

## NATIONAL ASSEMBLY

### OFFICIAL REPORT

Tuesday, 30<sup>th</sup> August, 2016

The House met at 2.30 p.m.

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

#### PRAYERS

#### PETITIONS

##### NON ISSUANCE OF IDs TO RESIDENTS OF WAJIR EAST CONSTITUENCY

**Hon. Mohamed Abass:** Hon. Speaker, I wish to present a public Petition on behalf of residents of Wajir East Constituency regarding the right to acquire national identification cards (IDs).

I, the undersigned, on behalf of the residents of Wajir East Constituency, draw the attention of the House to the following:-

THAT, Article 12(1) of the Constitution provides that every Kenyan citizen is entitled to the rights, privileges and benefits of citizenship, subject to the limits provided for/or permitted by this Constitution, specifically the right to acquire a Kenyan passport and any document of registration or identification issued by the State to citizens.

THAT, the national ID represents proof of Kenyan citizenship and a requisite document in transacting various important activities/businesses, without which an individual cannot exercise their voting right, purchase property, access higher education and employment.

THAT, further, lack of an ID as occasioned by hindrances and tedious processes involved, amount to violation of these very rights as the victims are denied the right to freedom as outlined in the Constitution.

THAT, processes involved in issuance of IDs have proved to be complex and unnecessary specifically the need to have parents avail themselves for finger prints when their children apply for the national IDs.

THAT, the requirement, for instance, has been impractical due to the nomadic lifestyle of the residents of Wajir County, hence it is very difficult for parents to avail themselves for the activity.

THAT, further, there have been inordinate delays in processing of the said document due to the repetitive vetting and registration exercises both at the local and national levels.

THAT, the registration process has been marred by malpractices and deals denying *bona fide* Kenyans the right to be issued with IDs.

THAT, efforts to have this matter addressed by the relevant Government agencies has proved futile.

THAT, the issues in respect of which this Petition is made are not pending before any court of law, constitutional or statutory body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Administration and National Security:

- i. Recommends that the Government establishes a mechanism to ease the process of acquisition of national IDs;
- ii. causes investigation of allegations of malpractice by the registration officers; and
- iii. makes any other order and/or direction that it deems fit in the circumstances.

And your petitioners will ever pray.

#### CONSTRUCTION OF TURBI-SOLOLO-MOYALE ROAD

**Hon. Duba:** Thank you, Hon. Speaker. I beg to submit this public Petition by the residents of Moyale Constituency on the construction of Turbi-Sololo-Moyale Road.

Hon. Speaker, I, the undersigned, on behalf of the resident of the Moyale Constituency, draw the attention of this House to the following: -

THAT, Turbi-Sololo-Moyale Road is part of the Mombasa-Nairobi-Addis Ababa Corridor which is an important part of the Trans-African Highway Corridor from Cairo to Cape Town and the road will serve as a link from Addis Ababa to Nairobi Corridor.

THAT, in July 2009, the African Development Bank (ADB) approved a loan worth US\$326m to finance the second phase of the Mombasa-Nairobi-Addis Ababa Road Corridor project.

THAT, the project involves construction and tarring 438 kilometres of road, including 245 kilometres of the Merille River-Marsabit-Turbi Road section in Kenya.

THAT, once completed, the project will help reduce transport and shipping costs between Kenya and Ethiopia and increase the volume of Ethiopian goods transiting through the Mombasa Port in Kenya.

THAT, the final phase of the road is being constructed by a Chinese contractor called China Wyui Company Limited.

THAT, as the third and final phase of the road nears completion, the road between Turbi-Sololo-Moyale, which is part of the final phase of the road, displays and exhibits poor workmanship as it has started peeling off and degrading with patches akin to potholes sprouting on several sections of the road.

THAT, this is despite the fact that the Government invested huge amounts of public funds for the construction of the road.

THAT, the construction of the Turbi-Sololo-Moyale was done in clear violation of Article 201 of the Constitution as there is no value for money as evidenced by the poor standards of the newly constructed road.

THAT, further, the construction of the Makutano Junction-Sololo Town which was approximately six-and-a-half kilometers involved the compulsory acquisition of adjoining land to the road. However, the land owners are yet to be compensated.

THAT, efforts to resolve the matter have borne no fruits.

THAT, the issues in respect of which this Petition is made are not pending before any court of law, constitutional or statutory body.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing:

- i. Causes an audit of the entire project;
- ii. recommends compensation of the people of Sololo in Moyale Constituency for the compulsory acquisition of land adjoining the Makutano Junction-Sololo Road;
- iii. Ensures that the Ministry of Transport and Infrastructure compels the contractor to adhere to the agreed standard in construction of this class of road; and
- iv. makes any other order and direction that it deems fit in the circumstances of the matter.

And your Petitioners will ever pray.

**Hon. Speaker:** Hon. Members, I have taken this process of getting all the three Petitions which have been presented, after which, I will allow a few of you to make comments, add or seek clarifications.

Member for Kiharu.

MEASURERS TO ELIMINATE COUNTERFEIT REVENUE  
STAMPS IN THE ALCOHOLIC INDUSTRY

**Hon. Kang'ata:** Hon. Speaker, I the undersigned, on behalf of Mr. James Maina Mugo, a male adult and a resident of Nyeri Town in Nyeri County, draw the attention of the House to the following:-

THAT, since the year 2002 and due to a variety of reasons, including increase in revenue collection, Kenya Revenue Authority (KRA) has become a key institution in the macro management of the Kenyan economy.

THAT, the alcoholic industry is a key sector from which the Government, through KRA, collects a good proportion of its revenue but for a long period unscrupulous traders have used unorthodox means to evade tax, including using counterfeited KRA stamps.

THAT, the usage of revenue stamps by KRA in the alcohol sector has also served as a means to check illegal trade of illicit alcoholic drinks.

THAT, the Government has in the recent past engaged in a public war against illicit brews.

THAT, due to the widespread nature of the vice in the country, the fight against counterfeited revenue stamps ought to be co-ordinated amongst various sector players, including licensed alcoholic drinks manufacturers, KRA, Provincial Administration, Kenya Police and county governments but this does not happen.

THAT, further the current efforts of various Governmental agencies, which fight counterfeit revenue stamps, are insufficient because of corruption amongst the enforcers in particular KRA officers; failure by KRA to decentralize enforcement measures and failure by the Authority to issue stockists and key suppliers with gadgets that can detect counterfeit stamps.

THAT, I confirm the efforts to have this matter addressed by the relevant bodies have failed to give relevant responses.

THAT, I confirm the issues in respect of which this Petition is made are not pending before any court of law or constitutional or statutory body.

Therefore, your humble Petitioner pray that Parliament through the Departmental Committee on Finance, Planning and Trade:

- i. Summons the Commissioner-General of KRA, Inspector-General of Police and Cabinet Secretary in charge of interior security to explain measures undertaken for the last two years to fight counterfeited revenue stamps in the alcoholic industry.
  - ii. Conducts public hearings in various key towns and cities with a view of collecting public information and ideas on these menace of counterfeited revenue stamps in the alcoholic sector.
  - iii. Invites key stakeholders, including licensed alcoholic drinks manufacturing firms and members of the public, to get views on ways the Government can eliminate counterfeit revenue stamps.
  - iv. Prepares a comprehensive report on ways to ensure counterfeit revenue stamps in the alcohol sector are eliminated.
  - v. Follows up the Committee on Implementation on the proposals contained in the above mentioned report in (4) above to ensure compliance.
- Your Petitioner will ever pray.

*(Loud consultations)*

**Hon. Speaker:** Hon. Members, those of you consulting should lower the decibels of your consultations. This is an opportunity for comments and clarifications.

Hon. Members, it is utterly out of order for a Member to hide somewhere claiming that he has no card. That Member should not even be in the Chamber at all. That sounds like the Hon. Member for Kikuyu. If the Hon. Member for Kikuyu has no card, he should know that he will just be an observer today.

Let us have Hon. Maanzo.

**Hon. Maanzo:** Hon. Speaker, I would like to comment on the Petition by the Member for Wajir East in relation to issuance of national identity cards. There has been an issue in the constituencies which touch on the borders. Generally, the issuance of IDs in the country has been a challenge. This has a bearing on the voting rights of people who attain the age of 18 years. I urge the Committee that while conducting investigations on this Petition, they should find a formula so that all Kenyans who are 18 years old and above access IDs.

On the *Nyumba Kumi* Initiative, Kenyans should know each other and where they live so that many young people who have attained the age of 18 years can get national IDs. This will enable them get voting cards so that they can elect their leaders.

With regard to the Moyale-Sololo Road, there was an issue that was mentioned about compensation of land owners. Compensation of land was a big rip-off in some parts of the country, including areas where the railway is being constructed and the Thwake-Athi Dam. It is a problem spreading across the country. The owners of the land where this road is being constructed on your way to Moyale have not been compensated properly. It would also be good for the Committee to come up with a formula of compensation so that the rightful owners of land do not lose their rights to the Government.

There are many people who went to court and the courts ruled against them. They lost their land to the railway construction companies and compensation was not forthcoming. The Committee should take care of all those land owners.

**Hon. Speaker:** Let us have the Member for Igembe Central.

**Hon. Kubai Iringo:** Thank you, Hon. Speaker for giving me this opportunity to comment on the Petitions. I will comment on the Petition by the Member for Ijara, Hon. Abass.

**Hon. Member:** Hon. Member for Wajir East.

**Hon. Kubai Iringo:** Sorry, I meant the Member for Wajir East. Thanks for the correction.

An ID is a very important document which each Kenyan must possess after attaining the majority age. It has also become one of the rarest commodities in our Republic because there are so many bottlenecks and hurdles which are put in place before one gets an ID. While it is important for one who has an ID to be a real citizen of this country, obtaining an ID should be made easy especially for those who leave school early and for those who need their IDs immediately after coming of age. This is because it becomes very difficult for one to start a business, get employment or access any services without an ID. This should not only happen in Wajir. Across the board, systems should be put in place and proper staffing and qualified people for the same.

The Kenya Revenue Authority (KRA) stamps can be tampered with or copied any time. There is a lot of flexibility and also---

*(Loud consultations)*

Hon. Speaker, the noise is too much.

The Kenya Bureau of Standards (KEBS) should put in place stricter measures to protect their seals or those fool-proof methods they use so that they can qualify what items should be in the market. They should change them once in a while so that cunning people who try to copy them will not know exactly what kind of seals have been put on various commodities or items.

**Hon. Speaker:** Let us have Hon. Tiyah Galgallo.

**Hon. (Ms.) T.G. Ali:** Thank you, Hon. Speaker. I stand to support the Petition by Hon. Abbas of Wajir East on acquiring IDs. Acquiring IDs in this country is very difficult. Even after the youth fill in the forms, it takes about eight months for them to get an ID. Most of these children are sometimes arrested because they do not have IDs. Most of the time, the youth from North Eastern Province are associated with *Al Shabaab*. If they do not have IDs, they get into trouble and many of them stay in cells because they are not able to produce any documentation.

Many times, the hurdles with regard to issuance of IDs are unbearable to the women of this country. Many of the fathers of the children born to the women do not even present themselves when they are called to produce their IDs for their sons or daughters.

Children from divorced mothers or mothers who are not living with their husbands often have difficulties in getting their fathers to sign for them documents. This is a hurdle that is very difficult to overcome.

Obtaining an ID is everyone's right. We should not put in place a lot of hurdles for our children to get IDs. We should also hear the cries of the women of this country. Sometimes, when we send them out there to help their children, it becomes very difficult because sometimes they do not even live with these children and neither do their fathers. We also help orphans who are not able to produce their parents to get IDs because some of them have never seen their parents since they were born.

I strongly support the idea of decentralising issuance of IDs. Having it at national level causes a lot of backlog, even for those who have already filled the forms. It is high time the Government came up with mechanisms of ensuring that we decentralise issuance of IDs for ease of obtaining the same and also for follow up. Most of the time, when forms are taken to Nairobi, they pile up and they are not able to sort them.

I support the Petition.

**Hon. Speaker:** Hon. Members, we need to do away with this particular clause in our Standing Orders so that we wait for Petitions to go through the normal process from which there will be a report which you Members will either oppose or support. This particular stage is for making comments and seeking clarifications. I do not know why Members are supporting it now. Let us refer the Petition to the relevant Committee that will give us a report within the stipulated time. After that you may either oppose or support the report. There is nothing to oppose at this stage. Now that I can see you are in a hurry to oppose or support things, let me hasten the process by which you will get to those areas.

Let us move to the next Order.

### PAPERS LAID

**Hon. Speaker:** Hon. Lessonet.

**Hon. Lessonet:** Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Tuesday, 30<sup>th</sup> August 2016:-

Report of the Select Committee on National Government Constituencies Development Fund (CDF) on its consideration of the National Government Constituencies Development Fund (Amendment) Bill 2016.

**Hon. Speaker:** Hon. Chepkong'a.

**Hon. Chepkong'a:** Hon. Speaker, we had a meeting until a little bit late this morning. I am seeking extra time---

**Hon. Speaker:** Hon. Chepkong'a, I cannot hear you.

**Hon. Chepkong'a:** Hon. Speaker, it is just that my voice is a little bit coarse.

**Hon. Speaker:** Did weekend activities impact on your voice box?

**Hon. Chepkong'a:** No.

*(Laughter)*

Hon. Ngeno here is telling me that I usually make noise, but I have no idea where.

I am seeking for time to table the Report on the removal of the Chairman of the Ethics and Anti-Corruption Commission (EACC) at around 4.00 p.m. and move the Notice of Motion.

**Hon. Speaker:** At 4.00 p.m., today?

**Hon. Chepkong'a:** Yes, Hon. Speaker.

**Hon. Speaker:** Very well. Whoever will be on the Chair should know that permission has been granted.

Let us move to the next Order.

### NOTICE OF MOTION

#### MERGER OF LAPTRUST AND LAPFUND

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

THAT, aware that Article 43(1)(e) of the Constitution entitles every Kenyan to social security; cognisant of the fact that the Local Authorities Pension Trust (LAPTRUST) and the Local Authorities Provident Fund (LAPFUND) were

originally set up to cater for the senior cadre staff of local authorities and the rest of the staff respectively; recalling that later, both the LAPTRUST and LAPFUND allowed both senior and junior staff of local authorities to join their preferred scheme, implying that the two Funds were offering similar services to their clientele; noting that the creation of county governments by the Constitution of Kenya, 2010 effectively scrapped local authorities under which the two Funds operate; further aware that, whereas the two Funds are being enforced by county governments, plans are underway to create a tailor-made retirement benefits scheme for county government workers; considering that these two Funds and the envisaged retirement benefits scheme for county governments will all serve the same employees and employers; this House urges the Government, through the National Treasury, to merge and restructure the administration of LAPTRUST and LAPFUND so as to accord with the devolved system of Government rather than creating a parallel fund, so as to eliminate unhealthy competition, duplication of roles and loss of public funds through multiple retirement benefits funds.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

### PROCEDURAL MOTION

**Hon. Speaker:** Hon. Members, before the Leader of the Majority Party moves that Procedural Motion, I would like to draw the attention of the House to the existence of a Supplementary Order Paper which is for purposes of enabling the House deal with businesses appearing as Nos. 8, 9, and 10.

I hope all Members now have a copy of the Supplementary Order Paper.

### REDUCTION OF PUBLICATION PERIOD OF BILLS

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

THAT, pursuant to the provisions of Standing Order 120, this House resolves to reduce the publication period of the Election Laws (Amendment) Bill (National Assembly Bill No. 37 of 2016), and the Election Offences Bill (National Assembly Bill No. 39 of 2016) and from 14 to five days.

Hon. Speaker, this is a straightforward Procedural Motion. These Bills were attached to the Report of the Joint Select Committee on Independent Electoral and Boundaries Commission (IEBC). All that was discussed in that Report needs to be transferred into a legislative policy. The first Bill, the Election Laws (Amendment) Bill brings out a lot of reforms that the Joint Select Committee proposed. The second one is the Election Offences Bill, which I am sure the Joint Select Committee did good work on it. Currently, all offences related to election matters are in various statutes. The Committee felt that there was need to bring all offences that pertain to elections to one specific Act of Parliament. Without anticipating debate, since we are breaking for a long recess on Thursday, it was the view of the House Business Committee (HBC) last Tuesday, in your absence, that we give priority to these particular pieces of legislation. This is in the spirit of what the two coalitions agreed on in the Joint Select Committee's Report.

This is just to reduce the publication period so that we refer the Bills to the Departmental Committee on Justice and Legal Affairs to look at them and bring us a Report.

I beg to move, and ask Hon. Jakoyo Midiwo, the Deputy Leader of the Minority Party to second.

**Hon. Speaker:** Hon. Midiwo.

**Hon. Midiwo:** I rise to second the Procedural Motion. The reasons are obvious and they have been given by the Leader of the Majority Party. While you were away, there was a lot of controversy about the Report that contained these Bills. Once we agreed that we wanted to move forward, we would like to expedite the process. I do not think there is too much to say about it.

I support.

**Hon. Speaker:** Indeed, like it was said earlier on, a lot of acrimony that was there was unnecessary. If you look at one of the Bills, it is merely repealing Part VI of the current Elections Act. It is making it a standalone Bill and calling it the "Election Offences Bill."

*(Question proposed)*

*(Question put and agreed to)*

Before we hear the point of order purported, allow me to recognise pupils and students from the following institutions, in the Speaker's Gallery:- Serve Academy from Sabatia Constituency in Vihiga County; St. Catherine Nangina Girls Primary School from Funyula Constituency in Busia County, and Akiba School, Westlands Constituency in Nairobi County.

They are welcome to observe proceedings in the National Assembly.

*(Applause)*

*(Hon. Were stood next to Hon. Speaker)*

Now that I have the opportunity and I can see the Chairman of the Departmental Committee on Labour and Social Welfare; let me just say that one of the Reports we expect tomorrow is from the Chairman of the Departmental Committee on Labour and Social Welfare. He happens to be standing next to me. I am just giving him prior warning that he should come and tell us all those things that Kenyans are eager to hear, tomorrow. We will be getting it firsthand.

Hon. David Were, as you give us your Report tomorrow, include that one so that people can get apprised.

Next Order.

**Hon. Wakhungu:** On a point of order.

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

**Hon. Wakhungu:** Thank you, Hon. Speaker.

My point of order is to seek your direction on the elections amendment Bills that are already on the Floor of the House, which are at their Third Reading or after the Second Reading. This is because we had initially discussed and said that whatever comes out of the Report of the Joint Select Committee on matters relating to the Independent Electoral and Boundaries Commission (IEBC) will be integrated in the earlier Bills that are already on the Floor of the House. We seek your direction on that.

Secondly---



**Hon. Speaker:** What? Just a minute. What are you saying will happen to whatever comes out of that Report?

**Hon. Wakhungu:** At the Committee of the whole House, it is supposed to be integrated into the already existing election laws amendment Bills that are already on the Floor of the House. I remember we suspended them pending the passage of this Report of the Joint Select Committee on matters relating to the IEBC.

We also have the Independent Electoral and Boundaries Commission (Amendment) Bill on the Floor of the House. What will happen to it? This is because some of these Reports have far-reaching ramifications on the IEBC Bill.

Lastly, I was away but we know there was this Report of the Joint Select Committee on matters relating to the IEBC which was debated, amended and passed on the Floor of this House.

**Hon. Members:** Were you in Rio?

**Hon. Wakhungu:** I was away in Rome.

*(Laughter)*

**Hon. Members:** You were in Rio.

**Hon. Speaker:** Order, Hon. Members! Order, Hon. Members!

**Hon. Wakhungu:** Hon. Speaker, the Senate has also passed it. What would happen to the issue of party hopping? Does it mean it was also integrated in one of the laws here? I just need your clarification.

Thank you.

**Hon. Speaker:** Hon. Members, I have said it so many times. Just to remind ourselves, look clearly at Article 94 (5) of the Constitution. It says very clearly that no person or body other than Parliament has power to make provision having the force of law.

*(Applause)*

I even saw you trying to quarrel with a Report, yet you are the only ones who can make provision having the force of law. Therefore, you are actually saying you do not want to exercise that authority. Why would you be worried about something that you have the power? You have the power to do all that appertains to that exclusive power to make and unmake laws. Indeed, it is you who can say you want to repeal, amend or add to the Bill. It is only you. That is a constitutional power given to you.

The other issue to note, Hon. Wamalwa, is that even these Bills, without any Question being put, upon being read for the First Time, which is about to happen, will stand committed to the Departmental Committee on Justice and Legal Affairs lead by Hon. Chepkong'a.

It is Hon. Chepkong'a's Committee which is supposed to look at these two new Bills alongside any other related Bills before them. They can decide to merge them. They can even decide to cause amendments. At the end of the day, remember it is you as Members who will have the final say on what becomes of any of the proposals. They remain proposals and Bills which are amenable to your immense legislative power and authority.

Therefore, you do not have to worry about things which have been mentioned by people who are not parliamentarians, especially others out there. They are not the ones with the power. You are the ones with it. So, do not quarrel about things you will get agitated about, yet you are

still the people to do them. Just come and make sure you are available here to deal with the Bills as they come.

Hon. Chepkong'a has also requested to advise the House on what becomes of these Bills alongside the other two Bills that are before his Committee.

*(Hon. Chepkong'a whispered to Hon. (Ms.) Sunjeev)*

Hon. Chepkong'a whispers to somebody near him that they will be meeting tomorrow at 10.00 a.m. The Speaker merely happens to have overhead. He was not whispering to the Speaker. He was whispering to Hon. Birdi.

Very well, let us get to the next Order.

## BILLS

### *First Readings*

#### THE ELECTION LAWS (AMENDMENT) BILL

#### THE ELECTION OFFENCES BILL

*(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Departmental Committee)*

**Hon. Speaker:** Just stop there. Did I get an indication that the Hon. Chepkong'a is now ready to give his Report?

## PAPERS LAID

**Hon. Chepkong'a:** Hon. Speaker, I beg to lay the following Paper on the Table of the House today, Tuesday 30<sup>th</sup> August 2016:-

Report of the Justice and Legal Affairs Committee on a Petition on the removal of Chairperson of the Ethics and Anti-Corruption Commission (EACC)

## NOTICE OF MOTION

I beg to give notice of the following Motion:-

THAT, this House adopts the Report of the Justice and Legal Affairs Committee on a Petition on the removal of Chairperson of the Ethics and Anti-Corruption Commission tabled on the House on Tuesday, 30<sup>th</sup> August 2016 and pursuant to Standing Order No. 230 (5), finds that the Petition as submitted does disclose a sufficient ground as contemplated in Article 251 of the Constitution for the removal of the Chairperson of the EACC.

**Hon. Speaker:** Next Order!

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

IN THE COMMITTEE

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, please sit down so that we continue with the Committee of the whole House. We are now in the Committee of the whole House to consider the Finance Bill (National Assembly Bill No. 20 of 2016). Committee Chair, are you ready for us to begin?

*(Several Hon. Members walked out of the Chamber)*

Hon. Members, please settle down. Those who are leaving the House, do so quietly so that we can continue with the Committee of the whole House.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I know what the point of order by the Leader of the Majority Party is about.

THE FINANCE BILL

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

*Clause 6*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have the Chair of Committee.

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

Amendment of Section 35 of Cap. 470 THAT, Clause 6 of the Bill be deleted and substituted therefor with the following new Clause –

6. Section 35 of the Income Tax Act is amended –

(a) in sub-section (1) by deleting paragraph (j);

(b) in sub-section (3) –

(i) by inserting the words “subject to subsection (3A)” at the beginning thereof;

(ii) by deleting paragraph (i);

(iii) by inserting the following new paragraph immediately after paragraph (i) –

(j) rent, premium or similar consideration for the use or occupation of immovable property;

(c) by inserting the following new subsection immediately after subsection (3) -

“3A. Notwithstanding the provisions of subsection (3), only a person appointed for that

purpose by the Commissioner, in writing, shall deduct tax under paragraph (j) of that subsection.

(d) by deleting subsection (6).

The effect of this amendment is to facilitate---

*(Hon. Gaichuhie consulted loudly)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Vice-Chair of the Departmental Committee on Finance, Planning and Trade, Hon. Gaichuhie, I urge members who are in the House to allow us to conduct business without too much interruption. Go ahead, Committee Chair.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, the purpose of this amendment is to enhance tax administration by allowing the withholding of rent income so that we increase the compliance of tax payments.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, please remove your card if you do not want to contribute this time because there are too many requests. I hope that only those who request want to speak.

*(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 6 as amended agreed to)*

*Clauses 7, 8, 9, 10, 11, 12 and 13 agreed to)*

*Clause 14*

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I need your guidance. I see a slight error in what has been published. I do not know whether I should move the amendment. I see a small error in the amendment in the Order Paper.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Just amend it and move it in the correct way. We will do the corrections here.

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

THAT, Clause 14 of the Bill be amended –

(a) by deleting paragraph (c) and substituting therefor the following new paragraph –

(c) in paragraph (2) by inserting the following new subparagraph immediately after paragraph (h)–

(i) in the case of a company that constructed at least four hundred residential units annually, fifteen percent for that year of income subject to approval by the Cabinet Secretary responsible for housing:

provided that where a company is engaged in multiple activities which include the ones specified in subparagraph (i), the rate of twenty percent shall be applied proportionately to the extent of the turnover arising from the housing activity.

(b) by inserting the following new paragraph immediately after paragraph (d)–

(e) Head B of the Third Schedule to the Income Tax Act is amended–

(i) in paragraph 3 by deleting subparagraph (m);

(ii) in paragraph 5 by deleting subparagraph (j).

I wish to move a further amendment by deleting the words “twenty per cent” where they appear and replace them with “fifteen percent”. I think it was a typing error because we only have one rate of 15 per cent.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, in Clause 14, the Member is amending what he calls a typographical error. The words “twenty per cent” appear on the third paragraph.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Makali.

**Hon. Mulu:** Thank you, Hon. Temporary Deputy Chairlady. It looks like Hon. Wamalwa is still not sure about the changes. It is paragraph three where it has been changed to 15 per cent. I support this amendment, but even as I support, I indicated earlier that this might be taken advantage of in terms of implementation and we will have a problem. Implementation might be a challenge but for now I support.

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

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

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

*(Clause 14 as amended agreed to)*

*(Clauses 15, 16, 17, 18, 19, and 20 agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, Hon. Kang’ata.

**Hon. Kang’ata:** Hon. Temporary Deputy Chairlady, I intend to vehemently oppose New Clause 18A. Will that come now or later?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Sorry, Hon. Kang’ata. Let me hear you. What do you want to do?

**Hon. Kang'ata:** I intend to oppose new Clause 18A.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have not reached the new clauses. Just be attentive. When you hear us go to that particular new clause, you can intervene.

**Hon. Kang'ata:** Thank you.

*Clause 21*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair, you have an amendment?

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

THAT Clause 21 of the Bill be amended –

(a) in paragraph (d) by inserting the words “excluding locally assembled motor vehicles” immediately after the words “motor vehicles”;

(b) by inserting the following new paragraph immediately after paragraph (d)–

“(da) by inserting the words “and locally assembled motor cycles” immediately after the words “motor cycles ambulances” appearing in item titled “Motor cycles of tariff 87.11 other than motor cycle ambulances”;

(c) by deleting paragraph (e);

(d) by inserting the following new paragraph after paragraph (e)–

“(f) by deleting the formula “AxB” in paragraph 2(2) and substituting therefor with the formula “A(1+B)”.

Hon. Temporary Deputy Chairlady, the main issue we are addressing here is to exempt from excise duty parts for local assembly of motorcycles. We are also seeking exemption of motor cycles from excise duty to encourage local investments and make them affordable. In the law that we passed a few months ago, there was a problem in the formula that we created for inflation adjustment. We are now correcting that error.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we have an amendment proposed by the Member for Bomet Central. I need the attention of the Chair of the Departmental Committee and the Leader of the Majority Party. There is an amendment proposed by the Member for Bomet Central. Are you aware of the amendment and do you have it in your possession? Departmental Committee Chair, you are the only one who can help the Member move the amendment. Give us your take on the amendment by Hon. Tonui.

Hon. Members, those of you who do not have the amendment, the Member of Bomet Central intends to amend Clause 21 by inserting the words “excluding school buses” after the word “vehicles.” This is generally to exempt school buses from Value Added Tax (VAT).

Departmental Committee Chair, go ahead and give us your opinion.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I have received a request from Hon. Tonui, who is also a Member of my Committee to move this amendment. I will move it so that the House will consider it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Go ahead Chair.

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

THAT, Clause 21 of the Bill be further amended by inserting the following new paragraph immediately after paragraph (d) –

(da) by inserting the words “excluding school buses” immediately after the words “vehicles” appearing in the item entitled “motor vehicles of tariff heading 87.02,87.03 and 87.04.”

Hon. Temporary Deputy Chairlady, basically, as you have said, the amendment seeks to exempt school buses from VAT. School buses are required by public schools.

That is the proposal by Hon. Tonui. On behalf of Hon. Tonui, I request hon. Members to support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, let me first propose Question.

*(Question of the further amendment proposed)*

Let me give the first chance to the hon. Member who has suggested the amendment so that he can give us more input.

**Hon. Tonui:** Thank you, Hon. Temporary Deputy Chairlady. This amendment is only dealing with that addition. You remember there was an increase of Ksh150,000 per unit in terms of VAT. This is now being adjusted to 20 per cent. Adjusting the VAT to 20 per cent for a 51-seat bus worth Kshs6 million will raise the price of that bus to Kshs9 million. It will be so expensive for schools to buy buses. Even with the passage of this amendment, if a school buys a bus it will be paying VAT as usual. The amendment seeks to exempt school buses from this variation because we are the ones purchasing them through the National Government Constituencies Development Fund (NGCDF).

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay. Let me give the Floor to the Member for Ugunja, Hon. Wandayi.

**Hon. Wandayi:** Hon. Temporary Deputy Chairlady, I am inclined to support the amendment as proposed by the Chair and as suggested by Hon. Tonui. School busses are no longer a luxury. They are a necessity for the day-to-day running of academic and extra-academic programmes of schools.

Therefore, I support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us keep it short. You support. Hon. Duale, you need to put an intervention.

**Hon. A.B Duale:** Hon. Temporary Deputy Chairlady, I oppose the amendment for two reasons. We need your direction.

First, that amendment falls within Article 114. The views of the Cabinet Secretary (CS) must have been sought first before bringing the amendment. Hon. Tonui is a Member of the Departmental Committee and he should know better.

Secondly, what happens if we waive VAT on a school bus and then the school management decides to sell the same bus to Hon. Duale the following day to start business with

it? Let us not open a Pandora's Box. What happens if I sell the same bus to a public transport SACCCO the following day?

This is a money Bill. Therefore, you must make an appropriate ruling. The views of the CS must have been sought before this amendment came to the House. Unless we are told that the PS's concurrence on the amendment has been obtained, we cannot amend the Bill in this manner.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Ichung'wah.

**Hon. Ichung'wah:** Thank you, Hon. Temporary Deputy Chairlady. While I completely agree with the Leader of the Majority Party, I was just consulting with Hon. Tonui. I wish there was a proviso to specify that the proposed exemption is just for public schools because as the Leader of the Majority Party said, that provision is likely to be abused by private schools, who charge our children exorbitant school fees. They can afford these buses even if their costs were to increase by 20 per cent.

Therefore, without that kind of proviso to specify that the exemption is for buses being bought directly by parents of public schools and the NGCDF for use by public schools, and that if you were to sell such a bus to someone else, like it happens with military vehicles, one has to pay the full VAT chargeable, this amendment is not acceptable.

In the absence of such a proviso, I oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, the point has been made. We have already heard the discussion about private versus public school.

Hon. Wamalwa, I hope you have a different point.

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Chairlady. Even though the nature of this Bill requires that the amendment must have gone through the CS Treasury, the fact that the Departmental Committee Chair has accepted it, we can assume that it went through the Treasury.

However, as we move on, and as you clearly put it, we know that for any school a bus is no longer a luxury. It is important for purposes of exchange programmes but, as the Leader of the Majority Party put it, we have a problem of abuse of privilege in this country. There was a time when university lecturers were allowed to import motor vehicles tax free and the facility was abused. I wish there was a clause in that amendment that would take care of the abuse aspect. This amendment is a wonderful idea. The challenge is that it will be abused. How do we control the abuse?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay. Let us have Hon. Jakoyo and then I will put the Question.

**Hon. Midiwo:** Thank you, Hon. Temporary Deputy Chairlady. I will be brief. The reason as to why this amendment will be very wrong for our economy is that you can walk into a motor vehicle showroom, as a school and buy a bus. The following day, the same bus will be sold as used. Even if you go to pay for the excess VAT, you will pay at the rate of a used car while the person who bought it 24 hours earlier was exempted from paying VAT at the rate of a new car. This House has a duty to help the State collect revenue.

That will be a very wrong loophole to open.

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

Hon. Members, because of the suggestion that has been made of a further amendment, let me give the Member for Bomet Central a chance to contribute. It is only fair because he is the one who has brought it.



**Hon. Tonui:** Hon. Temporary Deputy Chairlady, let me make a further amendment to read as follows: - “excluding public school buses.”

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair of Committee, can I read the further amendment the Member is suggesting? Remember the amendment is yours. He is saying “excluding school buses intended for public schools”

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I want to support the further amendment by Hon. Tonui because it cures some of the questions which the Members had. When giving them the benefit we should look at the bigger good as opposed to a few people who may abuse the process.

I support because it is enhancing and taking care of questions raised by Members.

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

*(Clause 21 as amended agreed to)*

#### Clause 22

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

THAT, Clause 22 of the Bill be deleted and substituted therefor with the following new clause –

Amendment of the  
Second Schedule  
to No. 23 of 2015.

22. The Second Schedule to the Excise Duty Act, 2015 is amended-

(a) in Part A by inserting the following new paragraphs immediately after paragraph 8 -

“9. Excisable goods imported or purchased locally for direct and exclusive use in the implementation of an Official Aid-Funded Project, to the extent provided for under the financing agreement.

10. Excisable goods imported for direct use in the manufacture of sanitary towels.

11. Excisable goods to the national carrier and local airlines for both local and international supplies upon recommendation by the Cabinet Secretary responsible for transport.

12. Excisable kerosene for industrial use.

13. All goods including materials supplies, equipment, machinery and motor vehicles for the official use by the Kenya Defence Forces and the National Police Service.

(b) in Part B by inserting the following new paragraph immediately after paragraph (1)(b) -

“(c) Excisable services supplied to the national carrier and local airlines for both local and international supplies upon approval by the Cabinet Secretary responsible for transport”.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Chair of Committee.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I wish to drop the following paragraphs of the amendment after further consultations with the National Treasury and with more information that came through.

I propose to drop 22(a) 10 because after further consultations there are no goods---

*(Hon. Ng'ongo consulted loudly)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mbadi, today I am going to be a bit strict with decorum in the House, because of the Bill we are considering. The Chair is moving an amendment and changing what is on the Order Paper and Members need to follow.

Proceed, Hon. Chair.

**Hon. Langat:** Hon. Mbadi usually says he is my senior. I am moving the amendment to Clause 22, but I am dropping paragraph 22(a)10, which is on excisable goods imported for direct use in the manufacture of sanitary towels.

After further consultations, I have received information that there are no excisable goods for manufacture of sanitary towels. If they were there, then they should be listed.

22(a) 11 is excisable goods to the national carrier and local airlines for both local and international supply upon recommendation by the Cabinet Secretary responsible for transport. There are so many exceptions which the Kenya National Carrier is already enjoying and they need to be responsible.

22(a) 12 is excisable kerosene for industrial use. After, further consultations this will be difficult to implement because excise is paid at the source. By the time the kerosene is bought it has already been paid for by Total Oil or big oil players.

Also the whole of 22(b) be deleted for the same reasons, as I had earlier advanced.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, let me make it clear. Hon. Chair, follow me as I tell Members what you have deleted.

He has deleted 22(a)10, 11, 12 and entire 22(b).

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I can see the Hon. Member for Matungulu.

**Hon. Mule:** Hon. Temporary Deputy Chairlady, I want to oppose the dropping of excisable goods imported for direct use in the manufacture of sanitary towels. I believe this is an issue which has been canvassed extensively in the Departmental Committee on Finance, Planning and Trade. There was a Petition in this House on the same. We presented the same in Mombasa and the Committee agreed with what I said.

That, the goods which are brought to manufacture sanitary pads are charged excisable duty which makes the end product more expensive and disadvantages the local manufacturers and our girls in this country. The Chair probably needs to get back to the notes we discussed in Mombasa. This particular amendment has over 18 items which need to be exempted to make sure that the local manufacturers do not leave this country to go and manufacture in Egypt, Tanzania or Rwanda.

I, therefore, oppose.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, your point is made. Hon. Chair, would you like to explain to the Member clearly.

**Hon. Langat:** Hon. Temporary Deputy Chairlady. I would like the Hon. Member to relax because we listened to him in the Committee. That is why, initially it was already there. If we make a law which says “excisable goods imported for direct use in the manufacture of sanitary towels,” without listing them, then it cannot be implemented.

I had agreed with him in the amendment of Value added Tax (VAT) which is coming before this House. I have listed the tariffs and everything else. This is just a general statement which cannot be implemented.

In any case, he should say which goods are excisable.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Duale.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, I think the Chair has made some good clarifications. I want to make it very clear that the inputs used to make sanitary pads are not excisable. They are already enjoying a tax waiver.

More fundamentally, what the Chair has raised is very important. You cannot just say “excisable services, inputs or goods.” When he appeared before the Committee he did not show those items.

As legislatures, we do not want to make manufacturers become rich. The type of taxation we have done, if you look at the inputs used in the making of sanitary pads - we want to make them rich but in a very honest and clean way. The inputs already used have tax waivers. The issue that the Chair raised is fundamental and it is good to give Hon. Mule a chance to tell us those particular items.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nyikal.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairlady, in principal, this is something we should support because sanitary towels are very important for our girls. I know some fathers here do not even know why sometimes their daughters do not go to school. The issues being raised are important. I would like the Chair to clarify because he is saying elsewhere there is a list showing what will be exempted. If that is the case, then we will accept his amendments. If not, then this should be accepted.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mule

**Hon. Mule:** Thank you, Hon. Temporary Deputy Chairlady. First and foremost, I want to be very clear. I am being asked to give a particular item, but a sanitary pad is a sanitary pad. We will get to the details of the items which are used to make sanitary pads on Clause 27. They are clearly written. If we drop this amendment right now, we will be cornered at Clause 27 and we will not get the exemption we are looking for.

It is sad for girls who cannot speak in this House to find men who want to oppose exemption of their sanitary pads and they want to tax them. We must be firm on this because the Ministry of Education, Science and Technology allocates Kshs400 million to buy sanitary pads for school girls in this country. If we do this we are going to reduce the cost of sanitary pads and make sure that the Ministry buys double the number of sanitary pads they are buying. What are we doing in this House when we oppose something which is clear? I want to oppose the dropping of item No. 10. The items have been clearly listed under Clause 27.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mule, we have heard you. Hon. Jessica Mbalu, do you want to speak on this? Hon. Mule, could you please approach the Table with the Chair of the Committee.

Hon. Rachel Ameso.

**Hon. (Ms.) Amolo:** Asante sana, Naibu Mwenyekiti wa Muda. Nataka kupinga mabadiliko ambayo yamewekwa hapa kwa sababu ukiangalia hali ya mtoto msichana katika nchi yetu ya Kenya wakati wa kutumia zile sodo inakuwa ni shida. Kwa hivyo, kama tutaangalia ushuru huu kama utalipiwa kule juu, itamaanisha ya kwamba tutazuia wale ambao wanatengeza hizi sodo katika nchi hii kwa sababu bei ya sodo itapanda juu zaidi na mtoto msichana hataweza kupata nafasi kununua ile sodo wakati anataka kuitumia. Kwa hivyo, napinga mabadiliko ambayo yamewekwa katika Mswada huu.

Asante.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Birdi.

**Hon. (Ms.) Sunjeev:** Thank you, Hon. Temporary Deputy Chairlady. I would like to oppose the dropping of item 10 because of reasons that have been said before. If Kshs400 million is what the Government has put aside to deliver sanitary pads to our girls and on the other side there are very many philanthropic organisations that spend a lot of money to get sanitary pads to those children, I think it would be a shame if we do not do this.

The other thing is that at the moment we get sanitary pads through the Common Market for Eastern and Southern Africa (COMESA) simply because it is cheaper. By dropping this amendment, I think we will be making a mistake.

Thank you very much, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mule, I want to give you the Floor so that Members do not continue discussing something that you had brought up and which you have got clarity on.

**Hon. Mule:** Thank you, Hon. Temporary Deputy Chairlady. The team from the National Treasury is saying that the goods which the Chair is proposing to drop are not excisable, but my worry is very simple. Currently we do not have a clear list from the National Treasury on the taxes which they charge on sanitary pads. This is why we need to look at this thing at Committee level.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So, do you still maintain your position? You have not been convinced by the argument from the National Treasury?

*(Loud consultations)*

No, he is the one who has come up with the amendment, Hon. Members. Let him make his point so that we know what we are discussing.

**Hon. Mule:** Hon. Temporary Deputy Chairlady, it is very clear. We are going to oppose the dropping of this amendment. The National Treasury claims that they are not excisable, but can they show us where in law it is not excisable? We want it to be clear so that tomorrow nobody puts excisable duty on these items.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, the Member is already informed that those goods which are used for the manufacture of sanitary pads are not excisable. So, even if we argue, we will still reach the same conclusion. I had a small opportunity to listen to what he was saying. He was talking about railway development levy. If that was his concern, we cannot amend the railway development levy. He needs to propose amendments to the Miscellaneous Fees and Levies Act.

So that we save time, I want to convince the Member to accept my position and inform him that somewhere in the Order Paper he has already gained because we have agreed to his

amendment to exempt raw materials for manufacture of sanitary towels from VAT. Again, imported sanitary towels are already exempt from VAT. So, I think he is already gaining.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will give opportunity to one more Member. Hon. Nyamweya.

**Hon. Nyamweya:** Thank you, Hon. Temporary Deputy Chairlady. This is how taxation goes: Either you pay excise duty or not. You cannot bring things which are not zero-rated. Either they are zero-rated or you pay taxes. In terms of sanitary towels, are they zero-rated or do they attract excise duty? If they are not zero-rated, then Hon. Mule is right to move the amendment so that we are sure that at the time when the goods come, the person does not pay any extra money because of taxation. Exempting the items from VAT is a different column.

The Chair should tell us, if they are going to remove it, are they zero-rated? If they are not zero-rated, he should show us the section then---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Chair has been very clear. Do not even respond, Hon. Langat. You have already been very clear on that. I think the Member was not paying attention.

Hon. Nyenze.

**Hon. Nyenze:** Hon. Temporary Deputy Chairlady, thank you very much. I think if only we can remove that no. 10 because in the following chapter it is taken care of, all this confusion will be done away with. The issue of sanitary towels is very big. In this country, women make up 61 per cent of the population. This issue affects half of the population of Kenya. So, when Hon. Mule seeks clear guidance on this issue, he is right. I also support what Hon. Nyamweya says. It is good for the Chair to tell us exactly if it is taxable, zero-rated or not. We want to be clear. There is no need for the Government to give sanitary pads to the children because it is unaffordable. We want to make it affordable.

Thank you, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I now want to put the Question. I think we have ventilated on this enough.

**Hon. Langat:** *(Inaudible)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): No, you have explained everything they are talking about. You have been clear, Chair.

*(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): Hon. Members, first let me repeat one thing, I have made it clear today that we need to be very sure of what we are doing. I have also made it clear that you listen when others are contributing so that when you vote, you know the impact of what you are voting for. Right now, neither side has got anything. Are we together Hon. Mule? Let me hear from the Leader of the Majority Party so that we know the way forward on this Clause.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, I would like to indulge all of us. As you said, let us all be very keen. This is the Finance Bill. The Finance Bill is always very unique. I want every Member to listen to this. We consulted and the National Treasury said that

these items are not excisable. The next thing is to show us the section. There are things that we can pass here and cannot be implemented. If the law is already saying that they are not excisable, what are we removing?

Hon. Temporary Deputy Chairlady, you need to come out clearly. You also need to be very audible. You know you are not audible!

*(Laughter)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Duale, I am the one in control of the House.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, he had some cold and so we could not hear him well. We need to hear him properly.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Okay. I will give the chance to Hon. Jakoyo, then the Chairman of the Departmental Committee on Finance, Planning and Trade.

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, I think we are splitting hairs here.

*(Hon. F. K. Wanyonyi consulted loudly)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Wanyonyi, Hon. Jakoyo is asking you to allow him to execute his point.

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, in our consultation with the National Treasury, in which Hon. Mule was present--- His fears are founded. We are talking about excise duty. The National Treasury said that these items are not excisable.

**Hon. Member:** Which Act?

**Hon. Midiwo:** You will look for the Act *Mheshimiwa*. Just let me make my point. You know when we are in a shouting match we cannot--- These items are not excisable. All excisable items are in the First Schedule of the Excise Act. We also have a list of the non-excisable items, including sanitary pads. That is under Section 69. This is a very clear issue. However, the point I needed to make is this. If the Question is let to stand the way we have put it, it means we will lose everything else, including what is contained under paragraphs 11, 12 and B. The import of that is major.

The implication of what we would have done, just because we are not explaining to ourselves, is that we would have given tax breaks to anybody who supplies, say, a chopper part or to anybody who buys all these things. This is a serious issue. This is the Finance Bill and that is why there is a lot of interest. I plead for calm.

Let us listen to the Chairman of the Departmental Committee. I have looked at these clauses. Clause 22(a)(10), which the Chair is seeking to delete is superfluous. If you compare it with what is in the list, you will see that there are two different lists. I want to plead with the House to go the way of the Chairman and exempt sanitary pads when we get to Value Added Tax (VAT). It is just logic. I do not think the National Treasury will be that crazy to misguide the House when we are seated here. That is why we are all asking for that consultation which is very important.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us hear the Vice-Chairman of the Departmental Committee on Finance, Planning and Trade, Hon. Gaichuhie.

**Hon. Gaichuhie:** Thank you, Hon. Temporary Deputy Chairlady. I want to plead with Hon. Members. These goods are not excisable. That fact affects Clause 22(a)(10). We can accept that because it will not do any harm. We do not want to drop the whole of Clause 22. This is because Clause 22 talks about very many other goods, including items for the military, the police and so on. If we drop the whole Clause then it will affect everything. As a Committee we would like to deal with Clause 22(a)(10). If it has to be there, let it be there so that we do not lose the import of Clause 22.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we are actually debating a clause that does not exist because of the vote that was taken. In order to correct that, let me give the Floor to Hon. Mule.

**Hon. Mule:** Thank you, Hon. Temporary Deputy Chairlady. I would like to guide the House very clearly. First and foremost, we have deleted the entire Clause 22. My concern is Clause 22(a)(10).

I want to beg the House, under Standing Order No.49, that we rescind the decision which we have made to delete the entire Clause 22 and then deal with Clause 22 and its sub-clauses individually so that we can deal with Clause 22(a)(10). That way, whatever else they want will be okay.

*(Question, that the Committee of the whole House rescinds its decision on Clause 22 of the Bill, put and agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we are back to Clause 22. I think I now have your attention. We will go paragraph by paragraph on Clause 22.

Let us have the Chairman of the Departmental Committee on Finance, Planning and Trade.

#### *Clause 22*

**Hon. Lagat:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 22 of the Bill be deleted and substituted therefor the following new clause –

Amendment of the Second Schedule to No. 23 of 2015. The Second Schedule to the Excise Duty Act, 2015 is amended –

(a) in Part A by inserting the following new paragraphs immediately after paragraph 8 –

10. Excisable goods imported for direct use in the manufacture of sanitary towels.

11. Excisable goods to the national carrier and local airlines for both local and international supplies upon recommendation by the Cabinet Secretary responsible for transport.

12. Excisable kerosene for industrial use.

Let me take this opportunity to explain.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Can I just ask you to consider Clause 22(a)(10) because that is where the issue was. If you still want to drop it, we might go back to the situation we have just come from.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I do not know why my good friend is hardening his position. He has already been assured that the list of excisable goods is a schedule under the Excise Act. If you check that list, you will find that none of the items used in the manufacture of sanitary towels are in the list for excisable items. So, we are spending a lot of time on something which we should have made a decision on long time ago.

I would like to ask Hon. Mule to support me because I am supporting him on the VAT issue, which is bigger. He should give in on this one. I am going to oppose the other amendment now.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chairman of the Departmental Committee, I have said that we move paragraph by paragraph so that we do not lose the whole Clause. Could you, please, move paragraph (a)(9), which has no contention?

*(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): Hon. Chair, I will give you a chance to speak. You know what I am doing. I am trying to save the whole clause because of one paragraph. So, we are moving paragraph by paragraph.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, we will proceed better if I move the amendment and then a further amendment. You will then put a Question on the further amendments paragraph by paragraph.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, we have already moved Clause 22(a)(9) which is fine. I am now putting the Question for Clause 22(a)(10). Is that okay?

**Hon. Langat:** Yes, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So, let us ask the House to proclaim itself on Clause 22(a)(10). Your amendment seeks to drop it. Is it not?

**Hon. Langat:** Yes, it is supposed to delete it, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Is it to delete or drop it?

**Hon. Langat:** Yes, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): That is what you are suggesting as the Chair of the Committee, is it not?

**Hon. Langat:** Yes, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): That is what Hon. Mule is contesting?

**Hon. Langat:** Yes, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I now put it to vote. Hon. Members, are we together?

*(Hon. Midiwo stood up in his place)*



Hon. Jakoyo, you might lose the point here. We are moving paragraph by paragraph. We have already moved Clause 22(a)(9). We are now moving on to Clause 22(a)(10).

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair, you can now move on to Clause 22(a)(11) and (12).

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

THAT, Clause 22 of the Bill be amendment by deleting (a)(11) and (12).

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So, you have dropped both?

**Hon. Langat:** Yes, Hon. Temporary Deputy Chairlady.

*(Clause 22(a) 11 and 12dropped)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we are still on Clause 22. Just give us a minute for further consultation.

*(The Temporary Deputy Chairlady consulted the Clerks-at-the Table, Hon. Langat and Hon. A.B. Duale)*

Hon. Chair, you had also dropped Clause 22(b). Have you dropped the whole of Clause 22(b)? Hon. Wandayi, I will give a chance but let me first hear the Hon. Chair.

**Hon. Langat:** Yes, Hon. Temporary Deputy Chairlady. I have dropped the whole of Clause 22(b). The usual procedure is that if I drop my amendment, it should not be voted for because I have dropped it. That is the procedure.

*(Clause 22(b) dropped)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair, I agree with you but let us also be clear that when we move amendments here, Members are allowed to raise their opinion on what you are doing. What happened is that Hon. Mule's argument caused the whole clause to "die". That is why we had to rescind the initial decision so that we could go paragraph by paragraph.

Hon. Chair, we are not at all saying that you do not have a right to drop your amendments. You have every right to do so but the membership on the Floor can debate to "kill" the whole clause. I hope you understand what I am saying.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I agree with what you have said but I also want to say that if I drop an amendment, there will be nothing to discuss because I will not have moved the amendment. So, that we make progress, I agree with what you have said but it should be clear that if somebody withdraws an amendment, there will be nothing to discuss on the Floor.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we have done---

*(Clause 22 as amended agreed to)*

*Clause 23*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have an amendment by Hon. Jared Opiyo. If you do not have your electronic card you can speak from the Dispatch Box.

**Hon. Opiyo:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 23 of the Bill be amended in paragraph (f) by inserting the following new definition in the proper alphabetical sequence—

“computer” has the meaning assigned to it under section 2 of the Kenya Information and Communications Act.

I am amending this clause to include computers on the list of items to be exempted from Excise Duty.

*(Question of the amendment proposed)*

Hon. Opiyo, just give some reasons because members would like to know them before I give the Chairman an opportunity.

**Hon. Opiyo:** Hon. Temporary Deputy Chairlady, you will realise that even the Jubilee Government wants the country to go digital. You know that our Standard One pupils started to use computers this year. Nowadays students cannot join university before acquiring laptops. It will not make sense if we do not lower the costs of acquiring these gadgets to encourage as many people as possible to acquire them.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us now have the Departmental Committee Chairman, Hon. Langat.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I oppose the amendment. This is a money Bill. What is defined as “computer” will open a Pandora’s Box for all and sundry. It will lead to serious revenue loss. This matter needs to have been canvassed properly. We should look at the implications on revenue. I agree we need cheap computers.

I want to thank the Jubilee Government because the computers which are being given to our kids are procured by the Government. The Government is already investing a lot on computers. If we deny the Government money to purchase those gadgets, it will be a serious revenue issue.

On the question of taxation, if we encourage this style, we may make serious amendments which may lead to unintended consequences. We need to be very careful.

I oppose and I urge Hon. Members to oppose the amendment.

**Hon. (Dr.) Oginga:** Hon. Temporary Deputy Chairlady, I also wish to join my Chairman in opposing this amendment. I am a Member of the Committee. I oppose not just because of the revenue implications but because many unscrupulous men used to use the window of exempting computers from tax to use Kenya as a dumping ground for obsolete computers, some of which are not friendly to the environment.

We should not open a Pandora’s Box by exempting tax on all computers.

**Hon. Opiyo:** Hon. Temporary Deputy Chairlady, I hear my colleagues. It is something that this House will need to engage on, on the way forward. In order for us to make progress, I want to withdraw the amendment.

*(Hon. Opiyo's proposed amendment to Clause 23 withdrawn)*  
*(Clauses 23, 24, 25 and 26 agreed to)*

*Clause 27*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We have three proposed amendments. We will start with the amendment by the Chairman of the Committee. If the amendment by the Chair is carried, the amendments by Hon. Jude Njomo and Hon. Jared Opiyo will be dropped.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I will drop some proposals contained in the amendment but let me move first.

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

THAT, Clause 27 of the Bill be amended –

(a) in paragraph (a) -

(i) by deleting subparagraph (i) and substituting therefor the following subparagraph–

(i) by inserting the tariff numbers 2302.10.00, 2302.30.00, 2303.30.00, 2304.00.00, 2306.10.00, 2306.20.00, 2306.30.00, 2306.41.00, 2306.49.00, 2306.50.00, 2306.60.00, 2306.90.00, 2835.25.00 and 2835.26.00 at the end of paragraph 43;

(ii) by deleting subparagraph (iv) and substituting therefor the following new subparagraph–

(iv) by deleting the words “and recreational parks of one hundred acres or more approved by the Cabinet Secretary for the National Treasury upon recommendation by the Cabinet Secretary responsible for Industrialization” appearing in paragraph 55 and substituting therefor the words “parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury”;

(iii) by deleting subparagraph (v) and substituting therefor the following new subparagraph–

(v) by deleting paragraph 57 and substituting therefor the following new paragraph–

57. All goods including material supplies, equipment, machinery and motor vehicles for official use by the Kenya Defence Forces and the National Police Service.

(iv) in subparagraph (vi) by deleting paragraph 59;

(v) in subparagraph (vi) by deleting the word “recreational parks” appearing in the proposed paragraph 63 and substituting therefor the words “tourism”,

(vi) recreational parks of fifty acres or more, convention and conference facilities”;

(v) in subparagraph (vi) by inserting the following new paragraphs immediately after the proposed paragraph 65–

- “66. Taxable goods locally purchased or imported by manufacturers or importers of clean cook stoves for direct and exclusive use in the assembly, manufacture or repair of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for matters relating to energy.
67. Inputs or raw materials locally purchased or imported by manufacturers of clean cook stoves approved by the Cabinet Secretary upon recommendation by the Cabinet Secretary for the time being responsible for energy.
68. Stoves, ranges, grates, cookers (including those with subsidiary boilers for central heating) barbecues, braziers, gas-rings, plate warmers and similar non-electric domestic appliances, and parts thereof, or iron or steel of tariff numbers 7321.11.00, 7321.12.00, 7321.19.00, 7321.81.00, 7321.82.00, 7321.83.00 and 7321.90.00.
69. Super absorbent polymer (SAP) of tariff number 39.06.90.0.
70. Carrier tissue white, 1 ply 14.5 GSM of tariff number 4703.21.00.
71. IP super soft fluff pulp – fr-fluff 310 treated pulp 488\*125mm (cellose) of tariff number 4703.21.0.
72. Perforated PE film 15-22 gsm of tariff number 3921.190.0.
73. Spunbound non-woven 15-25 gsm of tariff number 56.03.1190.8.
74. Airlid paper with super absorbent polymer 180gsm/67 of tariff number 48.03.00.0.
75. Airlid paper with super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.
76. Airlid paper without super absorbent polymer 180gsm/67 of tariff number 48.03.00.0.
77. Airlid paper without super absorbent polymer 80gsm/67 of tariff number 48.03.00.0.
78. Pressure sensitive adhesive of tariff number 3506.91.90.
79. Plain polythene film/LPDE of tariff number 39.21.190.0.
80. Plain polythene film/PE of tariff number 39.21.190.0.
81. PE white 25-40gsm/release paper of tariff number 48.44.51.10.0.
82. ADL – 25-40gsm of tariff number 56.03.1190.8.
83. Elasticized side tape of tariff number 5402.4410.
84. 12-16 gsm spunbound piyropnonwoven coverstock/12gsm spunbound PP non-woven SMS hydrophobic leg cuffs of tariff number 56.03.1190.8.

85. Polymetric elastic 2/3 strands of tariff number 3919.90.90.10.

86. Plain polythene film/PE of tariff number 39.20.10.10.

87. PE white 25-40gsm/release paper of tariff number 48.10.99.00

88.12-16 gsm spunbound piyropnonwoven coverstock/15gsm spunbound PP non-woven SSMMS hydrophobic leg cuffs of tariff number 56.03.1190.

89. Taxable supplies to the national carrier and local airlines for both local and international purchases upon recommendation by the Cabinet Secretary responsible for transport.

(b) in paragraph (b)–

(i) by deleting subparagraph (ii) and substituting therefor the following new subparagraph–

(vii) by deleting the words “and recreational parks of one hundred acres or more approved by the Cabinet Secretary for the National Treasury upon recommendation by the Cabinet Secretary responsible for Industrialization” appearing in paragraph 22 and substituting therefor the words “parks of one hundred acres or more including those outside special economic zones approved by the Cabinet Secretary for the National Treasury”;

(ii) by inserting the words “and national reserve” immediately after the word “parks” in the proposed paragraph 24 appearing in subparagraph (iii);

(iii) in subparagraph (iv)–

(a) by deleting the proposed paragraph 25 and substituting therefor the following new paragraph –

“25. The brokerage services of tour operators, excluding in-house supplies”;

(b) in subparagraph (iv) by deleting the word “recreational parks” appearing in the proposed paragraph 26 and substituting therefor the words “tourism, recreational parks of fifty acres or more, convention and conference facilities”

(c) by inserting the following new paragraph immediately after the proposed paragraph 27–

28. Taxable supplies to the national carrier and local airlines for both local and international purchases upon recommendation by the Cabinet Secretary responsible for transport

(c) by inserting the following new paragraph immediately after paragraph

(b) -

(c) Section B of Part I of the First Schedule is amended by–

- (i) renumbering the existing provision in section B of Part I as paragraph (1);
- (ii) inserting the following new paragraph immediately after paragraph (1)–
  - (2) Notwithstanding paragraph (1), the exemption shall be extended by a further two years from 1<sup>st</sup> September, 2016.

However, I wish to drop Paragraph 89 which relates to the taxable supplies to the national carrier.

**Hon. A.B. Duale:** Go slowly.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Departmental Committee Chair, go slowly as the Leader of the Majority Party is telling you and try to be audible.

**Hon. Langat:** I am dropping paragraph 89, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): First of all, is it the Supplementary Order Paper that you have?

**Hon. Langat:** I am sorry I am using my earlier Order Paper. I now have the Supplementary Order Paper.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Go ahead.

**Hon. Langat:** I am proposing to move amendment to Clause 27 but I am dropping the following paragraphs of the same; that is paragraph 89 on page 2007. I have already talked about the national carrier. We dropped the others. I am proposing that we drop the VAT.

I also wish to move a further amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, the Departmental Committee Chairman has dropped paragraph 89 on page 2007, which relates to the national carrier. Hon. Chair, can you explain?

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I am dropping paragraph 89.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, the Chair---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Leader of the Majority Party, it is for everybody to understand. Since you seem to have understood that let him explain to the rest of the House.

**Hon. Langat:** I am dropping paragraph 89, which relates to VAT on taxable supplies.

**Hon. (Dr.) Nyikal:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): What is it, Hon. Nyikal?

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairlady, we are proceeding in such a way that only a few Members are being carried on board. Some Members know what is happening. It is important that for every amendment, we are told its import so that we can all participate.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Thank you, Hon. Nyikal. That is what the Chair was doing. The Departmental Committee Chairman, what is the import of dropping paragraph 89?

**Hon. Langat:** Paragraph 89 is on exemption of VAT on taxable supplies to the national carrier. It is already enjoying many other exemptions and it must contribute to the national economy despite all the other challenges. Hon. Nyikal is aware that we gave the national carrier Kshs20 billion to boost its capital and it must also contribute to the national economy. I am dropping the paragraph. It will not be part of what we are voting for.

*(Paragraph 89 of part (a)(v) of the proposed amendment dropped)*

Secondly, I want to move a further amendment to paragraph (b)(iii), where it is written “25. The brokerage services of tour operators, excluding in-house supplies”. I wish to delete the word “brokerage.” It was a mistake because they are not brokers but they provide services as tour operators. This is typo error.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So, it will read “the services” and not “the brokerage services”?

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I want to delete the word “brokerage” so that what remains is “the services of tour operators.” Let me now move to explain the import of the proposed amendments.

Hon. Temporary Deputy Chairlady, all these proposals are for VAT exemptions. We received a lot of submissions on the cost of inputs for animal feeds which has gone up because of the VAT. We proposed and agreed with the National Treasury that we need to exempt all the inputs for the manufacture of animal feeds. Therefore, the amendment seeks to exempt the inputs for the manufacture of animal feeds from VAT so that farmers can benefit.

The other major one addresses Hon. Mule’s earlier concerns. Before that, we received submissions on the manufacture of cooking stoves which are used by people in rural areas. The Committee agreed that we need to exempt from VAT the raw materials for the manufacture of “cook” stoves to encourage local people to enjoy the benefit of using them as opposed to cooking with firewood, which is destroying our environment. We accepted that we need to exempt VAT on the raw materials for manufacturing “cook” stoves under Clause 27(a)(v).

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair, is it “cook stoves” or “cooking stoves”? What are “cook stoves”?

**Hon. Langat:** It is “cooking stoves”, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): We can amend that typo to indicate “cooking stoves”.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, the other major amendment we are making is to exempt VAT on all the inputs for the manufacture of sanitary towels. This will encourage local manufacturers to set up factories and compete with imported sanitary towels. I was telling my good friend that I have already accepted a big chunk of his amendment. Majorly, this is what we are doing. Basically, those are the major items for exemption of VAT.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let me propose the Question first and then I will give the opportunity to the Leader of the Majority Party.

*(Question of the amendment proposed)*

**Hon. A. B. Duale:** Hon. Temporary Deputy Chairlady, Item No.28 on page 2008 reads: “Taxable supplies to national carrier and local airlines.” I thought we dealt with it and deleted it under Clause 22(a)(11). The Chair has not talked about it. He needs to remove that.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, Hon. Chair.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I am sorry for that oversight. He is reminding me that in the same spirit I dropped the earlier one, I should drop paragraph 28 on page 2008. That is all.

We are also extending the exemption period for the levying of VAT on petroleum products. We are increasing the period of exemption for two years from 1<sup>st</sup> September, 2016. It is

a matter that needs further consultation; that is on petroleum products. We are extending the period for two years for further consultations.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mule, you have not requested to contribute, but I feel like you need to speak at this juncture.

**Hon. Mule:** Thank you very much. I want to thank the Chair for the Departmental Committee on Finance, Planning and Trade, and the entire Committee.

Clauses 27(a)(vii)68 and 70 all the way to Clause 89 have the items we want to exempt from VAT. This will make the manufacturing of sanitary pads in this country affordable. It will also create more jobs. The Government will also reap from the Pay as You Earn (PAYE) from the factories. This will also encourage investors to remain in this country instead of running away to Egypt, Tanzania and other countries. This amendment will enable the girl-child in this country to go to school.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mule, your point is made.

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

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

*(Clause 27 as amended agreed to)*

#### Clause 28

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): There are amendments by the Chair of the Committee and Hon. Jude Njomo. If the amendment by the Chair of the Committee is carried then Hon. Jude Njomo's amendment will be defeated. Hon. Chair of the Committee, can you move the amendment under Clause 28?

*(Hon. Langat consulted with other Members)*

Hon. Members, as the Chair of the Committee is consulting or preparing, I have a letter from Hon. Jude Njomo for absence from parliamentary sittings because of other parliamentary duties. Therefore, he has asked Hon. Kimani Ichung'wah to move the amendments on his behalf.

Would you like me to ask Hon. Kimani Ichung'wah to move the amendments?

**Hon. Langat:** Yes, Hon. Temporary Deputy Chairlady.

**Hon. Ichung'wah:** Hon. Temporary Deputy Chairlady, on behalf of Hon. Jude Njomo, I beg to move:-

THAT, Clause 28 of the Bill be amended in paragraph (a) by inserting the following new paragraph immediately after the proposed new paragraph 12.

13. The supply of liquefied petroleum gas.

The amendment seeks to exempt VAT on Liquefied Petroleum Gas (LPG) cylinders because the majority of our people in this country are very poor. Over the years, they have depended on wood fuel and other forms of solid fuels for cooking.



We increased taxation on kerosene in last year's Finance Bill and this has made life very difficult for many people. This exemption will encourage our people to use more LPG.

In a recent survey by the World Bank, it was said that about 87 per cent of Kenyans depend on solid fuels as their primary source of fuel. Therefore, I urge Members to support this amendment because LPG is very clean energy.

Hon. (Dr.) Nyikal can tell you the health risks that come with the use of charcoal, wood and Kerosene for cooking. They are very detrimental to our health and the lives of our people. If we use clean energy like LPG, we will help our people a great deal. Therefore, I urge Members to support the amendment.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will start with the Chair of the Committee.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I support the amendment because Kenyans need to access clean energy and we need to stop the destruction of our environment. Therefore, we need to make clean energy affordable.

I support the amendment.

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

*(Clause 28 as amended agreed to)*

*(Clauses 29, 30, 31, 32, 33, 34, 35, 36 and 37 agreed to)*

*Clause 38*

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

THAT, Clause 38 be amended in the proposed section 42A, by inserting the following new subsection immediately after subsection (4) —

(5) A person who, prior to the commencement of this section, was appointed to withhold tax under section 25A of the Value Added Tax Act, 2013 shall, notwithstanding the repeal of that section, be deemed to be a person appointed under subsection (1): provided that this provision shall not be construed to impose any penalty whatsoever on any such person who ceased to withhold tax for any period following the repeal of that section up to the 8th June, 2016.

This amendment seeks to clarify the issue of withholding tax agents which was deleted on the Floor of this House earlier in the year. Somewhere along the line, it raised the question as to whether the Kenya Revenue Authority (KRA) had lost the power to appoint the agents because of that deletion. We are introducing that power to ease administration of taxes so that the KRA can get taxes from the withholding agents from 8<sup>th</sup> June, 2016, when the provision was deleted.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have the Kakamega County Women Representative.

**Hon. (Ms.) Amolo:** Thank you, Hon. Temporary Deputy Chairlady. I support the amendment because it will enable the KRA to have enough revenue for other operations.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Member for Igembe North, do you support the amendment to Clause 38 by the Chair of the Committee?

**Hon. M'uthari:** Hon. Temporary Deputy Chairlady, I support the amendment.

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

*(Clause 38 as amended agreed to)*

*Clause 39*

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

THAT, Clause 39 of the Bill be amended by inserting the following new paragraph immediately after paragraph (b) –

“(c) by inserting the following new subsection after subsection (4) –

(5) The Commissioner shall repay the overpaid tax within a period of two years from the date of application, failure which the amount due shall attract an interest of 1% per month or part thereof of such unpaid amount after the period of two years.

When you overpay tax to the KRA and you need a refund, the KRA takes too long to refund your excess tax. But when you are wrongly refunded by the KRA and you do not repay back immediately---

*(Hon. Nyamweya and Hon. Angwenyi consulted loudly)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nyamweya and Hon. Jimmy Angwenyi, please lower your voices.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, when you are wrongly refunded by the KRA and you do not pay immediately, they start levying interest on the excess payment you received. However, if you have overpaid and you require a refund, they do not pay you interest.

The Committee proposes that it should be two-way. If I delay then I will pay interest to the KRA and if the KRA determines that I have overpaid taxes and I need a refund, it should repay me immediately. If the KRA delays for more than two years, then the amount shall start attracting interest at 1 per cent per month or part thereof of such unpaid amounts after the period of two years. We have provided a window of two years. This is to encourage the KRA to be efficient in refunds.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have Hon. Nyikal.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairlady, I support this amendment. Many people are afraid of paying taxes particularly if they have overpaid. If they are assured that they will be paid within two years, and that if the payment is delayed, then they will get some interest on it that is a good way to go. This is because it works both ways.

I support the amendment.

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

*(Clause 39 as amended agreed to)*

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

*Clause 45*

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

THAT, Clause 45 of the Bill be amended –

(a) in paragraph (a) by inserting the words “institutions registered under the Co-operative Societies Act, Cap. 490” immediately after the words “SACCO Societies Act, 2008”;

(b) in paragraph (c)(i) by inserting the words “institutions registered under the Co-operative Societies Act, Cap. 490” immediately after the words “SACCO Societies Act, 2008”; and

(c) in paragraph (c) (ii) by inserting the following new sub-subparagraph immediately after subparagraph (da) –

“(daa) institutions registered under the Co-operative Societies Act, Cap. 490”.

We are seeking to include SACCOs which are registered under the Co-operative Societies Act and are not subject to the SACCO Societies Act. We propose that if any member of a SACCO defaults, regardless of whether or not the SACCO is subject to the SACCO Societies Act, he or she must have their name in the Credit Reference Bureau (CRB) so that we encourage people who take loans to pay. Just like if you default in a bank, your name will be circulated. If you seek additional financing, you first have to clear your name. This is to encourage people to repay their loans regardless of the SACCOs.

*(Question of the amendment proposed)*

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

*(Clause 45 as amended agreed to)*

*Clause 46*

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I wish to drop that amendment. Clause 46 sought to amend Section 34 of the Banking Act in subsection (2) by inserting the words “in

consultation with the Cabinet Secretary” immediately after the words “Central Bank”. Clause 46 sought to ensure that before the Central Bank of Kenya (CBK) Governor makes any major decision, for example, when there is a bank failure, he has to consult the Cabinet Secretary (CS) for the National Treasury.

The Committee proposed to delete that provision. It is important to share information on very critical matters of the economy so that you do not wake up one morning and hear that this bank has been closed. It is good because at the end of the day, the CS is the policy maker. Should anything go wrong, it is the Government, namely the President or the CS, who shall explain.

After further consultations, I drop the amendment so that we allow for consultations. At the end of the day, the CBK Governor will still make the decision, but he has to inform the other players.

*(Proposed amendment to Clause 46 by Hon. Langat dropped)*

*(Clauses 46 and 47 agreed to)*

#### *Clause 48*

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

THAT, Clause 48 of the Bill be deleted.

This clause seeks to increase the capital base for banks progressively from Kshs2 billion in 2017, Kshs3.5 billion in 2018 and Kshs5 billion in 2019. After consultations, the Members of my Committee said that we need to encourage more people to set up banks and more Kenyans to invest in banks. We should not make it an exclusive club for a few people who have billions of shillings.

If Hon. Jakoyo has Kshs200 million, he can set up a small bank in Kisumu which may grow progressively to be like Kenya Commercial Bank (KCB) or Equity Bank. If you look at the history of all these banks, for example, Equity Bank, you will find that it was a very small building society but it is now a major bank in this country. The Members of the Committee agreed that we should encourage people to invest. We are also encouraging competition.

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

*(Clause 48 deleted)*

*(Clauses 49 and 50 agreed to)*

#### *Clause 51*

**Hon. Langat:** Hon. Temporary Deputy Chairlady, after further consultations, I want to drop that amendment. Clause 51 of the Bill was forcing the Kenya Deposit Insurance Corporation (KDIC) to consult with the CS for National Treasury incase a bank is failing. I think we should encourage consultations between the actors, regulators and policy makers so that before a major decision is made, it is known by all the stakeholders and policy makers. I am,

therefore, dropping that amendment so that we can support consultations in the sector.

*(Proposed amendment to Clause 51 by Hon. Langat dropped)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we are now moving to new clauses. So, please be aware.

*New Clause 3A*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chairman, I hope you know the procedure for moving a new clause.

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 3-

Amendment of section 10 of Cap 470.	3A. Section 10 of the Income Tax Act is amended by deleting paragraph (g).
---	--

Hon. Temporary Deputy Chairlady, last year, this House passed an amendment to remove Withholding Tax on winnings by players from the income tax for non-residents, but left the locals to continue being charged Withholding Tax. After consultations with the National Treasury and the KRA, it came out that it is not possible to withhold those winnings because you need the pin numbers of the people who are betting and winning and also the i-tax requirements. For administration purposes, this clause cannot be implemented.

We also have another clause that introduces additional taxes on the betting companies.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have Hon. Nyikal.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairlady, it is not quite clear---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. (Dr.) Nyikal, just give us a minute because Hon. A. B. Duale wants to intervene.

**Hon. A. B. Duale:** Hon. Temporary Deputy Chairlady, I need to go on record in the HANSARD that as we start dealing with New Clause 3A and many other amendments concerning betting, lottery and gaming, the Betting, Lottery and Gaming Bill of 2015 before this House has been withdrawn following a letter from the National Treasury. The proposed amendments are now transferred to the Finance Bill. That is acceptable by my office and that of the Speaker. All the amendments on this Bill are basically matters dealing with that Bill. In fact, more amendments have been brought up.

Hon. Members, the Betting, Lottery and Gaming Bill of 2015, has been officially withdrawn. I will write to the Speaker about the same. That Bill was more about taxation. For

purposes of tidiness, those amendments have been carried to this Bill.

I beg to give that Statement, and I need to go on record.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will also allow the Deputy Leader of Minority Party to go on record on the same issue.

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, as you know I am very interested in this issue. I like the fact that the Government is finally making an attempt to tax this industry. Even as the Leader of the Majority Party withdraws a Bill that was discussed here last week, he is doing it with our support so that we do not have to wait any longer before the State begins to tax these people.

I would like to go on record that within the next couple of weeks, there will be a Bill to deal with how we regulate the gambling and betting industry.

I support.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Leader of the Majority Party and the Deputy Leader of the Minority Party have cleared the air and so, Members are now aware.

Hon. Nyikal, do you want to speak to the same issue?

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairlady, I wanted to seek a further clarification because it did sound to me that what we are dealing with, as the Chairman was saying, that because it is difficult to get these identification documents, tax cannot be withheld. This gives me the impression that it is possible to get away with it. It is not clear whether we have another provision in the Bill that ensures that the tax that was not withheld is taxed elsewhere. I need that clarification before I support it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chairman, can you respond to that?

**Hon. Langat:** Hon. Temporary Deputy Chairlady, somewhere in the Bill, we will propose additional taxes to gaming and betting. For those that are administratively difficult, we are introducing additional taxes.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, the Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, let us deal with New Clause 3A which is amending Section 10 of the Income Tax Act by deleting Paragraph (g). According to the analysis of the Budget Office, this clause proposes to amend Section 10 of the Income Tax which provides for income from management, professional fees, royalties, interests and rents. This was designed to give betting and gaming companies relief on Income Tax at 20 per cent rather than the normal rates.

The proposed deletion by the National Treasury could mean that betting and gaming companies could now be subjected to an Income Tax at a normal rate of 30 per cent for locals/Kenyans, and 37.5 per cent for non-residents/foreigners in addition to any other taxes. That is the import of New Clause 3A.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. (Ms.) Mary Emaase, do you want to speak to this?

**Hon. (Ms.) Otucho:** I support that amendment because I think it is good, Hon. Temporary Deputy Chairlady.

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

*(New clause was read a Second Time)*

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

*New Clause 4A*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 4 –

Amendment of section 15 of Cap. 470. 4A. Section 15 of the Income Tax Act is amended in -

- (a) subsection (2) by inserting the following new paragraph immediately after paragraph (y)–  
“(z) expenditure incurred in that year of income by a person sponsoring sports, with the prior approval of the Cabinet Secretary responsible for sports”;
- (b) subsection (3) (b) by deleting the words “one hundred and fifty” and substituting therefor the words “three hundred”.

The purpose of that is to allow expenditure incurred by a person sponsoring sports, with the approval of the Cabinet Secretary responsible for sports, deducted for tax purposes. This is to give incentive to companies that sponsor sports like football, athletics and so forth so that we encourage them to sponsor sports in our country – especially in athletics which we are doing very well. We will encourage many people to engage in sports if we have people sponsoring that. At least, Kenya could be on the map of the world, especially on football. We need football to grow in this country.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairlady, when we were discussing the Bill that was withdrawn, the issue of supporting sports came up again. However, we noted that there were issues where support is given to foreign countries. Has that been taken care of here so that, even if you support a team in London, that does not lead to your tax evasion in this country? That is what will help the country.

I support the amendment, Hon. Temporary Deputy Chairlady.

**Hon. Langat:** Thank you, Hon. Temporary Deputy Chairlady. I want to inform Hon. Nyikal that, if he looks at the amendments, he will find it says “with the prior approval of the Cabinet Secretary.” That means there is a control. Before one is allowed, it is the Cabinet Secretary responsible for sports to say; “this sponsor is sponsoring football in Kisumu and Kericho. Let us

allow him deduct his expenses for tax purposes.” If it is an international sponsorship, I do not think any reasonable CS will approve that for purposes of tax. So, there is a control already.

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

*(New clause was read a Second Time)*

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

#### *New Clause 5A*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 5 –

Amendment of 5A. Section 34 of the Income Tax Act is amended—  
section 34 of Cap. 470.

- (a) in subsection (1) by deleting paragraph (m); and
- (b) in subsection (2) by deleting the following paragraph (i) –  
(i) winnings payable by bookmakers to punters (players).

This is basically a subsequent amendment after we passed New Clause 3A. It is some sort of clean up subsequent to the passage of New Clause 3A.

*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)*

*(New clause was read a Second Time)*

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

#### *New Clause 18A*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, Hon. Jakoyo Midiwo will be moving the amendments on behalf of Hon. Jude Njomo.

Go ahead Hon. Jakoyo.

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, on behalf of Hon. Jude Njomo, I beg to move:-



THAT, the Bill be amended by inserting the following new clause immediately after Clause 18—

Amendment of “18A. Section 7 of the Excise Duty Act, 2015 is amended in section 7 of No. 23 subsection (3) by— of 2015.

(a) deleting sub-section (2);

(b) deleting sub-section (3).

I need to explain this. As you know, I am interested in this issue because I brought a Petition last week in relation to issues of possible tax evasion by the East African Breweries Limited (EABL). This law seems to make law for a single company. I have been in this Departmental Committee on Finance, Planning and Trade for 10 years and I have seen strange things happening. This is one such strange thing.

In law, the issue of remission cannot be given to a CS. Articles 209 and 210 of our Constitution do not allow remissions without bringing those issues to the Floor of this House. When you say a CS can give a remission of up to 90 per centum, what are you telling people? We cannot make a law that violates the Constitution of this country. For us who are in areas which can possibly grow sorghum and millet, because this is a big thing, these brewers in our country must help us develop our agriculture.

I thank Hon. Jude Njomo for thinking ahead for us who can grow millet and sorghum. The moment you give the CS power to allow some remission, which is unconstitutional, you are allowing importation of those products.

Hon. Temporary Deputy Chairlady, I want you to help by guiding the House so that power on the issue of remission is not given to the CS through the backdoor.

I beg to move.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will start with the Chairman of the Committee.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I oppose that amendment. We cannot do a major policy decision overnight. That provision was made to encourage investors.

First of all, let us not look at it from a very minor perspective but from a major perspective. That provision was given so that we encourage brewers to go to our farmers who grow millet and sorghum so that they create market for their crops.

The power was given six months ago and we cannot do it after another six months. In this country, we need consistency of policies. We cannot wake up one day and make such a policy decision. In fact, I request that this amendment be withdrawn first because it is a major policy decision we are about to make.

Let us oppose this amendment. Surely, we cannot make such a rabid policy decision.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): That is okay, Hon. Chairman. We have heard you.

Let us hear the Member for Kiharu, Hon. Kang’ata.

**Hon. Kang'ata:** Hon. Temporary Deputy Chairlady, first, allow me to read to the Members what this clause which is being sought to be deleted provides. The Deputy Leader of the Minority Party appears to have misled the House.

It reads this way:-

“The Cabinet Secretary may, by notice in the Gazette, grant remission of Excise Duty wholly or partially, in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products, excluding barley grown in Kenya.”

The point is, if you allow this clause to go, what will be the effect? It will mean---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Kang'ata, I am sorry for taking you back. Read again what you are saying that you think will be affected by the proposed amendment by Hon. Jakoyo.

**Hon. Kang'ata:** Yes, Hon. Temporary Deputy Chairlady. The New Clause 18A is proposing to amend Section 7 of the Excise duty Act, 2015 sub-section 3 by deleting sub-sections (ii) and (iii) of that section which I want to read out.

Sub-section 2 provides:-

“The Cabinet Secretary may, by notice in the Gazette, grant remission of Excise Duty wholly or partially, in respect of beer or wine made from sorghum, millet or cassava or any other agricultural products excluding barley grown in Kenya.”

Sub-section 3 provides:-

“The Gazette notice issued under sub-section 2 shall specify the products and conditions to be met for the remissions to be granted.”

So, what is the effect?

The effect will be that currently, we have beer in Kenya which is being made from these three products. What the CS does, by virtue of this law, is to ensure that beer which made in Kenya, as the law provides, is given tax remission. If you looked at NTV the other day or even read the *Daily Nation*, you saw Hon. Oburu Odinga illustrating that he is now growing sorghum, because of this new clause, and selling it to beer manufacturers. So, we are going to kill cassava farming and “sorghum” farming at a commercial level. Most importantly, we are going to make our people revert to illicit beers, which this clause had fought and defeated.

So, as proposed by the Committee Chair, we should oppose this amendment very strongly if we do not want our people to go back to the illicit beers which this country has been fighting.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have Hon. Wandayi.

**Hon. Wandayi:** Hon. Temporary Deputy Chairlady, in so far as there is capacity to determine what is locally produced sorghum, millet or cassava, I agree that we oppose this amendment. I know what happens if you do not ensure that there is ready and guaranteed market for this produce. You end up killing the small-scale farmers who are the backbone of our economy.

More importantly, this beer that is made from these raw materials is meant for the low end market, for instance, Senator Keg. So, I agree with my colleague and senior, Hon. Jakoyo that if we do not control the definition between locally produced and imported raw materials, we will have a problem. However, if you can determine what locally produced raw materials are, it is a good law which we should not delete.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Opiyo, you have confused the House. You started by saying you oppose but now you seem to say you support.

**Hon. Wandayi:** I opposed it in the sense that it was going to kill the small-scale farmers. I want us to be sure on how to determine what locally-produced raw materials are and what imported raw materials are.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have the Member for Narok South.

**Hon. ole Lemein:** Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose this amendment. Hon. Kang'ata has executed it very well. Should this particular amendment be supported, we are going to kill our farmers who grow sorghum.

I oppose the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, the Member for Igembe North.

**Hon. M'uthari:** Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose this amendment.

Last year, I brought a petition to this House regarding the question of taxation on products made from sorghum, millet and cassava. By doing this, we are going to kill the livelihoods of many farmers who have contracts with beer-brewing companies. When farmers grow these commodities, we are also supporting the work being carried out by our research institution like the Kenya Agricultural Research Institute (KARI). At the same time, as farmers grow these crops for ready market, they also improve the food security in our country. In the process, this supports food security and generates income to many farmers.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I know you want to go on but your point is made.

**Hon. M'uthari:** Hon. Temporary Deputy Chairlady, I oppose this amendment and all those people who care about farmers should oppose it.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have the Member for Maragwa.

**Hon. Mwangi:** Thank you, Hon. Temporary Deputy Chairlady. I rise to oppose the new clause. We need to encourage our farmers to grow what has ready market. If we say we increase this, we are taking our people back to where they were – taking of illicit brews when we have started seeing the fruits of not taking those brews. People have now started taking Senator Keg, which is brewed using these crops.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Yes, the Leader of the Majority Party.

**Hon. A. B. Duale:** Hon. Temporary Deputy Chairlady, I am neither a farmer nor do I drink the by-products, but I am a Legislator. I want you to give Hon. Jakoyo and the Chair another moment because certain provisions of the Constitution have been cited.

Articles 209 and 210 of the Constitution provide that no taxes shall be levied, waived or varied except with prior approval of the National Assembly. As we navigate that amendment, how do we protect those two articles? The CS does not have powers. If you read those two articles, you will find that the CS has no powers. So, whether you represent the interest of the farmers---

**Hon. Langat:** Hon. Temporary Deputy Chairlady---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us have one at a time. The Leader of the Majority Party, continue.

**Hon. A. B. Duale:** Hon. Benjamin, I am talking. Parliament can give powers when they are brought to this Floor; they cannot be given by the Departmental Committee on Finance, Planning and Trade. So, we will not legislate something which is contrary to the Constitution. Unless somebody tells me that we “blind” our eyes on Articles 209 and 210, I will not support this amendment. That is what we are doing here today. If the Constitution did not give us that power, then there was no need for the Finance Bill.

During retired President Moi’s time, the Minister for Finance, could, in the middle of the night, say beer tax had increased. We will not give our powers to the CS unless the Chair of the Departmental Committee on Finance, Planning and Trade tells us. Forget about whether you grow sorghum or millet. I also keep camels but that has nothing to do with the Constitution and the law. I have over 500 camels in Bura Constituency. Those of you who follow my tweets have seen me milking them.

Tell me how we marry that amendment with the provisions of Articles 209 and 210 of the Constitution. If you are telling us to pass this amendment, then you are abrogating Articles 209 and 210. The Constitution has given the National Assembly the powers. Let me go on record. The Constitution has provided that no taxes shall be levied, waived or varied except with the prior approval of the National Assembly. I am a Member of the National Assembly. Tell me how you mortgage my powers to the Cabinet Secretary for the National Treasury.

**Hon. (Dr.) Nyikal:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. (Dr.) Nyikal, what is out of order?

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairlady, I want to seek for guidance.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, let us listen to Hon. Nyikal. I am sorry, Hon. Waiganjo. I will come to you.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairlady, I seek for guidance from the Chair because two very important issues have been raised. On one hand, there is the benefit that seems to accrue to our farmers while on the other hand, we seem to be going against the Constitution. To help members move forward, there is need for guidance on that issue of the constitutionality of the new clause.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Waiganjo, you have the Floor.

**Hon. Waiganjo:** Thank you, Hon. Temporary Deputy Chairlady. In my reading of the Constitution and the current law and what we are trying to do now, I read mischief in trying to bring an amendment that now appears to delete or oust the discretion of the CS in driving issues of policy.

First of all, those who are saying that this “flies” on the face of Articles 209 and 210 of the Constitution are forgetting that this law exists as it is and we do not even have a proper policy and we are still legislating.

In this House, we have a tendency of creating legislation before policy. So, I do not see any contradiction of sorts in the Articles 209 and 210, and what we are trying to do. Ousting the discretion of the CS in this regard will defeat the interest of the farmers of sorghum, millet and cassava and drive consumers back to the third generation brews.

So, I oppose the attempt to drive a wedge between the farmers and---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, let me give the guidance that has been sought regarding the law and the Constitution that has been quoted by various Members.

Hon. Members, this House, through legislation in the Excise Act and the Public Finance Management (PFM) Act, gave the powers of licensing fees imposed, waived or varied and remission of duty to the Cabinet Secretary (CS). The new clause that Hon. Jakoyo seeks to introduce is intended at taking away those powers from the CS and giving them to Parliament. The implication of that would be that every time there is need for remission of duty, the CS will have to come to Parliament to get approval. That is the import of the amendment. However, there is nothing unconstitutional right now because, through legislation, we gave the powers to the CS.

Hon. Members let us give Hon. Jakoyo. It is always fair to let a Member execute their point before we vote.

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, I rose on a point of order because of what I heard my good friend, Hon. Waiganjo, say. It flies in the face of the Constitution. You have attempted to give guidance.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members please let us have order.

**Hon. Midiwo:** This guidance cannot be “either or”. This is a straightforward matter because the Constitution is explicit. It states that “only the national Government may impose” and you have to do it through Parliament. Nothing stops the legislators who wish this position. This position is what we all wish as people who come from the areas where these products are grown.

First, I am contesting the power of the CS, which is unconstitutional. It is put here in this Bill, which seems to say that the CS can do that. The mischief that Hon. Waiganjo is talking about is in the Bill in Clause 68A (1), which states:-

“The Cabinet Secretary responsible for finance shall implement tax policies and where appropriate grant remission of duty under the relevant law on alcoholic drinks that are locally manufactured so as to promote compliance of those drinks with the objectives of this Act.”

This Bill seems to want to change Articles 209 and 210 of our Constitution, which we cannot allow. That is where the mischief is. You cannot give power which has been taken away by the Constitution. It is not me taking it. That power is not with the CS.

Secondly, I come from the area where these crops are grown. Giving that power to the CS will allow remission. The people who are seriously growing these crops are our neighbours in Tanzania. It is very important that we do not participate in an act that hurts our own people.

Hon. Temporary Deputy Speaker, I want to ask you. Articles 209 and 210 are not “ifs” or “buts”. Is what I have read okay or wrong?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Jakoyo, I have pronounced myself on this matter. There is no unconstitutionality on the provision that has been provided in this Bill. Your input in new Clause 18A could discuss the powers given to the CS on the Floor of this House. I have told you what we did as a House, through legislation. However, from where we sit, there is no issue of unconstitutionality.

Let us hear Hon. Duale.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, now that you have ruled that there is no issue of unconstitutionality; will you allow me to go on record? I do not want you to change your ruling. My problem is about giving the powers of this House to the CS. Was it there? When the Excise Bill was being passed in this House, that unconstitutionality was done. Up to now you are saying that the CS has been given powers to make policy decisions on matters of waiver, remission and variation. The people from the National Treasury watching me will understand that there is a serious issue here. The issue of waiver, levy and variation is only achieved with prior approval of the National Assembly. That is why the Chair should give guidance.

Hon. Chair you should not take this matter lightly. Even if you did it previously, through the Bill, two wrongs do not make a right.

Secondly, you should allow us to consult and see whether we can introduce a further amendment that can take care of the CS' rights and the Constitution.

*(Loud consultations)*

You can now vote. I can even vote with you Members.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, let us allow the Leader of the Majority Party to finish. Hon. Duale, have you completed?

Departmental Committee Chair, I am giving you the last chance to speak on this matter. Please, respond to the concerns on the issue of unconstitutionality.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, first of all, the section which gave the CS power to do tax remission was given through the Excise Bill, which is now an Act of Parliament

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Which I have pronounced myself on.

**Hon. Langat:** That was about six months ago. When a Bill has been signed and it becomes law, the questions of unconstitutionality shall be addressed at the High Court because it is already law. What I was requesting Hon. Jakoyo is that he should advance the merits of what he is trying to do without raising the question of unconstitutionality; that matter is not in the Bill before the House. It is a new amendment being introduced in the Finance Bill, and that is a major policy shift which requires further consultations.

We should remember that we are making laws on the basis of which people make their investments. If six months down the line you change the law – after people have made their investment decisions based on that law – it will be very unfair and inconsistent. I request Hon. Jakoyo to humbly withdraw his amendment because it is a major thing that we did as a House. Where there might be contention, we might have to involve the courts because we are changing laws in less than six months.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair, let me listen to two more Members. Let us listen to the Member for Kibwezi West.

**Hon. Musimba:** I think we are going round. When addressing the import of the 2010 Constitution, we need to take into account our own Standing Orders. If you look at Standing Order No.245 as it relates to the consideration of the Finance Bill on the Floor of the House, especially during the critical moment of the Third Reading it states:-

“(3) The recommendation by the Cabinet Secretary in paragraph (2) (f) shall be included in the report and tabled in the National Assembly.”

This section is ideally supposed to be referred to the Budget and Appropriations Committee because its touches on its recommendations as appertains to money Bills which can only be handled by the Budget and Appropriations Committee and not the Departmental Committee on Finance, Planning and Trade.

When I see the Chair of the Departmental Committee on Finance, Planning and Trade under siege it is because there is a missing link which should inform him on this. I do not know at this late hour what we should do. That is why I tend to agree with the Leader of the Majority Party that maybe further small consultation needs to be done because there is a missing link from the Budget and Appropriations Committee Report, to the extent of the recommendations by Hon. Jude Njomo as he touches on Article 114 of the Constitution on Money Bills. The recommendations by the Cabinet Secretary are not here.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nyikal.

**Hon. (Dr.) Nyikal:** Hon. Temporary Deputy Chairlady, I do tend to agree with what the Leader of the Majority Party and the Hon. Member have just said. It seems we are basing the fact that this is not constitutional because of a law that existed before. If that law at that time was unconstitutional and had not been challenged, that does not make it constitutional.

What is being contested is the power that is being given to the Cabinet Secretary. I do not see anybody saying it is wrong for those products to be exempted. The only issue is the power being given to the Cabinet Secretary to decide this or not. In that situation, there is need for more consultations so that we protect our farmers and become certain that we are not doing anything unconstitutional. The argument that it was there before, therefore, cannot possibly be unconstitutional.

I agree that we need more consultations on this even for short time.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, as long as the consultations revolve around the issue of constitutionality, I have already addressed myself on that. There needs to be no more consultations because I have addressed it as the Chair.

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

*New Clauses 39A, 39B and 39 C*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Chair, please move New Clauses 39A, 39B and 39C together.

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

THAT, the Bill be amended by inserting the following new clauses immediately after clause 39 –

Amendment of section 48 of No. 29 of 2015. 39A. The Tax Procedures Act, 2015 is amended by deleting section 48 and substituting therefor the following new section—

Erroneous  
refund of  
tax.

48 (1) Where any tax has been refunded in error, the person to whom the refund has been erroneously made shall, on demand by the Commissioner, pay the amount erroneously refunded.

(2) Where a demand has been made for any amount of tax under subsection (1), that amount shall be

deemed to be due from the person liable to pay the tax on the date upon which the demand is served upon him or her and if payment is not made within thirty days of the date of service, an interest equal to 1% per month or part thereof of such unpaid amount shall forthwith be due and payable, provided that the interest chargeable under this subsection shall not exceed one hundred percent of the tax originally due.

Amendment of section 89 of No. 29 of 2015.

39B. Section 89 of the Tax Procedures Act, 2015 is amended

- 
- (a) in subsection (6) by inserting the words “or interest” immediately after the word “penalty” wherever it appears;
  - (b) by deleting subsection (7) and substituting therefor with the following new subsection –  
“(7) The Commissioner may, upon an application under subsection (6) or on the Commissioner’s own motion and with the approval of the Cabinet Secretary, remit, in whole or in part, any penalty or interest payable by a person except a penalty imposed under section 85,

Provided that the remission of interest is by reason of –

- (a) uncertainty as to any question of law or fact;
- (b) consideration of hardship or equity; or
- (c) impossibility or undue difficulty or expense, of recovery of tax.

Amendment of the Second Schedule to No. 29 of 2015.

39C. The Second Schedule to the Tax Procedures Act, 2015 is amended –

- (a) in paragraph 2 by deleting the words “section 51 A (a)” and substituting therefor the words “sections 35 (6B), 37 (6) and 51A (a)”;
- (b) in paragraph 3 by deleting the words “section 56” and substituting therefor the words “sections 55 and 56”.

This is just to tidy up the Tax Procedures Act 2015, so that the Commissioners may implement it properly.

*(Question of the new clauses proposed)*

*(New clauses read the First Time)*

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

*(Question, that the new clauses be read a Second Time,*



*put and agreed to)*

*(The new clauses were read a Second Time)*

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

*New Clause 51A*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Who is moving for Hon. Jude Njomo?

Amendment of “51A. Section 77 of the Public Finance Management Act, 2012 section 77 of No. 18 of 2012. is amended by inserting the following new paragraph immediately after paragraph (c) —  
(d) the waiver or variation is approved by a resolution of the National Assembly where the waiver or variation relates to taxation or tariff agreements under the East African Community Treaty.

**Hon. Ichung’wah:** Hon. Temporary Deputy Chairlady, having consulted with Hon. Jude Njomo, who was a proponent of this amendment and the Chair of the Departmental Committee on Finance, Planning and Trade, I wish to withdrawal these amendments.

However, as I do so, it is important in relation to the issues that have been raised in Clause 18, which we have just voted against, regarding the National Treasury usurping the powers of this House on matters to do with East African Community Protocols. They have been varying and giving wavers and tariff variations under the East African Community Protocols without the approval of the National Assembly. It is quite clear and many of these variations and waivers are specific to Kenya and therefore largely hiding under the guise of East African Community Protocols.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Ichung’wah, we do not legislate in vain. You have withdrawn, please allow me to put the Question because the issue you are bringing is on a new clause which we have already defeated. I will not allow you to go back to the discussion we have had on New Clause 18. Have you dropped new Clause 51A?

**Hon. Ichung’wah:** Yes, I have dropped it, but it is important---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Thank you, Hon. Ichung’wah. We move on to the other new clauses.

*(Proposed New Clause 51A by Hon. Njomo withdrawn)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): What is out of order, Hon. Duale?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, there is nothing out of order, but you must allow us to go on record. I wanted to support the amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): There is no amendment. He has withdrawn New Clause 51A. So, we cannot debate something that has been withdrawn.

**Hon. A.B. Duale:** If he has withdrawn, I will wait.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Leader of the Majority Party, you know the procedure of the House.

**Hon. A.B. Duale:** I know the procedure, but let me say this with your indulgence. I will wait for it when it comes. The amendments he is withdrawing are the same as the ones we have just saved. We are happy we have found another Member.

*New Clauses 51B and 51 C*

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

THAT, the Bill be amended by inserting the following new clauses immediately after clause 51—

Amendment of section 37 of No. 18 of 2012. “51B. Section 37 of the Public Finance Management Act, 2012 is amended —

(a) in subsection (3) by deleting the word “officer” and substituting therefor the word “officers”;

(b) in subsection (5) by deleting the word “officer” and substituting therefor the word “officers”.

Amendment of section 66 of No. 18 of 2012. “51C. Section 66 of the Public Finance Management Act, 2012 is amended in subsection (1) by deleting the word “officer” and substituting therefor the word “officers”;

Basically, last year’s Finance Bill created two accounting officers, for Parliament; the Clerk to the National Assembly and the Clerk to the Senate.

I am trying to make the law tidy because at the time we were only talking about the officer. Now, we want to make it “officers” so that the two officers can even send their separate budgets to the Budget and Appropriations Committee.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, I think that is clear enough.

*(Question of the new clauses proposed)*

*(New clauses read the First Time)*

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

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

*(The new clauses were read a Second Time)*

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

*New Clause 58A*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Is it Hon. Ichung'wah moving the amendment on behalf of Hon. Jude Njomo? Go ahead.

**Hon. Ichung'wah:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended by inserting the following new clause immediately after clause 58—

Amendment of section 4 of No. 6 of 2015. 58A. Section 4 of the Special Economic Zones Act, 2015 is amended in paragraph (6) by inserting the following new subparagraph immediately after subparagraph (i)—  
(k) convention and conference facilities.

The import of this amendment is basically in relation to the amendment that the Chair of the Committee had moved on special economic zones to include conference facilities. This is informed by what we have seen in the recent past to do with conference tourism in this country. Many Kenyans are aware of the conferences that we have had, most recently the Tokyo International Conference on African Development (TICAD) which ended yesterday. We had traffic snarl-ups within the CBD. Many of these conferences are localised at the Kenyatta International Convention Centre (KICC), but there was a proposal some time back to have a conference facility at the Bomas of Kenya. I am sure the Ministry of Tourism is still working on it.

We want to encourage county governments of the counties surrounding Nairobi like Kiambu, Kajiado, Machakos--- I wish the Machakos People's Park had a conference facility so that you avoid coming into the city centre and take a different route. You could go through the Southern Bypass to Ndeiya in Kikuyu. We can establish conference facilities that will also help in the cropping up---

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

**Hon. Ichung'wah:** Hon. Duale is interrupting me saying there is no land in Kikuyu. There is land in the areas of Ndeiya at the border of Kajiado and Kiambu counties. It is important because these facilities will also help in the thriving of new cities in Konza, Ndeiya and Kajiado. I ask Members to support it. This is a very important sector. Conference tourism will also help to spur normal tourism like in the Maasai Mara.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Your point is made, Hon. Ichung'wah.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Chair of the Committee.

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I support because when you look at Kenya today, one of the leading tourist attractions is conventions. We host so many conferences. We need to encourage those who are able to invest in convention and conference facilities even outside Nairobi and Mombasa so that we develop across the country.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let me just put the Question. I think there is no contention on this. Okay, Hon. Jakoyo, but keep it short please.

**Hon. Midiwo:** I support. This proposal could not have come at a better time. As the Chair of the Committee has said, the new thing is the United Nations Conference on Trade and Development (UNCTAD) and TICAD. TICAD is the one for failed Heads of State who were just here last week. They come and barricade our city and we cannot do anything. This is important so that we can spread development away from our towns.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Jakoyo, withdraw that statement and apologise. I do not even need to give Hon. Duale an opportunity.

**Hon. Midiwo:** I have not mentioned any name, but I withdraw and apologise.

*(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 60*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Chair of the Committee, please move fast.

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 59—

Amendment of section 2 of Cap. 485A. 60. Section 2 of the Capital Markets Act, is amended—

(a) by inserting the following new definitions in their proper alphabetical sequence—

“commodity” means—

- (a) agricultural, livestock, fishery, forestry, mining or energy goods or any product that is manufactured or processed from any such goods;
- (b) financial instruments;
- (c) an index, right, or interest in any such commodity;
- (d) such other thing as the Cabinet Secretary may, by notice in the Gazette, determine to be the subject of a commodity contract;

“commodity contract” includes—

- (a) spot commodity contract;
- (b) commodity futures contract; and
- (c) such other contract or class of

contracts as the Authority may, by regulations prescribe;

“commodity market” means a market facility licensed by the Authority or a facility, whether electronic or otherwise at which, offers or invitations to sell, purchase or exchange

commodity contracts are regularly made on a centralized basis, being offers or invitations that are intended or may reasonably be expected to result directly or indirectly in the acceptance or making, respectively of offers to sell, purchase or exchange of commodity contracts but does not include—

(a) the office or facilities of a commodity dealer or broker;

(b) the office or facilities of a clearing house.

“spot commodity trading” means the purchase or sale of a commodity at its current market or spot price, where it is intended that such transaction results in the physical delivery of the commodity, and “spot commodity contract” shall be construed accordingly.

This is basically to define some of the items which relate to the commodities market which we are introducing in the next section.

*(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 61*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Chair.

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 59—

Amendment of section 11 of Cap. 485A. 61. Section 11 of the Capital Markets Act is amended—

(a) in subsection (1) by inserting the word “commodities” immediately after the word “securities” wherever it appears in paragraph (b);

(b) in subsection (3)—

(i) by inserting the words “commodity exchange” immediately after the words “securities exchange” appearing in paragraph (f);

(ii) by inserting the following new paragraph

immediately after paragraph (f)–  
“(fa) regulate spot commodity markets”;

Basically, we are coming up with what we call commodities market which will also be regulated by the Capital Markets Authority (CMA). We need to modernise sale of coffee, tea and sugar in the commodities exchange market which we are introducing.

Again, we need to give the Kenya Revenue Authority (KRA) some power to regulate that market so that there is fairness and so that our farmers can get fair prices on their commodities.

Thank you.

*(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 62*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Chair of the Committee.

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 59–

Amendment of section  
12 of Cap. 485A.

62. Section 12 of the Capital Markets Act is amended in subsection (1) by inserting the following new paragraph immediately after paragraph (k)–  
(ka) spot commodity trading and commodity markets.

This is basically a subsequent amendment following the creation of the commodities exchange market under Clause 61. Again, we are giving the CMA additional power to regulate sports trading and commodities markets.

Thank you.

*(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 63*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Benjamin Langat, the Chair of the Committee.

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 59—

Amendment to Part III  
of Cap. 485A.

63. The heading to Part III of the Capital Markets Act is amended by deleting the word “securities”.

This is a clean-up.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Jakoyo, are you asking for the new clauses? Have you looked at 2010, Hon. Members? Have you found them on page 2011, Hon. Nyikal?

*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 64*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Chair.

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 59—

Amendment of section 19  
of Cap. 485A.

64. The Capital Markets Act is amended by inserting the words “commodities exchange” immediately after the words “securities exchange” wherever they appear.

Again, this is a subsequent amendment after the one we have passed.

*(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 65*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Chair of the Committee.

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

THAT, the Bill be amended by inserting the following new clause immediately after clause 59—

Amendment of section 19A  
of Cap. 485A.

65. The Capital Markets Act is amended by —  
(a) inserting the words “commodities exchange” immediately after the words “securities exchange”;  
(b) deleting the words “a securities exchange licence” and substituting therefor the words “an exchange licence”.

This is also a subsequent amendment to what we have already passed.

*(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 66*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Amendments of section 20 of Cap. 485A. 66. Section 20 of the Capital Markets Act is amended by inserting the words “commodities exchange” immediately after the words “securities exchange” wherever they appear.

This is a subsequent amendment to what we have already passed.

*(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)*

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

*New Clause 67*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Amendment of section 21 of Cap. 485A. 67. Section 21 of the Capital Markets Act is amended by inserting the words “commodities exchange” immediately after the words “securities exchange” wherever they appear.

This is a subsequent amendment after what we have passed.

*(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)*

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

*New Clause 68*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Amendment of 68. Section 22A of the Capital Markets Act is amended—  
section 22A of Cap. 485A

(a) by inserting the words “commodities exchange” immediately after the words “securities exchange” wherever they appear;

(b) by inserting the words “commodities markets” immediately after the words “securities markets” wherever they appear.

Hon. Temporary Deputy Chairlady, those are subsequent amendments.

*(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)*

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

*New Clause 69*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Amendment of 69. Section 23 of the Capital Markets Act is amended—  
section 23 of Cap. 485A.

(a) in subsection (1) by inserting the words “commodity dealer”, “commodity broker” immediately after the words “authorized depository”;

(b) in subsection (2) by inserting the words “commodities exchange” immediately after the words “securities exchange”.

These are subsequent amendments.

*(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 70*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Amendment of section 25A of Cap. 485A of 70. Section 25A of the Capital Markets Act is amended in subsection (1) by inserting the words “commodities or derivatives” immediately after the word “securities” wherever it appears.

*(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,  
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 71*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Chairman is consulting.

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Amendment of section 2 of Cap. 131

71. Section 2 of the Betting, Lotteries and Gaming Act is amended by inserting the following new definitions in their proper alphabetical sequence –  
 “Collector” means the Commissioner-General appointed under the Kenya Revenue Authority Act;  
 “gaming revenue” means gross turnover less the amount paid out to customers as winnings;

This is just definition of terms which we were using subsequent to the amendments to Betting, Lotteries and Gaming Act. We are introducing new taxation on the same. Those are just definitions.

*(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 72*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Insertion of new section 29A in Cap. 131.

72. The Betting, Lotteries and Gaming Act is amended by inserting the following new section immediately after section 29-

29A.(1) There shall be a tax to be known as betting tax chargeable at the rate of seven point five per cent of the gaming revenue.

(2) The tax shall be paid to the Collector by the licensed bookmaker on the 20<sup>th</sup> day of the month following the month of collection.

Hon. Temporary Deputy Chairlady, as read by the Leader of the Majority Party, there was an Amendment Bill called Betting, Lotteries and Gaming (Amendment) Bill, which sought to introduce new taxes to this sector. After consultations with the National Treasury, it was felt that that entire proposal for taxation should be brought to Finance Bill. This is because by Friday, the Finance Bill will have been passed and those companies will start paying taxes with the new rates. So, basically, those proposals are from that Bill and so there will be a new tax on betting, called Betting Tax, which is charged at the rate of seven percent of the gaming revenue. This is

additional tax to the Income Tax which those companies are already paying. We are proposing an additional tax of 7.5 per cent of the revenue. We are also saying that just like VAT, those taxes shall be payable to the commission who is now defined as the commissioner by the Licence Bookmaker on the 20<sup>th</sup> day of next month.

*(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 73*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Amendment of section 37 of Cap. 131 73. Section 37 of the Betting, Lotteries and Gaming Act is amended-

- (a) in subsection (2) by deleting paragraph (a);
- (b) by deleting subsection 3.

This is a subsequent amendment to what we had passed.

*(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 74*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Insertion of section new 44A in Cap. 131. 74. The Betting, Lotteries and Gaming Act is amended by inserting the following new section immediately after section 44–  
 44A. (1) There shall be a tax to be known as lottery tax chargeable at the rate of five per cent of the lottery turnover.  
 (2) The tax shall be paid to the Collector by a person authorized to promote the lottery on the 20th day of the month following the month of collection.

Hon. Temporary Deputy Chairlady, we are introducing new taxes here. We are introducing the Lottery Tax on lotteries which are being run by different companies. We are introducing it at a rate of 5 per cent of the lottery turnover. In addition to the Income Tax, they will be paying another tax just like Value Added Tax (VAT) at five per cent of the total revenue which shall also paid to the collector by 20<sup>th</sup> day of the month following the month of collection.

*(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 75*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Insertion of section 55A in Cap. 131. 75. The Betting, Lotteries and Gaming Act is amended by inserting the following new section immediately after section 55–  
 55A. (1) There shall be a tax to be known as gaming tax chargeable at the rate of twelve per cent of the gaming revenue.  
 (2) The tax shall be paid to the Collector by a person carrying on a gaming business on the 20<sup>th</sup> day of the month following the month of collection.

We are introducing another type of revenue called the Gaming Tax at the rate of 12 per cent of the gaming revenue. We are fixing the date in which it should be remitted to Kenya Revenue Authority (KRA).

*(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 76*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Insertion of new section 59B in Cap. 131. 76. The Betting, Lotteries and Gaming Act is amended by inserting the following new section immediately after section 59A—  
59B.(1) There shall be a tax to be known as prize competition tax chargeable on the cost of entry to a competition which is premium rated at the rate of fifteen per cent of the total gross turnover.  
(2) The tax shall be paid to the Collector by the licensed person on the 20<sup>th</sup> day of the month following the month of collection.

This is meant to introduce a price competition tax at the rate of 15 per cent of the total gross turnover. The payment will be done on the 20<sup>th</sup> of the next month.

*(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 77*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Amendment of 77. Section 975 of the Companies Act is amended in section 975 of No.17 subsection (2) by deleting paragraph (b) of 2015.

We passed a requirement that before a new company invests in this country it has to look for local investors. That is difficult to implement because we want to encourage new investor to bring foreign direct investments. Once they are here, we should look for a way of getting them. But before they come in, we should discourage that. That is not right. Let them first of all come in by providing a smooth way of coming in. Once they are in the country, we look for a way of nabbing them.

*(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 78*

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

THAT, the Bill be amended by inserting the following new clause immediately after Clause 59-

Amendment of 78. Section 62 of the Consumer Protection Act is amended by section inserting the words “or where the lender is either a bilateral or 62 of No.46 of 2012. multilateral foreign financial institution” at the end of subsection (5)

This is just a question of consumer protection. If it is about two governments, we should make business easy for them.

*(Question of the new clause proposed)*

*(New clause read the First Time)*

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

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



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

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

*(Clause 2 agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**Hon. Langat:** Hon. Temporary Deputy Chairlady, I beg to move that the Committee do report to the House its consideration of the Finance Bill (National Assembly Bill No.20 of 2016) and its approval thereof with amendments.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we want to report on the Finance Bill (National Assembly Bill No.20 of 2016) and seek extension of this sitting to allow us to go to the Committee of the whole House on the Warehouse Receipts Systems Bill (National Assembly Bill No.12 of 2015).

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT AND THIRD READING

### THE FINANCE BILL

**Hon. (Ms.) Shebesh:** Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Finance Bill, 2016 (National Assembly Bill No.20 of 2016) and approved the same with amendments.

**Hon. Langat:** Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said Report. I request my Vice-Chairman to second.

**Hon. Gaichuhie:** Hon. Temporary Deputy Speaker, I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Langat:** Hon. Temporary Deputy Speaker, I beg to move that the Finance Bill, 2016 (National Assembly Bill No.20 of 2016) be now read a Third Time. I request Hon. Gaichuhie, my Vice-Chair, to second.

**Hon. Gaichuhie:** Hon. Temporary Deputy Speaker, I beg to second.

**The Temporary Deputy Speaker** (Hon. Omulele): We shall now have Hon. Katoo to move a Procedural Motion.

### PROCEDURAL MOTION

#### EXTENSION OF SITTING TIME

**Hon. Katoo:** Hon. Temporary Deputy Speaker, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provision of Standing Order No.30(3) (a), this House resolves to extend the sitting time of the House until the business under Oder No.11 (ii) is concluded.

We are time-constrained because of the business that is ahead of us. We have only two days. I would like the Deputy Leader of the Minority Party to second.

**Hon. Midiwo** seconded.

*(Question proposed)*

*(Question put and agreed to)*

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Temporary Deputy Speaker  
(Hon. Omulele) left the Chair]*

#### IN THE COMMITTEE

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

#### THE WAREHOUSE RECEIPTS SYSTEM BILL

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Order, hon. Members! We are in the Committee of the whole House to consider the Warehouse Receipts System Bill (National Assembly Bill No. 12 of 2015)

*Clause 3*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 3 of the Bill be amended by—

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

“(3) The Council shall consist of—

- (a) the Principal Secretary for the time being responsible for matters related to agriculture or a representative;
  - (b) the Principal Secretary for the time being responsible for matters related to finance or a representative;
  - (c) one person nominated by Council of Governors;
  - (d) the Director General of Agriculture, Food and Fisheries or a representative;
  - (e) the chief executive officer of the Council;
  - (f) one person nominated by Financial Sectors Regulators Forum;
  - (g) one person nominated by Kenya Farmers Association;
  - (h) one person nominated by Kenyan members of the East African Grain Council ; and
  - (i) one person nominated by Consumer Federation of Kenya.
- (b) inserting the following sub-clauses immediately after sub-clause (3)—
- “(3A) A person appointed as a member of the Council by the Cabinet Secretary under subsection (a) to (i) shall be—
- (a) persons who have the relevant expertise qualification and experience in the agricultural sector and any other relevant sector; and
  - (b) appointed through a competitive and transparent process.”
- (3B) The Council shall at its first sitting elect a chairperson and vice-chairperson from amongst its members.
- (3C) The Chairperson and Vice-Chairperson shall be of the opposite gender.
- (3D) A decision of the Council shall not be invalid by reason of a vacancy in the Council.”
- (c) inserting the following phrase “ to (i)” immediately after the phrase “under subsection (3) (e)” in subsection (4).

*(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 3 as amended agreed to)*

#### Clause 4

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-  
THAT, clause 4 of the Bill be amended in sub-clause (1) by—

- (a) renumbering the second paragraph (a) as (b);
- (b) deleting paragraph (b) and substituting therefor the following new paragraph—
  - “(b) establish and maintain a warehouse receipts system that contributes towards structured trading in agricultural commodities;”
- (c) deleting paragraph (c) and substituting therefore the following new paragraph—
  - (c) establish and maintain a central registry for management of warehouse receipt transactions under the Act;”
- (d) deleting the word “licenced” appearing in paragraph (e ) and substituting therefor the word “operating”;
- (e) deleting paragraph (h) and substituting therefor the following new paragraph—
  - “(h) may issue, suspend or revoke registration or licenses issued under this Act; ”
- (f) renumbering the existing clause 4(1) as clause (4); and
- (g) renumbering the existing paragraphs.

*(Question of the amendment proposed)*

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

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

*(Clause 4 as amended agreed to)*

*(Clauses 5 and 6 agreed to)*

#### *Clause 7*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 7 of the Bill be amended by inserting the words “in consultation with the Salaries and Remuneration Commission” immediately after the word “Secretary.”

*(Question of the amendment proposed)*

**Hon. (Ms.) Emanikor:** Thank you, Hon. Temporary Deputy Chairlady. I rise to support. The consultation is very important.

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

*(Clause 7 as amended agreed to)*

*Clause 8*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 8 of the Bill be amended—

(a) in sub-clause (4) by deleting the word “five” wherever it appears and substituting therefor the word “three”.

(b) in sub-clause (5) by deleting paragraph (c) subparagraph (v) and substituting therefor the following new sub paragraph—

“(v) conducts himself in a manner deemed to be inconsistent with this Act.”

This is in line with the Mwongozo Report on the number of years one is supposed to serve as a Board Member.

*(Question of the amendment proposed)*

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

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

*(Clause 8 as amended agreed to)*

*Clause 9*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the Bill be amended by deleting clause 9.

This is because if the work of the Corporation Secretary is to be done by the CEO, there would be duplication of roles.

*(Question of the amendment proposed)*

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

*(Clause 9 deleted)*

*Clause 10*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 10 of the Bill be amended by deleting the words, “with the approval of the Cabinet Secretary,”

The amendment seeks to reduce the powers of the Cabinet Secretary.

*(Question of the amendment proposed)*

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

*(Clause 10 as amended agreed to)  
(Clause 11 agreed to)*

*Clause 12*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, clause 12 of the Bill be amended in paragraph (b) by deleting the word "Service" and substituting therefor the word "Council".

This is to correct the inconsistency with the inclusion of the word "service" as opposed to "Council."

*(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 12 as amended agreed to)*

*Part III*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the title to Part III of the Bill be amended by inserting the word "Registration" immediately before the word "Licensing."

This is to include the registration in addition to licensing and inspection.

Thank you.

*(Question of the amendment proposed)*

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

*(Part III as amended agreed to)*

*(Clauses 13, 14, 15 and 16 agreed to)*

*Clause 17*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 17 of the Bill be amended in subclause (1) by deleting the word “may” and substituting therefor the word “shall”.

The effect of this amendment is to make it mandatory for the operator to apply for a licence if he or she wants to operate a warehouse.

*(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)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, you have to pronounce yourselves. It is not yet time. We need to pronounce ourselves for record and voting purposes.

*(Clause 17 as amended agreed to)*

#### Clause 18

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 18 of the Bill be amended—

(i) in sub-clause 1 by deleting paragraph (c);

(ii) by inserting the following new sub-clause immediately after sub-clause (5)—

“(5A) Where a license has been suspended or revoked, the Council shall appoint an independent warehouse manager to operate the warehouse in the interim until the matter is resolved.”

(iii) by inserting the following new sub-clause immediately after sub-clause (6)—

“(7) The Cabinet Secretary shall in consultation with the Council make regulations to provide for management of a warehouse whose license has been suspended or revoked and commodities stored therein.”

This is because it is difficult to determine nationally whether an operator is incompetent or incapable.

Thank you, Hon. Temporary Deputy Chairlady.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Igembe Central, do you want to contribute to this amendment?

**Hon. Kubai Iringo:** Thank you, Hon. Temporary Deputy Chairlady. I support the amendment. Once we have a suspended warehouse manager, getting somebody in an acting capacity will make the operations to continue.

*(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)*

*(Clause 18 as amended agreed to)*

*(Clause 19 agreed to)*

*Clause 20*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 20 of the Bill be amended by —

(i) deleting the words “the Chairperson, Chief Executive Officer, and one other member of the Council selected by the Council” appearing in subsection (1).  
by inserting the following new sub-clauses immediately after sub-clause (1)—

“(1A) The Warehouse Receipts Appeals Committee shall consist of—

(a) the Chairperson of the Council; and

(b) two other persons appointed by the Cabinet Secretary with experience in dispute adjudication”.

(2B) The term of office of the Warehouse Receipts Appeals Committee shall be for a period of three years.”

The amendment provides that Warehouse Receipts Appeals Committee would be an independent body, for fairness.

Thank you.

*(Question of the amendment proposed)*

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

**Hon. Gaichuhie:** Hon. Temporary Deputy Chairlady, when we do not have the Chief Executive Officer (CEO) in this committee, it will make it very independent.

Therefore, I support the amendment.

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

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

*(Clause 20 as amended agreed to)*

*Clause 21*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-



THAT, Clause 21 of the Bill be amended by deleting the word “calibrated” appearing in sub-clause (1) and substituting therefor the word “certified”.

This is to provide for terminology that reflects actual practice. Thank you.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Member for Igembe Central.

**Hon. Kubai Iringo:** Hon. Temporary Deputy Chairlady, I support the Chair’s amendment because the word, “calibrated” refers to mechanical machines but the word “certified” covers a wide range of other items.

*(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 21 as amended agreed to)*

*(Clause 22 agreed to)*

#### Clause 23

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 23 of the Bill be amended by—

- (a) deleting the words “and bonded”; and
- (b) deleting the word “persons” and substituting therefor the word “operators”

The purpose of this amendment is to remove the anomaly in this Bill. The Bill does not provide for custom bonded warehouses.

*(Question of the amendment proposed)*

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

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

*(Clause 23 as amended agreed to)*

*(Clause 24 agreed to)*

#### Clause 25

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 25 of the Bill be amended by deleting the word “of” and substituting therefor the word “for”.

The amendment seeks to correct the grammatical error.

*(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 25 as amended agreed to)*

#### Clause 26

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 26 of the Bill be amended in sub-clause (3) by inserting the words “crop year and season” immediately after the word “grade” appearing in paragraph (h).

The amendment seeks to provide additional details on the information on a warehouse receipt to assist to determine the age of the agricultural commodity which is stored in a particular warehouse.

*(Question of the amendment proposed)*

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

*(Clause 26 as amended agreed to)*

*(Clauses 27, 28, 29, 30, 31, 32, 33, 34, 35,  
36, 37, 38, 39 and 40 agreed to)*

#### Clause 41

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 41 of the Bill be amended by deleting the words “or bonded” appearing after the word “licensed”.

The purpose of this amendment is to remove that anomaly in the Bill. The Bill does not provide for custom-bonded warehouses.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. Members, you have to pronounce yourselves for record purposes. Even the Chair is not pronouncing himself. Do you disown your own amendment?

*(Clause 41 as amended agreed to)*

*Clause 42*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 42 of the Bill be amended by inserting the word “of” immediately after the word “issuing”.  
This is just to correct the grammar.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us have the Member for Tharaka Nithi.

**Hon. (Ms.) B.N. Nyaga:** Hon. Temporary Deputy Chairlady, I support the amendment by the Chair. It is important to have the correct grammar so that the Bill can have some meaning.

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

*(Clause 42 as amended agreed to)*

*Clause 43*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 43 of the Bill be amended by deleting the words “such fine and imprisonment” appearing after the words “or to both”.  
The amendment is to correct the clause by deleting the repeated phrase.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us have the Member for Turkana, Hon. Joyce Akai.

**Hon. (Ms.) Emanikor:** Hon. Temporary Deputy Chairlady, I support the amendment because it is a clean-up of the Bill.

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

*(Clause 43 as amended agreed to)*

*Clause 44*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 44 of the Bill be amended in sub-clause (1) by deleting the word “relevant” and substituting therefor the word “the”.

The amendment is to correct the grammatical error since there is only one council.

*(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 44 as amended agreed to)*

*Schedule*

*PARAGRAPH 1*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, paragraph 1 of the Schedule be amended by—

(a) inserting the words “or any other designated venue” immediately after the word “offices” appearing in sub-paragraph (1);

(b) deleting the words “three quarters” appearing in sub-paragraph (3) and substituting therefor the words “two thirds”

(c) deleting the word “one-third” and substituting therefor the words “two thirds” appearing in sub paragraph (5) .

This is to provide for flexibility with regard to meeting venues.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Let us have the Member for Igembe Central.

**Hon. Kubai Iringo:** Hon. Temporary Deputy Chairlady, I support the amendment because circumstances could arise and the offices may not be conducive or convenient for meetings. However, once there is quorum and it is in the mandate, they can sit anywhere and transact business.

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

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

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

*(Schedule as amended agreed to)*

*Clause 2*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 2 of the Bill be amended by inserting the following new definition its proper alphabetical sequence—

“warehouse receipt system” means part or the whole of the process of depositing commodities in a licensed warehouse, the issuance of a warehouse receipt reflecting the quantity and quality of the deposited commodity, the management of the transfer of the receipts as a document of title and includes but not limited to, the regulation of warehouses and actors associated in the processes.

Hon. Temporary Deputy Chairlady, we are providing for the definition of the “warehouse receipt system” because it was not there before.

*(Question of the amendment proposed)*

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

*(Clause 2 as amended agreed to)*

*Title*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, the title of the Bill be amended by deleting the word “receipts” and substituting therefor the word “receipt”.

This is just to correct the grammar.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Hon. (Dr.) Munyaka.

**Hon. (Dr.) Munyaka:** Hon. Temporary Deputy Chairlady, I support that the title be amended so that it can have proper language.

**Hon. Katoo:** On a point of order, Hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): What is your point of order, Hon. Katoo?

**Hon. Katoo:** On a point of order, Hon. Temporary Deputy Chairlady. Just for record purposes, there is an amendment to the title that has just been moved by the Chairman of the Committee.

*(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)*

*(Title as amended agreed to)*

*Clause 1*

**Hon. Mbiuki:** Hon. Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 1 of the Bill be amended by deleting the words “on such date as the Cabinet Secretary may, by notice in the Gazette may appoint”.

**Hon. Mbiuki:** As per the Constitution, all legislation comes to effect 14 days after the Presidential assent. So, it is automatic.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): There are no requests to speak on this.

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

*(Clause 1 as amended agreed to)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Having gone to Clause 1, I call upon the Mover to move reporting to the House.

**Hon. Mbiuki:** Thank you, Hon. Temporary Deputy Chairlady. I beg to move that the Committee doth report to the House its consideration of the Warehouse Receipts System Bill (National Assembly Bill No. 12 of 2015) and its approval thereof with amendments.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Mbalu): Yes. We got consent from Hon. Katoo ole Metito that you are moving. He was to be the Mover but he has authorised you to do the moving. So, you are quite in order.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## REPORT AND THIRD READING

### THE WAREHOUSE RECEIPTS SYSTEM BILL

**The Temporary Deputy Speaker** (Hon. Omulele): Shall we have the Hon. Temporary Deputy Chairlady.

**Hon. (Ms.) Mbalu:** Hon. Temporary Deputy Speaker, I note the Chairman is very strong this evening.

Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Warehouse Receipts System Bill (National Assembly Bill No. 12 of 2015) and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Mover, please.

**Hon. Mbiuki:** Thank you, Hon. Temporary Deputy Speaker. I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. (Dr.) Munyaka to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. (Dr.) Munyaka:** Thank you, Hon. Temporary Deputy Speaker. I stand to second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. Omulele): Mover.

**Hon. Mbiuki:** Thank you, Hon. Temporary Deputy Speaker. I beg to move that the Warehouse Receipts System Bill (National Assembly Bill No. 12 of 2015) be now read a Third Time.

I also request Hon. (Dr.) Victor Munyaka to second.

**Hon. (Dr.) Munyaka:** Thank you, Hon. Temporary Deputy Speaker. I also second. Thank you very much.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Omulele): I want to open it up to any member who may have something to say in regard to the Bill. I see Hon. Cyprian Iringo.

**Hon. Kubai Iringo:** Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to make a few remarks on this Bill. I thank the Committee for having done a good job on this Bill. It has put teeth to the existing Bill and strengthened it so that it can cope with the current situation. The Bill has also been conformed to our new Constitution, which was enacted in 2010.

Also, let me thank the members of the House, especially those who have persevered up to this moment to see this Bill go through. I find that the Bill will be quite a master piece in our operations and our country.

**The Temporary Deputy Speaker** (Hon. Omulele): Chair of Departmental Committee on Finance, Planning and Trade, I can see you have interest to talk on this Bill.

**Hon. Langat:** On behalf of the Departmental Committee on Finance, Planning and Trade, I thank the members of this House for the manner in which we prosecuted the Finance Bill this afternoon. Today's proceedings were more of consensus. There was only one instance where we had to put an amendment to vote. This was a very smooth process and I urge the House that we continue in that spirit of consensus so that we move very fast in the processing of our Bills.

I also thank the Departmental Committee on Agriculture, Livestock and Cooperatives for the new Bill that has been passed. It is going a long way in terms of stock management in this country.

Thank you.

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. Omulele): Hon. Members, the time being 6.40 p.m., this House stands adjourned until Wednesday, 31<sup>st</sup> August, 2016 at 9.30 a.m.

The House rose at 6.40 p.m.