill No.24 of 2013). They are fairly short Bills and so, stay with us and be alert as much as you can, so that we can dispose them.

(Clauses 3, 4 and 5 agreed to)

Members, some amendments are coming in right now. Anybody else who has amendments to the County Allocation of Revenue Bill so that we can do this together? I can see an amendment here signed by hon. Musyimi as the Chair of the Committee. Let us deal with it lawfully and under the procedure. Allow the Members to ventilate themselves as much as they can. Hon. Musyimi, are you there? I am informed that hon. Gichigi, you have brief to hold for hon. Musyimi?

Clause 6

Hon. Gichigi: Hon. Temporary Deputy Chairman, before the Chairman of the Budget and Appropriations Committee left the House, he had given consent and a brief to me to move his amendment. He had notified the Chair.

I beg to move:

THAT, Clause 6 of the Bill be amended in sub-clause 6 -

(i) By inserting the words “as assessed pursuant to Sub-section 7” immediately before the words ‘the national Government”

(ii) By inserting the following new sub-clause immediately after sub-clause 6-

“for purposes of the variation contemplated under Section 6, the Transition Authority and the Commission on Revenue Allocation shall assess the cost of devolved and gazetted functions of a county government and shall advise the National Treasury and the county government on the additional resources needed”.

The Committee is aware that it might have been a challenge to mount the necessary two-thirds majority, but we wanted to make sure that it goes on the HANSARD that the Bill, as presented from the Senate, had a problem. By saying that the national Government is going to give additional funds to the counties, it is important that we make it very clear that the functions and the cost of those functions must have been gazetted prior to further funding by the Central Government. It is very important that, that comes out clearly. At the moment, there is no law in this country that says that so and so is the one who is supposed to cost the functions that are devolved. As I speak, that has not been done. So, it is very important. The words that are out there are that the counties are just about to do the costing themselves. So, it is important that, that comes out clearly. That amendment, even if not sustained today because of quorum, is required in future. Otherwise, we are going to have a free-for-all situation.

If I am permitted, can I move an amendment on Clause 12A?

The Temporary Deputy Chairman (Hon. Kajwang): No, you are dealing with Clause 6. The reasons we are doing this is that you are a Member of the National Assembly and you have a right to speak on the Floor of the House. Hon. Musyimi has that right to speak on the Floor of the House, but let us deal with it properly.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I want to disagree with my colleague that the cost of functions is done by the governors. There are constitutionally mandated bodies like TA, CRA and by extension, even the CIC when they sit together. It is only the TA that will gazette the cost and the functions. It is not the governors. So, we need to do that for the HANSARD. But that is why the law sets the benchmark. If it says that for this House to amend it must have a two-thirds majority, then that law must be adhered to. Otherwise, what the Chair of the Budget and Appropriations Committee is just doing is a talk show which we have to respect and the only time he can bring the issue back under the same law is six months from today. We need to utilize our time in a very good way. If you know that the amendment will carry two-thirds and you know that we do not have the two-thirds majority and we still have other small agendas in the House like the CDF Act and the Motion for Adjournment, we need to use our time very well. Hon. Members have that right within the Standing Orders, but we should know that we have to move. That is why a benchmark has been set of two-thirds majority.

The Temporary Deputy Chairman (Hon. Kajwang): Alright, I see many hon. Members on the request list and interventions. Were these requests in the previous amendments or these are new ones?

Hon. Members: These are new ones!

The Temporary Deputy Chairman (Hon. Kajwang): Okay. Then these are many requests. Let us help ourselves. It is very late in the night. At the end of the day, you want to address yourself to the Constitution and the Constitution in Article 111(2) states as follows:

“The National Assembly may amend or veto a special Bill that has been passed by the Senate only by a resolution supported by, at least, two-thirds of the hon. Members of the Assembly.”

And Standing Order 151(1) states as follows:

“The National Assembly may amend or veto a special Bill that has been passed by the Senate only by a resolution supported by at least, two-thirds of members of the Assembly.”

So, unless you have something which will help us work through the Constitution and Standing Orders--- Hon. Sakaja, are you on a point of order? Where are you?

Hon. Sakaja: Hon. Chair, I just want to help us dispose of this matter very quickly.

The Temporary Deputy Chairman (Hon. Kajwang): Yes, hon. Sakaja, I am just allowing us to do a very a quick ventilation on it so that we understand where we are.

Hon. Sakaja: The matter that has been brought by the Budget and Appropriations Committee is really a constitutional matter. This is because if they are saying that within the County Allocation of Revenue Bill, as brought by the Senate there will be more funds allocated that, in itself, is unconstitutional because the Constitution is very clear. In Article 218, where it creates Division of Revenue Bill and County Allocation of Revenue Bill, it states that the Division of Revenue Bill divides revenue raised by the national Government amongst national and county levels of Government in accordance to the Constitution. Then it is followed by County Allocation of Revenue Bill which shall divide among the counties the revenue allocated, which is the Division of Revenue Bill.

So, you cannot go beyond that. Anyway, because this has already passed, it is the Division of Revenue Act. Now, without even touching that provision, in the County Allocation of Revenue Bill, it is null and void to the extent to which it contradicts the Constitution. So, they can feel happy that they have written that, but to the extent that it contradicts the Constitution, which is clear that the limit on the County Allocation of Revenue Bill is that which put in the division - Kshs210 billion. But it is null and void.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you so much. Let us hear from hon. Charles Njagagua. Hon. Members, refrain from controlling the Chair from the seats. Just allow us to have a good debate.

Hon. Njagagua: Thank you, hon. Temporary Deputy Chairman. Indeed, the Mover of this Bill by his first statement, this is a defeatist kind of way. Is it that they knew from the beginning that they could not surmount the numbers? Is he really in order to put us through an academic exercise?

The Temporary Deputy Chairman (Hon. Kajwang): Thank you. That is a good point taken. Any other hon. Member I can see? Paul Arati Simba!

Hon. Member: Could we get guidance from the Chair---

The Temporary Deputy Chairman (Hon. Kajwang): I am sorry about that, but I will recognize you later.

Hon. Simba: Hon. Temporary Deputy Chairman, Sir. The same question that my colleague has just asked; he knows very well that we cannot raise that number. Is it in order for him to keep us here---

The Temporary Deputy Chairman (Hon. Kajwang): Thank you. Let us hear from hon. Cheptumo.

Hon. Cheptumo: Hon. Temporary Deputy Chairman, I do not think that we are going to act in vain. Please, allow us proceed.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you, I can deduce where you are going to. Let us hear from hon. Metito.

Hon. Katoo: Thank you hon. Deputy Chairman. Mine is also to plead with hon. Gichigi that for two reasons, let him not move that amendment because if it gets defeated, then it will have to wait for more than six months to be discussed again.

Secondly, it will even be an exercise in futility because it will not be put into question because we do not have the required number. So, he should even withdraw it. He should not even move it in the first place. Maybe, we can address his thinking in other ways when we come back if at all, this House will go for recess.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you. This is the first time this matter is coming. So, hon. Members, I think it is a good learning process. Let me hear from one of the first-timers. I have heard from second and third-timers. Can I hear from the hon. Member for Awendo? Just proceed to the Dispatch Box.

Hon. Opiyo: Hon. Temporary Deputy Chairman, I think my concern has actually been adequately addressed by the hon. Member who has spoken. But I think it is important that we are not presented with the Bill that we rubber stamp. I am saying so because we have been given this Bill this afternoon and we are supposed to discuss it. They know so well that we are not able to raise the requisite numbers and they present us with the same Bill so that we pass it without actually---

The Temporary Deputy Chairman (Hon. Kajwang): The last to speak on this is hon. Ng'ongo. Where is he?

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, mine is just to urge hon. Gichigi to withdraw even the other amendments. This is really one Bill that we can afford to rubber stamp. Anyway, it does not hurt us. Let the Senate enjoy itself.

The Temporary Deputy Chairman (Hon. Kajwang): Hon. Ng'ongo, are you in order to suggest that this National Assembly is in a position to rubber stamp any Bill?

Hon. Ng'ongo: But this Bill is actually – if you look at the Constitution---

The Temporary Deputy Speaker (Hon. Kajwang): No! Just address the issue whether the National Assembly should rubber stamp any Bill.

Hon. Ng'ongo: You can afford to rubber stamp, if it is necessary. Hon. Temporary Deputy Chairman, remember what hon. Sakaja said. When they make amendments which are contrary to the Constitution, why bother? Let us pass this---

The Temporary Deputy Speaker (Hon. Kajwang): Hon. Gichigi, you have heard the mood of the House and you know the provisions of both the Constitution and the Standing Order. What say do you have?

Hon. Gichigi: Thank you, hon. Temporary Deputy Chairman. First of all, I want to say this: I am not aware that hon. Members have been permitted to be away from this House to make it impossible to have a two-thirds majority.

Hon. Members: No! No!

Hon. Gichigi: I have the right to be heard. Secondly, even if we do not have the two-thirds majority, let it go on record that the Budget and Appropriations Committee also wanted to move a Motion that we were unable to pass.

The Temporary Deputy Chairman (Hon. Kajwang): Hon. Gichigi, are you sure that the Budget and Appropriations Committee is trying to do something that they should have done much earlier, when this County Allocation of Revenue Bill came to this House? Are you belatedly trying to get the National Assembly to help you clean up?

Hon. Gichigi: Hon. Temporary Deputy Chairman, can I be protected to complete what I wanted to say? What I am saying is this: The Bill as sent here by the Senate was amended. It is not the same document that was originally tabled here. The Budget and Appropriations Committee is stating that Clause 12A is again problematic; the Senate has attempted to amend the PFM Act, when they know very well that they have---

The Temporary Deputy Chairman (Hon. Kajwang): Thank you so much, hon. Gichigi. We are not going to take too long on this. Thank you so much for all those interventions. We want to put them together.

Hon. Member: Put the Question!

The Temporary Deputy Chairman (Hon. Kajwang): No. We are not going to put the Question. Hon. Gichigi, I wish that you would have seen the sense to withdraw because I will hate to rule you out of order. This is because I am going to rule you out of order if you do not. What do you want for the HANSARD, that you are ruled out of order or that you are able to see the issue? Consult with the Leader of Majority Party. Hon. Gichigi, there is a legal obligation placed upon you to consult with the Leader of Majority Party. All right, can you go to the Dispatch Box so that we get this done with?

Hon. Gichigi: Hon. Temporary Deputy Chairman, on behalf of the Chair of the Budget and Appropriations Committee, since this House has not been able to mount the necessary numbers, we are forced to withdraw those particular amendments, but the errors have been cited.

The Temporary Deputy Chairman (Hon. Kajwang): I still do not like the words “forced to withdraw”. So, can you get that bit done properly?

Hon. Gichigi: Hon. Temporary Deputy Chairman, we are, therefore, withdrawing the amendments.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you, hon. Gichigi.

(Proposed amendment to Clause 6 withdrawn)

*(Clauses 6, 7, 8, 9, 10,
11, 12 and 13 agreed to)*

*(First Schedule, Second Schedule and
Third Schedule agreed to)*

(Clause 2 agreed to)

(Title agreed to)

(Clause 1 agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the County Allocation of Revenue Bill and its approval thereof without amendments.

(Question proposed)

(Question put and agreed to)

The Temporary Deputy Chairman (Hon. Kajwang): Hon. Members, that brings us to the end of our consideration of the County Allocation of Revenue Bill (Senate Bill No.1 of 2012). It paves way for our consideration of the Constituencies Development Fund (Amendment) Bill (National Assembly Bill No.24 of 2013).

THE CONSTITUENCIES DEVELOPMENT
FUND (AMENDMENT) BILL

Clause 3

The Temporary Deputy Chairman (Hon. Kajwang): There are a number of amendments by hon. Members, and one of them is hon. Kaluma. The amendment is not on the Order Paper but I am informed that it has been fairly circulated.

Chairman of Departmental Committee, can you proceed?

Hon. Lessonet: Hon. Temporary Deputy Chairman, there are various amendments to be moved on this Bill. Amongst them is one on Clause 2.

The Temporary Deputy Chairman (Hon. Kajwang): Hon. Lessonet, we are on Clause 3. You are moving the amendment on behalf of hon. Kaluma.

Hon. Lessonet: Hon. Temporary Deputy Chairman, on behalf of hon. Kaluma, I beg to move:

THAT, the Bill be amended by deleting Clause 3 and substituting therefor the following new clause –

3. Section 20 of the principal Act is amended –

(a) by deleting subsection (1) and substituting therefor the following new subsection -

(1) The budget ceiling for each constituency shall be –

(a) three quarters of the amount specified in section 4(1) divided equally among all constituencies; and

(b) an amount equal to quarter the amount specified in section 4 (10) divided by the national poverty index multiplied by the constituency poverty indeed.

(b) by deleting the word “joint” appearing in subsection (2);

(c) by inserting a new subsection immediately after subsection (3) as follows-

(4) this section shall be deemed to have come into operation beginning with the allocation for the 2013/2014 Financial Year

The Temporary Deputy Chairman (Hon. Kajwang): Hon. Members, I hope you have digested the effect of that amendment. We are looking at Section 20 of the principal Act and the basis of sharing the CDF money *vis-a-vis* the budget ceiling. It has been proposed in part (a) of the amendment that the budget ceiling for each constituency be three quarters of the specified amount divided equally among all constituencies, and that an amount equal to a quarter specified be divided by the national poverty index multiplied by the constituency poverty index. I think in part (b) it is procedural drafting to remove the word “joint”, which appears there erroneously. I presume. Part (c) is providing the operational time of the Bill.

So, that is the gist of the amendment.

(Question of the amendment proposed)

Hon. Member: Put the Question!

The Temporary Deputy Chairman (Hon. Kajwang): Hon. Members, we had voted to extend the sitting time of the House. So, we are fresh. Do not push us because you are feeling a little fatigued. There are hon. Members who want to ventilate on the amendment. So, allow them to say what they have to say.

Yes, hon. Gladys Atieno Nyasuna!

Hon. (Ms.) Nyasuna: Thank you, hon. Temporary Deputy Chairman. I just want to support the amendment and say that the delimitation of boundaries of constituencies has already taken care of a lot of the equality issues within the constituencies. Therefore, distribution of funds should not, again, take into account the factors that have already been taken care of when delimiting the constituencies.

Therefore, I strongly support the amendment and say that it will give an opportunity to all Kenyans to enjoy the benefits of the CDF. As we all know, the CDF is so far the most successful devolved Fund. Therefore, everything that can be done to improve it must be done.

With those remarks, I beg to support.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you, hon. Nyasuna. Can I have somebody whose voice I have not heard today?

Yes, hon. John Mukuru Muchai!

Hon. Muchai: Hon. Temporary Deputy Chairman, Sir, I rise in support of this proposal and I need guidance from you with regard to the handwritten word “joint” appearing under (b) because it either forms part of the amendment or the amendment is without meaning without that word. Is it in or out?

The Temporary Deputy Chairman (Hon. Kajwang): No. The text that I have has the “joint”.

Hon. Muchai: Mine is handwritten.

The Temporary Deputy Speaker (Hon. Kajwang): Yes, it is still the text that I have. Do not worry.

Hon. Muchai: Hon. Temporary Deputy Chairman, Sir, then I want to support this amendment and say that there is need to develop this country on an equal footing basis and the factors that have been explained were taken into consideration when delimitation of boundaries was done. Therefore, we would like to see the transformation of this country in a short period. The only way that we can do that is to ensure that the devolved funding through the CDF is afforded its place in the transformation process.

Hon. Temporary Deputy Chairman, I also want to say that contrary to what the thinking of the devolved system of Government is, devolved system occurred when Parliament enacted the CDF Act in terms of the development at the constituency level. I support this amendment.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you. Let me go to someone whose voice I have not heard; Member for Bondo, Gideon Ochanda Ogolla.

Hon. Ogolla: Okay. I will talk very quickly on two things, hon. Temporary Deputy Chairman. I support the amendment and one thing that I want to bring out is that the criterion that was used to arrive at 47 counties is not the same criterion that was used to arrive at 290 constituencies. If that is so, then we cannot use the same criteria for allocating funds for CDF and funds for counties. That is number one.

Number two, the 1 per cent is a big error that treats constituencies as though they are the same. So, you get small constituencies, for example, Vihiga having 1 per cent, Nyatike having the same 1 per cent and you get another constituency somewhere else having 1 per cent. I think this is an error that we do not need to have.

I support.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you. I will allow two ventilations; one from my left and one from my right. Hon. Chepkonga, where are you? We are not debating. So, just give us snippets of your thoughts and sit down.

Hon. Chepkonga: Thank you, hon. Temporary Deputy Chairman, Sir, for giving me this opportunity. This particular amendment is the best amendment that can be ever done. I support what my other colleagues have said. I just want to say that the best development that has ever occurred in a very small country called Bhutan was because of CDF and I suggest that hon. Lessonet visits that place.

Hon. Temporary Deputy Chairman, you know people have failed to understand us when we oppose governors because of failure to be vocal. They imagine that we are opposing devolution. We are not. Our constituencies are the very essence of the existence of counties. Ainabokoi Constituency is in Uasin Gishu County. How can I, therefore, be said to be opposing devolution?

Thank you, hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang): Point well said. The last one on this is hon. Francis Chachu Ganya.

Hon. Ganya: Hon. Temporary Deputy Chairman, I strongly oppose that amendment. When you look at service delivery both in population and land mass, while some constituencies are so small like Mvita or Kibra, some are so vast like North Horr Constituency which I represent. It is over 38,000 square kilometers. It is bigger than four provinces of Kenya – the whole of Western, Nyanza, Central and seven Nairobis put together. Those constituents have to travel over 80 kilometres to go to the next Government hospital within that county.

Hon. Temporary Deputy Chairman, if we are going to look at the needs of Kenyans and all Kenyans in this country, whether they are in Nairobi, at the Coast or wherever, the land mass must be a factor. It should be a factor.

The Temporary Deputy Chairman (Hon. Kajwang): Are you in support of the amendment?

Hon. Ganya: I strongly oppose this amendment.

The Temporary Deputy Chairman (Hon. Kajwang): So, you are opposing?

Hon. Ganya: Strongly.

The Temporary Deputy Chairman: Thank you, Members. Let everybody be heard. Let the dissenting voices be heard. Let the---

Hon. Members: Put the Question.

The Temporary Deputy Chairman: Okay, hon. Kaluma.

Hon. Kaluma: Thank you, hon. Temporary Deputy Chairman. I want to thank all the Members for contributing to the Motion on the proposed amendment. What we are bringing back is the provision in the CDF Act as it has been before the 2013 legislation. We are proposing this to remove the fear of hon. Chachu Ganya while alive to the fact that there is the Equalisation Fund dealing with all those issues. What we are saying is that this being a CDF thing, the constituency should get nearly a similar amount in terms of allocations and, indeed, this will easily deal with the situation where we heard some Members saying that last year their constituencies got Kshs81 million and now they are going to get Kshs50 million. It is about equality. We have the Equalisation Fund.

Number two, there is a point which has been raised here. The issue of delimitation of population and boundaries is dealt with consistently under the population quota prescribed. I thank all the Members and I request that we support this amendment.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you. I now put the Question.

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

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

(Clause 3 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang): All right. We will move to clause 2.

Clause 2

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

THAT, Clause 2 be amended by inserting the following new subsection at the end

—
(2) All monies allocated under this Act shall be considered as funds allocated to constituencies pursuant to Article 206(2)(c) of the Constitution to be administered according to section 5

Hon. Temporary Deputy Chairman, the principal Act was anchoring this Fund in Section 202 which was extremely wrong and which is inappropriate. We are taking it to the right position of distributing money from the Consolidated Fund. We are doing it under Clause 206(2)(c) of the Constitution, which is extremely correct.

With those few remarks, I move the amendment.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang): Can I have Richard Onyonka speaking to this Bill?

Hon. Members: He is not there.

The Temporary Deputy Chairman (Hon. Kajwang): Okay, let me go to the Leader of Majority Party.

Hon. Ng'ongo: But I am there.

The Temporary Deputy Chairman (Hon. Kajwang): Hon. Members, Onyonka is the architect of this amendment. That is why I am asking for him.

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I think hon. Mbadi should be promoted to be the Leader of Minority Party. He deserves it. This amendment is going to make CDF free from any interference from the Executive, governors and any busybodies. This is the gist of the whole amendment that we felt we must go through before we go on recess. Today, we have anchored the CDF under Article 206(2)(c). I am sure apart from the one that infuriated my good friend, the hon. Member for North Horr - I am sure he was wondering because I am no longer in Dujis. I am in Garissa Town. So, land is not a major issue.

(Laughter)

I beg to support.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you. That is on a light touch. Let me hear the voice of a female, Florence Kajuju.

Hon. A.B. Duale: Defector!

Hon. Kajuju: Hon. Temporary Deputy Chairman, I am being harassed by hon. Duale.

The Temporary Deputy Chairman (Hon. Kajwang): I will protect you. You are in your right place. Please, speak.

Hon. Kajuju: Thank you. Hon. Temporary Deputy Chairman, I support the proposal and state that this is the right way to go as the House and we mean to show direction to those who believe that they know and yet the ones who know are quiet.

I support.

The Temporary Deputy Chairman (Hon. Kajwang): Thank you. Members, many of your buttons are permanently on intervention. So, I am not aware who will speak next. These are Simba, Gichigi, Chachu, Mbadi Ng'ongo. So, can I hear something there from Andrew Toboso Anyanga?

Hon. A.T. Anyanga: Hon. Temporary Deputy Chairman, we all agree that the CDF has really been behind the transformation of the rural Kenya.

In the recent past, we have had serious threat to the survival of this Fund. I want to believe that by moving this amendment, the CDF will be guaranteed its survival but more importantly, be entrenched in the Constitution to enable Members of Parliament undertake their responsibilities of ensuring that they not only develop the constituencies but they are also accountable to the funds that are accorded to those constituencies under this Act.

So, I support.

Hon. Wambugu: On a point of order, hon. Temporary Deputy Chairman. I had put the request a while ago to support this amendment. I think the CDF is the only fund which had made a difference to *mwanachi*. To bring it back to the county level would not be in order.

I beg to support.

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

(Clause 2 as amended agreed to)

New Clause 3A

Hon. Lessonet: Hon. Temporary Deputy Chairman, I have various new clauses. I want to start with the one that amends Section 24 of the principal Act.

I beg to move:-

THAT, the Bill be amended by inserting a new clause immediately after clause 3 as follows:

4. Section 24 of the principal Act is amended by deleting the words “not exceeding five in number” appearing in subsection (17)

This is to allow hon. Members to employ more than five people in their CDF because they are already limited by the 5 per cent available for administration. So, it is the amount of money which will limit you and not the number of people to be employed. That is the essence of this amendment.

Hon. Temporary Deputy Chairman, allow me to move all the new clauses. On the new clause still under Section 24 of the principal Act, we want to delete Section 24(A) by deleting the words “and shall serve as secretary to the Constituency Development Fund Committee which appears in “f”. We wish to insert the words “and another person to be secretary” immediately after the words---

The Temporary Deputy Chairman (Hon. Kajwang): Let us do them one by one so that Members can follow. Just resume your sit if you do not mind. Hon. Members, we are back to the Supplementary Order Paper. We are on page 278 and you will see the text of that amendment down on that page. You have heard for yourselves that the gist of that amendment is to remove the words “not exceeding five in number” appearing in subsection 17 of the principal Act.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 4

The Temporary Deputy Chairman (Hon. Kajwang): Hon. Lessonet, can we hear you? Hon. Members, you seem not to have the amendment on the Order Paper, but it has been circulated. We have a printed version of it. Hon. Langat, can you read it the way it is, so that the Members can appreciate what you are saying?

Hon. Lessonet: Hon. Temporary Deputy Chairman, I beg to move:
THAT, we renumber Clause 3A as New Clause 4.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 5

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

THAT, the Bill be amended by inserting a new clause as follows:

5. Section 28 of the principal Act is amended by deleting the words “ten” appearing in subsection (1) and substituting therefor the word “eighteen”

The essence of this amendment is that currently, the National Assembly Select Committee, namely, the Committee that I chair, we are only 11 Members. With this amendment, we will be increasing the membership from 11 to 19. That is basically the essence of this amendment, to make the membership 19 from the current 11.

The Temporary Deputy Chairman (Hon. Kajwang): Members, the gist of that amendment is to expand the Select Committee. Section 20 of the principal Act had put the number at 10. This amendment aims at expanding that number to 18 in line with the Standing Orders and in line with the increased membership of the House.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

New Clause 6

Hon. Lessonet: Hon. Temporary Deputy Chair, I beg to move:

THAT, the Bill be amended by inserting a new clause as follows:

6. Section 24 of the principal Act is amended –

(a) in subsection (2) by deleting the words “and shall service as the secretary to the Constituency Development Fund Committee” appearing in paragraph (f);

(b) in subsection (3) by inserting the words “and another person to be secretary” immediately after the words “chairperson” appearing in paragraph 9d)

The Members will have realized that their fund managers currently, are superpowers. They are the secretaries to the CDFC, the AIE holder and the mandatory account signatory. So, I am moving this amendment, so that you can pick another member, of the eight members who you nominated to the CDFC, to be the secretary to the CDFC. So, that is basically the essence of this amendment. The other signatories are properly provided for in the Act. The only thing they are going to do as a Committee is to enforce the Act to make the Board to comply with the provisions of the Act. The signatories of the CDFC account shall remain the fund account managers and two officials who should be picked from the other eight members.

The Temporary Deputy Chair (Hon. Kajwang): Members, now I know I have your unqualified attention.

(Question of the new clause proposed)

(New clause read the First Time)

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

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

(The new clause was read a Second Time)

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

Members, that was the business before us in the Committee. I shall now call upon the Mover to report.

Hon. Lessonet: Hon. Temporary Deputy Chair, I beg to move that the Committee doth report to the House its consideration of the Constituencies Development Fund (Amendment) Bill (National Assembly Bill No.24 of 2013) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[Hon. Deputy Speaker (Dr. Laboso) in the Chair]

Hon. Deputy Speaker: Hon. Members, we now want to report on all the three Bills, and we shall do the reporting in the order in which they appeared in the Order Paper. We will start with the VAT Bill. Hon. Chairman, would you like to move? You have done extremely well in the Committee stage and I am sure we all want to finish this very well. Is the Chair of the Committee of the whole House in? The time is coming for the Mover of the Motion.

Hon. Kajwang: Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Simba Arati, what is out of order?

Hon. Simba: Hon. Deputy Speaker, when we adjourned last week on Thursday, we agreed in this House that, indeed, we were to get our salaries before we go on recess. Secondly, we were to get a car grant. I know---

Hon. Deputy Speaker: You are out of order, hon. Arati Simba! We are talking about the VAT Bill. You are out of order! Continue Chair!

REPORTS, CONSIDERATION OF REPORTS AND THIRD READINGS

THE VALUE ADDED TAX BILL

Hon. Kajwang: Hon. Deputy Speaker, I beg to report that the Committee of the whole of House has considered the Value Added Tax Bill and approved the same with amendments.

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

Hon. Lessonet seconded.

(Question proposed)

(Question put and agreed to)

Hon. Langat: Hon. Deputy Speaker, I beg to move that the Value Added Tax Bill be now read the Third Time.

(Question proposed)

Hon. Deputy Speaker: Hon. Members before I put the Question, I would like to let you know that we have the required number of 50 hon. Members.

(Question put and agreed to)

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

THE COUNTY ALLOCATION OF REVENUE BILL

Hon. Kajwang: Hon. Deputy Speaker, I beg to report that the Committee of the whole House has considered the County Allocation of Revenue Bill and approved the same without amendments.

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

Hon. Langat seconded.

(Question proposed)

(Question put and agreed to)

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

(Question proposed)

(Question put and agreed to)

(The Bill was accordingly read the Third Time with the leave of the House and passed)

THE CONSTITUENCIES DEVELOPMENT FUND (AMENDMENT) BILL

Hon. Kajwang: Hon. Deputy Speaker, I beg to report that the Committee of the whole of House has considered the Constituencies Development Fund (Amendment) Bill and approved the same with amendments.

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

Hon. A.B. Duale seconded.

(Question proposed)

(Question put and agreed to)

Hon. Lessonet: Hon. Deputy Speaker, I beg to move that the Constituencies Development Fund (Amendment) Bill be now read the Third Time.

(Question proposed)

(Question put and agreed to)

(The Bill was accordingly read the Third Time with the leave of the House and passed)

Hon. Deputy Speaker: Hon. Members, we have now completed our agenda up to the end of Order No.15. I now call upon the Chief Whip to move the Adjournment Motion, as indicated by him, in an amended form.

You may proceed.

MOTION FOR ADJOURNMENT

ADJOURNMENT TO A DAY OTHER
THAN THE NEXT NORMAL SITTING DAY

Hon. Katoo: Hon. Deputy Speaker, pursuant to the provisions of Standing Order No.28, I beg to move the following Motion:

THAT, pursuant to the provisions of Standing Order 28, this House adjourns until Tuesday, 17th September 2013, in accordance with the Calendar of the Assembly (Regular Sessions).

Hon. Deputy Speaker, I would like to take this opportunity to thank the hon. Members of this House for the manner in which they have executed this afternoon's business – in unison, with togetherness and in sobriety for purposes of serving Kenyans. Therefore, I would like to request my colleagues that once we proceed on recess, we cultivate and nurture a spirit of togetherness. There will be need for us to even visit one another in our respective constituencies to build one Kenya. I am encouraged by what we have done this afternoon. It is my wish that when we come back from recess we continue with the spirit of togetherness. We should always appreciate that it is this House which

makes decisions. It is not the Executive. It is the National Assembly which makes decisions.

Finally, I want to explain why I have moved the Motion in this amended form. It is because we have already exhausted about a week of our recess period. We were to go on recess last Thursday. So, we have already eaten into the recess period. Most importantly, this afternoon, there was a Communication from the Chair to the effect that from 8th - 12th September 2013, we will have an induction workshop for the National Assembly. So, it is good that we cover for the lost days, go for the four-day induction workshop and come back on 17th September, 2013.

Hon. Deputy Speaker, due to the long hours that this House has been sitting this afternoon, I do not want to take much time. I just want to request my colleagues that we support this Adjournment Motion to allow us visit our constituencies and do Committee work. Many hon. Members have sought Statements from various Committees in the last one month. So, the Committees need time to investigate matters under their jurisdiction.

With those remarks, I beg to move and request the Leader of Majority Party to second the Motion.

Hon. Deputy Speaker: Proceed, hon. Duale.

Hon. A.B. Duale: Hon. Deputy Speaker, I want to thank the House. As we break for recess, I think Kenyans have known where power lies. Those who have powers to amend or repeal or create laws are the hon. Members who sit in this House. Today we have told our colleagues in the Senate that they can ambush us as they wish. They wanted to fix us to look like we are fighting devolution but tonight we are walking out of here knowing that our counties will have money, having passed the County Allocation of Revenue Bill.

Secondly, we have done justice to the Constituencies Development Fund Act, which some of us had the privilege of making in the last Parliament. I want to thank my colleagues and the Chairperson of the CDF Committee for perfecting it. They have brought back the glory of the CDF.

Finally, as we go on recess, let us preach peace and unity. Let us have the interests of our country first. Let us respect our former leaders, like the former Prime Minister and the former Vice-President. Let us make sure that we give time to the President and the Deputy President to fulfill the pledges they have made to Kenyans. Let us go back to our constituencies and make sure that we design the projects by the time we come back, so that the CDF Board can have time to approve them. Let us make sure that we go back to the constituencies since we have more than a month of recess.

Hon. Deputy Speaker, we can also look at the Marriage Bill. For people like me, whom the law has granted permission to marry up to four wives, I will see whether I can have one or two.

With those remarks, I beg to support.

Hon. Deputy Speaker: Hon. Members, before I propose the Question, I just want to remind you that Standing Order No.83 provides as follows:

“The Speaker or the Chairperson, as the case may be, shall order any Member who unnecessarily and persistently interrupts proceedings or consults loudly and disruptively, to withdraw from the Chamber and Standing Order No.107 (Grossly disorderly conduct) shall apply to any such Member.”

Hon. Members, if that were to happen to anyone of you on a day like today, you cannot step into the precincts of Parliament until the next sitting day. You cannot attend Committee sittings. So, such thing should not happen to anyone of you on a day like today. Therefore, I am just reminding any one of you who may be disrupting or persistently and unnecessarily trying to interrupt the proceedings of the House, what the consequences are.

(Question proposed)

Hon. Deputy Speaker: Hon. Members, remember that each Member speaking shall have five minutes, unless you want to reduce that time. There is a long list of Members who have indicated their intention to speak, starting with hon. Cheptumo.

Hon. Cheptumo: Hon. Deputy Speaker, I will start by reducing my time. I will be very brief, as I support the Motion.

I would like to, first, thank the Members of this House for the good performance in this Session. Today we have been able to pass a law which gives our counties resources. My appeal to our Governors and Senators is that the money should be spent prudently for the betterment of Kenyans. Of late we have been able to deal with a situation where this House has been seen not to support devolution. It is my humble submission that today we have been able to demonstrate to Kenyans – and to those who have claimed that we do not support devolution – that we indeed support devolution. This House has passed the Bill from the Senate unopposed and without any amendment. That is a clear indication that we, in this House, indeed support devolution.

Hon. Deputy Speaker, the other issue I would like to raise is that this House has been able to, within this short period, deal with very serious issues. Today we have also been able to deal with the Constituencies Development Fund and pass appropriate amendments. As we all know, the CDF has been able to do a lot in our country. Last year, my constituency received Kshs80 million. This amendment which we have done this afternoon or evening is going to bring the balance and equity so that we are going to share the revenues equally and fairly amongst our constituencies.

Finally, hon. Deputy Speaker because of time and I want my colleagues to get more time, I would like to support and say that as we go to our constituencies, we are going to do more for our constituents.

Thank you, hon. Deputy Speaker.

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

Hon. Deputy Speaker: Order, hon. Members. Let us not have a quorum hitch because of a few Members wanting to raise it. So, hon. Members if you have stood this long, really staying a little bit longer just for us to complete the business in a good manner would be a good thing. I want to give a chance to---

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

Hon. Deputy Speaker: What is your point of order?

Hon. Member: Hon. Deputy Speaker, our gadgets are not working over here.

Hon. Deputy Speaker: I am told there is a hitch. Please, for whichever is not working make sure you come to the Dispatch Box.

Hon. Member: Hon. Deputy Speaker, can I attract your eye?

Hon. Deputy Speaker: Before you attract my eye, I want to first give a chance to Maina Kamanda, the Chair of the Departmental Committee on Transport, Public Works and Housing. I think he may have some useful information for all of us. So, hon. Maina Kamanda, where are you? We are not hearing you. So, come to the Dispatch Box.

Hon. Kamanda: I rise to support the Motion for Adjournment, hon. Deputy Speaker. I also want to thank the Members and in particular the members of my committee, the Departmental Committee on Transport, Public Works and Housing for the enormous job they have done for the period that we have been here. There have been so many questions raised by Members. These are questions about KURA and KERRA. I promised you last time that you will hear from me and I want to inform this House that I have received a letter from my Cabinet Secretary, Eng. Kamau confirming to this House that KERRA and KURA money is there. I want to read this letter and table it and maybe I have circulated some copies. He says: "I wish to inform you that KURA and KERRA will remain in place until Parliament decides through legislation the next course of action."

Hon. Deputy Speaker, what does that mean? That means that we will continue and I want to assure the Members here that fuel levy is collected by Kenya Roads Board (KRB) and the money goes to the KRB. It has not been disbursed to Treasury. So, we have no problem. We have agreed with my Cabinet Secretary that once you people constitute your committees and have signatories of the accounts maybe within another two weeks you will have that money in your accounts. So, that money will be there. Do not read too much in the media. We have agreed. I have even met him this afternoon and I want to tell you to go and do your roads. Maybe before you come back, you will have your money.

On the CDF, I also want to say that I am a member of the CDF Committee. The District Accountants are not signatories to the accounts and we are going to tell the Chief Executive Officer (CEO) to withdraw any letter that he has written to the District Accountants. They are not and we are going to enforce the law so that, that circular can be withdrawn.

Thank you.

(Applause)

Hon. Deputy Speaker: Hon. Mary Emase.

Hon. (Ms.) Otucho: Thank you, hon. Deputy Speaker for finally giving me an opportunity. I rise to support the Adjournment Motion because for one it is very timely and also it is a health break to all of us. We have had very little time to address issues of our constituencies and I want to believe that this break will give us time to go and attend to development issues in our constituencies.

Finally as I close, I just want to appeal to all the Members that as we go to the constituencies, let us focus on issues of development as opposed to politicking that has been going on and let us give the Jubilee Government time to deliver on its promises.

Thank you.

Hon. Deputy Speaker: Cyprian Iringo.

Hon. Iringo: Thank you, hon. Deputy Speaker for giving me this opportunity. I rise to support the Motion and I also concur with my colleagues that we also have a

break. We have not had time to be with our constituents. Now that our needs have been catered for and especially the provision of money for roads, we believe that when we go down to our constituencies, we will lay the foundation of how we are going to deliver on our promises and also to attend to other issues.

Therefore, hon. Deputy Speaker, I beg to support.

Hon. Deputy Speaker: Hon. Ouma, use the Dispatch Box.

Hon. Ochieng: Thank you, hon. Deputy Speaker. I rise to support the Motion on Adjournment and while at it, I just wanted to say that this adjournment has been long overdue. You remember that since we came from that bruising campaign, we have not had time to bond with our constituents. Some of the Members also need time to go and join their families and reflect on what went on during that time.

However, as we proceed home, I think one of the issues of welfare that I think I must register here is that almost five months since we came to Parliament, we were made to constitute people who serve at the constituency offices both in Nairobi and in the villages and most of them have actually not been facilitated. Even in Nairobi Members of Parliament still do not have offices. Their staff are operating from the streets and I think it is good to register this to the PSC to expedite and facilitate Members adequately so that we may be comfortable even as we take this deserved break.

Thank you, hon. Deputy Speaker. I think this break will be good. I wish the Leader of Majority Party was around so that he can now go back and reflect and come back when he is a little bit more sober than he has been.

Hon. Deputy Speaker: Sabina Chege, are you on a point of order?

Hon. (Ms.) S.W. Chege: Thank you, Deputy Speaker. I wanted to support. First of all, I want to thank all the old Members who actually guided us as the new Members in the House with a lot of patience. We have really worked hard and I want to commend Parliament for passing 24 Bills *vis-à-vis* the Senate where only one Bill has been passed.

Finally, I am happy that we are going to join our families and have a break. We came from the campaigns to the House and to the Budget. So, it is a good rest. Kindly let me wish our Muslim brothers and sisters a happy *Ramadhan*.

Hon. Ganya: Thank you, hon. Deputy Speaker. As I support this Motion, this is a very sad day for this House. This is a day when there is no consultation. This is also a day when a serious decision has been made whereby an amendment is done to a formula used to allocate resources to constituencies. It is mischievous and deceptive; I am sorry to say that. It is very sad where tyrants use their numbers without due care to democracy and the rest of the country which has been marginalized for the last 50 years because of poor policies. It is a sad day for this country that this Parliament does not consult. Decisions are made and sneaked in by some Chairs of Committees who are full of mischief and malice. Decisions are made, where some lose while others gain.

In any competition, some will lose while others will gain, but let us have a fair game. I was in this Chamber during the Tenth Parliament. When we reviewed the CDF Act, it was done through consultation. That is why we have the Commission on Revenue Allocation. This is a commission that looks at all parameters and ensures fair development of the entire nation of Kenya.

Just a few minutes ago, some people have lost up to Kshs10 million while others have gained up to Kshs20 million and yet they are the same people who have marginalized us for the last 50 years. That is why I do not have a single hospital in my

constituency while there is one in every village in Central, parts of Rift Valley and other areas or the so-called Jubilee strongholds. It is a shame and a disgrace.

Hon. Lessonet: Hon. Deputy Speaker, this particular amendment is very personal to hon. Ganya. Of course, I also understand that the entire North Horr is as big as Central Province plus Nyanza and Nairobi. When we were using the factor of 8 per cent on land mass, it was possible that that factor alone --- Hon. Ganya is right to express those sentiments. On the factor of land mass alone, it is possible he was getting Kshs40 or Kshs50 million. If you look at Lamu Constituency, you will find that it only got Kshs30 million. This is when we used the formula where land mass gives a Member of Parliament about Kshs50 million. In that case, Lamu was getting Kshs30 million. Even as the Chairman of the CDF Committee, I did not find that to be fair. That is why I supported the amendment by hon. Kaluma because in a way, it brings equity and quality.

I am aware that we passed the Constitution and through the Equalization Fund, we shall take care of those areas like North Horr and the others which hon. Ganya is accusing us to have marginalized in the past. Those areas will be taken care of through the Equalization Fund.

I also want to tell hon. Ganya that with time, he will feel the benefit of the Equalization Fund. I hope that the Governor of Marsabit County will apply equity so that the region that hon. Ganya comes from and other parts of this country are not, therefore, marginalized further by the governors they have elected. If those governors do not spend money, which otherwise they would have used for development, to buy furniture, vehicles – and some of them I am aware that they intend to buy aircraft – definitely those parts of the world will come up.

To conclude, immediately the President assents to this Bill, we shall be consulting the relevant Ministry so that we can revise the re-allocation. We may be communicating through you. I will be consulting the CDF Board if we can hold a one-day event at the place of hon. Members' choice. If they want us to go to their region, if they want to come to a central place or if they like going to Mombasa, the CDF Board can take them to Mombasa so that we can go and revise or review the new allocations together after the amendment of this Act today. This will enable us to plan for our projects knowing the right amounts available to our constituencies.

Hon. Deputy Speaker, with those remarks, I want to support the Adjournment Motion. As hon. Members go and plan their CDF allocations, I also beg them that they do not allocate the CDF resources according to the voting pattern. I want to beg hon. Member not to go and say that this location did not vote for them and, therefore, they will not get any CDF. It is not time for punishment or it is not time to pay back. I just want to beg hon. Members that they finance all their constituencies equitably.

While on that, I want to beg hon. Members again, do not fund projects of Kshs100,000 or Kshs50,000. Do not give a school Kshs200,000 to build a classroom because there is no classroom for Kshs200,000. If you are building a classroom, be courageous enough and give them adequate money to complete a classroom. If you are building a whole school or a library, be courageous and allocate it Kshs10 million. I want to tell hon. Members that the people they represent---

Hon. Deputy Speaker: Your time is up! Yes, hon. David Gikaria.

Hon. Gikaria: Thank you, hon. Deputy Speaker. I rise to support the Adjournment Motion. I just want to pick on something that the Chair, Departmental

Committee on Transport, Public Works and Housing has just said. We have just passed the County Allocation of Revenue Bill. We have given them the total figure of Kshs210 billion.

Last week when the Cabinet Secretary was here, he made it very clear that the money had already been allocated under the Kshs190 billion. So, it will also be very sad if I go to my area without that money and then the governor or the other leaders use that against me because I have no money to do roads and yet we are claiming that we have the money for the roads. Just by a stroke of a letter, I do not think that that is fair. All I just wanted to say is that we should relinquish the issue of the money for roads and we know that it is with the county government so that we are able to clear our names at the local level. It will be very wrong now that we have just passed that Bill. Somebody is telling us now that part of the money is being sent to KeRRA and KURRA, which is not true. I think it is high time that the Chairmen told us the truth. They should tell us that this money is not there so that we can go and tell the public that we are not in charge of roads and so and so is in charge of roads. I will be able to make some noise if my roads are not being done by the governor. Otherwise, we will have a hectic time trying to tell our constituents that we do not have money for the roads.

It is only fair for the Chairperson to clarify that. If I remember, the Cabinet Secretary, National Treasury, made it very clear that all the money for roads is part of the Kshs190 billion that was given. I think that is not fair. I would like to go on the ground and say that from 2013/2014, we are not in charge so that, at least, we can make a name for ourselves. Otherwise, I agree with the Chairperson of the CDF that we really need to look into how best we can allocate money for the CDF so that we do a project that is visible. We ask our colleagues that let us not encroach into the governors' functions and the county governments.

Hon. Deputy Speaker, I rise to support the Adjournment Motion.

Hon. Ng'ongo: Hon. Deputy Speaker, I rise to support this Motion for Adjournment. As my colleagues have said before me, this is long overdue. This House has transacted a lot of business as can be seen from the number of Bills that we have just passed, namely, 24. This House requires this time to go not only to interact with the constituents, but also to spend part of the CDF funds that were meant for 2012/2013. For those constituencies which have received the money, take charge so that this issue of constituencies misusing resources does not come up. It is giving us a bad name. We should do the monitoring and evaluation.

Hon. Chachu Ganya expressed his displeasure, but we also need to be fair to all of us. Remember the county funds that we voted for, namely, the Kshs210 billion, a lot of it goes to those marginalized constituencies. The formula is that of the CRA. There is the Equalization Fund again. I remember that when we were coming up with the CRA formula, it was a negotiated formula and we were very sympathetic. I remember when we were in Naivasha, we had even to adjust the formula a number of times. Hon. Sambu was not very happy with this formula. So, this is not a scientific formula as some of us want to put it. It was just a negotiated formula like we are negotiating today the new CDF formula. So, let us be accommodative. Much as we want our regions or our constituencies to get more funds, we also need to be very accommodative.

I want to wish the new Members of Parliament good luck as they embark on serious interaction with their constituents for the first time since they came. This is the

time I would urge my colleagues to make sure that they take personal charge by delivering the CDF cheques personally because if you just send it like it is a bribe that you are giving to committees, then the constituents will not feel you. You need to go and meet your constituents and tell them that you have brought the money and if it is not utilized properly, they should get in touch with you. It serves you a lot more. As hon. Lessonet said, if you utilize this money properly, it will help you come back. If you do not, you will be voted out.

Let me just share this with you. In 2007, there is a place where I got only three votes. I got 40 per cent of the total votes cast at the nomination. During the last election, that same place, I only failed to get the exact opposite. It is only three votes which I did not get. This is because of how I interacted with them in terms of the usage of the CDF. I will tell you that this money would do a lot more in changing even fortunes for you. That is why some people envy us and they want this Fund because they see it as a way of campaigning. But really, why can you not campaign? When you were selling your agenda, you were telling the electorate to elect you to do one, two or three things. If you do it with the resources that you get from the Government, because you cannot have enough resources to develop your constituency, there is nothing wrong. There is nothing wrong if you implement your manifesto because each one of us had a manifesto. So, if someone is telling you that, do not feel shy. Do not feel ashamed if someone is telling you that you are using the CDF to campaign. You need to use it to campaign and use even other resources. Even the Ministries need to give us resources to campaign because we campaigned on the platform of delivery, failure to deliver with the resources, we are voted out. But if you deliver because there are no resources, then the Government is not being fair to you.

I support.

Hon. (Ms.) Chebet: Thank you, hon. Deputy Speaker. I have really been waiting for this time I want to congratulate the House for the work that we have done today. It is an excellent job and it shows the public and the communities out there that we are for devolution. I know a lot of negative things have been said about us, that we are not supporting devolution. As we go out there, we want to show everybody that we support devolution. Two, I also want to thank the President for paying the teachers.

Hon. Muchai: On a point of order, hon. Deputy Speaker. I am wondering whether it is in order for the Members to prolong this debate given that we are likely to run into a quorum crisis. Is it in order for me to request that you consider putting the Question on the Motion of Adjournment?

Hon. Deputy Speaker: Fortunately for this one, no Question is put. Allow hon. Chebet to finish her contribution.

Hon. (Ms.) Chebet: Hon. Deputy Speaker, I was talking about the payment of teachers. I am very happy that we are going home when the teachers are happy. They have been paid their salaries. It was not good for us to find them without their pay. For the CDF, the Members of Parliament are happy that they have their CDF. The only problem is that the women representatives are going home empty handed. I do not know when we are going to be made happy, so that we can take something good to our counties, so that we can as well celebrate.

The last thing is on the Equalization Fund. The Elgeyo Marakwet County has hanging valleys which require the Equalization Fund. I hope next time, the Committee considers the hanging valleys of Elgeyo Marakwet County under the Equalization Fund.

I support the Motion for Adjournment.

Hon. Kamanda: Hon. Deputy Speaker, I want to clarify a point that was raised by hon. Gikaria. It is true that the Kshs27 million that went to our county, we are not taking back that money to KeNHA and KURRA. I want my brother to bear with me that the man who has written this letter is a person who has taken oath of office. He is a serious person and they have agreed on how we are going to get the money. Let us give them the benefit of the doubt. If they do not do it, we can take action against them for cheating the House. We can take action against these people, but as of how, they have directed what to do and they have allowed me to tell the House that they are disbursing the money before the Members come back. You will take your money.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, it is now time to adjourn the business of the House. This House stands adjourned until Tuesday, 17th September 2013, at 2.30 p.m.

The House rose at 9.48 p.m.