

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 19th September, 2019

The House met at 2.30 p.m.

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

PRAYERS

PAPERS LAID

Hon. Speaker: There are some papers to be laid by the Leader of the Majority Party. The Leader being absent, can somebody deputise for him?

Let us have the Chairman of the Departmental Committee on Transport, Public Works and Housing.

Hon. David Pkosing (Pokot South, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Road Maintenance Levy Fund Allocations for each constituency by the Kenya Rural Roads Authority (KeRRA) for the Financial Year 2019/2020.

It translates to Kshs31,100,000 per constituency, which is Kshs21 million from 22 per cent and Kshs9,500,000 from the 10 per cent.

Hon. Speaker: Very well. The next Paper is by the Chairman of the Departmental Committee on Education and Research, Hon. Melly.

Hon. Julius Melly (Tinderet, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Education and Research on its Consideration of:

(i) The Higher Education Loans Board (Amendment) Bill (National Assembly Bill No.9 of 2019).

(ii) The Early Childhood Education Bill (Senate Bill No.26 of 2018).

Hon. Speaker: Let us have the Chairman of the Departmental Committee on Environment and Natural Resources, Hon. Kareke Mbiuki.

Hon. Kareke Mbiuki (Maara, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Environment and Natural Resources on its consideration of:

(i) Budget Implementation Review for the Ministry of Water and Sanitation, the Ministry of Environment and Forestry, the State Department of Mining and the State Department of Wildlife for the first half of the 2018/2019 Financial Year.

(ii) Inquiry into the Death of Eleven Black Rhinos after translocation to the Tsavo East National Park Sanctuary.

(iii) Inquiry into Encroachment on Riparian Areas in Kenya.

(iv) The Climate Change Conference in Katowice, Poland from 8th-14th December, 2018.

Hon. Speaker: Let us have the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Legal Notice No.110 of 2019 relating to the Kenya Export Promotions and Branding Agency Order and the Explanatory Memorandum from the Ministry of Industry, Trade and Cooperatives.

The National Government Budget Implementation Review Report for the Financial Year 2018/2019 from the Office of the Controller of Budget.

Report of the Auditor-General on the Financial Statements in respect of Kabarnet Hotel Limited for the year ended 30th June, 2016, and the certificate therein.

Reports of the Auditor-General on the Financial Statements in respect of the following Institutions for the year ended 30th June, 2018, and the certificates therein:

(i) North Eastern National Polytechnic.

(ii) Lake Victoria North Water Services Board.

(iii) National Council for Population and Development.

The Reports of the Auditor-General on the Financial Statements in respect of the following constituencies for the year ended 30th June, 2018, and the certificates therein:

(i) Wajir South;

(ii) Lugari;

(iii) Kinangop;

(iv) Rongai;

(v) Oljoro Rok;

(vi) Baringo North;

(vii) Ol-Kalou; and,

(viii) Narok West.

Hon. Speaker: Hon. Members, before we move to the next Order, allow me to recognise pupils from Joy Shiners Primary School of Narok East Constituency, Narok County and students from Komothai Boys Secondary School of Githunguri Constituency, Kiambu County, who are seated in the Speaker's Gallery.

In the Public Gallery, we have pupils from Wii Primary School of Kitui Central Constituency, Kitui County; students from Gitongu Secondary School of Mathioya Constituency, Murang'a County and pupils from Dr. Krapf Primary School of Makadara Constituency, Nairobi County.

They are all welcome to observe the proceedings in the National Assembly this afternoon.

Next Order!

NOTICES OF MOTIONS**ADOPTION OF REPORT ON INQUIRY INTO DEATH OF BLACK
RHINOS IN TSAVO EAST NATIONAL PARK SANCTUARY**

Hon. Kareke Mbiuki (Maara, JP): Hon. Speaker, I beg to give notice of the following Motions:

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on its inquiry into the death of 11 black rhinos after translocation to the Tsavo East National Park Sanctuary, laid on the Table of the House on Thursday, 19th September 2019.

**ADOPTION OF REPORT ON INQUIRY INTO
ENCROACHMENT OF RIPARIAN AREAS**

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on its inquiry into the encroachment of riparian areas in Kenya, laid on the Table of the House on Thursday, 19th September 2019.

Hon. Speaker: Next Order.

ORDINARY QUESTIONS

Hon. Speaker: The first Question is by the Member for Tharaka Nithi County, Hon. (Ms.) Beatrice Nkatha.

Hon. (Ms.) Beatrice Nyaga (Tharaka Nithi CWR, JP): Thank you, Hon. Speaker. I am trying to open the machine. Where is it?

Hon. Speaker: You came so long ago. It does not require a screwdriver. Maybe, as you are taken through the motions, let me get the Question by the Member for Igembe South, Hon. John Paul Mwirigi. Do you also want a screwdriver?

*Question No.394/2019***ELEVATION OF IGEMBE UNIVERSITY CAMPUS TO UNIVERSITY**

Hon. John Paul Mwirigi (Igembe South, Independent): I have one, Hon. Speaker.

Hon. Speaker, I rise to ask Question No.394/2019 to the Cabinet Secretary for Education:

(i) Following the Presidential Directive of 3rd August, 2017, when will Igembe Campus, a constituent college of Chuka University, be elevated to a university and granted a charter?

(ii) What measures is the Ministry putting in place to ensure that the said campus is elevated and granted a charter without further delay?

Hon. Speaker: The Question will be responded to before the Departmental Committee on Education and Research.

The Member for Tharaka Nithi, you can use a hard copy.

Question No.385/2019

ISSUANCE OF BIRTH CERTIFICATES IN HOSPITALS

Hon. (Ms.) Beatrice Nyaga (Tharaka Nithi CWR, JP): Hon. Speaker, I beg to ask the Minister for Interior and Coordination of National Government the following Question:

Could the Ministry consider giving birth certificates to new-born babies immediately upon discharge from hospitals?

Hon. Speaker: The Question will be responded to before the Departmental Committee on Administration and National Security.

The next Question is by the Member for Homa Bay County, Hon. Gladys Wanga Nyasuna.

Question No.406/2019

DISTRIBUTION OF SANITARY TOWELS TO SCHOOLS

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Public Service, Youth and Gender Affairs the following Question:

(i) Could the Cabinet Secretary provide the list of schools, per constituency, that have benefited from the allocation of sanitary towels during the financial years 2017/2018 and 2018/2019?

Hon. Speaker, I would like to re-phrase the second part of my Question, hoping that the Clerks-at-the-Table will note the change. This is because the way it is phrased does not bring out the point.

(ii) Could the Cabinet Secretary confirm whether sanitary towels were purchased and distributed to schools with the allocation of Kshs463 million for the financial year 2018/2019?

I re-phrased the second part of the Question because I highly suspect that no sanitary towels were purchased in that financial year.

(iii) What steps has the Ministry taken to ensure that the quality of sanitary towels is safeguarded and approved for use by the relevant agencies?

Hon. Speaker: The Question will be responded to before the Departmental Committee on Labour and Social Welfare.

The last Question is by the Member for Busia County, Hon. Florence Mutua.

Question No.407/2019

IMPLEMENTATION OF SENDAI FRAMEWORK
FOR DISASTER RISK MANAGEMENT

Hon. (Ms.) Florence Mutua (Busia CWR, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

What steps has the Ministry taken to ensure that key priorities of the Sendai Framework for Disaster Risk Reduction (2015-2030) as adopted by the Third United Nations World Conference in Sendai, Japan in March, 2015, are inculcated in sector plans to enhance risk reduction in view of the current upsurge of cancer cases and food contamination?

Hon. Speaker: The Question will be responded to before the Departmental Committee on Administration and National Security.

I see an intervention by Hon. Wanga Nyasuna. Everybody who had requested for an intervention has withdrawn. Hon. Dennitah Ghati, have you removed yours?

Hon. (Ms.) Dennitah Ghati (Nominated, ODM): I am here, Hon. Speaker.

Hon. Speaker: Proceed.

Hon. (Ms.) Dennitah Ghati (Nominated, ODM): Thank you very much, Hon. Speaker. My intervention was in support of the Member for Homa Bay County. I support her Question simply because of what has been happening, especially when it comes to sanitary pads. That is why it is urgent that the Ministry comes out clear. The other day, you saw a girl who committed suicide because of period shame. It is urgent.

Hon. Speaker: Hon. Dennitah Ghati, people might think that you want to use your condition to breach the Standing Orders. You say you want to support a Question. What procedure is that? That is totally out of order. The fact that something that excites you has been mentioned by another Member is not an opportunity for you to breach the rules. There is no provision for supporting a Question. If you want to support what Hon. Gladys Wanga has raised, appear alongside her before the Committee so that the issues you are raising can have some meaning and effect. Please, I do not want to begin applying Standing Order No.107. When somebody is out of order, I should now begin applying it regularly to avoid further breach. For the time being, you are pardoned.

There is a Statement by Hon. Didmus Barasa Mutua.

REQUEST FOR STATEMENTS

MEASURES TO CURB ROAD CARNAGE

Hon. Didmus Barasa (Kimilili, JP): Hon. Speaker, pursuant to Standing Order No.44 (2) (c), I request for a statement from the Chairperson of the Departmental Committee on Administration and National Security regarding increased road carnage and lack of implementation of mitigation measures on road accidents by the National Transport and Safety Authority (NTSA) and the Traffic Department of the National Police Service in the country.

An accurate calculation of the real cost of traffic crashes in the country is the first step towards curbing the rising incidents of road carnage. What is lacking in the country is a culture on which road safety can thrive, if road users understand the cost of their actions or inactions both at the personal and national level.

The World Health Organisation (WHO), back in 2014, estimated that Kenya loses about 5 percent of its GDP or Kshs387.5 billion to traffic crashes. The figure was expected to rise and

currently is most likely to be above the global average of 3 percent. In the first 10 months of 2018, a total of 2,585 people lost their lives on Kenyan roads, according to the NTSA. This was an 11 per cent increase from 2,331 in the same period in 2017.

The nation's wealth is eaten away through medical bills, property damage and injury to or death of economically productive citizens. Eliminating road traffic deaths and injuries is an achievable goal. To do it, Kenya must change, not just its roads and its drivers, but itself. The country must revolutionise its approach to the problem and start seeing people as the reason the road system and, indeed, the entire rubric of Government exists.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

(i) What are the major causes of road accidents in the country as investigated by National Transport and Safety Authority (NTSA) and the National Police Service (NPS) in the country?

(ii) What are the mitigation measures that are being undertaken and interventions by the Ministry?

(iii) What is the mandate of NTSA with regard to reducing road carnage and actions on police investigations and whether corrective actions are acted upon and implemented?

I thank you, Honourable Speaker.

Hon. Speaker: Hon. Barasa, you may have noticed that I almost declined to approve your Statement, the reason being that you are a member of that Committee. However, the matter is a serious one. Through that Statement you have sought, I would like the entire House to express itself. You have asked about the mandate of NTSA. It is spelt out in the legislation which established it. So, you are in breach of the Standing Orders. I want that Statement to be made available for the entire House to express itself. Where is the Chair of the Departmental Committee on Administration and National Security? Is there a Vice-Chair of that Committee? The Vice-Chair is here.

Hon. John Waluke (Sirisia, JP): I am here, Hon. Speaker.

Hon. Speaker: You do not follow the proceedings.

Hon. John Waluke (Sirisia, JP): We were talking about something with Hon. Wamunyinyi. I am sorry, Hon. Speaker. You can repeat because we were busy on something else. I am very sorry about that.

(Laughter)

Hon. Speaker: The Member who is seeking the Statement is also from your county. You are busy consulting with the Member for Kanduyi who is also from your county. So, you have not followed the request.

Hon. John Waluke (Sirisia, JP): I did not. Hon. Wamunyinyi kept me busy, Hon. Speaker. I am honest.

Hon. Speaker: Hon. Barasa, do you want to summarise your Statement for the benefit of the Vice-Chair to give an undertaking?

Hon. Didmus Barasa (Kimilili, JP): Thank you, Hon. Speaker. We have had very many accidents in this country. Every time an accident happens, police carry out investigations. I really want to know whether those police investigations include actions that should be implemented to prevent re-occurrence of those accidents or they only investigate for other purposes other than

coming up with corrective action. It is on this basis that I want the Committee to provide a Statement on the role of NTSA and the Traffic Department of NPS in mitigating against those very many accidents that are eating into the population of this country.

I thank you.

Hon. Speaker: Hon. Waluke, you have the Floor.

Hon. John Waluke (Sirisia, JP): Thank you, Hon. Speaker. It is good because Hon. Didmus Barasa is a member of that Committee. Let him give us two weeks so that we can respond on that Statement.

Thank you.

Hon. Speaker: Very well. The Statement will be made available after two weeks. Hon. Waluke, we expect this Statement to be as comprehensive as possible. If you look at the written text from Hon. Barasa, he has raised a number of issues and I think it will be fair that whoever will help you come up with the Statement responds to the many aspects of the question as possible. It is a matter that is happening almost throughout the country on a daily basis.

The next Statement is by the Member for Homa Bay Town.

VIOLATION OF TRADE UNION RIGHTS

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. This is a request for a Statement on interdiction of teachers and violation of trade union rights.

Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding interdiction of teachers and violation of trade union rights by the Teachers Service Commission (TSC). The TSC recently interdicted 280 teachers who participated in a call by the Kenya National Union of Teachers (KNUT) to boycott training programmes on the Competency Based Curriculum (CBC) on the basis of poor preparations by the TSC. Further, over 42 of those teachers have since been dismissed while over 100 of them have been suspended for six months for participating in that industrial action.

Hon. Speaker, given these circumstances, I would like the Chairperson of the Committee to inform the House of the following:

(a) Why did the TSC take action against 280 teachers who were responding to their union's call for action as provided for by Article 41 of the Constitution, without procedurally engaging the union on this matter?

(b) Why has TSC failed to deduct and remit union dues for the months of July and August 2019, contrary to the provisions of labour laws and International Labour Organisation Convention No.98 on the Protection and Rights of Trade Unions, thus crippling the operations of KNUT to the detriment of teachers?

(c) Why has the TSC refused to comply with the conditions of the Collective Bargaining Agreement (CBA) of 2017/2021 and the International Labour Organisation Convention No.95 prohibiting withdrawal of earnings by workers through the introduction of two parallel pay rolls: one for non-KNUT members who benefit from the CBA and another one for those who are not benefitting from the CBA and yet the benefits of the CBA are for all the teachers in the teaching service and sufficient funding was appropriated by the National Assembly for those payments?

(d) Why is the TSC refusing to comply with court orders, particularly by formulating and implementing Career Progression Guidelines and Teacher Professional Development Guidelines contrary to the provisions of the Statutory Instruments Act, 2013 and the code of regulations for teachers, to the detriment of teachers?

I thank you, Hon. Speaker.

Hon. Speaker: Chair of the Departmental Committee on Education and Research, how long will you take to give that Statement that has been requested?

Hon. Julius Melly (Tinderet, JP): Thank you, Hon. Speaker. The Committee undertakes to respond to that Statement in two weeks' time.

Thank you.

Hon. Speaker: Even as you come up with that Statement, be prepared. Whoever will be on the Chair will give other Members an opportunity to make comments on the Statement, but not on the request.

(Hon. Samuel Atandi raised his hand)

Do not raise up your hand Hon. Atandi! You do not want to say that you support the Statement. Do not add to what happened to Hon. Wanga. Given the nature of the Statement sought by Hon. Kaluma, Hon. Melly should expect that when he comes to make that Statement, there will be a chance or an opportunity for Members to make comments and seek clarifications on what will have been provided.

Hon. (Dr.) Robert Pukose (Endebess, JP): On a point of order, Hon. Speaker.

Hon. Speaker: Next Statement. Hon. Pukose, what is your point of order?

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. As you are aware, last week on Thursday, I 'seeked' a Statement on the forceful eviction of my constituents...

Hon. (Ms.) Gladys Wanga (Homa Bay CWR), ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Wanga, you seem to be agitated about something.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Speaker, we have students in the Gallery listening to us. This is not the first time, the Hon. Doctor, whom I respect, has said, "I seeked". The correct word in English is, "sought". That is what I wanted to correct, Hon. Speaker.

(Laughter)

Hon Speaker: I am sure the Member is going to thank you for drawing his attention to the correct form of the word.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, I can assure you that when my Kenya Certificate of Secondary Examination (KCSE) result is compared with that of Hon. Wanga, I will be found to have scored higher than her in English.

(Loud consultations)

I accept her correction. The correct word is "sought".

(Laughter)

Thank you, Hon. Wanga. But that still does not negate the fact that I scored higher than her and that I am a surgeon; the only surgeon in the Kenyan Parliament!

Hon. Speaker: Hon. Pukose, do not get derailed.

Hon. Robert Pukose (Endebess, JP): Hon. Speaker, last week on Thursday, I sought a Statement from the Chair of the...

(Loud consultations)

Hon. Speaker: Proceed and ignore unnecessary distractions.

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, I sought a Statement on the forceful eviction of my constituents of Mowlem and you directed that the Chair of the Departmental Committee on Administration and National Security responds today. This morning, the Chair of the Committee called me and informed me that, unfortunately, the problem emanates from our Table Office. The dispatch of the Statement to the Ministry had not been done as late as yesterday. So, he requested to respond by next week on Thursday. I agreed with him because it is good that a solution is sought regarding the issue affecting the people of Mowlem. That is more important than just responding without anything happening on the ground. I concurred with the Chair of the Committee. I want that to go on record and it be noted by the House.

Thank you, Hon. Speaker.

Hon. Speaker: The Clerk will make a follow up too and ensure that whatever that is sought here in plenary is dispatched to appropriate ministries with speed.

(Hon. Gichimu Githinji raised his hand)

I see some Members with intervention. Member for Gichugu, do not raise your hand. I see your intervention.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Speaker. I stand pursuant to the provisions of Standing Order No.44(2)(c). Hon. Speaker, I had drafted a Statement sometime last week. I sought to have a Statement from the Chair of the Departmental Committee on Trade, Industry and Co-operatives on a matter of national interest, a matter that touches on sub-standard oil at the Port.

Hon. Speaker, you were misguided because the reason my request for a Statement was rejected was that the matter was active before the Committee. As I stand here, I would like the Chair or any other person to confirm from the Committee whether the matter is active or not. Therefore, I was denied a chance to ask for a Statement on a matter of national interest.

I beg to be allowed to seek that Statement from the Chair.

Hon. Speaker: I have to keep on bending backwards and forwards because it looks like the two induction workshops we have held and the incessant pleas we have been making that, please, refer to the Standing Orders, seem to be falling on deaf ears.

Hon. Gichimu, if you wanted to contest that, all you needed to do was to come straight to my Office so that we can examine the matter. The people advising the Hon. Speaker would then be called upon to explain why they misled the Speaker by saying that the matter is active before the Committee. Hon. Gichimu, you are contesting the advice given by members of staff. I advise you go to the Clerk's Office with your request for a Statement and the Clerk will call the officer who advised and the matter will be resolved. It does not need to be handled here.

(An Hon. Member raised his hand)

Hon. Member, do not bother raising your hand when you have pressed the intervention box. There is no system error. I see the Member for Kamukunji's card showing. Just relax.

Let me recognise the presence of pupils from Utafiti Primary School, Kikuyu Constituency, Kiambu County, in the Speaker's Gallery.

The Member for Tinderet, do you want to make your Statement?

STATEMENTS

CIRCUMSTANCES LEADING TO THE DEATH OF JACKLINE CHEPNG'ENO

Hon. Julius Melly (Tinderet, JP): Hon. Speaker, I rise to make a Statement concerning a pupil who died at Kabiangek Primary School.

Hon. Speaker, on 12th September 2019, Hon. Joyce Korir, the Member of Parliament for Bomet County, sought a Statement from the Chair of the Departmental Committee on Education and Research regarding the death of Jackline Chepng'eno, a Class VI pupil at Kabiangek Primary School.

Hon. Speaker, it was on this same Floor that I sought to bring the Statement immediately because the matter was of national concern. The same was transmitted to the Ministry of Education and the Teachers Service Commission (TSC).

The Committee received a scanty report earlier on the same and, as a Committee, we went through it and decided the Ministry should take back the report and give us a comprehensive report on the same. We have a comprehensive report from the TSC about the circumstances and events that surrounded the death of Jackline Chepng'eno.

Hon. Speaker, as you have directed, this is a very comprehensive Report that responds to the issues regarding the death of this young soul. I will go straight ahead to read the Statement. I also want to put it on record that the Departmental Committee on Education and Research also sought a Statement from the Cabinet Secretary, Ministry of Education; independent of the TSC because the Board of Management (BoM) is under the Ministry of Education while teachers management is under the TSC. As I read the Statement, I indicate to Members and the House that the Statement I am going through is purely from the TSC. The Committee is just transmitting it.

Hon. Speaker, on Monday, 9th September 2019, the Commission received information from the County Director in charge of Bomet County to the effect that a pupil at Kabiangek Primary School, Konoin Sub-County, Bomet County had committed suicide. The Commission also received allegations that before the untimely demise, Jackline had been scorned and

humiliated by her class teacher, Mrs. Jennifer Chemutai, for soiling her school uniform during her menses. It was further alleged that it is as a result of the supposed humiliation by the teacher that the pupil committed suicide on 6th September 2019. In responding to this, the TSC has just outlined its mandate as per the Act, but I will not go over that because it is in the public domain. I will go straightaway to the issues and how the Commission has handled this particular matter.

The CEO says that due to the sensitivity of the matter, the facts of the case and the wide publicity of the issue, the Commission invoked the provisions of Regulation 136 of the Code of Regulations for teachers and decided to send the teacher, Mrs. Jennifer Chemutai, on compulsory leave. The objective of sending the teacher on compulsory leave is to accord the Commission a conducive environment to conduct impartial investigation of the matter and confirm any professional culpability on the part of the teacher. This will also accord the teacher her personal security and safety and grant her an opportunity to defend herself from the allegations and also to accord her the due process of the law.

On preliminary investigation, the Commission also launched investigation on the matter by constituting a joint investigating team comprising officers from the Commission and the State Department of Basic Education and Early Learning. The investigating team comprised the following officers:

- (a) County Director of Education, Bomet County;
- (b) TSC County Director, Bomet County;
- (c) Quality Assurance and Standards Officer;
- (d) Sub-County Director of Education in Konoin Sub-County;
- (e) TSC Sub-County Director of Konoin Sub-County; and,
- (f) Curriculum Support Officer of the zone.

The team visited the school on 11th September 2019 to investigate the allegations that the pupil committed suicide as a result of being ridiculed by one of her teachers for soiling her school uniform. At the material time, the team had only one report from the head teacher confirming that Jackline Chepng'eno of Standard VI, admission number 006, committed suicide on Friday, 6th September, 2019. On arrival, the team was received by the head teacher of the school. Normal teaching and learning process was on in the school and there was peace within the school environment. The pupils and teachers were all in the school except Mrs. Jennifer Chemutai, the teacher who was accused to have harassed Jackline. She kept away fearing for her life after intense demonstrations by the local community that were witnessed the previous day.

These are the preliminary findings. On Friday, 6th September 2019, the late Jackline reported to school as usual at about 9.45 a.m. together with the rest of the pupils. She attended a Pastoral Programme (PPI) lesson in the morning. During the English lesson which occurred between 10 a.m. and 10.25 a.m., the class teacher and teacher of English, Madam Jennifer Chemutai, asked the pupils to write a composition using pencils. The few pupils who did not have pencils, including the late Jackline, were instructed to go and borrow from the lower classes. Jackline hesitated. The teacher prevailed upon her to go to the next class and borrow so that she could do the assignment with others. As she walked out, the teacher noticed that she had soiled her school uniform. She then followed her outside the classroom. The team confirmed that the teacher politely advised Jackline to accompany her to the office to get sanitary towels from the Deputy Head Teacher, Mrs. Caroline Rono, after which she could go home, change her uniform and get back to school. While the teacher headed towards the office to source for the

sanitary towels, Jackline walked towards the gate and went home straight. When the teacher finished the inquiry on the whereabouts of the towels, she spotted Jackline walking towards the gate. Her attempts to call her back did not bear any fruit.

Upon reaching their home, her mother inquired why she had come home early. Jackline told her that the teacher had advised her to go and change her uniform she had stained and get back to school. The mother similarly instructed her to change and wash her uniform and return to school in the afternoon. The mother asked her to wash one of her clothes. She complied, picked a bucket and a *leso* and went to the river. At around 2.00 p.m., word reached Jackline's family that she had committed suicide. According to statements given by her classmates – the statements are annexed in this statement – the class teacher, Madam Jennifer Chemutai, did not scold or ridicule Jackline for soiling her school uniform. That is the statement annexed to this report by fellow classmates.

Jackline's parents separated long time ago. Her mother and her siblings were staying at her maternal grandmother's place and, unfortunately for Jackline, both her mother and grandmother are addicted to alcohol. It is Jackline who had the responsibility to undertake all the family chores. Her elder sister had been hospitalized for terminal illness for the last two months at Kapkatet General Hospital, leaving behind her two children under the care of Jackline. The sister had just been discharged from hospital at the time of investigation. The investigation's team also found out that the school had received its full consignment of sanitary towels for the second term. At the time of the investigator's visit, the team could not establish the number of sanitary towels received and those dispensed to the learners due to poor record keeping. However, it was confirmed that the school had received and distributed its consignment for the month of August and September 2019. I also have an attachment to show how much they received.

The team counted 17 packets of the remainder of the said consignment in the school store. According to the teacher in charge, Jackline and the rest of the eligible pupils received their supply of the towels for the months of August and September on 30th July 2019. The team further visited Jackline's home and confirmed that she used one of the two packets of sanitary towels given to her by the school on 30th July 2019. This was corroborated by the mother.

In conclusion, the Commission had perused the preliminary report and directed its officers to cover certain areas. As an employer in the public service, the Commission's mandate is limited to professional culpability of its employees and breach of regulations governing the teaching service. It is in this regard that the Commission may also be guided by the technical reports from the specialized Government agencies which are also seized of the matter. That means it is not only the Commission but also other Government agencies that are dealing with the same matter.

Accordingly, therefore, once the final investigation report is out, the Commission will make its decision on the matter based on the provisions of the law and the provisions of the Code of Regulations for teachers and appropriate administrative action based on the evidence and the merits of the case. Annexed on this particular statement are the writings from the classmates, an indication from the teacher on how he received the sanitary towels and the pictures.

That is the Statement as per the TSC regarding the circumstances and events that surrounded the death of the little girl, Jackline Chepng'eno. This is purely a Commission Statement. It is not a Committee statement.

Two, we are yet to receive a statement from the Ministry of Education regarding the same. When we get it, I will table it on the Floor of the House.

Thank you.

(Hon. Julius Melly laid the document on the Table of the House)

Hon. Speaker: Hon. Dennitah Ghati.

Hon. (Ms.) Dennitah Ghati (Nominated, ODM): Thank you very much, Hon. Speaker.

I have listened to the Statement by the Chair of the Departmental Committee on Education and Research. It does not add up, even if it comes from the TSC. I take particular interest in this case because this is a child from Bomet County. I have a history with Bomet County. Bomet County is the county that moulded my education. I am a product of Kaplong Girls High School which is in Bomet County. I want this House to know that I had the opportunity of serving in this House with Hon. Cecilia Ng'etich, who was my head teacher at Kaplong Girls at the time I joined the school.

My heart bleeds for this girl simply because many of us grew up in those times when affording a sanitary pad was a luxury. This is an issue that we cannot just leave with the MoEST or the TSC to take care of. There is no way the TSC can produce such a report to say that the family of the girl, the mother or the grandparent of the girl is an alcoholic. How does that translate into period shaming? It is unfortunate the teacher alleged to have done this is a female. There is no way a female teacher....

Hon. Speaker: That is enough, Hon. Ghati. Please, you know other Members also want to make some contributions.

Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker.

I am actually perturbed by the Statement coming from the TSC. The reason I am perturbed is, usually, when there is any form of violence against young girls or women, they are then made the culprits. That is even when it is period shaming.

(Applause)

The facts are out there. We know that this girl was shamed by the teacher. What is happening are claims that the mother was an alcoholic and the father was absent. So, what if the father and mother are alcoholics? Half of people in the country are alcoholics. They do not commit suicide because they are alcoholics. There are many people who are alcoholics. Even most of us in this Parliament have alcoholics in our families. We have not committed suicide.

(Applause)

I am requesting the Kenya National Commission on Human Rights (KNHCR) to go to that school, undertake independent investigations and sue whoever is responsible. If the school is responsible, sue the school! If the ministry has not provided sanitary pads which we passed in the Budget, sue the ministry! We are not going to have our girls shamed because of a natural thing like having periods. Maybe, as Members of Parliament (MPs) and symbolically, women MPs,

should come here with blood behind so that people can normalise having periods. It is very normal. We cannot be shamed for what is normal. Otherwise, we will soon be told to leave our breasts at home! Periods are like our breasts. It is part of our body. Let us not shame girls for naturally occurring things.

Thank you, Hon. Speaker.

(Several Members raised up their hands)

Hon. Speaker: Sorry. Hon. Members, do not raise your hands up. I can see from the Intervention Box. The Member for Isiolo, do not raise your hand up. You are merely causing unnecessary distraction. Let us hear Hon. Kubai Iringo.

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Speaker, for giving me this opportunity to comment on this Statement.

At the outset, that Statement from the TSC is cosmetic. It was tailored to protect the teacher. In as much as they said the sequence of events up to when the girl went home, that is where they started picking issues to victimise the family or create an impression that the family's problems led the girl to commit suicide. That is diverting from the original problem of not having sanitary towels. In as much as they are saying they gave the girl some sanitary towels, they could not account for the ones they gave. Could be they were not there. Why had they to go independently when they knew this issue had a lot of national interest? I would request for an independent investigation into the same and we put the TSC's issue aside.

Hon. Speaker: Let me just remind ourselves. I have seen there are Members who have been in this House continuously since the year 2008. This was a request for a Statement. It does not result in any resolution of the House. You should be one of the people to show an example of how it is done, if you know you have sat in this House since that time. It was a Statement. You choose what you want to get. If you wanted a resolution of the House to go in the direction that I hear from some of you, the Member who sought the Statement should have known how best to handle the situation. That is if she wanted the House to make a resolution. For the time being, it is just comments. This is a Statement.

Hon. John Mbadi.

Hon. John Mbadi (Suba South, ODM): I, first of all, want to register my appreciation to the Committee, through the Chair, for, at least, responding to this House in a short time, as quickly as possible. This is a matter of national importance. The issue of that girl caught the attention of this country for what happened to a small young girl who is below the age of 15 years.

Listening to the Chair of the Committee, I get it that this Report is based on the findings and investigation done and the witness was the TSC, which is the employer of the teacher who was purportedly or allegedly the one who made that girl to commit suicide. The MoEST is still doing its investigation. I urge that the Committee gets to this House the report of MoEST and any other investigative agency so that this matter can be addressed conclusively.

My concern is that I think we are probably dealing with the symptoms of the bigger problem in this society. A young girl of 13, 12 or 11 years committing suicide is something we should not look at in a narrow perspective of failure to provide sanitary towels. We need to ask ourselves the fundamental question of why it is that there is increased cases of teenagers

committing suicide. If it is just about ridicule and being mocked, I do not think we can pass a judgment that can lead to suicide. There must be something that is triggering children in this country to start thinking of committing suicide and even getting involved in other criminal acts. We saw the video that was going round just the other day; the video that went viral about a teenager. We need to address this matter of increased cases of teenagers committing suicide.

I listened to Hon. Millie Odhiambo. She was talking so passionately. I urge Millie and tell her that we also feel the same. By the way, the teacher who is being alleged to have pushed this child to commit suicide is not even a male teacher. She is a female teacher who should understand much better. So, this is not a question of people being insensitive. It is a question of finding out why that particular child committed suicide. If it is because of some negligence, some lack of attention, it should be addressed. If it is a bigger and wider societal problem as I suspect, we need to deal with it. It is wrong if we just start condemning some people unheard, who probably forced the child to commit suicide without asking why this child could not handle this situation and thought that the best way to handle it is to commit suicide. Children really fear death. I do not think there is any time I ever feared death like when I was a child. I can remember when my mother was bitten by a snake. It made me fear snakes to date. I was a child and I was told that could have led to the death of my mother. So, children fear death. If a child commits suicide, we must ask ourselves what leads more children to commit suicide. Otherwise, the way we are approaching this debate is from a narrow perspective.

Finally, the Committee should go there and get more findings. They should not just rely on the findings of the TSC. The TSC has done its bit. The Ministry of Education will do their bit. The other investigative organs will do their bit. I heard that the Directorate of Criminal Investigations (DCI) has taken over this matter. I do not know to what extent. Let them bring a comprehensive report and then we merge all the reports before this House to help us debate from a point of information.

Thank you.

Hon. Speaker: Hon. Members, I am told that what Hon. John Mbadi has addressed about death, even those who preach about going to heaven, it is the thing they dread most.

(Laughter)

I am just paraphrasing the late Steve Jobs.

The Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I want to thank the Chairperson of the Committee. When a statement is sought, it is good that Members of the House go and get the statement and consume it. When Members were debating, I looked at the statement from the TSC. It has a lot of information. It has photographs of the mother of the child showing that they had pads at home. It is showing the tabulation of the stock of pads delivered by the Ministry of Education to that school. It shows statements by her colleagues in Class VI and the stock of pads in that school at that time. So, the TSC, as a responsible institution, has done its bit. What we need to deal with now is suicide. The only person who can give an answer to that matter... It is not the only crime. There are many Kenyans who are committing crimes every day. The Office of the DCI with the type of forensic labs that they have... If anyone picks this document...

From where I sit, during the budget-making process, the county women representatives wanted this budget to go to the National Government Affirmative Action Fund (NGAAF). So, this is their other way of telling us that sanitary pads should be in NGAAF.

Hon. Members: Yes

Hon. Aden Duale (Garissa Township, JP): No! No! Maybe, that is the politics you are playing in this House. But TSC...

(Loud consultations)

I have said many times that we are not in the county assemblies. It is my chance. I listened to Hon. Millie Odhiambo and Hon. Mbadi. You must learn to listen to me. If you want to make noise, you can meet me at the car park. But in the Chamber, you cannot shout at me. The only person who can shout at me is my wife and mother.

(Laughter)

Yes! You cannot! You are not one of them. So, Hon. Speaker, this culture of shouting... Hon. Gladys Wanga, you know the only person who can shout at me is my wife who has given birth to five of my sons, or my mother. You are the Member for Homa Bay County and I am the Member for Garissa Town Constituency. Listen to me and I will listen to you. I agree with the new Member for Ugenya that there should be no feelings in the House. People must read this TSC Statement. When we were passing the Budget, our sisters wanted this money to go to NGAAF.

I want to thank Nancy Macharia. The TSC has given a comprehensive Report. I am sure Prof. Magoha will bring a comprehensive report. We want to go to the bottom of how our daughter died. Let us ask the Departmental Committee on Administration and National Security to ask the DCI to do an investigation. I told the lady the other day to invite the Director of Public Prosecution (DPP). He can ask for an inquest. Let us ask the DPP to ask for an inquest on how that child died.

In this Report that the Committee Chairperson has tabled, there is a picture of the daughter's mother showing that she had pads in her house and the headmistress showing the stock that was supplied by the Ministry. So, before we bash the TSC, we should read their Report. I want to urge Members to first be reading reports and statements. They should not jump from their chairs.

Please, Hon. Speaker, next time, nobody should shout at me. I am serious.

Hon. Speaker: I will allow the Member for Homa Bay town one minute. This is not a gender issue.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Speaker, the manner in which this matter came before the Floor of this House is limiting. I would request that either this matter be brought in a manner that may allow this House to investigate it properly or the Committee on its own motion tackles it as a matter that can be dealt with, so that we can get their report upon which we can make a firm resolution. It is sad that we are told that, that pupil died. The Report which is before us – and I listened to the Chairperson well and Members who contributed – has not mentioned a postmortem report. There is no mention of police investigation or investigations by agencies that undertake investigations. What is confirmed before us is that, that school girl is

actually dead. We cannot conclude that it was suicide. Remember you can also be murdered by hanging. What we would request for is an approach that goes beyond confirming the fact of death as to what caused the death. I would request that the Committee takes it up or a Member takes up proper procedure, so that we can properly investigate.

Thank you.

Hon. Speaker: Let me hear from the Member from the constituency that the said girl came from.

Hon. Japheth Mutai (Bureti, JP): Thank you, Hon. Speaker. First and foremost, the death of that girl was unfortunate. Personally, I attended the funeral of the said girl. I was present when she was buried. What we are witnessing here is something unique. There are not many girls who commit suicide. This is a unique case. I have heard what the Chairperson has said on the Report from the TSC. It is a sad affair of events to push blame to the parents of a child who has committed suicide. When I was at the funeral, there were several allegations that the TSC was trying to protect the teacher. There were allegations of threats made against several people that if they spoke a, b, c or d, something would be done to them. That came out in the funeral. In fact, one lady – for those who watched the funeral and there was a clip captured by television stations – who works for an NGO, was threatened by the TSC and teachers that if she says the truth, something bad will happen to her. What my colleague Hon. Kaluma has said is what should happen. Let the Departmental Committee on Education and Research be seized of this matter and investigate it. It should get to the root cause of the problem. We are being told that the mother was a drunkard. I personally know that family. I know where the mother comes from. She is not a drunkard. If she drinks, then that is somewhere else. This has nothing to do with the suicide. Also, what came out is that it was the first time the girl was having her menses. She had not experienced it before. It was the first time that happened to her. It was unfortunate that we lost a soul. We do not want that to happen to any other girl in this county. She should be the last one. We should get to the bottom of this issue.

I do not agree with the TSC in absolving their teacher based on their own evidence and not evidence from an independent body. I say sorry to the family. I feel for them. I think it is incumbent upon this House to rise to the occasion and get to the root cause of the problem so that no family in this country will ever experience the same.

Thank you.

Hon. Speaker: Hon. Members, this was a request for a statement. Now we must do business. If any of you desires an investigation of this matter, you know what you need to do. Now all that I am required to do is to allow you to make a few comments. Now you have taken more than 30 minutes. Those are not few. Those are enough for the time being. I do not know whether anybody here would relish having a child of that age die. If you desire the House to resolve to have some investigations, please, take the necessary steps in terms of the Standing Orders. Otherwise, everybody will start saying: “Another one was a drunkard” and another will say: “This one was a church minister or a priestess”. You are here, so you do not know what somebody is doing out there in the village. If you want the matter investigated, please, just follow the Standing Orders and the House will resolve one way or another. For the time being, that suffices. Let us now have the Leader of the Majority Party.

BUSINESS FOR THE WEEK COMMENCING 24TH TO 26TH SEPTEMBER 2019

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(a), I rise to give the following Statement on behalf of the HBC, following its meeting held on Tuesday, 17th September, 2019.

On Tuesday, next week the HBC has scheduled the Finance Bill, 2019 for consideration in the Committee of the whole House. It is important for Members to know that the Bill shall be concluded on or before 26th September. Therefore, any proposed amendments should be forwarded to the Clerk's Office as soon as possible. We will also consider the revised Sessional Paper No.1 of 2019 on the policy framework for reforming education and training for sustainable development in Kenya and a Petition by the Executive regarding the variation of the boundaries of Mt. Elgon Forest Reserve, should we not conclude them today.

Also prioritised for Second Reading next week are the following Bills, should we not conclude them today:

1. The Early Childhood Education Bill (Senate Bill No. 26 of 2018);
2. The County Governments (Revenue Raising Process) Bill (National Assembly Bill No. 24 of 2018); and,
3. Petition to County Assemblies (Procedure) Bill (Senate Bill No. 22 of 2018).

In accordance with the provisions of Standing Order 42A(5) and (6), I wish to convey that:

1. The CS for Education will appear before the Departmental Committee on Education and Research on Thursday, 26th September 2019, to answer the following questions—
 - (a) Question No.25 from Hon. (Ms.) Naisula Lesuuda;
 - (b) Question No.333 from Hon. Peter Kaluma;
 - (c) Question No.347 from Hon. Ezekiel Ombaki;
 - (d) Question No.355 from Hon. Godfrey Odanga;
 - (e) Question No.382 from Hon. Joshua Kandie;
 - (f) Question No.387 from Hon. John Wambugu;
 - (g) Question No.389 from Hon. Charles Njagagua; and,
 - (h) Question No.403 from Hon. Robert Githinji.
2. The CS for Health will appear before the Departmental Committee on Health on Thursday, 26th September 2019, to answer the following questions:
 - (a) Question No.380 from Hon. Oroo Oyioka;
 - (b) Question No.384 from Hon. Didmus Barasa; and,
 - (c) Question No.383 from Hon. (Ms.) Florence Mutua;
3. The CS for Sports, Culture and Heritage will appear before the Departmental Committee on Sports, Culture and Tourism on Thursday, 26th September 2019, to answer the following questions—
 - (a) Question no. 359 from Hon. James Murgor; and,
 - (b) Question No. 404 from Hon. Gideon Keter.

Hon. Speaker, I want to tell Members that they must be there for their questions when the CSs are appearing. If they are not available, then the Chairs of those committees can be provided with written answers at the earliest opportunity available.

Finally, the HBC will reconvene on Tuesday, 24th September 2019, at the rise of the House to schedule business for the rest of the week. I now wish to lay this Statement on the Table of the House.

Thank you, Hon. Speaker.

(Hon. A.B. Duale laid the document on the Table)

Hon. Speaker: Order, Hon. Members. Call out the next Order.

BILL

Second Reading

THE FINANCE BILL

(Hon. Joseph Limo on 18.9.2019)

(Resumption of Debate interrupted on 18.9.2019)

COMMUNICATION FROM THE CHAIR

UNCONSTITUTIONALITY CLAIMS ON THE FINANCE BILL, 2019

Hon. Speaker: Hon. Members, you will recall that yesterday, Wednesday, 18th September 2019, the Finance Bill (National Assembly Bill No. 51 of 2019) was listed as Order No.12 in the Order Paper of the Afternoon Sitting for consideration at Second Reading. Upon the Order being called out and before the Motion for the Second Reading of the Bill was made, Hon. Gitonga Murugara George, the Member for Tharaka Constituency, rose on a point of order and sought the indulgence of the Chair not to allow the Bill to proceed to Second Reading. Hon. Murugara asserted that Clauses 50 and 51 of the Bill, which propose to amend the Proceeds of Crime and Anti-Money Laundering Act (No.9 of 2009), are unconstitutional to the extent that they contain provisions limiting the right to privacy guaranteed under Article 31 of the Constitution and threaten to erode the settled principle of advocate-client confidentiality. That claim elicited interest from several other Members including the Leader of the Majority Party, Hon. (Dr.) Otiende Amollo, Hon. (Ms.) Jennifer Shamalla, Hon. John Mbadi - Leader of the Minority Party, Hon. Kirima Nguchine, Hon. Chrisantus Wamalwa, Hon. Mohamed Junet and Hon. Jude Njomo.

Another matter that arose relates to the propriety of including proposed amendments to the Proceeds of Crime and Anti-Money Laundering Act in the Finance Bill, 2019, and which some Members felt were not incidental to the tax and other measures proposed in the Finance Bill.

As you may recall, the Member for Kiambu Constituency introduced a separate dimension to the point of order. His concern was that if the House went ahead and debated the provisions of Clause 43 of the Finance Bill relating to control of bank interest rates, any

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resolution of the House on the matter would sound a death knell to the proposals in the Banking (Amendment) Bill, 2019 moved by himself and currently under consideration by the House and which address the “ambiguity” issues of the capping of interest rates provision. The assertion by the Member for Kiambu Constituency was based on Standing Order 49(1), which provides that no Motion may be moved which is the same in substance as any question which has been resolved either in the affirmative or in the negative, during the preceding six months in the same session.

From the Members’ contributions, there are four questions which arose that require determination by the Speaker:

(i) What is the scope of a Finance Bill? Is the Finance Bill another form of a Statute Laws (Miscellaneous Amendments) Bill, and can the Bill be used to introduce proposals which are not incidental to taxation or revenue-raising measures?

(ii) Do Clauses 50 and 51 of the Finance Bill, 2019 offend the Constitution?

(iii) Do Clauses 50 and 51 of the Finance Bill, 2019 comply with the standard of disclosure set out in the Constitution?

(iv) How does the inclusion and subsequent consideration by the House of provisions proposing to amend the Banking Act under Clause 43 of the Finance Bill, 2019 affect the Banking (Amendment) Bill, 2019 currently before the House?

You will also recall that following the issues raised, I provided preliminary guidance to the House by allowing debate on the Bill at Second Reading to proceed and undertook to make a considered ruling on the matter today.

Hon. Members, at the outset, let me state that a Finance Bill has the nature and form similar to that of Bills commonly termed in parliamentary parlance as “omnibus bills”. Although there exists no precise definition of the expression “omnibus bill”, Audrey O’Brien and Marc Bosc, in *House of Commons (Canada) Practice and Procedure, 2nd Edition*, describe an omnibus bill as “one that seeks to amend, repeal or enact several Acts, and is characterized by the fact that it is made up of a number of related but separate initiatives.” For all intent and purposes, a Finance Bill is usually intended to amend several separate but related statutes on taxation and revenue raising.

Hon. Members, in terms of history, the practice and usage of omnibus Bills dates as far back as 1850 in the United States Congress when Senator Henry Clay introduced a series of resolutions to seek a compromise and avert a crisis between North and South over the issue of slavery. The Compromise of 1850 covered five separate legislative subjects in terms of enactment, amendment and repeal, including partial abolition of the slave trade, entry of the State of California into the Union, creation of two territorial governments and settlement of a boundary dispute between the States of Texas and New Mexico. The practice in Canada dates back to as early as 1888 and also exists in the United Kingdom, Australia and New Zealand, save for differing procedural requirements as to what such Bills may or may not contain.

Hon. Members, the procedural propriety of introducing omnibus Bills is, therefore, an established practice, albeit exercised with caution. From the Canadian Parliamentary experience, O’Brien and Bosc had the following to say with regard to the propriety of omnibus Bills and I quote:

“It appears to be entirely proper, in procedural terms, for a bill to amend, repeal or enact more than one Act, provided that the requisite notice is given, that it is accompanied by a royal recommendation (where necessary), and that it follows the form required.”

Hon. Members, it is an indisputable fact that the Parliament of Kenya relies on the practices and precedents in the mentioned jurisdictions. Hence, it has become an established practice that bills of omnibus nature have been introduced and passed by Parliament and assented to by the President.

Indeed, Hon. Members, Article 94(1) of the Constitution clearly states that legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament. Further, Article 109(1) provides that Parliament shall exercise its legislative power through Bills passed by Parliament and assented to by the President. It is worth noting that there exists no prescription as to the nature, limitation or form that Bills introduced in Parliament for passage ought to take. Guidance in this respect only exists in the Standing Orders. Of particular importance in this respect is Standing Order 114 providing for (the manner of) introduction of Bills, Standing Order 127 regarding public participation and Standing Order 133(5)(6) regarding scope of amendments which may be permitted at Committee of the whole House. With regard to Standing Order 114, there are three parameters set out for scrutiny before a Bill is published. That is, whether the proposal affects county governments; is a money Bill as outlined under Article 114 of the Constitution or conforms to the Constitution and the law and the format and style of the House.

Hon. Members, with regard to “Bills emanating from the Executive” which have by tradition been introduced in the House by the Leader of the Majority Party or the Chairperson of the relevant Departmental Committee, this House had occasion, during the review of its Standing Orders at the close of the Eleventh Parliament, to introduce a new Standing Order 114A. This Standing Order empowers the Speaker to exempt legislative proposals originating from the party forming the national Government from the detailed and rigorous pre-publication scrutiny on condition that the proposal is accompanied by a copy of the relevant Cabinet approval.

The Cabinet approval notwithstanding, any proposal so exempted is still interrogated by the Clerk in terms of its conformity to the Constitution and the law and the format and style of the House. The Finance Bill, 2019 is an example of such a proposal, having been introduced under the hand of the Chairperson of the Departmental Committee on Finance and National Planning.

Hon. Members it is, therefore, clear that the House has in place proper mechanisms to assess the propriety of a legislative proposal both in form and substance. Questions relating to the scope of omnibus Bills and proposed amendments thereof at the Committee of the whole House have arisen on few isolated cases in the Twelfth and preceding Parliaments. I will highlight two cases just to jog the memory of this House.

First, as you may recall, on 28th August 2018, the Member for Rarieda Constituency, Hon. (Dr.) Otiende Amollo, MP raised a point of order challenging the constitutionality of the Statute Law (Miscellaneous Amendments) Bill, 2018 (National Assembly Bill No.12 of 2018) in its entirety. In respect of this matter, I did guide the House, in part, that –

“There is nothing unconstitutional about this Bill. The term “omnibus” does not refer to minor or trivial amendments. In fact, you could be talking about making minor amendments to existing law. But you may just insert one word; where it talks of “10 per cent” and make it 50

percent. That could be monumental. So, it is not the volume of the text that should be the issue to be considered. On this, the courts must also allow Parliament to do its legislative work. Let them deal with the interpretation of the constitutionality or otherwise of Bills that have been passed by the House. We cannot be held hostage by courts saying: “We think this is an omnibus law or, there are too many amendment Bills.

A Finance Bill, for instance, is an omnibus Bill. It amends several laws to deal with revenue-raising measures or even repeals in entirety certain taxation provisions in law. Some of them have such great import that if one was to say the issue of substantive *vis-à-vis* the text, the two would not go hand in hand.

My view is that, since the issue of “omnibus law” is as old as the year 1850, the issue of “omnibus” is not one that offends the practice anywhere in the jurisdictions we compare ourselves with. We have traditions and customs. Our Constitution has not disallowed miscellaneous amendment Bills. I do not think whether we could say it is “unprocedural”. My guide would be that we consider the Bills. Our requirement is under Article 10, among others; Articles 10(2)(a) and 118, which are on public participation. So, when a Bill is published, whether it contains proposals to amend two Acts of Parliament or 10 or 15, what our Constitution requires is that the public is involved. That is why we publicise those Bills in the newspapers. So, I think it is within the power of the House to legislate in terms of Articles 94 and 95. When we are legislating, we should not look over our shoulders save to consider what the letter and spirit of the Constitution and its substance are. There has never been a precedent that says: “Do not use miscellaneous amendment processes”.

As you can clearly tell, the practice of omnibus Bills in our Parliament is established and this House has, with technical support of officers of the House, devised innovative strategies of navigating the complexity of omnibus Bills based on the experiences with different Bills of this kind.

Hon. Members, in the Tenth Parliament, a question of similar import arose as to whether or not some amendments proposed on certain statutes in the Finance Bill, 2011 were within the scope and ambit of a Finance Bill. In addressing the question, my predecessor, Speaker Kenneth Marende, observed as follows:

“Hon. Members, the practice that is emerging where amendments covering diverse subject matters are introduced to a Finance Bill is one that requires to be reconsidered. Some of the amendments that have been proposed to Finance Bill in recent times, and in the present case, are over matters that rightfully fall within the mandates of ministries other than that Ministry responsible for Finance, and consequently the mandates of various Departmental Committees.

Introducing such amendments to a Finance Bill denies the relevant Ministries and Committee of the House, stakeholders and the general public the opportunity to reflect and deliberate on the proposed amendment.”

Hon. Members, the question at hand that I have been invited to rule on closely mirrors the situation that my predecessor dealt with above. But, be that as it may, and as earlier stated, the omnibus nature of a Finance Bill ought to be taken into account when resolving any question of the scope and principal object of a Finance Bill. Erskine May Parliamentary Practice (24th Edition), an authority on parliamentary practice and procedure provides as follows at page 780 and I quote:

“The scope of a Finance Bill is not limited to the imposition and alteration of taxes for the purpose of adjusting the revenue of a particular year. It is also not intended to be an annual Act in the same sense as an Appropriation Act, but normally includes many provisions of permanent character for the regulation of fiscal machinery and other purposes.”

I put emphasis to use of the words “fiscal machinery”.

Hon. Members, the scope of a Finance Bill is not exclusively limited to imposition and alteration of taxation for the purpose of adjusting the revenue of a particular financial year, but also includes provisions of permanent character for the regulation of the fiscal machinery and other purposes. With regard to the inclusion of amendments to the Proceeds of Crime and Anti-Money Laundering Act, 2009 under Clauses 50 and 51 of the Finance Bill, 2019, though not reflected in the Long Title of the Bill, a correlation can be made between the proposed amendments with regard to reporting of suspicious transactions as a fiscal control on the loss of government revenue. It is my considered view that, as a House, we should not be seen to curtail our legislative mandate. The legislation passed by this House is measured as against the Constitution and the issues of concern to the people that it resolves. With this in mind, form is a secondary consideration.

Hon. Members, Standing Order 47(3) places a particular obligation on the Speaker to exclude a Motion from being debated or direct the amendment of a Motion in an appropriate format where the Motion either offends the Constitution, an Act of Parliament or the Standing Orders. Verbatim, the Standing Order provides, and I quote—

“(3) If the Speaker is of the opinion that any proposed Motion –

- (a) is one which infringes, or the debate on which is likely to infringe, any of these Standing Orders;
- (b) is contrary to the Constitution or an Act of Parliament, without expressly proposing appropriate amendment to the Constitution or the Act of Parliament;

The Speaker may direct either that, the Motion is inadmissible, or that notice of it cannot be given without such alteration as the Speaker may approve or that the motion be referred to the relevant committee of the Assembly, pursuant to Article 114(1) of the Constitution.”

Hon. Members, in parliamentary practice, a House of Parliament considers any Bills by way of a Motion seeking agreement of the House either for the Bill to be read a Second Time, for amendments to the Bill to be considered and approved during the Committee of the whole House, or for the Bill to be read a Third Time. In relation to the consideration of a Bill, the role of the Speaker under Standing Order 47(3) is two-fold. On the one hand, the Speaker is under an obligation to exclude any Bill or part thereof from consideration by the House where such a Bill or part of it patently violates the Constitution, any written law or the Standing Orders, and the said violation is not curable through appropriate amendment or revision, prior to the consideration of the Bill.

On the other hand, the Speaker is under a further obligation to ensure that any Bill under consideration by the House is insulated from any amendment or revision that may place it at odds with either a constitutional or statutory provision or violate the procedural prescriptions of the Standing Orders.

Standing Order 47(3) effectively excludes the participation of the House in the decision to be made by the Speaker and, as I have previously ruled, obliges the Speaker not to fold his or her arms and preside over deliberations that may lead to an unconstitutional and absurd result. Clauses 50 and 51 of the Finance Bill 2019 seek to amend the provisions of the Proceeds of Crime and Anti-Money Laundering Act 2009 to designate advocates, among other professionals, as reporting institutions of any suspicious transactions done by their clients. I understand the concern of Hon. Murugara and all other lawyers in this House in trying to tie the attorney-client confidentiality, the right to privacy and the right of access to information under Articles 31 and 35 of the Constitution, respectively. However, as Members are aware, the Constitution is very clear on the rights and freedoms that may not be limited under any circumstances.

Hon. Members, Article 25 of the Constitution provides as follows, and I quote:

“25. Despite any provision in this Constitution, the following rights and fundamental freedoms shall not be limited—

- (a) freedom from torture and cruel, inhuman or degrading treatment or punishment;
- (b) freedom from slavery or servitude;
- (c) the right to a fair trial; and,
- (d) the right to an order of *habeas corpus*.”

A clear reading of Article 25 of the Constitution mandates this House to limit any other right or fundamental freedom subject only to the protections outlined by the Constitution. Up to that point, and without interrogating the merits of the proposals, the argument that clauses 50 and 51 of the Finance Bill, 2019 ought to be excluded from consideration by this House on account of limiting constitutional rights seems not to hold any water in my view.

Hon. Members, Article 24 of the Constitution prescribes the manner in which the rights and fundamental freedoms guaranteed by the Constitution may be limited. Clauses (1) and (2) of the Article are instructive insofar as they state, and I quote:

“(1) A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—

- (a) the nature of the right or fundamental freedom;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others; and,
 - (e) the relation between the limitation and its purpose and whether there are less restrictive means to achieve the purpose.
- (2) Despite clause (1), a provision in legislation limiting a right or fundamental freedom—
- (a) in the case of a provision enacted or amended on or after the effective date, is not valid unless the legislation specifically expresses the intention to limit that right or fundamental freedom, and the nature and extent of the limitation;

- (b) shall not be construed as limiting the right or fundamental freedom unless the provision is clear and specific about the right or freedom to be limited and the nature and extent of the limitation; and,
- (c) shall not limit the right or fundamental freedom so far as to derogate from its core or essential content.

Hon. Members, Article 24(2) of the Constitution requires that any provision enacted or amended on or after 27th August 2010 to expressly stipulate the intention to limit a fundamental right or freedom and the nature and extent of the limitation for the provision to be valid. I am cognizant of the fact that the Proceeds of Crime and Anti-Money Laundering Act was enacted in 2009. To the extent that the Finance Bill 2019 proposes amendments to sections of the Act with a discernible link to the limitation of rights guaranteed under the Constitution, the said amendments ought to comply with the requirements of Article 24(2) of the Constitution.

Clauses 50 and 51 of the Finance Bill are not accompanied by any additional provision stating the intention to limit the right to privacy and the nature and extent of the limitation in relation to the new categories of professionals it seeks to designate as reporting institutions under the Proceeds of Crime and Anti-Money Laundering Act, 2009. To this end, the two proposed provisions fail to comply with the standard of disclosure set out by the Constitution in Article 24 (2) above and, therefore, are procedurally defective.

(Applause)

To this end, given the clear provisions of Standing Order 47(3)(b) which imposes an obligation on me to satisfy myself with regard to certain procedural and constitutional standards, I am constrained to order that these two provisions be excluded from consideration by this House during the Second Reading of the Bill.

(Applause)

Also, I hasten to add that this determination is only related to the procedural defects in the manner in which the proposed amendments have been presented. Nothing stops the Mover of the Bill or any other Member from proposing the amendments in the appropriate format in a separate Bill for consideration by the House. At this stage, the question as to whether the two clauses would offend the Constitution if they were to comply with the standard of disclosure set in the Constitution and introduced as a separate Bill does not arise.

Hon. Members, before I conclude, let me also allay the fears expressed by Hon. Jude Njomo on the inclusion and subsequent consideration by the House of Clause 43 of the Finance Bill 2019, which seeks to amend the Banking Act, and the manner in which it affects his Banking (Amendment) Bill, 2019. As I stated in my preliminary directions to the House yesterday, the House has not yet expressed itself on the said Bill sponsored by Hon. Njomo, hence the provisions of Standing Order 49 on re-visiting a matter already decided by the House does not arise. But, for the benefit of the Member, the House and perhaps the general public and stakeholders who may be keenly tracking proceedings relating to that Bill, there are three likely scenarios that may result.

First, if Clause 43 of the Finance Bill, 2019 is amended by this House to include provisions extracted from Hon. Njomo's Bill, 2019 and the Finance Bill 2019 is assented to by the President without any reservations, the object of the Member will have been realised, hence there would be no need to proceed with further consideration of Hon. Jude Njomo's Bill.

Second, if the House negatives Clause 43 of the Finance Bill as presented or an amendment to delete the said proposal is carried, the House would have resolved the matter. This scenario will trigger the application of the provisions of Standing Order 49 and the matter may only be re-introduced after six months, in accordance with the same Standing Order.

In the third scenario, the same fate as that in scenario two would arise in the event that this House passes the Finance Bill 2019 with Clause 43, but the President expresses reservation to that Clause, and the House fails to muster the threshold required to override the President's reservations.

As to what the second and third scenarios would portend to the likely lapse of the 12 months that the court, through a ruling made on 14th March 2019, granted the National Assembly to rectify the anomalies that were in that law, the matter is outside the purview of the Speaker at the moment.

In summary, therefore, it is my finding:

THAT, Clauses 50 and 51 of the Finance Bill (National Assembly Bill No.51 of 2019) fail to comply with the standard of disclosure set out by the Constitution and more specifically Article 24(2) and, therefore, are procedurally defective and are hereby excluded from Second Reading. The Bill will proceed as if the two clauses were not part of it;

THAT, this determination is only related to the procedural defects in the manner in which the proposed amendments have been presented;

THAT, nothing stops the Mover of the Bill or any other Member from proposing the amendments in the appropriate format in a separate Bill for consideration of the House; and

THAT, with respect to Clause 43 of the Finance Bill 2019, which seeks to amend the Banking Act, the provisions of Standing Order 49 on re-visiting a matter already decided by the House does not arise at this stage as the House has not made a determination on the matter one way or another.

Hon. Members, the House is accordingly guided.

Hon. John Mbadi (Suba South, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. John Mbadi, what is your point of order?

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. I applaud your ruling and congratulate you for giving that long ruling. I understand why. It is because this is a matter that some people would have gone to court to challenge. So, you need to pronounce yourself in a manner that even the judges would treat it as a ruling from a person of an equivalent status as a judge.

Now that we have taken care of the interest of lawyers and their clients under Clauses 50 and 51, there is another profession of accountants which is also to be adversely affected by the provisions of Clause 49. In the spirit of equity and fairness and equal treatment to all professions, I would also urge that this provision in the Bill on Clause 49 is offensive to accountants. That is a matter that we dealt with not long ago. I do not understand why the Treasury is behaving like

this. As accountants, we are really offended by this intrusion from the Treasury to attempt to legislate for us and in the process, dealing with a matter that they do not understand. So, I also urge that in the same spirit as we have dealt with lawyers, the same should apply to accountants. I could see lawyers really cheering you although I know you were not making this ruling because you are also a lawyer. I know you are fair to all professions. Could you also be fair to the profession of accountants and have Clause 49 removed from debate so that when we go to the Second Reading, we do not consider Clause 49 of the Bill?

Thank you, Hon. Speaker.

Hon. Speaker: We cannot debate the ruling. Hon. Musimba.

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): Thank you, Hon. Speaker. I thank you for your considered ruling on the issue. My concern is about public participation in light of a recent ruling which was given that considerations that we make during the Committee of the whole House are not subjected to public participation. In this case, more specifically when we are dealing with this Finance Bill, you find that as it emanates from the Executive, the Executive arm of the Government has already subjected the Bill to public participation during the budget-making exercise before being published, which informs the amendments they bring forth.

However, at the point that we have given the considerations during Second Reading, more importantly when we bring the proposals, it is now subject to challenge in court. So, I ask you, Hon. Speaker, to guide us in terms of when we bring in public participation as regards a Bill so that they are not negated by the courts as we move forward. We will not have an opportunity since, in accordance with our Standing Orders we have up to 24 hours prior to Committee of the whole House sitting to bring amendments to your able office. As such, there is no opportunity for public participation. This is an area which needs to be addressed. I need your guidance on how we will proceed.

Hon. Speaker: Hon. Musimba, you are suggesting something that is a bit strange. Is it before we proceed to the Committee of the whole House or after the Committee of the whole House?

Hon. (Dr.) Patrick Musimba (Kibwezi West, Independent): This is in light of that ruling which was given in the courts challenging the issues we brought to the Committee of the whole House, which were not subject to public participation. As such, they were not relevant in the material Bill which was assented to. That is the primary concern. Should we say that all Members bring all their proposed amendments after the Second Reading of the Bill and then we subject it to public participation instead of considering it in the Committee of the whole House, Hon. Speaker?

Hon. Speaker: Fortunately Hon. Musimba, I am sure all Members know that the authority under Article 124 of the Constitution to make rules that guide the processes to be applied by any House of Parliament is exclusive to the House. The courts cannot give us rules of how Parliament will function. I will be the last person to accept that kind of situation. If our procedures are to be developed by the courts, then we would lose the relevance or need to exist. The courts have also developed their rules to guide their operations. It cannot be like that. That is why Article 124 of the Constitution is there. It gives authority to the respective Houses of Parliament to make rules which guide our operations.

As far as the issue of amendments, which are proposed by Members is concerned, it is within our Standing Orders. Earlier on when the Leader of the Majority Party was reading the business before the House next week, he urged those Members who intend to make proposals to amend the various clauses and other provisions in the Finance Bill to begin preparing. Those proposed amendments are always approved by the Speaker on the basis of constitutionality. They should comply with the Constitution. Two, they must be relevant to the Bill which has gone through public participation. If a Member introduces a matter which is alien to the Bill or offends any provisions of the Constitution, then the Hon. Speaker has the power to reject any proposed amendment.

Having followed that procedure, as long as the proposed amendments are relevant to what is there, after engaging with the stakeholders and the public in general, each Departmental Committee makes a report which reflects the views that they have collected. For instance, if the Committee publishes the Bill and invites the views of the public and other stakeholders and nobody appears, it cannot stop the House from going forward. It will make a report and say that they advertised for people to come and give views and nobody gave any views or that the views that they got offend parts of the Constitution and other existing legislations. To that extent, we cannot be bound by any decisions that the courts may wish to advance, and especially with regard to the procedures here. We have the responsibility to develop our own internal processes and rules of procedure, just like the courts.

Hon. Members, we can proceed.

Hon. (Ms.) Gladys Wanga (Homa Bay (CWR), ODM): On a point of order, Hon. Speaker.

Hon. Speaker: I can see an intervention by Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Speaker, I wanted to contribute to the Finance Bill.

Hon. Speaker: It has already been called out. Hon. Members, you can see there is some business appearing as Order No.9 which is the Committee of the whole House. The business in Order No.9 will take less than 20 minutes. It is fair for us to conclude the Bills. It is for the convenience of the House. It will take very short time. I have looked at the Report of the Departmental Committee on Justice and Legal Affairs with regard to its consideration of the President's reservations to the Parliamentary Service Bill (National Assembly Bill No.6 of 2018). They have proposed amendments to Clause 43. The amendments, as contemplated in Standing Order No.154(4) and Article 115 of the Constitution, are in tandem with the intentions contained in the President's reservations. Therefore, they fully accommodate those reservations. Hon. Members, I suspect that you may not take a very long time because this is a Bill that you have already considered.

Hon. Members, allow me to re-arrange the Order Paper. I am happy because I have seen a Member in red. I was looking for the person who would conduct the next business. The Hon. Deputy Speaker had told me that he would do it, but I have looked around and I cannot see him. The first Chairperson of the Chairperson's Panel, Hon. Soipan, is in the House.

Hon. Members, we will move to Order No.9, conclude it quickly and then go back to Order No.8. In Order No.9, the Leader of the Majority Party had written to request that he needs further consultation with the Ministry concerned. What appears as business (iii) in Order No.9 has been taken out of the Order paper. So, you will only do (i) and (ii).

You can call for the next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

**CONSIDERATION OF PRESIDENT'S RESERVATION TO
THE PARLIAMENTARY SERVICE BILL**

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Hon. Members, we are in Committee of the whole House to consider the President's Memorandum to the Parliamentary Service Bill (National Assembly Bill No.6 of 2018.)

Clause 20

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 20 of the Bill be deleted.

The deletion does not in any way take away the powers of the Parliamentary Service Commission as spelt out in Article 127(6) of the Constitution. It is very clear.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): There seems to be no interest to contribute.

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

(Clause 20 deleted)

(Hon. Aden Duale consulted several Hon. Members)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuyu): Leader of the Majority Party. You seem to be having a parallel *kamukunji*.

Hon. Aden Duale (Garissa Township, JP): We are discussing the Building Bridges Initiative (BBI) now that *Punguza Mizigo* is finished.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I see the Chairperson of the Departmental Committee on Justice and Legal Affairs wants to move his amendment. Leader of the Majority Party, are you the one moving the amendment?

Hon. Leader of the Majority Party, the Chair of the Departmental Committee on Justice and Legal Affairs has an amendment, so you have to move the clause first then we come to his amendment. You are being distracted by the *kamukunji*.

Clause 43

Hon. Aden Duale (Garissa Township, JP): In the last 24 hours, there have been new political developments in the political arena among the *Tangatanga*, *Kieleweke* and the Orange Democratic Movement (ODM) guys. So, they are consulting. Hon. Kamanda has defected from the Jubilee Party to ODM.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): But, you are on record, Hon. Leader of the Majority Party, having stated clearly the other day that there is nothing like those terminologies you are using here. That is a subject for a *kamukunji* and not for the Committee of the whole House.

Hon. Aden Duale (Garissa Township, JP): You should disband them. They are here. There is the guy from Mathare, the leader of *Tangatanga* and another one from *Kieleweke*.

Hon. Temporary Deputy Chairlady, I beg to move:

THAT, clause 43 of the Bill be amended-

(a) in sub-clause (1) by inserting the words “on the advice of the Salaries and Remuneration Commission” immediately after the words “shall be determined”; and

(b) in sub-clause (2) by deleting the words “every three years or within such shorter period” and inserting the words “on the advice of the Salaries and Remuneration Commission” immediately after the word “determine”.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I now call upon the Chair, Hon. Cheptumo, to move his proposed amendment to the Clause.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, the Bill be amended by deleting Clause 43.

Hon. Temporary Deputy Chairlady, what the President has done is to provide explicitly that the Salaries and Remuneration Commission (SRC) advises in the event that the Parliamentary Service Commission might wish to increase salaries of Members and staff. That is a clear provision of Article 230(4)(b) of the Constitution. There is no need, therefore, for us to provide for it in the Bill because it is clearly provided for in the Article 230(4)(b) of the Constitution.

That is the justification for us proposing that the clause should be deleted because it is not adding any value. The Leader of the Majority Party agrees with me on this matter. I had consulted him. That is the position we have taken as a Committee.

The Hon. Speaker agreed that this amounts to accommodating the President's proposal. Therefore, the issue of two-thirds does not arise. That is why the Speaker gave a position before he left.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): That is in order, Hon. Chairman.

(Question of the amendment proposed)

Hon. Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, I support the amendment by the Chair because we are talking about the role of SRC which the President raised. Its role is clearly set out in Article 230(4)(b) of the Constitution. So, there is no need of further reciting that in the Bill because it is already in the Constitution. This Bill is for the Parliamentary Service Commission. We do not need to bring SRC matters which are in the Constitution to the Bill. I agree with the Chair. The President raised it and we are deleting the entire Clause 43 so that it remains in the Constitution.

I beg to support.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Chairlady, without adding much, I want to state that SRC must note that in the case of staff of Parliament, their role is advisory. So, they should not move in to try and set salaries of the Parliamentary Service Commission. There is a difference. It should be noted clearly that as far as the staff of Parliament are concerned, the role of the SRC is advisory. Setting and reviewing of salaries belongs to the Parliamentary Service Commission on advice of the SRC. But, I know that the SRC likes to overstep its mandate even on this one. They sometimes move in to try and set the benefits for the staff of the Parliamentary Service Commission. That should be noted even as we pass this amendment.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairlady. I rise to support Hon. Cheptumo's amendment. It is, indeed, positive. It does not negate the President's proposal at all and a simple majority will work out. We do not need to re-state what is stated in the Constitution.

I request Members who are here to support the amendment. As my colleagues have clearly put it, the role of SRC is clear in the Constitution while the role of the Parliamentary Service Commission is to ensure effectiveness and efficiency of Parliament. There are some other jurisdictions that we can try to benchmark. The SRC is just there for advisory purposes. Because of the unique aspect of Parliament, Parliamentary Service Commission is the one in a better position to ensure that there is effectiveness and efficiency. As I said earlier, that deletion does not negate at all, it adds value. So, we are leaving it as it is outlined in the Constitution.

I support. Thank you.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I will give one more Member an opportunity to speak. Hon. Mbui, be brief.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Chairlady. Mine is a serious concern. We are dealing with President's reservations to a Bill we passed in the House. The President has expressly expressed his views on Clause 43. We are now amending what the President has proposed. I do not know legally whether we can amend and then we say that we are not negating what he has stated. The President has forwarded a memorandum. That is just a concern.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Mbui, I do not know whether you missed the Speaker's ruling. If you did, I will ask Hon. Wamalwa to brief you. That has been overtaken by events.

Hon. Ochieng'.

Hon. David Ochieng' (Ugenya, MDG): Hon. Temporary Deputy Chairlady, I just wanted to note that we would not have gotten where we are, if we followed the advice of the lawyers in this House and Parliament. Sometimes we tend to be overzealous. I did not see a reason why we had to include SRC because it makes us look bad – that Parliament wants to muzzle SRC. Following what Hon. Wanga said, I agree that we need to make all the commissions understand that the commissions as set up in Chapter 15 were supposed to work independently but not in a vacuum, in my opinion. They are not silos, they work with each other. We want to advise SRC that much as we would defer their advice, they must always consult the commissions that have the expertise in the various areas that are concerned.

I support the amendment.

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

(Clause 43 deleted)

Hon. Aden Duale (Garissa Township, JP): Hon. Temporary Deputy Chairlady, Hon. Ichung'wah should sit far from where I am sitting.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): You are very distracted today, Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): It is this man. He usually does not stay late. He should have left by now.

Hon. Temporary Deputy Chairlady, I beg to move that the Committee do report to the House its consideration of the President's Reservations to the Parliamentary Service Bill (National Assembly Bill No.6 of 2018) with amendments.

(Question proposed)

(Question put and agreed to)

THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION (AMENDMENT) (NO.3) BILL

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Members, we are considering the Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill (National Assembly Bill No.35 of 2019)

(Clause 3 agreed to)

Clause 2

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairlady, I beg to move:

THAT, Clause 2 of the Bill be amended-

- (a) in the proposed new paragraph 1(2) by deleting subparagraph (f);
- (b) in the proposed new paragraph 1(2) by deleting the words “one person” appearing in subparagraph (h) and substituting therefor the words “two persons”;
- (c) by deleting the proposed amendment to paragraph 1(6) of the Schedule to the Act.

The justification of the amendment is that the new paragraph 1(2), (a) and (b) as noted in Clause 2 are related. The amendment in paragraph (a) proposes to delete subparagraph (h). Paragraph (h) talks about one person nominated by the Attorney-General. We wanted to increase the number of the members from the religious groups. We are deleting (f) and proposing new paragraph 1(2) by deleting the words “one person appearing in subparagraph (h) and substituting therefor the words “two persons” so that we remove the Attorney-General from providing a member for the selection panel and increase the number for the religious groups from one to two. When the Independent Electoral and Boundaries Commission (IEBC) appeared before us and we had a discussion, we felt that having one member from the religious groups would be unfair noting that the current membership of the IEBC is nominated by the religious groups. So, we felt that two was fair. We removed the Attorney-General and replaced with an additional number from religious groups. That is the essence of those two amendments.

(Question of the amendment proposed)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Temporary Deputy Chairlady. This is an important amendment. I support it. The Attorney-General seconding a nominee to the selection panel was like the Government of the day seconding a nominee. Removing that one and putting it to the interreligious council makes sense, only that all the institutions that have been given responsibility to nominate people to this very important Commission should bring in people of integrity, people who are decisive and people who can take this country forward. This is the single most important Commission as far as the future of this country is concerned. In fact, this Bill should be passed with speed. We now need to move ahead and clear the current commissioners because they have been the most indecisive lot.

Chebukati and his team must now go home. We must now bring a new lot of commissioners who have integrity and can move this country forward.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Wakhungu.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Chairlady. I rise to support. If you check the HANSARD during the Second Reading, I raised this matter, particularly when it comes to the religious groups. I asked the question: What criteria are we going to use? We have so many religious groupings in this country. We have the National Council of Churches of Kenya (NCCCK), Kenya Conference of Catholic Bishops (KCCB), the Presbyterian and the Muslims. There will be room for anarchy when you give them one slot. I am happy that the proposal came in based on what we had recommended when it was at the Second Reading. It is important that this particular important selection panel is put in place immediately so that we can move with speed. We know very well that the IEBC is very critical. We will have delimitation of boundaries or the boundary review after the census. We need people from the church. At least, the threshold for people from the church is somehow higher, and there is an element of trust.

I thank you and support.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Ochieng.

Hon. David Ochieng (Ugenya, MDG): I support this amendment. The Chair of the Departmental Committee on Justice and Legal Affairs deals with so many institutions. We need to give guidance in the future. If we will have panels that have so many people, like 11 in this situation, we open up these panels to a lot of interests and gerrymandering. The practice in future should be looking at five or seven at most so that these are small panels that do an efficient job without having these kinds of brokers coming in.

I support and also agree to the fact that the position of the Attorney-General (AG) has changed in the new Constitution. It is not the AG that was. The AG is now an advisor to the Government of the day. Therefore, he cannot be given powers to appoint like in this situation where we are giving institutions powers to appoint.

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): Hon. Rasso.

Hon. Ali Rasso (Saku, JP): Thank you very much, Hon. Temporary Deputy Chairlady. I rise to support the proposal by the Chairman of the Departmental Committee on Justice and Legal Affairs.

Other than looking at election itself, I think Kenyans tend to have a lot of faith and confidence in the church people, whether they are Christians or Muslims to an extent that brings fidelity to our elections. It will be good if individuals are brought by different parties. It happens that Hon. Wamalwa will be one of the party leaders very soon. To cut out that, Kenyans will have confidence in the IEBC when we have people from religious groups. In the long run, I think the IEBC is about who wins the election more than what they seriously do.

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

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

(Clause 2 as amended agreed to)

(Title agreed to)

(Clause 1 agreed to)

The Temporary Deputy Chairlady (Hon. (Ms.) Soipan Tuya): I now call upon the Mover to move reporting.

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Chairlady, I beg to move that the Committee do report to the House its consideration of the Independent Electoral and Boundaries Commission (Amendment) (No.3) (National Assembly Bill No.35 of 2019) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORTS

CONSIDERATION OF PRESIDENT'S RESERVATIONS TO THE PARLIAMENTARY SERVICE BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I call upon the Temporary Deputy Chairlady to report to the House. We will start with the Schedule on the President's Reservations to the Parliamentary Service Bill (National Assembly Bill No. 6 of 2018).

Hon. (Ms.) Soipan Tuya (Narok CWR, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the President's Reservations to the Parliamentary Service Bill (National Assembly Bill No.6 of 2018) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Can we have the Mover of the Bill to move agreement with the report?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, on behalf of the Leader of the Majority Party, I beg to move that the House do agree with the Committee in the said report.

I request Hon. Kimunya to second.

Hon. Amos Kimunya (Kipipiri, JP): I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, from where I sit, I note that we do not have the requisite numbers for me to put the Question for adoption. Therefore, I defer the putting of Question on this one.

(Putting of the Question deferred)

THE INDEPENDENT ELECTORAL AND BOUNDARIES
COMMISSION (AMENDMENT) (NO. 3) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have reporting on the Independent Electoral and Boundaries Commission (Amendment) (No.3) (National Assembly Bill No.35 of 2019).

Hon. (Ms.) Soipan Tuya (Narok CWR, JP): Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Independent Electoral and Boundaries Commission (Amendment) (No.3) Bill (National Assembly Bill No.35 of 2019) and approved the same with amendments.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Can I have the Mover of the Bill to move agreement with the report?

Hon. William Cheptumo (Baringo North, JP): Hon. Temporary Deputy Speaker, I beg to move that the House do agree with the Committee in the said report.

I also request Hon. Kimunya to second.

Hon. Amos Kimunya (Kipipiri, JP): I second and thank Hon. Members for their input.

(Hon. Moses Cheboi walked into the Chamber)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Deputy Speaker. Let me give you time to settle. I know you are walking in. Thank you. You know we must respect the Speakership.

(Question proposed)

I will proceed to put the Question. I saw the Deputy Speaker walking in and thought that quorum has been raised. The Clerks-at-the-Table should confirm for me.

*(The Clerks-at-the-Table counted
the Hon. Members within the Chamber)*

Hon. Members, the House is not properly constituted for me to put the Question on the Independent Electoral and Boundaries Commission (Amendment) (No.3) (National Assembly Bill No.35 of 2019). I order that the Question on the same will be put in the next sitting.

(Putting of the Question deferred)

Next Order!

BILL

Second Reading

THE FINANCE BILL

(Hon. Joseph Limo on 18.9.2019)

(Resumption of Debate interrupted on 18.9.2019 – Afternoon Sitting)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, as a matter of procedure, we know we always do not debate twice on a Bill. This is resumption of debate. We had 19 Hon. Members who had debated on it. Hon. Sophia Noor had a balance of four minutes.

Hon. (Ms.) Sophia Noor (Ijara, PDR): Thank you, Hon. Temporary Deputy Speaker. I had a balance of some minutes. I want to first appreciate the ruling by the Speaker this afternoon. Some of the issues that I wanted to raise and discuss are what the Speaker ruled on this afternoon particularly, Clauses 50 and 51 on the removal of the interest rate capping on loans and lawyer-client relationship on disclosure. Those are the things I wanted to discuss at length.

I will conclude by stating that, as a country, we need to reduce the cost of doing business. We need to give incentives to investors. We have many investors who are interested in doing business in this country, but because of the high cost of services, they are not able to cope with the costs. I know there are several investors who have moved out of this country to other countries because those countries have enabling environments for doing business. This is a Finance Bill. It needs to raise resources to finance programmes and projects of the Government. We need to attract investors so that we can expand our revenue base. We must create an enabling environment for all investors and we must reduce the cost of doing business.

With those few remarks, I support.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Order Members! As we debate, please take note of the communication that was given by the substantive Speaker on this Bill this afternoon.

Member for Kathiani.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to contribute on the Finance Bill 2019 with amendments proposed by the Committee. First, I want to point out the issue of our budgeting process. I do not know whether it is international. I have an interesting observation. We have our expenses proposed and passed then later we come and discuss how to raise money to fund those expenses.

Last year, we had a major problem. We had passed a budget and when we were dealing with the Finance Bill, some of the proposed sources of income within the Finance Bill were part of the things Members wanted to negate. That would have meant that we would not have money

to run the Budget as it were. This is something that we need to look at going to the future. When we deal with expenses then later on with the income, I do not know whether that is the best practice internationally.

On matters of taxation and duty, it is important that we are able to figure out how to raise money to fund Government projects. There are a lot of things that Members talk about here. In fact, one of our cardinal responsibilities, as the representatives of the people, is to figure out how to get development for the people who elected us; how to get them water, how to improve their health and infrastructure in their schools and roads, and all sorts of agendas that come through our constituents. So, basically, it is important to look at these issues of taxation clearly. At the same time, we have to be careful. As we tax our people, taxation must not go beyond. There is a way you can tax people so that they generate income that will lead to more taxation that will give the Government more money.

I have looked at some of the proposed changes in taxation that are supposed to raise revenue for the country. For example, the proposed taxation on income from the digital marketplace is shocking. The digital market is the future. If we did not target and spot it several years ago, it means that was a major oversight. The future is digital. Any taxation that is being planned in the country must look at that area critically. A lot of our buying and selling is going to take place online. Going into the future, probably few or no people will walk to the shops. People will be able to order whatever they want from the comfort of their homes. That is the future we are looking at. So, this is futuristic and it is a brilliant idea to tap on that market.

Secondly, I saw the expansion of the withholding tax bracket to incorporate security services, cleaning and fumigation, outside catering, transport except by air, sales promotions and marketing services. My only concern on that will be on enforcement. It is one thing to talk about expansion of that bracket. How do you enforce it? An area like outside catering has so many people doing it in this country. Every pre-wedding, wedding, funeral and birthday parties are serviced by outside caterers. How will the tax collection agencies ensure that they capture this market and raise the revenue they require? We hope that it will also not be abused so that, for example, when I have a birthday party for my daughter, somebody will not walk in and claim that whoever did the cooking is offering outside catering services. So, that is an enforcement issue which needs to be looked at.

The other issue is the re-introduction of the turnover tax of 3 per cent on people whose businesses have a gross receipt of less than Kshs5 million. That is a positive thing.

Hon. Kimani Ichung'wah (Kikuyu, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Member for Kathiani, there is an intervention by the Member for Kikuyu. What is your point of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, I am sorry to interrupt the leader. My point of order is on relevance. I have listened to the Member for Kathiani. I do not know if he has read the Committee's Report. Some of the issues he is alluding to are issues that have already been covered in the Report. So, I am wondering if he is looking at the Bill together with the Committee's Report or without it. The issue he has raised on outside catering for birthdays is an issue that, if he listened to the Chairperson, has already been addressed.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! Hon. Member for Kikuyu, for the record, what is it that you picked that is not relevant?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, if he has... Sorry.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): What is it that you picked in terms of relevance?

Hon. Kimani Ichung'wah (Kikuyu, JP): I mentioned it, Hon. Temporary Deputy Speaker. You were speaking when I said it. So, you could not hear me.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): No! Just mention it to the House. You are not speaking to me. You are speaking to the House.

Hon. Kimani Ichung'wah (Kikuyu, JP): I said it is on withholding tax on caterers for birthday parties and weddings. If the Chairperson was here, he would have confirmed that they have already addressed and recommended the removal of that provision and in its place thereof, they have proposed more excise duty to be raised from things like alcohol.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): So, the Member for Kikuyu, are you on a point of information or a point of order? Do you want to inform the House? The Member for Kathiani, as you address us, can we hear you on what the Member has raised?

Hon. Robert Mbui (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I wish to proceed because these are issues that are contained in the Finance Bill. The fact that the Committee has deliberated on and mentioned them does not in any way mean that I cannot also give my opinion. Unless it is the Speaker who rules that we cannot discuss a certain aspect, like he has ruled out Clauses 50 and 51, the rest are allowed.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): I rule that it is a House of debate and Members are free to debate. However, we must always observe relevance. The Member for Kathiani, carry on.

Hon. Robert Mbui (Kathiani, WDM-K): Thank you. That is why I remain completely relevant to the Finance Bill up to the end. Having talked about taxation, there are exemptions that I have noticed and I feel that the area of exemptions, which I strongly support, is on two aspects. The first one has to do with the youth who are registered under the Ajira Digital Programme and the second one, the environmental challenges that we have. As a nation, plastic materials have clogged our environment and they are really messing up this environment. Therefore, the proposal to give tax incentives to those corporations that are going to be involved in the recycling of plastics is a brilliant idea and it is something that needs to be supported. The reduction of VAT on plant machinery and equipment for the manufacture of plastics is also very important. So, I feel that the incentives that have been given are quite important.

I want to finish by saying this: There is a very suspicious move that we have seen. This House debated the issue of capping interest rates. Member after Member contributed and it became law. Now I have seen an attempt, which I am happy the Speaker has ruled we can debate, to remove the capping. I think it is a very suspicious move. The proposal that has come here is that...When we put a cap on interest, it means that there is no money for borrowing by SMEs. The reality is that if you look at what the banks have done, even when interest rates were capped, they have gone into digital platforms and have been lending money to a lot of people. The control of digital platforms seems to be non-existent. If you look at the interest rates that people are paying, it is extremely too much money. So, on the issue of interest capping, I think

this is a matter that we need to discuss further. I would imagine that if it were possible, the Bill that is coming forth would give us opportunity to address this issue. This is an issue on which banks are canvassing; we get messages all the time. They are trying to ensure that we remove the gain...

The Temporary Deputy Speaker (Hon. Jessica Mbalu): Let us have Hon. Gichimu Githinji, Member for Gichugu.

Hon. Gichimu Githinji (Gichugu, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to contribute to various aspects of this Bill. I particularly support the amendments to Clauses 44 and 45 of the Bill, which seek to bring a legal framework that introduces what we call cargo consolidators. This is a very crucial amendment to the Standards Act because it will enhance sanity in importation.

On many occasions, goods of substandard value and counterfeit goods have been imported into this country. This is largely because the business of consolidators has no legal framework. In this case, we have also seen that most of the importers who have piled their goods with certain consolidators have also lost goods in the process, because you identify those consolidators at the point of import or from the country of origin. However, when you come into this country, you cannot find the person who consolidated your goods. In the process, we also have misinformation and a lot of issues relating to mis-declaration of some goods. And you find someone who imports, maybe, oil which is substandard may declare it as something else. So, this will bring a lot of sanity. It will also make sure that the consolidators who have been operating legally are not short-changed by other unscrupulous people who masquerade as consolidators.

The other aspect of this Bill that I would like to contribute to, but which I do not support, is the clause that seeks to delete Section 33B of the Banking Act. This is likely to plunge Kenyans again into high interest rates in this country. We have seen so many people auctioned at this time when the interest rate is capped at 14 per cent. What if we increase the interest rate to 20 or 28 per cent? People might even lose their lives. We have seen so many people losing property. You look at the newspapers and you notice that three to five pages are auctioneers' advertisements about property of people who had taken bank loans. And this is likely to escalate. So, I agree with the majority of the Members that this amendment is being sneaked in again to defeat the resolution of this Parliament to place the interest rate cap. This is a provision that needs to be amended at the Committee of the whole House so that we can conclude the debate that has been re-initiated in this Parliament, on the advice of the courts, by Hon. Jude Njomo.

Hon. Temporary Deputy Speaker, the other aspect that I would like to support is on clarification over salary. This is so that when the National Housing Fund (NHF) is being applied, at least, it will not affect the allowances. It will only affect the basic salary. This clarity is important so that employees are not over-taxed.

Finally, on the issue of Privileges and Immunities Act, it is a very good amendment so that those people who have been enjoying tax immunity, will also enjoy that immunity from the products that are locally purchased. These are some organisations, non-profit making organisations and other categories that are classified under the Privileges and Immunities Act. This ensures that they run to support communities and do what they are legally required.

Hon. Temporary Deputy Speaker, I support the amendment under Clause 38. With those mixed reactions in my debate, I believe other issues can be dealt with at the Committee stage.

I thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members, you never got used to Hon. Temporary Deputy Speakers who are of the female gender. Let us have Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. We know very well that the Finance Bill is a very important Bill because it gives revenue-raising measures. We have had a budget and the Big Four Agenda for Jubilee Party. For them to be funded, we must develop measures of raising revenue. As we do that, the key objective is to drive the economy into production as opposed to consumption approach.

Hon. Temporary Deputy Speaker, I would like to speak on the amendment of the Banking Act. I was one of the people who worked closely with Hon. Jude Njomo, the great servant of the people of Kiambu. When you look at the theory of demand and supply, when you look at the conceptual framework, this is a theory that has stood the test of time and has never been challenged.

In a market place, when the price of a commodity goes down, the quantity that is demanded should be higher. It is very ironical because when we cap the interest rates, that means the margin goes down and the goods to be demanded should be higher. In this case in the banking sector, it is on the contrary. When you try to probe further, these banks have conspired to deny an opportunity to SMEs simply because of the assumption that they are risky. This is a conspiracy. These banks have been making abnormal profits. Normally, when all factors are constant - *ceteris paribus* - that should not have been the case. However, because it is contrary and it is an issue of governance, that is why we call upon the Central Bank of Kenya which regulates banks to ensure that when the interest rate goes down, many people can afford to access credit. However, because they are used to abnormal profits and in this case they are not making the abnormal profits, they conspired to blackmail...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Hon. Wamalwa. Hon. Ichung'wah, are you are on intervention? Just remove your card from the intervention.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Absolutely. So, this is blackmail and we must look at it keenly. We do not want Wanjiku to suffer. Savings and Credit Cooperative Societies (SACCOs) always have interest rates of 12 per cent on a reducing balance, which comes to about 7 per cent and they make dividends. When you negotiate with some Micro Finance Institutions (MFIs), they give you credit on very low rates and they still make money. So, we cannot afford to allow banks to make abnormal profits again.

We are calling upon His Excellency the President not to abuse Article 115 of the Constitution when it comes to referrals. We want him to listen to us and the Wanjiku. Based on Hon. Speaker's ruling today on Hon. Jude Njomo's Amendment Bill that we have just passed in the Second Reading, it is very unfair to say that if we pass this one, Hon. Jude Njomo's Bill dies. We know there are many people in the country and to drive this economy we must rely on SMEs.

However, the blackmail that is going on to force Parliament to remove the capping of interest rates is unacceptable. When you do a trend analysis, earlier on when capping had been removed, banks were making abnormal profits. Even now as they cry, they are still making profits. Currently, the Cooperative Bank and the Equity Bank have made overwhelming profits. So, they want to continue robbing the common *mwananchi* in the pretence that they want to

increase accessibility to the SMEs, and it is very wrong. Unless you want to show me any academic paper that somebody has challenged the theory of demand and supply, graphically when the price goes down, more should be demanded.

It is the responsibility of the CBK to regulate banks and so the Governor of CBK should have gone to the banking industry and asked why that is happening. I tried applying for a loan and was told that I am politically exposed. You cannot be given a loan as a politician. The core business of a bank is to give money. It is not to keep the money in their safe. It is to advance money to the people so that people can use it and they get interest.

In China they charge an interest rate of 2 per cent. Why? Are they performing miracles? The EXIM Bank that is giving us many loans charges low interest rates. So, the medium enterprises that are there can compete. If you are a contractor and you are borrowing money, they want to put it at 20 per cent. How will you make your profits? It will be very difficult. So, I am calling upon Hon. Members that we oppose this. If it is an issue of getting the two-thirds majority, I am suspecting His Excellency the President might reject it. This is because I have seen in many of his contributions talking about removing the capping. We should remove conflict of interests. We know we have business communities here. We know who owns the banks and so in this case cases of conflict of interest must be blocked.

We must legislate for the benefit and the interest of the common citizenry. If SMEs are going to access money when it comes to production economy, they will provide employment to our youth. So, I am calling upon our Hon. Members to reject this amendment of the Banking Act, even if it means bringing two-thirds majority to overturn the President's referral, so be it.

This is the time we must legislate. Article 93 of the Constitution says no one has the right to legislate except Parliament. We must do that for the interest of our people. The people in the banks are trying to block the entry.

Last time we argued with Hon. Ichung'wah... As a community we have been trying to come up with a bank, but the capital requirement is excessive. So, the few people who own banks are trying to raise entry barriers. You cannot join the banking industry because it is lucrative, they want monopoly and right now they are merging to enjoy economies of scale. Recently we have seen the Kenya Commercial Bank buying out National Bank of Kenya. It is going to be number one both in assets and customer base.

Secondly, we have the merger between Commercial Bank of Africa (CBA) and the NIC Bank. It is a big monopoly. So, we cannot allow few people to enjoy such benefits at the expense of the common Kenyan. Again you want to remove the capping of interest rate for them to continue making abnormal profits. This is unacceptable! We are here for the interests of the common Kenyan. There is a big gap in this country between the rich and the poor. So, this amendment of the Banking Act is tantamount to robbery with violence. In the industry, we have credit facilities such as *Fuliza*. Look at the interest rates charged by *Fuliza*. It is abnormal. We need to investigate which banks are facilitating *Fuliza*. So, we must protect the consumer.

You might be excited when you *okoa jahazi* on your mobile phone. This is an abnormal profit that Safaricom is making through *Okoa Jahazi*. Recently my credit was over and I borrowed Kshs1,000. Do you know how much they charged? Kshs100, that is 10 per cent per day. So, per annum it will be what? This is abnormal. So, it is high time we protected the consumer. You get money quickly but pay back through the nose. This is abnormal and

something we should not accept. When you quantify and calculate *Okoa Jahazi*, it is like robbing a bank. This is an abnormal profit they are making.

We are here to protect the interests of the common *mwanaanchi*. So, it is the highest time we called the Governor of the Central Bank of Kenya. We need to know their agenda because of the conspiracies they are doing. As Parliament we are here for the interests of the common *mwanaanchi* and we must reject this when the time comes.

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

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Chris Wamalwa. Let me have the Member for Saku, Hon. Rasso Ali.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Finance Bill which is a mixed bag. As legislators in this House, one thing we must guard against is exactly what Hon. Chris Wamalwa has said, that we should not allow sneaking of things which in the long run will bite us and affect our people in a big way.

After education, taxation is the greatest equaliser. Our tax regime must be clear, fair, transparent, appropriate and an enabler. If it does not fit into this category, then it means it is not a good tax system. If we want to run a good country we must be prepared to pay taxes. If need be we must be prepared to pay more. But, for us to pay taxes, Kenya needs good service delivery whether it is in hospitals, roads, water or all kinds of services, including security. I have looked at both the Bill and the Report by the Committee. I want to thank the Committee for what I consider to be a very detailed and comprehensive Report.

In this Bill, we need to guard against three things and one of them is double taxation. It is very easy to talk about the turnover tax by the taxman at the headquarters and counties where taxes are also collected. In the Bill, it states that this should not exceed Kshs5 million during any year of income. Turnover is payable to any resident person. It is good to state as it is, but my worry is the clarity in execution of this particular aspect in this Bill.

In the Report there is something Hon. Ichung'wah said, and I quickly perused through the Bill and did not see it. One is the area of growing the tax bracket. Today, the most profitable areas of taxation are the service industry.

In the olden days, we used to look at hotels and tours. This was a very narrow approach. But now the taxman is targeting outside the box and into the future horizon on things like digital platform. I was asking myself what Mark Zuckerberg came to do in Nairobi. I thought maybe he was not doing very well in Kenya. It means the money they are making is mind boggling. So, the gentleman came to Nairobi and went to a fish and chips outlet to appreciate that there is a big market in Kenya.

The taxman should not just raid the normal areas of cigarettes and beers. They must look at where the money is today. I am happy the Speaker made his ruling and be that as it may, we respect it. The important thing is that lawyers are among the people who make big monies in this country. They basically represent you in all that you do other than the oxygen you breathe in. Here, they have cleverly brought something to the House to expunge Sections 50 and 51 of this Bill. But, I think during the Committee of the whole House it is important for us to see if we can make some money from here.

There are a few areas I want to talk about. One is the area on the Proceeds of Crime and the Anti-Money Laundering Act. This is also a major area of cash flow and a threat to the national security of this country. If we do not have the purview of how much is transacted in

what is called the darkroom in the back office, we might not be getting value for money. This is in terms of security and looking for where the big monies are because there are people who can easily hide money in a clever way.

Another area of interest is on the privileges and immunities. What I wanted to see in the Report is a big view of some of the major companies that will enjoy this tax exempt because this is an area that is subject to abuse. Having served in the Kenya Defence Forces (KDF) in the olden days we used to have the Armed Forces Canteen Organisation (AFCO). The exemption of duty to this facility for members of the armed forces was removed. Those who went for missions all over the world in some of the very dangerous places would get tax exemption on imported cars. But, this is no longer there.

Hon. Kimani Ichung'wah (Kikuyu, JP): On a point of order, Hon. Temporary Deputy Speaker.

Hon. Ali Rasso (Saku, JP): Yes, you can give me information, the Chair of Budget and Appropriations Committee.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Ichung'wah and Hon. Rasso Ali, I will treat that as noise because he has not... Hon. Ichung'wah I can now see your intervention, let me hear what you want to say.

Hon. Kimani Ichung'wah (Kikuyu, JP): On a point of order, Hon. Temporary Deputy Speaker. Thank you, Hon. Temporary Deputy Speaker. I appreciate Hon. Rasso's acceptance of the point of information. He said I had mentioned something and I was wondering since I had not contributed to this debate. I remembered he must have been referring to my intervention when the Member for Kathiani was speaking.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): But Hon. Rasso should not listen to Members. He should address them through the Chair.

Hon. Kimani Ichung'wah (Kikuyu, JP): He said I had mentioned something about withholding tax relating to...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): So, do you want to give information?

Hon. Kimani Ichung'wah (Kikuyu, JP): Yes. If he looks at the Bill and the Committee's Report on Page 69, there is a proposal to delete Clauses 10 and 13. With all due respect...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! Order! You know in the Budget and Appropriations Committee we respect you, but you must also respect procedures. Now that you are expressing that you want to give information, the procedure is that Hon. Rasso, officially, accepts that request. Hon. Rasso, do you need information from Hon. Ichung'wah?

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Temporary Deputy Speaker. I think the cat is already out of the bag. He has given that information.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Your time is over. I will add you one more minute because he confused himself. When we asked whether you needed information the answer should have been yes because for him to shout to you, I treat it as noise. He must follow the procedure, which he did very well. You have one minute.

Hon. Ali Rasso (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker. You are kind.

The final point I wish to make is on the area of the environment with regard to taxation on electric cars and recycling plants. The introduction of this by the taxman should be welcome because one of the major concerns today that we experience is the issue of environmental degradation and climate change.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I now give the Floor to the Member for Kikuyu. Now you have your time to speak.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. I will just pick up from that point because it seemed Hon. Rasso doubted what I had said. You know I am very meticulous when it comes to some of these issues. I read, understand and contextualise what is there. I am not like the Member for Kathiani, who was speaking to things he has not read yet they have been tabled in this House. This Report was tabled here. What I was speaking about to the Member for Kathiani is in this Report. Indeed, Clauses 10 and 13 relate to the withholding tax on security services, cleaning and fumigation services, and catering services offered outside hotel premises, transportation of goods excluding air transport, sales promotion and marketing and advertising services. The Committee is proposing deletion of those particular clauses. I want to begin at that point by thanking the Committee.

Hon. Robert Mbui (Kathiani, WDM-K): On a point of order, Hon. Temporary Deputy Speaker!

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Member for Kathiani, there is totally nothing out of order.

Hon. Kimani Ichung'wah (Kikuyu, JP): The Member for Kathiani is just a distraction. Does the Member for Kathiani understand that what is being named is in parliamentary parlance? It is provided in the Standing Orders.

Hon. Temporary Deputy Speaker, please, allow me to continue and ignore the Member for Kathiani. There is a problem with these *Kieleweke* people.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! Order, Hon. Ichung'wah! This House debates. Member for Kathiani, what is your intervention?

Hon. Robert Mbui (Kathiani, WDM-K): Hon. Temporary Deputy Speaker, is it in order for the Member for Kikuyu to continuously imply that I have not read the Finance Bill? I do not know what criteria he has used to make that decision because even when he raised his point of order when I was making my contribution, I explained that I am at liberty to discuss anything even if the Committee had discussed it. So, is it in order for him to continue bringing the political fight from outside there to this House? This is *Kieleweke* versus *Tangatanga*.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! Order! Hon. Members, let us be relevant. Let us follow the procedures.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, you agree with me when I raise the point of order on relevance that, indeed the Member for Kathiani can go into irrelevant things.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Carry on, Hon. Ichung'wah.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, I begin by making few comments on those particular services in relation to the withholding tax to be levied on them. The National Treasury had proposed taxation on those areas. I am glad the Committee,

led by Hon. Limo, has seen the logic of not going into that area. I appreciate what the Member for Kathiani said earlier, as much as we do the budget and seek how to finance it through the Finance Bill. Last year, we had a problem with VAT on fuel and other proposals that were to finance the Budget that were declined by this House. I must thank the Committee. Unlike last year, when people made this Chamber a dancehall for *mugithi* and other songs to object to things they did not agree with, and which they thought were popular with the public, the Committee has done the right thing. It has gone out there, listened to the issues that the public are not in agreement with and come up with proposals not just to delete those particular propositions, but also to make propositions on alternative ways of raising revenue. I appreciate what they have done, as much as Hon. Rasso does not seem to be very comfortable with going for the more obvious sources of revenue in terms of levying more excise duty on betting. They have gone for betting and sin taxes, including alcohol and cigarettes. I think it is the best thing to do under the circumstances of a country that is short of revenue. People will still drink. Even if you increase the price of beer to Kshs300 per bottle, they will still drink. Smokers will still smoke. So, tax them more. We should tax them more and more. Even the people who are gambling should be taxed more so that the Government can raise revenues. I thank the Committee for that.

The other issue that I want to speak to is the Capital Gains Tax. I am glad the Committee has proposed to remove the proposal to increase the Capital Gains Tax from 5 per cent to 12 per cent. It was not just absurd that the National Treasury had proposed such a huge increment at a time when we are talking about housing being one of the pillars in the Big Four Agenda. Increasing the Capital Gains Tax will negate the expected gain from the affordable housing agenda under the Big Four Agenda. Therefore, I am glad the Committee realised that it would negate that particular pillar of the Big Four Agenda. If we enhance the Capital Gains Tax, we will make housing developers and those in the property industry - I must declare interest because I have a big interest in the property industry - to increase the prices of properties and houses, and therefore, negate the very things we are talking about under the Big Four Agenda, especially on housing.

Secondly, the Capital Gains Tax as proposed was almost two-and-a-half times more, from 5 per cent to 12.5 per cent. I had hoped that they would even consider increasing that to about 7.5 per cent. If you read the Committee's Report, you will realise that all the stakeholders who appeared for public participation were opposed to these things. It is also good to be responsive to the things that are raised by people who appear before our committees. They have, therefore, removed that particular provision. I thank them for supporting the affordable housing pillar of the Big Four Agenda.

Finally, I will speak on interest rate capping. I agree with everything that Hon. Chris Wamalwa has said in terms of interest capping. It is, indeed, true that this country has become captive of our banking industry. Our banking industry is not only coercing and arm-twisting this country's economy, but also arm-twisting very innocent Kenyans who seek to borrow money from banks. Even as banks do that, we must not forget that the biggest culprit in the issue of high interest rates is the Government of Kenya. Until and unless the Government controls its appetite for domestic borrowing, we will not and we will never address the issue of domestic borrowing. Banks prefer to lend to the Government because the Government borrows at between 9 and 12.5 per cent risk free. Even if you were a bank owner today, you would not lend to Kimani, Wanga,

Wanjiku or Atieno at 14 per cent, especially those of us who are politically exposed personalities. We are a risk to banks. Just by the mere fact of being a politician, you are a risk.

Therefore, your credit rating is much higher than the Government's. There is no bank that will lend to you at 14 per cent when they can lend to the Government risk free at even 9 or 12 per cent. If we are intent on controlling interest rates, the basis of that control must begin from this House because we are the budget-making House. We are the ones who approve budget estimates and Government expenditure that will occasion a huge fiscal deficit and financing through borrowing. That borrowing has to come from foreign entities. You can hear Kenyans saying that we are almost becoming slaves of the Chinese and other people who we are borrowing from. The Government is cautious on whether to externalise most of our debt. It has been my position that we are better of externalising most of our debt than internalising it and borrowing from the domestic market. This, therefore, hinders the private sector from borrowing from banks. We must deal with those issues from here.

We must address - and I speak as the Chair of the Budget and Appropriations Committee - the question of our fiscal deficit. If we do not address it as Members of Parliament, we make it very difficult for the Government because it must implement what we have resolved in this House in terms of rolling out development projects. That is why the day before yesterday, I told Members in this House that even as we look at austerity measures, let us enforce them in the Government, especially in the Executive, in terms of cutting expenditure, more so recurrent expenditure. I was shocked this morning to read in the *Business Daily* - and I am waiting for that audit report - that the Ministry of Interior and Coordination of National Government is spending up to Kshs3 billion on entertainment. Who are they entertaining and why? I am waiting. There is nothing out of order. I know when I mention the Ministry of Interior and Coordination of National Government, Hon. Wanga, because of other reasons, may rush to support them. I will wait for the audit report.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! We respect the Chair of the Budget and Appropriations Committee, but let us also respect procedures. You cannot pre-empt debate. I will add you one more minute. You cannot think for Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Speaker, I take great exception when Hon. Kimani Ichung'wah says that for other reasons, I will say something when he speaks about the Ministry of Interior and Coordination of National Government. I find that deriding. It was meant to intimidate me, but I cannot be intimidated. My point of order is: Are newspaper reports eligible for debate on the Floor of the House? The last time I read my Standing Orders, they were not.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Ichung'wah, you are pre-empting debate, but Hon. Wanga says you are intimidating her. Speak to the reports of the newspapers. Give him one minute.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, with my body size and physique, I cannot intimidate Hon. Wanga with her size. I had no intention of intimidating Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): On a point of order!

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! I can see your card in the intervention slot. Hon. Member for Kikuyu, please, resume your seat. You looked for it. Let me hear her point of order.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Temporary Deputy Speaker, Hon. Ichung'wah is jumping from the frying pan into the fire. What he said earlier is even better. He should not talk about body sizes of women, especially in the manner in which he did. I expect an apology.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): From where I sit, I may not be able to know the difference between your sizes, but both of you should be relevant. I do not know how to measure sizes. Hon. Member for Kikuyu, just be relevant. Do not go to sizes of women or men. Order! Please, desist from being irrelevant. Carry on. Resist mentioning the size of honourable Members. From where I am, I am not able to measure your size and her size. I do not know what size you are referring to.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Temporary Deputy Speaker, now that she has called Hon. Millie Odhiambo to help and she is here, I beg to conclude. I had mentioned that we wait for that audit report. We must be serious as a House. When it comes to scrutiny of budgets and how they are being implemented, we must perform that role without fear and intimidation from whatever quarter.

I beg to support the Bill with the amendments proposed.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): On a point of order, Hon. Temporary Deputy Speaker!

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order! Hon. Millie Odhiambo and Hon. Onyango, unless it is anything else, the Member for Kikuyu has already concluded his debate. I wish you would put your card in the intervention slot. It has just come in. Let us have the Member for Ugenya.

(Loud consultations)

Hon. David Ouma Ochieng, Member for Ugenya. Member for Muhoroni, you are always out of order. You are out of order.

Hon. David Ochieng' (Ugenya, MDG): Hon. Temporary Deputy Speaker, most of the time when people have nothing to say, they make noise.

I rise to support this Bill. This is a very important Bill in any country and Parliament. Parliaments, elections and governments are driven by that age-old adage, namely, no taxation without representation. This Bill will tell Kenyans what will be taxed and by how much. That is why I would like us to be serious about it.

When the Chair was moving this Bill yesterday, he said that he is proposing measures that will help the Government raise Kshs30 million more. I could not disagree more because the tax measures that we already have in the country are enough. In my opinion, and my major point of argument this evening is that we just need to enforce our tax laws. We do not need new tax measures or items being taxed. We just need to ensure that the laws that we have today are enforced.

In the last few weeks, you have seen people being taken to court and dragged because of tax. Some of the highest earners in the world such as Cristiano Ronaldo earn so much money in football and he gets convicted on tax evasion issues, but no one jails him. The laws on taxation are not meant to put people in jail and incarcerate them. They are meant to ensure that the Government is able to collect revenue.

(Hon. Onyango Oyoo consulted loudly)

I cannot even hear myself.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Just be focused. Member for Muhoroni, the Member for Ugenya is being disturbed by your loud consultations. Please, lower your volume.

Hon. David Ochieng' (Ugenya, MDG): Thank you, Hon. Temporary Deputy Speaker.

As we enforce tax laws, the primary factor is whether we can collect tax and not how many people we can jail. When the KRA Commissioner-General comes on television and says that he will come after many and jail them, whom will he come after? Kenyans are the ones making this Government work. The best approach is to ensure that people pay tax. He cannot jail all of us. The Commissioner-General should know that he cannot jail all Kenyans because they did not pay tax. He must be innovative. He must talk to Kenyans to enable them to understand why paying tax is important. Where there are problems or issues, those must be sorted out based on the law. We do not want to hear people being arraigned in court or taken like criminals all over the place because they did not pay a certain amount of money. Talk to them and make them understand. Where people evade tax, use the necessary instruments. Taking people to court should be the very last and most punitive resort.

I say this with a lot of respect for the Commissioner. You arrest 100 people and say that people were sending them Kshs1,000 or Kshs2,000. We have people at the highest level of KRA on the payroll of Indians in this country receiving Kshs5 million, Kshs10 million or Kshs20 million every month to protect them from paying taxes. Your tax obligation is Kshs50 million. Then they sit with you and tell you that you do not need to pay Kshs50 million and you give them Kshs25 million. Others tell you to give them Kshs5 million and then you pay tax worth Kshs5 million. If they can enforce the tax regime in the right way, we will be collecting triple what we are collecting today. They should ensure that they are doing the right thing. The current tax bracket is so wide that they need to ensure that everyone else is involved in it and then have the resources concerned.

Hon. Temporary Deputy Speaker, two, there is the issue of the National Housing Development Fund which has gone to the courts. It is still being adjudicated. I appreciate the President's Big Four Agenda and especially housing being at the centre of the same. Think about it this way: In July, 2019, one of our oldest and most prolific cement factories in Kenya announced that it was going to downsize at the level of 600 employees. We have been having a housing boom for 15 years but the cement factory is going down. So, which cement do we use? Mabati Rolling Mills (MRM) and other companies that produce iron sheets are going down but we have a housing boom. Which iron sheets do we use? I do not believe that a housing levy is the solution to the issue of housing in the country. The solution is to encourage more people to construct houses in this country. I am certain that in the next 12 months, all the Members of Parliament will have built a house or two for a widow because we are politicians. However, make it easier for other Kenyans to help other Kenyans have houses. There are old people who do not have money to build houses. I would love a tax regime that allows you to build a house for an old lady or a person who cannot afford to build a house and then you get a tax rebate. If you collect the housing levy and then you use it to buy Chinese cement, Brazilian cement or

Egyptian cement, you are exporting the money you are collecting to build the country abroad. We need to protect our cement industry and construction industry from these kinds of imports.

I never imagined that in my life I would see Kenya importing sand. The Chinese bring already built walls to this country. They just put them one over the other. The Chinese are building walls in China using Chinese cement and sand and then bring them here. I never imagined that Kenyans would import sand. These are the areas you should look at when you are talking about our revenue systems. The housing boom and housing agenda that the President talks about will never result into any job in this country, unless we look at it very keenly and ensure that Kenyans are given a chance to decide how they want to fund housing in the country.

Look at what we did with the Standard Gauge Railway (SGR). We introduced a railway levy sometime back. The railway is not doing very well. People are being forced to use cargo lines. We are now saying that we will reduce the import declaration fee from 2 per cent to 1.5 per cent. Why would you tax imports for production? As the President, if you are saying that you want to industrialise and make the country to be like Singapore, which did not have import declaration fee, why should you levy people who are importing raw materials to produce in the country? Singapore did not tax imports of production. That is how they grew. President Uhuru Kenyatta must know that he will not grow this country by continuing to tax imports of raw materials.

This country will grow when we learn to be disciplined, to put our mouths where our monies are and not to let down Kenyans even where it is very clear that we are doing it. You have heard that we will still put some money in the railway line and yet it is making losses. I have heard Members saying that we are widening the tax bracket and taxing betting. We are still taxing imports in the 21st Century. Let me tell you something that happened. We banned the use of polythene paper. We said that we do not want them. We said that we would encourage the use of the normal paper bags for packaging. We are a member of Common Market for Eastern and Southern Africa (COMESA). So, Egyptians will import the raw materials of making paper from India and Oman at zero per cent. Our producers of paper export that raw material and when they get to the border, they are charged 25 per cent. Because we are in COMESA, on a good day, any paper product from Egypt starts at 25 per cent cheaper because we are levying 25 per cent on raw material and Egypt is not doing the same. Hon. Temporary Deputy Speaker, I request for a minute to finish my contribution.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You are already consuming your time. Finish your contribution within your time.

Hon. David Ochieng' (Ugenya, MDG): As we pass the Finance Bill, I request that we need to put Kenyans in front and ensure that we are honest to them. Let us all be ruled by the same law.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. We appreciate your contribution, Hon. Member. Let me hear from one-time powerful Minister for Finance.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. Let me start by appreciating the work that the Committee has put in this Bill. I have gone through their Report. Its thoroughness is indicative of the time and effort that they have put in this Bill. The Committee had 45 stakeholders who appeared before them. They all come with very divergent interests. Balancing all those things can be a challenge.

They have good recommendations. We must commend them. I want to highlight a few things. I want to agree with something that was raised earlier by Hon. Mbadi in terms of some purported amendment to the Accountants Act to remove student accountants from being registered. When we were amending the Accountants Act those days, we realised that what people think of student accountant is anyone who is not qualified to be an accountant. Some of them are very senior accountants in Government corporations but they have not passed the final exam. Because there was no mechanism of regulating them, they would do all their rogue business and pretend that they are not regulated by anyone. It is at that point that we said that we put everyone who has either qualified or is in the pipeline to qualify within the ambit of the Institute of Certified Public Accountants of Kenya (ICPAK), so that you can regulate them through their training and even after they have qualified. I am glad because the Committee has also seen the sense of that and suggested that the amendment by the National Treasury should be removed. We will strengthen it even further by bringing in ICPAK which is the regulator of all accountants to have a big say at not only those who have qualified but also those who are in the pipeline of being qualified.

When you look at all the corruption that is taking place in this country and the plunder of public monies, you blame the accountants. On one hand, we want to fight corruption but on the other hand, we say that we remove the accountants from the regulator, which does not add up. I am glad because the Committee has seen that and even supported some other amendments that were brought in by ICPAK to further strengthen the regulatory framework and ensure that people who work as accountants in the public or private sector are regulated, whether they are qualified or not. I want to commend the Committee for that.

There are some surprises in this Report. Just the other day, the Departmental Committee on Transport, Public Works and Housing brought us a very good Report after analysing what is happening with Kenya Airways (KQ). It recommended that we should nationalise KQ which requires massive investment of public money to pay off the current investors and loans. KQ appeared before the Departmental Committee on Finance and National Planning and made some recommendations that there are some taxation measures that can help them to be competitive in line with international best practice, including the recommendation that was made by the International Civil Aviation Authority. These are exemptions that had been granted to KQ in my time. They were removed here when we reviewed the VAT in 2013 which has led to some of the problems that KQ has. But the Committee in their analysis came out with a very peculiar conclusion that it rejected the proposals by the KQ.

A proper analysis of the aviation industry was necessary in order to assess the exemptions that can be effected in the industry. Who is going to do this analysis? The Departmental Committee on Transport, Public Works and Housing already did the analysis and said that we need to save Kenya Airways. It just shows that perhaps in this House we are working on a silo basis or at cross-purposes. One Committee says we save KQ while another one says we should not save them. This is something we probably need to do before the final amendment, so that the two Committees sit together and see if there is something that they can do in this interim stage through the Finance Bill by adopting some of the recommendations they made, for example, to make KQ be at par with other airlines. They suffer when they go out there, but when other airlines come here, they do not pay the same costs that KQ is forced to pay at home. I do not

speak for KQ but fortunately, I was the Minister for Finance when I exempted them and when I was in the Ministry of Transport, I supported them and we had some growth.

I urge the two Committees to sit together and harmonise the interests which are basically the same, that we need an airline industry that works. What can we do in the Finance Bill to help so that the National Treasury does not continue in its search of levying more money to raise more funds, and does not kill KQ, where it is the main shareholder, and then go back for the same money they have raised from taxing KQ to bail them out through nationalisation? It does not make sense.

Let me also add my voice to the issue of the banking amendment. I am on record in this House in the past having opposed capping of interest rates because we had alternative ways of ensuring that the economy or the cost of capital is cheap. You may remember in the late 1990s and early 2000s, you needed to know the bank managers and even take them for lunch to be allowed to discuss a business proposal. Come 2003, we removed all that. We did some adjustments and banks started going to the streets. They erected tents in streets looking for borrowers because they had excess liquidity and needed to get borrowers. We have gone around and now banks are all of a sudden downsizing because they do not need customers because there is a big customer called the Government. All they need is one guy in the National Treasury deciding how much to put. Right now, we have a Budget deficit of Kshs600 plus billion and over. What does it do? It triggers a signal that the Government's appetite has been whetted further. So, what is likely to happen is that interest rates will go up and it will force the Central Bank rate to be raised because of the cap so that they can charge us more.

If we agree to remove the capping of interest rates, the SMEs sector, which is probably the lifeline of this country right now because the big companies are busy laying off workers, will suffer. The SME sector, that we need to save, will probably be the one to save the realisation of the Big Four Agenda. I hope the people who advise the Executive and the President are in touch with the reality to see what is happening. By advising that we remove the cap at this point when the economy is at its lowest, when it is almost going into a recession, will actually kill the few SMEs and traders who have been daring to go to banks and borrow. The banks are not yearning for removal of capping of interest rates so that they can lower the rates, but they want the capping to be removed so that they can raise the rates. So, anyone suffering borrowing at 14 per cent and cannot even sell will now be forced to borrow anything that will be set and it could be 19, 20 or 30 per cent and the whole economy will come to a standstill if not tumble.

I commend the Committee because they have seen the light and have supported the Bill by Hon. Jude Njomo and we should all support it. As it has been said, I hope if this matter comes back in a memorandum we will stand with the people and make the Executive realise what we need.

Lastly, I know the Committee, in looking for where to raise money, has gone the route we all think is the easiest, the so-called sin taxes. But we need to remind ourselves that the chaps who consume alcohol at the household level will not buy half a bottle because we have raised the tax. So, at the low end, people will still take their two bottles of beer because they cannot buy in halves, but that will mean that the disposable income available to their households will be depleted.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I will use my discretion to give him one minute. Having been the Minister for Finance, it is important to listen to him.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, the importance of this, and I see the Chair of the Departmental Committee on Finance and National Planning is here, when we increase some taxes especially on some alcohol, cigarettes and all that, we reduce the disposable income available to households especially for people at the lower level or you migrate them into cheap alcohol. We saw this happen in 2013 until we went around trying to mop up the illicit alcoholic drinks. Let us balance between the need to raise more money and the social cost of raising that revenue. It might end up costing us more to mop up the social cost or to mitigate the social cost of some of these things. These are some of the things we need to balance. I am sure the Committee may have looked through them. I wanted to raise my voice because at times we look at easier solutions like adding tax on alcohol and tobacco, but there are some costs we need to think of.

With those remarks, I beg to support. I commend the Committee for a job well done.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me have the representative of the people of Homa Bay County.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this year's Finance Bill. From the outset, I support it. I have gone through the Report by the Departmental Committee on Finance and National Planning. I thank them for doing a thorough job. Since the Chair has come back, the only recommendation I would like to make is that since Members of this House make an entry from different directions, for ease of reading, for non-finance and accounting people like ourselves, please, let them have a key for the abbreviations. When we read this Report as non-finance people, we have to make *Google* our friend. That is when you will know what "CGT" means. Everything is in abbreviations that we do not know. I hope when the Chair reports next time, we can have many abbreviations. So long as the Report has a key, you can refer to the front and see what they stand for. Otherwise, they have done a very good job.

I am happy that we are passing the Finance Bill without too much ado because of the public participation that has been adequately done. There are areas we do not necessarily agree with, but you remember last year when we were passing the taxes on fuel, it was a very big war. We were at cross-purposes with our constituents. It is very useful to just sit in the House and listen to very experienced voices on this matter of revenue-raising measures that we have. I support.

(A Member crossed the Floor without bowing to the Chair)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Nyasuna, just a moment. There is this Member who knows what he has done. I do not want to mention his name. Can you do the right thing? Hon. Members, it is important for us to respect the procedures of the House.

(The Hon. Member bowed)

Thank you. Proceed, Hon. Nyasuna.

Hon. Gladys Wanga (Homa Bay CWR, ODM): That is also part of good exercise for the Member. I would like to support the exemption of tax on the Ajira Digital Programme. For a

long time, even when we were in university, many people spent a lot of time doing digital work. You would take term papers for students in America, write them and they would pay you on your PayPal account. I am very happy. For a long time, the Government did not recognise that this is an area through which we can engage our young people. The Government recognising the Ajira Digital Programme, that online space is a space that young people can work and earn money without having to come out here, set up offices or tarmac for years after graduating or carry jerry cans and say, "I graduated and now I am washing cars in town", is a good thing. Young people can engage their minds on more useful things yet when they are on social media, they do nothing but churn out insults and abuse leaders, create photo shops and do funny things. This is a useful programme.

I would like to agree with some of the stakeholders who submitted to the Committee that the Kshs10,000 per annum for registration - you have to register with Kshs10,000 for you to qualify for the exemption - may be too much for some people, but it may be too little for others. I want to agree with some stakeholders who proposed that every person should be rated at their level and taxed accordingly. The Government might end up raising more money than if they made a flat rate of Kshs10,000. Many young people involved in the Ajira Digital Programme might not raise the Kshs10,000. It might be that you are making it easier, but making it more difficult at the same time.

I know there was a proposal in the Finance Bill to exempt agricultural pest control products from tax. I saw that the Committee agreed with the stakeholders who said that instead of exempting, it should be zero-rated. If you are going to achieve food security, then it would be very important that farm inputs are zero-rated. At the same time, the quality of the products, especially the agricultural pest control products; should be given first priority. On one hand, we can be dealing with zero-rating agricultural pest control products so that we have our agriculture developing. We also have health as an item in the Big Four Agenda. One of the reasons why people are suffering a lot even from the cancer that we see today is the use of such products, especially when the quality of those products is not controlled. I would like to submit that as we do this let us also look at the quality of the products that are brought into the country.

I would also like to speak on the issue that has been spoken to, namely, capping of bank interest rates. I would like to support the position that many of the Members have taken. As an SME, to borrow in this country is near impossible. In Homa Bay, we have a Sacco called Homa Bay County Women Sacco and we were told that you can get some money from the Women Enterprise Fund (WEF). For you to get the money, you have to go and get a bank guarantee from a bank. We went to our bank and asked them to give us a bank guarantee so that we could borrow. It has been more than 15 months since then and we are still waiting. You sign very many forms and when you are six months through the process, you start afresh. We are not going to yield, as a House, on behalf of the people we represent here, to the blackmail of the big banks that are frustrating SMEs.

I support wholly that we are not scrapping the cap on interest rates. I thank the Departmental Committee on Finance and National Planning for standing with Kenyans on this matter. Our experiences are painful on this matter. So, banks should welcome SMEs even if they want to lend all their money to the Government as was mentioned by our serious senior former Minister for Finance, Hon. Kimunya.

As much as we speak about sin taxes, and I have heard many Members speak about the sin taxes and being an easy place to go, surely some of these sins, like betting is a choice that is bringing down our children. Let me tell you a sad thing, Hon. Temporary Deputy Speaker. Even if you go to the parking here, you will see that our drivers have a piece of paper. The whole day, they are betting. In the villages, everybody is betting all the time. Surely, we must do something. Even if you talk about alcohol, if you want to reduce your disposable income through alcohol, alcohol is a choice. It is a choice you make. You decide whether you want to have food on the table for your children or you want to drink beer with all the money in your purse. As we advance the argument that sin tax is an easy place to go, I support that we must have some level of... I am thinking about it in *Dholuo*, but I cannot remember the English term. There must be a point at which you detract people from these issues where they have to make a choice between smoking cigarettes and taking beer even though they know it is harmful to their health and leaving their children to go hungry. I support fully that move.

With those many remarks, I thank you for this opportunity.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Molo, Hon. Kimani Kuria.

Hon. Kuria Kimani (Molo, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to contribute to the Finance Bill. I will start by asking: Can a people tax themselves into prosperity? Can a man stand in a bucket and lift himself up by the handle? These words were used by Winston Churchill. Every year around this time, we come to Parliament, we debate the Finance Bill and approve taxation measures. We change our tax regime on some products and change tax exemption to zero-rate. We increase taxes like we are proposing to increase the Capital Gains Tax from 5 per cent to 12.5 per cent. The one place that the youth of this country have been making money from has been at the digital market. Now, we are proposing to tax that too. What do we achieve when we do this? Countries that continue to tax their citizens have been proven to lead to more poverty and less economic growth. Can a company come and register in Kenya and be sure that the taxes it will pay will be the same in five years? We need to have consistent tax laws that can make a company have a five-year, ten-year or 20-year strategic plan knowing that the cost of doing business will not change because Members of Parliament came and debated the Finance Bill and passed a new tax that was not paid the previous year.

We have seen that this inconsistency in our laws affect greatly our businesses. In the area I represent, called Elburgon in Molo Constituency, we woke up one day to a ban on logging. We had industries, companies and factories that had invested billions of shillings in this sector. Then by just a change of policy like this, those businesses started becoming illegal. To what extent do we want to raise all this money for these taxes? The absorption rate of our budget in our counties in the last financial year was at 50 per cent. It means that county governments were unable to absorb 50 per cent of the taxes we raised in the last Finance Bill to implement their development programmes. The absorption rate of the budget by the national Government was slightly higher; at 60 per cent. It, therefore, means that the money that we purported to raise last year through increased taxation led to inconsistencies in the business sector and only 40 per cent was absorbed. Therefore, the questions are: "Did we really need these taxes? Did we really need to increase and introduce something like the Presumptive Tax that will be charged to that *mama mboga* only for us not to actualise it?"

A lot has been said about capping interest rates. Now, the National Treasury proposes to lift this cap. Banks have been known to make a lot of money in profits. Why do they do so? I will go and deposit Kshs100 in a bank account. If I want that Kshs100 one hour later, I will have to pay a fee for just getting that money back. We get all this money sitting in a bank account to earn only two per cent interest or no interest at all. Banks take that money and give it to somebody for use and charge them 14 per cent per annum. Banks are saying that they are going to collapse if we continue with this interest capping. When other businesses in Kenya are collapsing and reporting losses and reduction in profits, and when companies at the Nairobi Securities Exchange (NSE) are giving profit warnings, the banks are expanding to Rwanda and other countries. They even have enough money to buy each other out like the buyout we had between the Kenya Commercial Bank (KCB) and the National bank of Kenya (NBK). Therefore, our role as Members of the National Assembly should be to protect SMEs, the electorates who deposit money today and get no interest on that account, but have to pay punitive interest rates if they want to go and borrow that money.

Hon. Amos Kimunya was the Minister for Finance. He talked about how banks would go out and pitch tents during those days. I remember they would even come to Kenyatta University (KU) during my university days. They would pitch tents there to try to sell loans even to students. Now, for you to access a loan at the bank, they will probably even ask for your birth certificate and all manner of documents and not approve it at the end of the day. Why has it come to this? Banks have realised that they do not have to do an assessment of credit on you. They can just buy the Treasury Bills the Government is selling and the Treasury Bonds and they are going to get the interest they would get if they loaned you with the need to follow you further for you to pay. One of the things I am very proud about being a Member of this Committee is that we refused to remove this cap on interest rates.

What if we get all these taxes and concentrate on making sure that the money we have is spent correctly? What if we say we are not going to introduce new taxes, but are going to have tax incentives to our businesses? This would ensure that we have hundreds of businesses registering instead of having one or two businesses register every day. They will realise that Kenya is a tax haven and they can operate here at a minimum cost. We will end up collecting more taxes because more businesses are going to make profits. As long as we are looking at our businesses and income with a microscope and looking for where to touch or tax, we will fail. People have come up with innovations in the digital market and we are saying that this is where we should get access to and tax. If we let businesses thrive, overall, through the economies of scale, we will collect more taxes that we will use to develop this country other than targeting to raise so much from fewer businesses with the companies ending up closing.

As I finish, we need to have consistency in our laws. Someone who comes to open a business in Kenya should know that, for sure, the taxes they are going to pay for the next five years are X or Y. It should not be a different tax rate every year or a different tax bracket this year, next year you are tax exempt and zero rated in the next. It makes our country unsuitable and unattractive to business people and investors.

With that, I end my contribution.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I have nine requests. I can assure you Members will still have time to debate this. The Member for Wundanyi. Member for Othaya, I can see you. Your chance will come.

Hon. Danson Mwashako (Wundanyi, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to add my voice to the debate on this important Bill.

First and foremost, this year's Finance Bill will go down in history as one over which we did not have much issues to raise in comparison to the acrimony we saw last year. The only bit that we must stand with Kenyans is on the interest rate caps. The National Treasury and the Executive have indicated intention to bring a Bill that wants to remove interest capping on the loans that we take from banks.

I must commend the Hon. Limo-led Departmental Committee on Finance and National Planning for a good job in analysing the Finance Bill 2019, and in particular, bringing in amendments that disagreed with the request to amend the Banking Act. Many Hon. Members have talked about this. I just want to say that some of us had really bad experiences in matters loans when interest rates were not regulated. We remember that many borrowers in 2010 and 2011 took mortgages and other loans at rates above 22 per cent. I remember a situation where someone borrowed a loan at 24 per cent to pay in 20 years. Many of them were not able to service the loans. As such, the banks repossessed whatever securities that were given.

So, I am happy the mood of this House is to refuse to amend the interest rate capping. This should remain. The reason given by the National Treasury that they want to amend this to have more money released or lent to SMEs is a fallacy. Banks under the Banking Association of Kenya are really pushing this House to amend this for their selfish reasons. We are aware that banks are making abnormal profits. For all sectors of this economy, banks are making a lot of money. We are aware that, even as they push us to amend the interest rates capping, their core interest is not to lend more to SMEs. They just want to compare whether to lend to us as individuals, SMEs or companies or continue lending to the Government.

Now that we are saying no to the removal of interest capping, we must, as a House, interrogate and come up with legislation that will force the National Treasury to reduce its appetite for borrowing from the local market. Indeed, banks are making too much money by lending to the Government through risk-free instruments like Treasury Bonds and Treasury Bills. Kenyans are watching what this House is going to say about interest rates capping. No one in this country would like to go back to 20 or plus rates of interest.

So, I really support the Finance Bill with these amendments that we are not removing interest caps. The second issue is the idea of registering student accountants. We have many student accountants working for organisations, for the Government and in every sector of this economy. The moment we agree with the National Treasury that we should not register students as members of the Institute of Certified Public Accountants of Kenya (ICPAK), we will only have those qualified in CPA-K being registered by ICPAK. We will cause a big number of accountants, though not qualified, deregistered from ICPAK. Therefore, we will have many people who are not regulated by anybody. The Departmental Committee on Finance and National Planning has indicated in an amendment, that we should continue registering student accountants, so that every practicing accountant at whatever level is regulated by ICPAK. I really support what the Committee has done.

Lastly, as far as we are seeking to raise revenue for this country through this Bill, KRA and the National Treasury must continuously tell Kenyans why they are not able to meet their targets year in, year out. It is not fair for this Parliament, every year, to sit here to do a budget, listen to the Cabinet Secretary for the National Treasury speak and then give us a statement in

June - and now we are on the Finance Bill - and yet we are always talking about deficits. Every time, the KRA tells us what it will collect. This year, it has told us that it expects to collect Kshs1.8 trillion yet we know for the last five years, there is no year it has hit its target. Therefore, we must ask the KRA and the National Treasury very hard questions: Why are they always very ambitious with what they want to raise, and every time they tell us they do not meet their targets? We have a new boss at KRA and we have a lot of expectations on him. If there is only one expectation that Kenyans must hold the new KRA boss to accomplish, it is making sure that this year they meet their targets.

With these remarks, I support with amendments. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you for being considerate to your fellow Members of Parliament. The Member for Othaya, you may also consider to do the same, but it is not mandatory.

Hon. Gichuki Mugambi (Othaya, JP): Thank you very much, Hon. Temporary Deputy Speaker. I was almost getting worried that your eyes were not seeing this far.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Mugambi, you caught my eye.

Hon. Gichuki Mugambi (Othaya, JP): Thank you, Hon. Temporary Deputy Speaker. I also want to join the rest of my colleagues in thanking the Committee on Finance and National Planning for a job well done, especially in considering the contentious issues and addressing them beforehand, in particular, the increase in the Capital Gains Tax, which it has retained at 5 per cent. This should be the spirit of committee workings.

One issue that they should have considered is the issue of the Presumptive Tax. Presumptive Tax is a very discriminative tax because we all know that taxes are paid on profit. When you presume that small businesses with a turnover of Kshs5 million are making profit and you tax them in advance, that is discrimination. I wish the Committee would borrow the wisdom of the 2018 committee which scrapped that kind of taxation. You cannot presume that somebody is making profit and tax him or her.

Let me also allude to the issue of removal of interest rate capping. We have heard several times banks say that they are not able to lend to SMEs because interest rates have been capped. There is nothing that can be farther from the truth as this contention. The SMEs in this country are suffering because of reckless lending by banks. When they were not controlled, they were lending to SMEs at interest rates of 30 per cent. And they were so reckless that they were not even demanding security for lending. Actually, they were shylocking to SMEs. Today, they want to go back to that reckless practice. We have to be very firm on this issue of interest capping. So far, we are seeing a lot of benefits. I would request even the Executive to see the benefits we are getting out of the capping of interest rates, among them the consolidation of the financial institutions. Today, we have seen financial institutions coming together to achieve economies of scale and reduce their costs of operations. If banks want help, we can help them more. If they reconsider the kind of big perks they give to their CEOs, they will save all the money they need in this world. Last year, one bank paid its CEO Kshs750 million in a year. And these are banks that want to make much more money. I think this is the time to stand with Kenyans and request our banks to continue consolidating and to continue addressing their costs of operation.

Today, the margin between the cost of funds and the rates at which they lend is still very high. But we need to throw a caution that our Government should not give a blank cheque to

banks when it comes to lending. We are reckless in our spending until we create such a huge deficit that everyday banks have a ready market for their funds because the Government has an insatiable appetite for borrowing. I believe if the Government reins in on its budget deficits, banks will lend to SMEs at a lower rate. We already know SMEs have other avenues of borrowing. They have the co-operative movement where they save and borrow at 12 per cent reducing balance. We already have the Government support through the Uwezo Fund, the Youth Enterprise Fund (YEF) and the Women Enterprise Fund (WEF). Therefore, we cannot be told that we have to remove the capping to save our SMEs.

Hon. Temporary Deputy Speaker, if we support SMEs through a proper fiscal framework, they do not need cheaper money from the banks than what they are getting today. We also need to think, as a House, and I am sure some of us will come with that framework, that today banks have seen a loophole. They are lending through digital platforms at rates that are unimaginable. Today, Fuliza has lent about Kshs80 billion to Kenyans at exorbitant rates of 5 per cent per month which works at 60 per cent per annum. Today, they do not want to be controlled. You can see where we have no control like on digital lending platform, banks are exploiting Kenyans. They are lending recklessly because much of this money is going on consumption. Kenyans, especially the youth, have no longer a chance to save. Even before they learn how to save, they have been given free money without struggle. They do not need to go to any bank. With only a phone and an identity card, they owe banks money which they did not invest in anything and they are supposed to pay back at 60 per cent. We have to save our Kenyans. We have to save our youth from this kind of threats because they will never know and learn how to save.

Hon. Temporary Deputy Speaker, I beg to support. I thank the Committee for a job well done.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You used your minutes very well. Hon. Members, I have like five requests and Members have been here for long. Let us have the Hon. Member for Muhoroni.

Hon. Onyango Oyoo (Muhoroni, ODM) Thank you very much, Hon. Temporary Deputy Speaker. I was not in the House early enough to benefit from the wise ruling of the Speaker with regard to this Bill and as a result, I will be very palliative in my approach.

I will support the Bill. It speaks to the intention of the Government to enlarge the tax scope so that many people are brought on board and the Government can raise enough money to run its economic programmes.

As we are all aware, Kenya used to be a serious agricultural country and we collapsed these industries deliberately. We had tourism, which was thriving. We also collapsed it out of reckless lack of focus.

The third largest industry that came to the fore was corruption and the President has launched vicious attacks against it. We will support him and ensure that corruption is no more in this country. That now leaves us with no other serious industry, but to ensure that taxes are properly collected. We, as Parliament, should ensure that the taxes which will be collected are used prudently. We no longer want to see people carelessly using their positions to kick start dummy projects which add no value to the common population of this country. This far we will support His Excellency the President to ensure there is zero tolerance to corruption. The programmes which will be kick started must add value to the population. We have so many

phantom projects which are not benefitting the people yet people are paying taxes and do not get value for money.

My constituency is the father to the sugar industry and many of them are collapsing under the weight of economic hopelessness. They pay taxes and the Government does not invest in them. When we ask for more money, we are told the industries are already overburdened with debts they owe to the Government, but on close assessment, we find that most of these debts are loans which were advanced to the sugar industry from the Sugar Development Levy. This is money that each time a farmer delivers his cane, he contributes and it is aimed at helping him one time to redo his farm or help the industry to do minor maintenance or enhancement.

Farmers owe money, but in the Government estimations, that has been lumped up as loans. So, when you hear the sugar industry owes the Government about Kshs37 billion, it is over estimated taxes or money that should have been used to advance loans. The orgy of the whole thing is that we have companies like Muhoroni Sugar Company and Chemilil Sugar Company contributing so much money to the net tax yet in the end, these people have products they cannot ferry or haul out of their farms because of lack of roads.

When we ask for the roads money, we are told the budget is not there and there is no money. Yet we are an island because we have Jubilee infested constituencies, which are very good neighbours of ours and we see them being connected to electricity and Muhoroni is not. We are told to wait because there is no budgetary provision. You also find roads being launched and we are told there is no money. We think we support the Government to raise funds through proper taxation and once they receive it, they should distribute it equitably. Areas where the Jubilee Government was not voted for should receive their consideration.

In politics, one day can be a very long time. Nobody would think we would now be talking as if we are in the Government. My brother, Hon. Duale, knows very well that in this Parliament, there are many Members, but apart from him and me, there are very few people His Excellency the President can refer to by name. The rest he calls them *nani, wewe*, so and so.

Hon. Temporary Deputy Speaker, with those few remarks, I support this Bill. It is timely.

Hon. Aden Duale (Garissa Town, JP): On a point of order, Hon. Temporary Deputy Speaker.

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

Hon. Aden Duale (Garissa Town, JP): On a point of order, Hon. Temporary Deputy Speaker. I rise under Standing Order No.95. This Bill must be passed by 26th September, which is next week Wednesday. Members must bring their amendments between now and Tuesday because we need to put the Question on Tuesday. I am asking the Mover to be called upon to reply and in his reply, you can allow him to give Members like Hon. Rozaah Buyu, Hon. Shaban and the Member for Gatanga, at least, two minutes each. I think the Member is right that the President knows very few people by name and the former Prime Minister too.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): That is a point of contention. I am sure the President knows Hon. Wang'a, Jessica Mbalu and the Commissioner. I know the Member was trying to please you and he knew what he was doing. Hon. Duale, the Leader of the Majority Party, has rightly stood on Standing Order No.95 on closure of debate and from where I sit I can only put the Question on the same.

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

I now call upon the Mover to reply.

Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to reply. I want to thank the Members who have contributed and I have seen a lot of interest. Therefore, I request to give the following Members one minute each because of time. The Member for Taita Taveta, the Member for Gatanga, the Member for Kisumu County and the Member for Nyando.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Chairperson of Departmental Committee on Finance and National Planning, you have been in this House for long. This is your second term. As a matter of procedure, the debate was prematurely closed and from where I sit, you cannot purport to donate time. I must appreciate the intention of donation and the Members who were ready to speak to this Bill, Hon. Ngugi Nduati, the Member for Gatanga; Hon. Buyu Akinyi, the Member for Kisumu County; the Member for Taveta; the Commissioner; the Member for Nyando, Hon. Jared Okelo and the Member for Lari.

We have to follow procedures in the House. Hon. Limo, you can go ahead and reply.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I stand guided. The Members will still have a chance to make comments during the Committee of the whole House.

I take this opportunity to thank the Members who have given very constructive contributions during the debate on this Bill. This Bill will continue seeking progressive ways of raising revenue. In fact, very many comments which have come from the Members have also recognised the new phenomenon, which is the digital market and the issue of credit. We have also noted the importance of trying. We will try to bring in controls over interest rates on mobile credit, which is largely unregulated currently.

Otherwise, I thank the Members who have contributed. I thank the Members of my Departmental Committee on Finance and National Planning. I also thank the leadership of the National Assembly, led by the Speaker, the Clerk, and the Leader of the Majority Party. To all other Members of the leadership of this House, I say thank you.

I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, the Mover has replied to the Finance Bill (National Assembly Bill No.21 of 2019). I confirm that the House is not properly constituted for me to put the Question on this Bill. So, I order that the Question be put at the next available opportunity.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 7.00 p.m., the House stands adjourned until Tuesday, 24th September 2019, at 2.30 p.m.

The House rose at 7.00 p.m.