

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 26<sup>th</sup> March, 2014

The House met at 9.00 a.m.

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

PRAYERS

QUORUM

**Hon. Deputy Speaker:** Hon. Members, we cannot transact business until we have the requisite numbers; so, I order the Division Bell to be rung.

(*The Division Bell was rung*)

Order, Members! We now have a quorum and we can begin our business for the day. The Leader of Majority Party, I see you have pressed your button, are you having a notice of Motion?

## NOTICES OF MOTIONS

### PROVISION OF TAPPED WATER TO ALL PRIMARY SCHOOLS

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

THAT, aware that water is one of the most basic needs; concerned about children in primary schools, especially those who do not have access to clean tapped water; also, aware that the Government is already providing electricity and food to these schools; deeply concerned that lack of water leads to a host of hygiene-related problems, including jigger infestation, cholera and others, this House resolves that the Government provides tapped water to all public facilities, especially primary schools as water is life.

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Rachel Nyamai, is that a response or a notice of Motion?

**Hon. (Ms.) Nyamai:** (*Off record*)

**Hon. Deputy Speaker:** It is not showing, okay.

## TAKEOVER OF HEALTH SERVICES BY NATIONAL GOVERNMENT

**Hon. (Ms.) Juma:** Hon. Deputy Speaker, I beg to give notice of the following Motion:-

THAT, aware that the Transition Authority and the Council of Governors operationalized the devolution of health services in the country from the auspices of the national Government to the county governments, as required under the Constitution of Kenya 2010; concerned that the delay in the devolution plan by the national Government has resulted in a broken public health system; deeply concerned that most health facilities have and are experiencing shortages of equipment, drugs and doctors resigning due to frustrations in carrying out their duties effectively, thus becoming a major obstacle to saving patients lives; noting that most hospitals have no adequate capacity to provide health services to the people, this House resolves that the national Government takes over provision of health services from counties, which have no capacity to provide such services, until such a time when county governments will be ready to take over such functions as contemplated in Section 15 of the Sixth Schedule and Article 187(1) of the Constitution of Kenya, 2010.

**Hon. Deputy Speaker:** Is there any other notice of Motion?

Hon. Jakoyo Midiwo, I am aware of your point of order. Please, just hold on. Let us have responses now.

## STATEMENTS

## NON-ENFORCEMENT OF ANTI-GAY LAWS

**Hon. A.B. Duale:** Hon. Deputy Speaker on 11<sup>th</sup> March, 2014, hon. Kang'ata requested a Statement on alleged non-enforcement of anti-gay laws by the various organs of the national Government, contrary to the constitutional principle of the rule of law. The hon. Member sought to be informed on the following:- The reason for the non-enforcement of the anti-gay laws; whether there are any organizations in Kenya which champion violation of the anti-gay laws; the steps that the Government is taking against such organizations, if any, including deregistration or curtailing the organizations' activities.

I wish to state as follows as per the Statement from the Cabinet Secretary in charge of national security.

Hon. Deputy Speaker, the Penal Code, Cap.63 of the Laws of Kenya, Sections 162, 163 and 165 prohibit unnatural acts between human beings and between human beings and animals. Contrary to the hon. Member's sentiments, these laws are being enforced all over the country and several cases have been detected and appropriate action taken against those found culpable.

I wish to table a list of all the cases of homosexuality totaling to 595, which have been reported and acted upon by the police since the year 2010 to date. Further, I want to confirm that the National Police Service and the Government are not aware of any

organization which champions the violation of the anti-gay laws; if and if they exist then they do so illegally.

However, the following challenges are encountered when dealing with these type of cases at the Judiciary. The first one is lack of witnesses to testify in court. There is also lack of scientific evidence as many cases are reported very late. The victims are often compromised by the accused parties; where victims are minors, parents or guardians, tend to conspire with the accused and refuse to come to court. In some cases and due to victimization, the victims tend to shy away from pursuing cases while others fail to report them due to embarrassment. The court process may be too slow with unnecessary adjournment. There is lack of public awareness and sensitization. Sometimes there are threats from the accused person's family. There is withholding of evidence by key witnesses. Disappearance of the accused persons after incidents is common.

Section 162 of the Penal Code is subtitled: "Unnatural Offences." It states:

"Any person who-

(a) has carnal knowledge of any person against the order of nature; or

(b) has carnal knowledge of an animal; or

(c) permits a male person to have carnal knowledge of him or her against the order of nature is guilty of a felony and is liable to imprisonment for fourteen years."

Hon. Deputy Speaker, Section 163 of the Penal Code states thus:-

"Any person who attempts to commit any of the offences specified in Section 162 is guilty of a felony and is liable to imprisonment for seven years."

Section 165 of the Penal Code is about indecent practice. It states thus:-

"Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such an act by any male person with himself or with another male person, whether in public or private, is guilty of felony and is liable to imprisonment for five years."

Hon. Deputy Speaker, this is the interesting part and I want hon. Members to hear me. This thing is happening across the country. I have a summary of cases handled per region and per county.

The whole of Central Province has recorded 85 cases; Coast region, 63 cases; Rift Valley region, 204 cases; Nairobi, 40 cases; Nyanza, 33 cases; North Eastern region, 9 cases; my own county, 3 cases; Eastern region, 161 cases and where the Leader of Minority Party comes from, Kitui County, 16 cases. Meru County has the highest number of 103 cases.

*(Laughter)*

Western region records 25 cases; finally, hon. Kang'ata's Murang'a County has recorded 27 cases.

The court cases are here. This is a good document and I will ask the Office of the Clerk, through you, hon. Deputy Speaker, to make copies of it. We must recognize Homa Bay for recording nil. Also Samburu, Mandera and Vihiga counties have recorded nil. The rest of the counties have cases recorded.

(Laughter)

**Hon. Deputy Speaker:** Hon. Kang'ata.

**Hon. Kang'ata:** Thank you, hon. Deputy Speaker. I want to say that I am very happy with the response because there is a constitutional principle which states that every law must be enforced until that law is amended or repealed. I am happy to be informed by the Leader of Majority Party that, indeed, Kenya is enforcing anti-gay laws. Therefore, we do not even have to go the Uganda way. What Uganda did was merely joining us. We showed the way and so we should maintain the momentum until that day this Parliament, probably, reconsiders the matter.

I am, therefore, happy with that information. I want to congratulate my leader here for having responded promptly. I would like to urge the Judiciary to continue pressing on. I am happy with the response.

**Hon. Deputy Speaker:** Hon. Rachel Nyamai, is yours a clarification or do you want to give a response?

Let us get clarifications first. Hon. Midiwo, you want to seek clarification? You can seek clarification on the statement as given by the Leader of Majority Party.

**Hon. Midiwo:** Thank you, hon. Deputy Speaker. I am not happy with the Statement given. I thought the hon. Member who raised the issue would have felt the same way. This is a problem in our country. If you talk to experts, you will know there are a lot of problems. Just last week, a student committed suicide here in Kiambu. Nine years ago, a child died out of depression in the same school because of being raped by fellow female pupils. Therefore, we have a problem and I think the Government needs to stop being casual on this issue.

Hon. Deputy Speaker, I know of a study that was done in Kisumu Town alone, and it put the number of gay activity so high that the Government must crack down on this ungodly activity.

**Hon. Deputy Speaker:** Order, hon. Midiwo! What is your point of order, hon. Njomo?

**Hon. Njomo:** On a point of order, hon. Deputy Speaker. The hon. Member has mentioned that a student died in Kiambu out of this act. I would like to correct him that this was an allegation about a student who had died many years before and the death was attributed to sexual assault. It did not happen last week, neither has it been proved to have happened. It is just an allegation; it should not be taken as gospel truth.

**Hon. Deputy Speaker:** I do not know what the hon. Member is relying on. What is the source of your information, hon. Midiwo? If it is the newspapers, you know how this House treats media information. You may continue seeking clarification.

**Hon. Midiwo:** Hon. Deputy Speaker, the issue of newspapers has two contrary views. I have read in our library on many occasions and newspaper stories are okay. But these are people who have been shown on television. Last week, there was a story of Loreto Girls High School in Kiambu; I want to tell hon. Njomo that, this is a vice in our country and it cannot be something we gloss over.

Hon. Deputy Speaker, could the Leader of Majority Party tell us what specific steps and mechanisms the Government has put in place to keep in check gayism and lesbianism in the country because these are unlawful and ungodly acts?

**Hon. Deputy Speaker:** Thank you. We can have more clarifications sought, please. Hon. Aden, the Floor is yours.

**Hon. Aden:** Thank you, hon. Deputy Speaker. I just wanted to say that this is a very important subject under discussion here today.

Last week, hon. Sakaja and I represented Kenya in the African, Caribbean, Pacific countries and European Union (ACP/EU) Conference in Strasbourg. I want to say that this particular subject was in contention in the assembly, mainly because a week earlier the European Parliament had sat down and passed a resolution to move Nigeria and Uganda out of the Cotonou Agreement, just because of effecting a law on the matter we are discussing now. Kenya's view in the assembly was that we are a sovereign nation that makes and respects her own laws. It is very unfortunate that some members of the European Parliament are on record referring to the action taken by Uganda and Nigeria as that of ape-looking human beings who once roamed the world. In other words, they are primitive laws. The Penal Code, from the research I did, is not something that Kenyans made; it was inherited from the British. What makes them laws of ape-looking humans?

I do not want to go deep into this debate, but nations must respect the sovereignty of the African countries with regard to their choice of laws as that is what their people want.

**Hon. Deputy Speaker:** Order, hon. Aden! Hon. (Ms.) Nyasuna seems to be on a point of order.

**Hon. (Ms.) Nyasuna:** I have a clarification to seek.

**Hon. Deputy Speaker:** Then you will have to wait. I thought you had put an intervention. Let hon. Aden finish seeking his clarification.

**Hon. Aden:** As I conclude, I want to say that we see gay people demonstrating openly on the streets of Nairobi. It is not too long ago when they were in the streets of Nairobi. A few of them were arrested between 2010 and now---

**Hon. Deputy Speaker:** Hon. Aden, are you seeking a clarification?

**Hon. Aden:** Yes; the clarification I want to seek is that, with the knowledge of the existence of this law, why are we allowing people to openly break it by demonstrating outside Parliament?

**Hon. Deputy Speaker:** Okay, the hon. Member for South Imenti

**Hon. Murungi:** Thank you, hon. Deputy Speaker. Meru County has been mentioned by hon. A.B. Duale to have the highest number of cases of homosexuality reported in the courts. He gave us nine challenges which are faced when investigating these cases. Could he clarify whether Meru County has overcome all these challenges and that is why these cases are so high in Meru County?

I remember when we visited Belgium two weeks ago, as my brother, hon. Aden, has mentioned, the European Parliament made this a big issue. Even our mission there was interrupted for almost one day when they challenged us on these issues of homosexuality and lesbianism, noting that Uganda had passed law against gayism. Therefore, as I seek clarification, let me say that the European Parliament should not take us the way they want to take us and impose sanctions on African countries. One Member of European Parliament from United Kingdom - we realized later on that he is the president of gays and lesbians in Europe - actually almost molested us because of this law.

*(Laughter)*

Therefore, let the Leader of Majority Party clarify this issue of Meru County because it should be on record.

Thank you.

**Hon. (Ms.) Nyasuna:** Thank you, hon. Deputy Speaker. I must say that I am happy with enforcement of our anti-gay laws. We also do know that HIV infection is highest among the group of men who have sex with men. According to a Kenya HIV/AIDS survey, actually the highest rate of new infections is in this group of men who have sex with men. I want to throw in a word of caution; these men who have sex with other men have families. Actually, during the day, they have their men, including some found where we walk. These are men in suits and they have wives. At night, there are men who have sex with other men. From the public health perspective, progress has been made. These men are also accessing HIV testing. They are accessing care and---

*(Power failure)*

If these people continue hiding, they will continue to infect their families and this is what might result in a high number of HIV infections. That is what I am seeking a clarification on.

**Hon. Deputy Speaker:** Can we have some clarification sought by hon. (Bishop) Mutua?

**Hon. (Bishop) Mutua:** Thank you, hon. Deputy Speaker. I want to seek a clarification on the numbers that have actually been convicted. This is because we have been given a long list of cases that have been finalized in court or where the court process is on. I would like to hear the actual convictions, otherwise this to me sounds like the tip of the iceberg. The bigger issue is not yet tackled and we need to face this issue seriously.

The second clarification I want to hear from the Leader of Majority Party is whether we have officially received any complaint from external forces trying to force us to go the gay way. I would like to know whether that has come and if it has, what has been our response to it?

**Hon. Deputy Speaker:** Hon. Members, we may not leave this topic if you continue with the long list that you want clarification on.

**Hon. Serut:** Thank you, hon. Deputy Speaker. The response from the Leader of Majority Party, to me sounds like music because I represent a constituency which borders Uganda. With the stiffer penalties now being imposed on gays in Uganda, there is going to be a big influx of gays into this country through Mount Elgon.

*(Laughter)*

What measures has the Government put in place to ensure that at least those who are trying to cross over from Uganda are put somewhere in a camp like that one in Kakuma?

*(Laughter)*

**Hon. Deputy Speaker:** Hon. Njagagua.

**Hon. Njagagua:** Thank you, hon. Deputy Speaker. My clarification is on what the Leader of Majority Party said, that one of the impediments to enforcement of anti-gay law is the delayed court process. Yesterday, I heard the Chief Justice talk of visiting witch doctors. Is this one of the laws where the complainants should go to witch doctors for settlement?

*(Laughter)*

**Hon. Deputy Speaker:** Hon. Lentoimaga, Samburu North.

**Hon. Lentoimaga:** Thank you, hon. Deputy Speaker. One thing is that gayism and lesbianism are from the western culture. Actually, it is an influence from the West, and over the years we have suffered a lot of harm because of this influence. Sometime back we were told that even HIV/AIDS originated from Western culture. The Western culture has also come to us in the name of dress. Some of our ladies are dressing in a very awkward manner. They wear miniskirts and to me this practice will continue. It will spread throughout the country.

**Hon. Deputy Speaker:** Please, seek a clarification, hon. Lentoimaga.

**Hon. Lentoimaga:** Hon. Deputy Speaker, I am going there. My clarification is, since we are a sovereign State, can we just be brave enough and outlaw gayism and lesbianism? We should enact a law as Uganda has done and then we outlaw the whole thing, so that we can stop this western influence.

**Hon. Deputy Speaker:** Finally, hon. David Wafula, the hon. Member for Saboti.

**Hon. Wekesa:** Thank you, hon. Deputy Speaker. While I appreciate the response by the Leader of Majority Party, I would like him to tell us how many of these reported cases were forced and how many were voluntary?

**Hon. Deputy Speaker:** The hon. Leader of Majority Party. Members, too many of you want clarifications; we may not move on if we continue this way.

**Hon. A.B. Duale:** Thank you, hon. Deputy Speaker. At the outset, I want to say that Kenya is a God-fearing country and both the Bible and the holy Quran and this Constitution do not allow what we are discussing this morning. The Constitution in Article 45(1) says:-

“The family is the natural and fundamental unit of society and the necessary basis of social order, and shall enjoy the recognition and protection of the State.”

Article 45(2) says:-

“Every adult has the right to marry a person of the opposite sex, based on the free consent of the parties.”

That is the Constitution. If you want me to quote from the Quran, I will do it. If you want me to quote from the Old Testament, I will do it. So, this is the basis in the Constitution, the Penal Code; Sections 162, 163 and 165 are very clear.

Hon. Jakoyo asked about the specific measures the Government is taking against this problem. I think this is a social problem and I do not want to lay blame; if our religious leaders are watching me, that is where we should start. We should preach against this and preach the holy books. Leaders have a role to carry out civic education and I want to agree with hon. Jakoyo. It is happening in our schools. It has been well said

by the Director of Limuru Girls. It is happening in our girls' schools and our boys' schools. It is happening in the streets. There are even streets like the famous Koinange Street. I am told they have their own streets in Mombasa. These people exist. So, as a country we must find ways of fighting it.

The hon. Member for Balambala asked why we allow them to demonstrate. I am sure if they go for the permit at the Central Police Station in downtown Nairobi, they will not ask for it on the basis that they are gay people, and that they want to fight for the rights of the gay people. They will say that they want to demonstrate for other reasons but the moment they are in the streets they do the opposite. I am sure the police have a cardinal duty to enforce the law and stop such demonstrations.

To the hon. Member for South Imenti, of course there is data. In fact, in all the court cases, those who are acquitted and those who are jailed for 10 to 15 years, their names are contained in this document. This is a document of the House. From where I sit I cannot explain why there are 108 cases in Meru. Maybe we need to look at the court cases. We need Members of Parliament from Meru region to have a caucus. You need to go and address the issue the way we want to address terrorism. It is as serious as terrorism and as any other social evil.

Hon. Njagagua talks about what the Chief Justice said. I do not want to speak about that. The Chief Justice is a very good friend of mine. That Kenyans should go to witchdoctors; I think that was uncalled for. In my opinion, it was very irresponsible. We have set up courts for Kenyans to get justice, and I do not know why the Chief Justice wants to equate the court system to witchcraft. Some of us abhor it and we do not want to hear about it, but maybe, it depends on where he comes from, his background and his region.

*(Laughter)*

Hon. Deputy Speaker, I want to first of all congratulate hon. Wanga and hon. Mbadi. In Homa Bay, it is zero. Those guys are not there. So, you are representing a county which is free of those characters but you have asked about HIV. I totally agree with you. From all the data by the National AIDS Control Council (NACC) and the National AIDS and STI Control Programme (NAS COP), the highest prevalence rate is among this section of our society. I think it is for the leadership to engage. It is for us to have dialogue.

For hon. Serut, this is the most difficult question. I cannot answer it. Now, if these guys are crossing from Uganda, how do we identify them? This is because the police will look for their registration documents. The police will look for a terror network through intelligence gathering, but if one person crosses from Uganda to Serut's constituency, then he needs to tell us how we can identify them. However, I am sure the Department of Internal Security will find out that.

Hon. Wamunyinyi asked whether they reported cases voluntarily. Some are voluntary while some are reported. The document is very clear.

I think hon. Lentoimaga talked about Western culture. I am sure both in our Constitution and our statute laws, this thing is not allowed. When I listened to President Museveni, he said that he had assented to the Bill based on scientific data given to him.



We would be very happy if Museveni shared that data with us. Uganda passed a law. For us, the law is very clear; the Constitution and the Penal Code are clear. I want to tell my colleagues that this is a social problem. It is incumbent upon our religious leaders, political leaders, the Government, parents and school administrators to fight this culture, which is a contradiction of the scriptures. I want to tell you that this is a global issue. This is a Western agenda. Some of you will not even go to Western countries. You will miss visas. It is that serious to Western governments. You might go for a visa to attend the IPU or Commonwealth Parliamentary Caucus and you are told that you will not be given a visa based on that. I am not predicting what they are going to do but for us, as Africans; as people who believe in God; as a God-fearing nation, we must at all times ask the Government to implement the law to make sure that we reduce this vice in our society.

**Hon. Deputy Speaker:** Thank you, Leader of Majority Party. I have given a lot of time because this is an important topic.

Hon. (Ms.) Nyamai, you can now respond to your Statement request.

*(Hon. (Ms.) Nyamai stood up in her place)*

Order, hon. (Ms.) Nyamai! There is business listed on the Order Paper. Can we follow the Order Paper? We should be getting a response from the Chairperson of the Departmental Committee on Environment and Natural Resources.

**Hon. (Ms.) Abdalla:** Hon. Deputy Speaker, the Statement I have was sought by hon. Shill, but I have not seen him and he has not received a copy.

**Hon. Deputy Speaker:** Is Hon. Shill in the House?

**Hon. Members:** He is not here!

**Hon. Deputy Speaker:** Then we will not respond to a Member who is not in the House.

Let us have Hon. (Ms.) Nyamai.

**Hon. (Ms.) Nyamai:** Hon. Deputy Speaker, on 17<sup>th</sup> February, 2014, a Statement was sought---

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, hon. Members! The consultations are too loud!

#### IMPLEMENTATION OF NUTRITIONISTS AND DIETICIANS ACT

**Hon. (Ms.) Nyamai:** A Statement was sought by hon. Nderitu, seeking information on several matters. The Statement is on the status of creation of the Directorate of Human Nutrition and Dietetics as provided for in the Nutrition and Dieticians Act, 2007. He focuses on the following matters:-

- (i) when the Government plans to establish the Directorate of Human Nutrition and Dietetics and appoint the Director of Nutrition and Dietetics Services;
- (ii) reasons for the delay in setting up the said Directorate since 2007; and,

(iii) the allegations of discrimination in the scheme of service and promotions of nutritionists and dieticians as compared to other health professionals within the public health sector.

On the first matter; when the Government plans to establish the directorate, the Ministry has redrafted a revised scheme of service for nutritionists and dieticians which accommodates the position of Director of Nutrition and Dietetics Services. The draft is currently under consideration by the Public Service Commission (PSC), which is mandated to approve schemes of service in the Civil Service. The Ministry will recruit the Director of Nutrition and Dietetics when the draft scheme of service is approved.

However, the Ministry has no immediate plans to create a Directorate of Human Nutrition and Dietetics. The approach taken by the Ministry in the creation of directorates is function-based and not cadre-based. This means several cadres performing related functions are grouped together to form a directorate. Following the release of the Executive Order No.2 of 2013, the specified mandates of Government Ministries, the Ministry carried out an evaluation of existing functions within the Ministry. Out of this exercise, four directorates were created based on broad policy mandates. Under this structure, the function of nutrition and dietetics is placed under the Directorate of Preventive and Promotive Health Services. The four directorates were created bearing in mind that much of the health functions have been devolved to the counties and only a lean structure is required at the national level for policy guidance.

The second issue he raised is reasons for the delay in setting up the said directorate since 2007. The Nutrition and Dieticians Act, 2007 does not make express provision for creation of the Directorate of Nutrition and Dietetics Services in the Ministry of Health. In fact, the overall aim of the Act is regulation of professional standards for nutritionists and dieticians vested in an executive council and not the determination of functional structures of the Ministry of Health or any other part thereof. That being the case, this talk of a delay in setting up the Directorate of Nutrition and Dietetics Services in the Ministry of Health does not, therefore, arise. The Act only presumes that there will be a Director of Nutrition and Dietetics in the Ministry who will be a member of the council. Creation of directorates in the Ministry of Health, as is the case with other Ministries, remains a prerogative of the leadership in consultation with the PSC. Granted that most health services, including those related to nutrition, have been devolved to the counties, creation of a Directorate of Nutrition and Dietetics Services is not justifiable.

He also seeks to know about allegations of discrimination in the scheme of service and promotions of nutritionists and dieticians as compared to other health professionals within the public health sector. Promotion is service-based on requirements in the specific schemes of service under which officers serve, and availability of approved vacancies and approval by the PSC. The Ministry, therefore, is not aware of the existence of any discriminatory practices in the administration of scheme of service for nutritionists compared to the schemes of service of other health professionals.

**Hon. Deputy Speaker:** Is it a very long Statement? Is it possible to summarize it because---

**Hon. (Ms.) Nyamai:** I have finished and it is signed by the Cabinet Secretary for the Ministry of Health.

**Hon. Deputy Speaker:** Hon. Nderitu, do you have clarification to seek?

**Hon. Nderitu:** Hon. Speaker, I am not satisfied with the answer given. First, I was waiting to see whether they would call me for their meeting because I had more details regarding some of the issues. When you look at the issue of the directorate that they say the Nutrition and Dietetics Services is under, the most senior person in that Service reports to very junior officers in the department. So, I was thinking that since I have such details, why did they not call me for clarification?

Secondly, if you check the issue of mistreatment of workers, the PSC has been called to audit and those reports are there. They even gave their recommendations on what should be undertaken. So, it is my wish that the Committee gets the documents that I have. I also seek a further clarification about the people who feel that they are being discriminated against. The PSC interviewed and recommended further action, I have their names and it is very bad for the Cabinet Secretary in charge of this Ministry to mislead us that those things are not there yet. I have details of people who have been discriminated against. I would like your guidance, so that I can get further clarification. I will also table the documents that I have to assist the Committee to do their work.

*(Hon. Nderitu laid the document on the Table)*

**Hon. Deputy Speaker:** Any other Member wishing to seek clarification on this Statement and not on any other? Hon. (Ms.) Abdalla, is it on this Statement?

**Hon. (Ms.) Abdalla:** The next one.

**Hon. Deputy Speaker:** Hold on! Let hon. (Ms.) Nyamai respond to hon. Nderitu. Actually, the practice has been that when you call the Cabinet Secretary, the person who asked for the Statement is usually called to the Committee meeting. That is because they may have additional information that they can clarify with the Minister directly. So, hon. (Ms.) Nyamai, how come you did not involve the Member during your meeting with the Minister?

**Hon. (Ms.) Nyamai:** Hon. Deputy Speaker, I would like to agree that hon. Nderitu was not invited to give further details on this. We wish to get hold of the documents that he asked for, so that we can enrich this Statement. I also would like to clarify to him the following: I pointed out that the Ministry is going to recruit the Director of Nutrition and Dietetics. I am going to pick the documents and we will give a further response to this. When I gave him a copy, he mentioned to me that there were some details that had been left out and I appreciated that.

**Hon. Deputy Speaker:** We do not need to bring it back to the Floor. You can sort out the matter once you call him to the meeting with the Minister.

**Hon. (Ms.) Nyamai:** Yes, hon. Deputy Speaker.

**Hon. Deputy Speaker:** The next Statement is from the Chair of the Committee on Environment and Natural Resources.

EXCLUSION OF TANA RIVER FROM WATER HARVESTING  
AND STORAGE PROGRAMME

**Hon. (Ms.) Abdalla:** Thank you hon. Deputy Speaker, Pursuant to Standing Order No.44(2)(c), hon. Ali Wario sought a Statement concerning the construction of small dams and water pans under the National Water Harvesting and Storage Programme in various counties as published by the Ministry of---

*(Loud consultations)*

**Hon. Deputy Speaker:** Order, hon. Members! The level of consultations is too high.

**Hon. (Ms.) Abdalla:** It was published by the Ministry of Devolution and Planning. The hon. Member stated that there are 45 counties included in the list of those benefiting from the programme, including Nairobi and Tana River counties. He was more concerned that Tana River County, being part of the arid region, would greatly benefit from such a project. He had asked that our report should give reasons for exclusion of Tana River County. Two, he wanted to know whether any research was done to inform the decision to exclude Tana River County and, thirdly when the Ministry plans to undertake the same programme in Tana River County.

I beg to read the following response:-

The Ministry of Devolution and Planning, through the National Youth Service, is implementing the National Water Harvesting and Storage Programme. The Ministry of Environment, Water and Natural Resources is participating in the programme through the provision of technical advice to the National Youth Service.

*(Loud consultations)*

Hon. Deputy Speaker, consultations are too loud, especially from the Member for Balambala.

**Hon. Deputy Speaker:** Hon. Members, the consultations are too loud. Hon. Sumra and hon. Jude! All those Members standing, please, find a good place at the back if you need to consult.

**Hon. (Ms.) Abdalla:** Hon. Deputy Speaker, I think Members need to listen to this, because the Jubilee Government intends to invest Kshs.7.5 billion annually in this matter and each constituency will be considered. If you do not hear the implementation plan, you will not be able to have your constituency benefit. The Ministry of Environment, Water and Mineral Resources is providing technical advice to the National Youth Service. The target for this financial year under the programme is the construction of 1,034 water harvesting structures at an estimated budget of Kshs.7.5 billion. So far, Kshs.1.5 billion has been provided for the construction of 272 structures and design of 164 small dams. Owing to the limited capacity of the National Youth Service to execute the targeted water harvesting structures within this financial year, it was agreed that the six regional development authorities and the eight water services boards under the Ministry of Environment, Water and Mineral Resources be involved in the implementation of the programme. It was proposed that the regional authorities and the water boards would use their internal capacity to construct the water pans and small

dams, and where this capacity is exceeded, outsource the construction, so that they are able to meet the expected output.

It is against this background that the Ministry of Devolution and Planning published the tender notice for construction of 743 structures in 231 constituencies through respective regional authorities and water boards, whose internal capacity was exceeded.

The water harvesting structures in Tana River are among those that will be done through the in-house capacity of the Coast Development Authority, supplemented by hiring of dam construction equipment. The sites are Kesi in Galole Constituency, Bura in Bura Constituency, Hara in Galole Constituency, Gale in Bura Constituency, Kibisu in Garsen Constituency and Kone in Garsen Constituency. Construction work on those sites was expected to commence on 17<sup>th</sup> March, 2014. From the foregoing, it is clear that although Tana River was not in the published list, the planned water harvesting structure would be constructed through in-house capacity. The published list is not an indication of the scope of work to be undertaken under the programme. The National Water Harvesting and Storage Programme is primarily targeted at rural constituencies and especially those in arid areas.

Nairobi and Mombasa counties, being mainly urban, were excluded. Water supply requirements for those urban counties are being addressed through other means, including donor supported initiatives. The National Water Harvesting Programme is to be implemented within the next five years, with an estimated annual budget of Kshs.7.5 billion. So far, 1,034 sites have been identified and budgetary provisions made, including the six sites for Tana River. The Ministry is in the process of confirming the suitability of the additional sites provided by the leaders. The list of sites so far provided is not exhaustive. More sites will be required, so that they can meet the large budgetary provision.

The Ministry urges MPs to participate in identifying additional water storage sites for inclusion in the programme in the next financial year.

Thank you.

**Hon. Deputy Speaker:** Hon. Wario, you have the first chance for any clarification.

**Hon. Wario:** Thank you very much. Allow me to register my appreciation to the Chair and the Committee on Environment and Natural Resources for according me the opportunity to sit in that Committee and query the answer as the Principal Secretary was answering this Statement.

However, on that day I was promised a definite date of 17<sup>th</sup> March as the commencement time for the construction of the dams in my constituency. I visited the constituency last week and, unfortunately, nothing has been started. When are they starting the construction work?

Thank you, hon. Deputy Speaker.

**Hon. Deputy Speaker:** Any other clarification? Hon. Wamalwa from Kiminini, is it clarification on the same? Where is Wamalwa? Is it a clarification on this Statement? I do not see Wamalwa.

Then hon. Lelit from Samburu West, is it a clarification on the same?

**Hon. Lati:** Thank you, hon. Deputy Speaker. I want to appreciate that very elaborate answer as given by the Chair. I think it is very informative. I, however, have two clarifications that I want to seek. Since you want to empower our people through businesses, particularly the youth, why did the Government not contract the youth from the constituencies?

**Hon. Deputy Speaker:** Order, Members! We cannot hear the Member who is trying to get a clarification because of the level of consultations.

**Hon. Lati:** So, I want to appreciate the very elaborate answer given by the Chair. I also want to appreciate the fact that the Ministry has said that we should involve Members of Parliament from the areas. But I have two clarifications to seek. One, since this is a massive programme and it is focused at the constituency level, what plans are there by the Ministry to empower the youth to do those kinds of businesses? I think that is something that is in the Jubilee Manifesto. The other thing that I want to ask is this: Since this thing is focused on the constituency, why do we not have Members of Parliament, particularly the CDF secretariat, being involved in the implementation of that programme?

Thank you.

**Hon. Deputy Speaker:** The Member for Turkana East.

**Hon. Ngikor:** Thank you, hon. Deputy Speaker. Mine is just to know from the Chair of the Committee in charge of environment the issue of identification of the projects. That is because we had been told that MPs would participate in the projects this financial year. We just have the team from Nairobi coming to the constituency level and starting their work. Who normally identifies these projects? Some of these projects have become white elephants in those areas, especially in my area. I have several of them but nobody is using them because they have been put in the wrong place, where people do not even need them. Even when they are in Tana, as per the request of the Member of Parliament representing that area--- It has already been said that there are some areas which have been identified. I think the same thing should apply to other constituencies. Who did the identification? Was the community or the Member of Parliament from that area involved?

**Hon. ole Lemein:** Thank you, hon. Deputy Speaker. As we appreciate the work that the Ministry is doing, it is good for us to know the work that is being in our constituencies. As I speak, there are some pans that are being done in my constituency. However, how can the Ministry start doing these works before--- It is very difficult for the work to go on now that it is raining.

Thank you, hon. Deputy Speaker.

**Hon. M.D. Duale:** Thank you, hon. Deputy Speaker for giving me this opportunity. I want to thank the Chair of the Committee for the answer she has given. However, I am a bit worried about the capacity of the National Youth Service (NYS) to implement this project. Could this work be shared among the youths in the constituencies?

Thank you very much.

**Hon. Aden:** Thank you, hon. Deputy Speaker. I also want to thank the Chair for the very elaborate answer that she has given. My first clarification is on the capacity of

the dams that exist. This is because these dams are very important to us. As you can see, the pastoralists are very concerned about this issue. This is the lifeline of our people.

The problem we have now is that the amounts allocated to do some of these projects are so little that they can only do small dams that can hardly hold any water. Could we target dams that are bigger in size or capacity and that can hold water for a long period? It might be useful to do two or three in a constituency which will hold a lot of water rather than doing five or so very small dams.

Finally, the time it has taken is too long. Unfortunately, the rains are here. Fortunately, this is the time when we would have collected water for our people; unfortunately, the dams are not ready. We also need to engage the Minister and seek clarification on timing.

Thank you very much.

**Hon. F.K. Wanyonyi:** Hon. Deputy Speaker, I wish the Chairlady was listening. I want to seek a clarification. I think the whole programme is good but there is a problem. The Ministry should have involved Members of Parliament from the respective places to identify the sites.

In my area, we have a problem because I have not been involved. The problem with Kwanza was lack of check dam to tame River Sabwani which causes floods in that area. I have been told now that instead of funding for check dams, they now fund water pans, which are misplaced. I raised the problem and it is good that she has said that the Regional Development Authorities (RDAs) are involved. They outsourced to people who have no capacity. The NYS does not have the capacity to operate in some vast areas like mine, where we need check dams instead of water pans. I know my constituency is one of those that have been identified. However, instead of doing check dams, we are doing water pans. I do not know whether there is confusion and why they have not involved Members of Parliament to identify particular problems and sites. Could she clarify that?

**Hon. Deputy Speaker:** The Member for Kwanza, I think your point has been made.

Yes, the Member for Wajir West.

**Hon. A.O. Ahmed:** Thank you, hon. Deputy Speaker. While I also appreciate the response from the Chair of the Committee I have a few concerns as raised by my other colleagues. One is the involvement of the Members of Parliament when undertaking the selection of the dams. I think that has been the biggest problem; we have not been involved. As a result, there is duplication. You will find in one village or centre a dam is being constructed by a water service board, the regional water authority and the county government. This is duplication of work and misuse of resources. I think the Ministry needs to sit down with the technical team. Members of Parliament should be involved as much as possible. We should have a say in this.

Thank you.

**Hon. Sumra:** Thank you very much, hon. Deputy Speaker. Of course, it is water for *wananchi*. The population of Nairobi has grown and I hope the Chair, hon. Amina, is listening. We have a big population in Eastlands and Dandora. Could this money be used to buy storage tanks? The population in Mombasa is growing and there is lack of water. Could we consider buying storage tanks, so that water is stored and supplied to the local residents? Could we consider using the money to provide storage tanks in big cities?

**Hon. (Ms.) Kipchoim:** Thank you, hon. Deputy Speaker. I want to appreciate the Chairlady for the good report. However, I also want to raise my concerns. The concerns that my colleagues have raised are similar to mine. This is because they do not involve us in anything. Whenever they want to dig a water pan, drill a borehole or construct check dams, they should involve us so that we can tell them where they are supposed to put these facilities. We have many boreholes which are not working now. These boreholes have no water and the same thing applies to check dams. They hold no water. The dams have no water. During the rainy season, rain water spills over and causes a lot of breakages. For instance, in my constituency, none of them is working. The communities have a lot of problems with those dams.

**Hon. Kaluma:** Thank you, hon. Deputy Speaker. We do not know of those dams in Homa Bay Town Constituency. I want to ask the Chair of the Committee what the Ministry is doing to ensure that there is equity in the distribution of those resources. About Kshs.7.5 billion is a lot of money for some constituencies not to get something. In dealing with that issue of equity, I want the Chairperson of the Committee to clarify whether, indeed, the Ministry is thinking of implementing that huge programme through the constituencies in the manner in which we are now doing staff housing for nurses. The CDF identified sites and locations for better implementation so that we do not have money being wasted. We need to put money where we can have direct returns on it.

Lastly, it has been said that Members of Parliament will be involved. Can we know how the Ministry is intending to involve Members of Parliament, if those projects are not being implemented on a constituency-to-constituency basis in the manner proposed?

**Hon. Deputy Speaker:** Chair, I think most of the questions are now being repeated. The Chair can now respond.

**Hon. (Ms.) Abdalla:** Hon. Deputy Speaker, there are eleven clarifications. The first one is from hon. Wario about the date of commencement. That was the agreed date of commencement with the Ministry officials. We will have to follow that date of commencement. We will ask the Ministry why they have not started.

On the question from the Member for Samburu West as to why the youths were not involved, I have a background on the mindset of why the money was put in the National Youth Service. One of the reasons why it was done this way was because the works were highly inflated and the vision of the Jubilee Government was that we should not have institutions that have machinery and we do not use them. So, the initial plan was for the NYS to use the machinery they own and their trained expertise to do the dams themselves. In essence, the budget was lower than when it is given to commercial contractors. That is where the problem began. That is why they could not advertise this as a youth activity and the bulk of the work would be done internally with the machinery owned by the regional authorities and water services boards. That is why the youth were left out.

On the issue of the involvement of Members of Parliament on selection - and this question has been asked by Members for Samburu West, Turkana East, Daabab, Kwanza, Wajir West and Baringo South--- They are concerned about the need to involve local Members of Parliament. The Ministry informed us that their source of information on where to place those dams was based on the already done studies on the placements of



those dams. So, they picked the dams from the already identified sites and they did not involve Members. Some regional authorities have insisted on calling up Members to find out the viability and where to place those dams.

However, we continuously asked the Ministry, especially through the budgeting process, how they can prevent duplication. The Members of Parliament are putting money through their CDFs. The water services boards are investing in dams and now there is this Kshs.7.5 billion. We have been promised that they are going to ensure that duplication does not take place. The Member for Narok South has brought up a very valid issue that we need to address and I wish the Chair of the Budget and Appropriations Committee was here. There is the fact that those dams cannot be constructed when the rains have come and also, we know that there is a major problem of Exchequer releases in the Government at present. This needs to be addressed so that we do not lose out on that Kshs.7.5 billion in areas where there has been rainfall.

On the issue of dams for Kwanza, this is a problem of “cutting and pasting” projects throughout the country. Check dams are not included in this activity. So, they cannot fund check dams when the Budget is for small dams.

The Member for Balambala said that we should do big-size dams. That is the right way to go but, as you know, the funding, as budgeted for, was for internal works. The need to spread out that funding to all the constituencies could not allow big dams to be constructed.

The last one was from the Member for Embakasi South regarding how to innovatively ensure that urban areas are considered since this is about water harvesting and storage. This is a suggestion that I will present to the Ministry as part of the input from the House.

**Hon. Deputy Speaker:** I want to give the chance to hon. Midiwo who is on a point of order.

**Hon. Midiwo:** On a point of order, hon. Deputy Speaker. Mine is a simple one. I should have done it the right way. We could have done this before we began our proceedings.

Arising from the events of the weekend and the murders that occurred in Coast Province in Likoni, I want to request that we do a one-minute silence as a House, to show solidarity with the people. Further, you allow us a few minutes just to send our condolences to the bereaved families and condemn acts of terrorism.

**Hon. Deputy Speaker:** That is a good order and I think we can all then stand in solidarity with our brothers.

*(The House observed a minute of silence)*

Hon. Members, I do not know whether 10 minutes will really serve our purpose. Given that it is not in the Order Paper, maybe, you can ask for a Motion for Adjournment later in the day, so that we can discuss it.

**Hon. Midiwo:** Hon. Deputy Speaker, I am informed that we will be debating the Report on the Westgate Shopping Mall Terrorist attack in the afternoon. So, I am okay.

**Hon. Deputy Speaker:** Thank you. We can then move to the next Order.

## COMMITTEE OF WHOLE HOUSE

*(Order for Committee read)*

*[Hon. Deputy Speaker left the Chair]*

## IN THE COMMITTEE

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

THE NATIONAL FLAG, EMBLEMS AND  
NAMES (AMENDMENT) BILL

**Hon. (Eng.) Gumbo:** On a point of order, hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Nicholas Gumbo, there can be nothing out of order because we have not even started transacting business under this Order.

Hon. Members, we have four clauses in this Bill. We have amendments proposed by three Members of this House. They have amendments which are not related to each other.

Yes, hon. Nicholas Gumbo.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady, I rise on a point of order in relation to the matter that is before us. When this matter came up, I rose on a point of order. With utmost respect to my friend, hon. Keynan, who has sponsored the Bill, I want to ask about the constitutionality of this Bill. I was told that I should do so during the Committee Stage.

Hon. Temporary Deputy Chairlady, if you could just indulge me, our Constitution---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Gumbo, did you say that you raised this issue earlier on?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady, I raised the issue during the Second Reading of this Bill. I was told that I should raise it during the Committee Stage. I feel---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Is it a constitutional issue, hon. (Eng.) Gumbo?

**Hon. (Eng.) Gumbo:** Yes, it is hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. (Eng.) Gumbo, give me a minute to consult on the matter.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady, I wish you could just indulge me, so that I can explain.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. (Eng.) Gumbo, very briefly, what is the constitutional issue that you are raising, so that I can consult on it before you proceed?

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady, that is why I was asking you to indulge me.

The business before us is the National Flag, Emblems and Names (Amendment) Bill, 2013. If you look at the Constitution, under Article 9(1), you will see that the national symbols of the Republic are given as the national flag, the national anthem, the coat of arms and the public seal. Article 10 of our Constitution is about national values and principles of governance. One of the values provided under Article 10(2)(a) is patriotism.

One of the proposed amendments says that the national flag is supposed to promote patriotism. That is where I have a fundamental problem. Under the proposed Clause 4A(1), the Bill says that a person shall not fly the national flag on any motor vehicle. Under Sub-clause (3) of the same proposed Clause 4A, the Bill provides that a person who contravenes Sub-section (1) commits an offence and shall be liable, on conviction, to a fine not exceeding Kshs.1 million or imprisonment for a term not exceeding five years or both.

Hon. Temporary Deputy Chairlady, in my humble view, this is a major contradiction. You cannot be saying that the national flag is a symbol of patriotism and---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Gumbo, I have gotten the gist of what you are saying. I will ask the Mover, hon. Keynan to explain himself.

**Hon. (Eng.) Gumbo:** Hon. Temporary Deputy Chairlady, why do you not just let me explain further?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): No! I have got the gist of what you were saying.

Hon. Keynan, please, convince this Committee of the whole House on your position.

**Hon. Keynan:** Hon. Temporary Deputy Chairlady, I do not have the advantage of having a copy of the County Governments Act, 2012 but I know that Section 3 of that particular Act clearly domesticates what is anticipated by Article 10 of the Constitution, to which hon. Gumbo has ably referred.

It is true that the national flag is one of the symbols of national unity but there is a *modus operandi*. Here is where hon. Gumbo has completely mis-applied the law. There is a way in which that particular very important national item is supposed to be used. Therefore, this Bill is attempting to bring order and harmony in the way those particular very important facilities are supposed to be used. There is a procedure to be followed before a Bill gets to this stage. This Bill was first drafted---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Keynan, I know the procedure. I just wanted to hear your response to hon. Gumbo's contestation. I will then take the Leader of Majority Party and one other hon. Member to contribute.

**Hon. Keynan:** Hon. Temporary Deputy Chairlady, if there is any unconstitutional element in this Bill, the right approach is to wait for this House to legislate, go to court and say that it is not constitutional.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Keynan, I have heard you. Let us now listen to the Leader of Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, I want my colleagues to listen to me. I have nothing against the governors. In fact, I have a very good working relationship with my governor. Hon. Gumbo referred to Article 9 of the Constitution, which is sub-titled “National symbols and national days”; and Article 10, which is sub-titled “National values and principles of governance”. As we sit here and legislate, any Kenyan can fly a flag in his country. This Bill is dealing with State officers. Look at the contradiction. I want to read the County Governments Act. It says: “County symbols”. This is the work of my Garissa County Assembly. They better do it.

The only person who has fulfilled the requirements of Sub-clause 4 is the Governor of Kisumu. I want to congratulate him. It says: “Every county shall enact legislation prescribing the following county symbols:-

- (i) The county flag.
- (ii) The county coat of arms.
- (iii) The county public seal.”

Hon. Temporary Deputy Chairlady, the only governor who has written to the Attorney-General of the Republic of Kenya to ask for permission on the design is the Governor of the Great City of Kisumu. We must thank him because he is following the law. That is what the law says.

Finally, let us not be trivial. We are in the Committee of the whole House. Let us continue with the business.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Duale, I have heard your point. Of course, hon. Gumbo has a right to put his point across. What the rule says is that you allow ventilation because what he was raising was a constitutional issue. I am giving a chance to the last person, hon. Kaluma, and then I will make a decision.

**Hon. Kaluma:** Hon. Temporary Deputy Chairlady, we are contemplating debate on the amendments proposed by hon. Ronald Tonui, and we should be alert to that. Lastly, the county governor under Article 260 of the Constitution is not just an officer of the county government. He or she is a State officer just like others. So, we should not mislead one another, as the Leader of the Majority Party is doing, saying that the county governor can only fly the county flag. He is misleading---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Thank you, hon. Kaluma. My decision has been espoused by majority of the Members. Thank you, hon. Kaluma for also making me aware that there are such amendments coming. But your point of order cannot be entertained at this time. A constitutional matter is very serious and this Bill could not have reached this stage if it was unconstitutional, unless we had no vigilance as we were doing it.

Hon. Gumbo, I will ask you, kindly, because there are amendments coming, to wait for them. Hon. Keynan, we are starting now with the amendments and we are going to start with Clause 3. We have amendments proposed in Clause 3 by three Members. Hon. Asman Kamama, if you could start with your amendments, please.

### *Clause 3*

**Hon. Abongotum:** Thank you, hon. Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 3 of the Bill be amended by -

(a) inserting the words “and diplomats while in foreign missions” immediately after the word “Senate” appearing in the proposed new Section 4A(2).

The merit of this amendment is as follows: You know that when our diplomats are outside our territorial boundaries, they represent this country. They are entitled to flying the flag and this is a normal practice all over the world. I submit hon. Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): That is clear, hon. Kamama. You have done 3(a). Do you want to do 3(b) so that we can propose the amendments together?

**Hon. Abongotum**: Yes, hon. Temporary Deputy Chairlady. I beg to move:-  
THAT, Clause 3 be amended by-

(b) deleting the word “exceeding” wherever it appears in the proposed new Section 4A(3) and substituting therefor the words “less than.”

We want to avoid ambiguities when it comes to fines. We are proposing a fine of Kshs.1 million but not less than Kshs.2 million should be given to anybody who flouts this particular provision.

Thank you, hon. Temporary Deputy Chairlady.

*(Question of the amendment proposed)*

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

**Hon. Keynan**: Thank you, hon. Temporary Deputy Chairlady. This is something that we have discussed in the Committee and it really improves on the Bill and, therefore, I want to support those amendments.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I can see so many requests and feel that they might not be on this issue. Hon. Mbadi, you have a point of order?

**Hon. Ng’ongo**: On a point of order, hon. Temporary Deputy Chairlady. I was just wondering because previously we have dealt with proposed amendments on a clause before. If they are two, we handle one at a time. That is because I do not have an issue with the first one, but I have an issue on the second one. If you allow me - and I am not a lawyer - I have never heard of any legislation where you put “not less than”. It is usually “not more than” in terms of fines. This is going to be the first legislation of its kind and, therefore, I would advise my colleague to drop the second amendment and leave us with the first one, which I have no problem with. I have never heard of where you put “not less than” in terms of a fine.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Mbadi, that makes sense. Hon. Kamama, are you in agreement with hon. Mbadi so that we can proceed?

**Hon. Abongotum**: Hon. Temporary Deputy Chairlady, I will not drop my amendment because we really deliberated on this issue thoroughly and in a consultative way. So, what he is raising is just a personal issue.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): So, I will put the Question separately for the amendment to Clause 3 (a) and Clause 3 (b).

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, do you want to contribute on this?

**Hon. Members:** Yes.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will give a chance to only one more person - hon. Gichigi.

**Hon. Gichigi:** Thank you, hon. Temporary Deputy Chairlady. The proposed amendment to Clause 3(b) is not acceptable in these particular circumstances. By just flying a flag, you are fined Kshs.1 million! That is the import of this proposed amendment. When you say “not less than”, it means you can actually be convicted and fined Kshs.1 million or more. This is not acceptable and all of us should oppose this amendment.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I have heard you, hon. Member. I now want to put the Question. I know you have heard both sides of the argument, hon. Members.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): The Mover of the Bill, you have an amendment on Clause 3. Go ahead with it, hon. Keynan. Sorry, it is the Leader of Majority Party. I apologize. Hon. A.B. Duale!

**Hon. A.B. Duale:** I want my colleagues to listen to me because this is a very important amendment. I beg to move:-

THAT, Clause 3 of the Bill be amended by-

- (a) inserting the words “Cabinet Secretary” immediately after the word “Chief Justice” appearing in the proposed new Section 4A(2).

I am getting my amendment from the Constitution. If you look at Article 152 of the Constitution, it says:-

“The Cabinet shall consists of –

- (a) the President
- (b) the Deputy President
- (c) the Attorney General; and,
- (d) not fewer than fourteen and not more than twenty-two Cabinet Secretaries.”

If you go further, you will see within the Constitution that the Executive is composed of the President, the Deputy President, the Cabinet and the Attorney General. Now that we want to deny our friends based on the county law, Section 6--- They are going to design a county flag, county coat of arms and county public seal and, of course, we also expect the county executives to also fly the county flag. That is because we

cannot have an Executive of only the President and the Deputy President flying the flag. I want to convince my colleagues that, that happens the world over and support my amendment that the Cabinet should also have the flag. I beg to move.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I have so many interventions. Could I kindly ask Members, because these requests were there from the earlier debate we had--- If you have a request now, please, remove your card and request afresh. That is because we have too many names. Hon. Rose Nyamunga of Kisumu, do you want to contribute? Hon. Gikaria of Nakuru Town East.

**Hon. Gikaria:** Thank you, hon. Temporary Deputy Chairlady. I support hon. Duale's amendment on this one. Hon. Adan Keynan came to our Committee and he really expressed the desire to have the Cabinet Secretaries included. He mentioned something about the Constitution. I support the amendment as proposed by hon. A.B. Duale.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Millie, do you want to speak on this issue? Please, go ahead.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Temporary Deputy Chairlady. I stand to oppose. My view was really that we should all have the flags. But if we cannot all have the flags, then there is no reason why we are giving Cabinet Secretaries and us Members of Parliament, who were elected by the people of Kenya, we want to treat ourselves as second-class citizens.

I oppose.

**Hon. Katoo:** Hon. Temporary Deputy Chairlady, I think I was the last one to speak during the Second Reading of this Bill. I want to support this amendment and urge my colleagues to do so. Just imagine our Cabinet Secretaries are outside the country on official duty---

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. A.B. Duale, hon. Jamleck and hon. Mutava, you cannot lobby in that manner, which is causing too much disruption. I cannot hear what hon. ole Metito is saying. Please, consult in low tones.

**Hon. Katoo:** Hon. Temporary Deputy Chairlady, I was saying that the world over, Cabinet Secretaries represent the Heads of State. This is similar to hon. Asman Kamama's amendment about the high commissioners and ambassadors. Cabinet Secretaries represent Heads of States when they move out. I want to urge my colleagues not to look at individuals or the current situation. Let us look at posterity. In our neighboring countries here in East Africa, Cabinet Secretaries fly flags. How then can we say that the Cabinet Secretaries in this country will not fly the flag? That is demeaning them.

I urge Members to be tolerant and listen to the views of others. A vote will be put and a decision made by this House. I urge hon. Members to support the amendment.

**Hon. Bedzimba:** Bi Naibu Mwenyekiti wa Muda, nasimama kupinga haya mabadiliko. Ikiwa tumewanyima magavana ambao wamechaguliwa na wananchi kwa kura, hatuwezi kumpatia mtu ambaye ameteuliwa.

Kwa hivyo, napinga.

**Hon. (Dr.) Shaban:** Bi Naibu Mwenyekiti wa Muda, kuna umuhimu mawaziri waruhusiwe na wapatiwe nafasi ya kupeperusha bendera katika haki zao za kufanya kazi. Hii ni kwa sababu Baraza la Mawaziri ni chombo chenye umuhimu nchini. Vile vile, ikiwa mabalozi walioko chini ya mawaziri wataruhusiwa kupeperusha bendera, basi kuna umuhimu mawaziri pia wapewe nafasi ya kupeperusha bendera ya nchi.

*(Loud consultations)*

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

**Hon. Members:** Division! Division!

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, we have quorum for the Division. I order that the Division Bell be rung.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Order, hon. Members! Order, hon. Keynan! Order hon. Duale!

Can we close the Bar? Hon. Members, can we have order now? Serjeant-at-Arms, can you help me to maintain order now? Hon. Members should immediately return to their seats. Hon. Kajuju, please, help me keep order by taking your seat.

Hon. Members, remember I have the authority to order you out of this Chamber, if you are not going to maintain order. Hon. A.B. Duale, you know I can actually order you out of this Chamber! Hon. Members, I must say, as exciting as it seems, you must maintain order for us to have a clear process.

We are now going to vote electronically. I will give you guidelines step by step on how to vote electronically. You have 90 seconds to do so. This is the way we are going to vote. Please, do not do it until I tell you. You are going to have 90 seconds to log in and 60 seconds to vote. Voting is "Yes" or "No" or "Abstain." Please, desist from trying to vote twice or pressing twice. Once you do it, we will see and check the systems and then do the tallying.

Those who do not have cards, I want to see---

*(Loud consultations)*

Hon. Members, I want to inform you that we are now in the digital era and we have started enforcing our Standing Orders. I am sure you have seen what most Chairpersons are doing. If you have no card, you will not vote. Therefore, those who have cards should proceed and vote.

What is your point of order, hon. A.B. Duale?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, you need to use Standing Order No. 1.



*(Loud consultations)*

**Hon. Members:** No! No!

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, I have the Floor.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, I even want to help you with that. I have a substantive Speaker who is my boss and I am following orders from him.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, you should protect me from the hon. Member for Suba.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I will not be able to use it because it belongs to the substantive Chair of this House who gave me directions and I am following those directions. I have been given directions not to use that Standing Order at this time. Therefore, take 90 seconds, hon. Members.

Complete what you were saying, Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, it is not the card which is voting, it is hon. Members of Parliament. From precedents and practice, hon. Members are the ones who vote and not cards.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I have given you airtime, hon. Duale. Take 90 seconds to vote.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairlady, if you look at Millie Odhiambo and me, we have a long history. She reminds me of---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I have given you 90 seconds, hon. Duale! Are you with me? The 90 seconds begin now. I have not said you vote. Log in your cards. Do not vote yet, please.

**Hon. Midiwo:** *(Inaudible)*.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Thank you very much, hon. Jakoyo for reminding me so that we are aware of what we are voting for. Due to the noise, it had slipped my mind. I apologise. What we are voting on is that Clause 3 be amended as proposed by hon. Aden Duale. Please log in now. Do not vote, just log in first. Hon. Members, I am waiting for it to come on the screen. So, please, just log in and be patient. Please, let us not take more points of order in-between voting. It has never happened and it will not happen.

Hon. Members, I just want to say one thing: If you are a new Member in this House, please use the Member sitting next to you to show you where the voting buttons are. The voting buttons are not the ones for intervention or speaking. Now the screens are on, hon. Members. I can see some people have started voting without my guidance. So, I want to now give you authority to vote. It will be 60 seconds to vote, hon. Members. Go ahead and vote.

Hon. Members, the time for voting has ended. Hon. Members, honestly, I have not seen you so much excited in a long time. Hon. Members, I want to announce the results of the voting. The Ayes are 51; the Noes 74 and abstention is zero.

## DIVISION

*(Question put and House the divided)*

(Question negated by 74 votes to 51)

**AYES:** Messrs. Bitok, ole Lemein, Sang, Ms. Gathogo, Ms. Kajuju, Ms. Mbugua, Ms. Ngetich, Messrs. Njenga, Abdinoor, Lentoimaga, Ms. Gatheca, Messrs. Rai, Wambugu, Washiali, Musyimi, Kinyanjui KK, Dr. Shaban, Messrs. Langat, Dawood, Gikaria, Njuki, Dr. Nyongesa, Messrs. ole Ntutu, Wangamati, Kinyua, Gakuya, Bowen, Ms. Kanyua, Messrs. Wekesa, Kamau, Angwenyi, Tong’i, Serut, Nakara, Kariuki Ndirangu, Chepkong’a, Dr. Laboso, Messrs. Katoo, Muthari, Lagat, J.K. Chege, Manoti, Melly, Ms. Chebet, Ms. Musyoka, Messrs. Kemei, Abongotum, Sambu, Chanzu, E.Keter and Keynan.

**NOES:** Messrs. Midiwo, Mwamkale, ole Kenta, Oyoo, Wandayi, Kaluma, Abass Mohamed, Aden, Masadia, Dido, Andayi, Mulu, Kangara, Bishop Mutua, Messrs. Njagagua, Gimose, Wakhungu, Iringo, Muzee, Nanok, Sitati, (Ms.) Kedogo, Messrs. Ngare, Nderitu, Theuri, Mungaro, (Ms.) Nyasuna, (Ms.) Kipchoim, (Ms.) Duri, Messrs. Kombe, Mwanyoha, Saney, Mwaura, Eng. Rege, Prof. Nyikal, Messrs. Mlolwa, Maj-Gen. Nkaissery, Mr. Magwanga, (Ms.) Lay, Messrs. Murungi, Okoth, (Ms.) Fathia, (Ms) Emaase, Messrs. Robi, Maweu, Ng’ongo (Ms.) Odhiambo-Mabona, (Ms.) Khamisi, Messrs. Linturi, M.D. Duale, Aburi, Chea, Ibren, Ngikor, Eng. Gumbo, Messrs. Gitau, Shehe, Otaalo, Bedzimba, Makenga, Tonui, (Ms.) Nyamunga, Messrs. Mwaita, Gichigi, Ndiritu, S.S. Ahmed, Tiren, Ogari, (Ms.) Sunjeev, Messrs. Mwadeghu, Bosire, Wetangula, (Ms.) Chidzuga and (Ms.) Juma.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Let us go to the next clause. Hon. Members, we now have another amendment on the clause by hon. Ronald Tonui, MP. Hon. Tonui, we are ready for your amendments now.

### Clause 2

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

THAT, Clause 2 of the Bill be deleted and replaced with the following new clause –

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, do you have an amendment on Clause 3? We are still on Clause 3 and that is why we are following the order of all Members who have amendments on Clause 3. We have disposed of all the others. We are on your Clause 3. Go ahead.

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

THAT, Clause 3 of the Bill be deleted and replaced with the following new clause

Insertion of new section 4A in Cap 99. **3.** The principal Act be amended by inserting the following new section immediately after section 4-

Flying national flag on a vehicle. **4A.** A citizen of Kenya may fly the national flag on a vehicle.

I have taken effort to define what a vehicle is as per my amendment.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Members, please, pay attention to hon. Tonui who had the decency also to do the same earlier. Hon. Members, please, consult in low tones.

**Hon. Tonui:** I am moving that the principal Act be amended so that we define “vehicle”. We are saying that a vehicle includes a motor vehicle, motorcycle, bicycle and any other conveyance used on the road. I fail to understand the intentions of this Bill.

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

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Serut, what is your point of order?

**Hon. Serut:** Hon. Temporary Deputy Chairlady, by accepting the amendment that he is trying to move, are we not trying to negate what we have already passed? We have already withdrawn the flag from the governors and Cabinet Secretaries. So, which other citizens is he referring to?

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, he has a right to move it. We will go to the next process as we have done before. So, hon. Tonui, complete moving your amendment.

**Hon. Tonui:** Hon. Temporary Deputy Chairlady, I believe you confused me because I wanted to move the amendment right from the start to the bottom. It was to start with the definition. Whoever was typing this Order Paper, typed Clause 2 there instead of Clause 3. It should be reading:-

“Clause 3 be deleted and replaced with the following new clause-

3. The principal Act is amended in Section 2 by inserting the following new definition in its proper alphabetical sequence.

I am defining “vehicle” to include a motor vehicle, motorcycle, bicycle and any other conveyance used on the road. My intention here is to encourage---

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): Hon. Member, give me one minute to consult on this matter. I will give you your space.

*(Hon. Temporary Deputy Chairlady  
consulted the Clerks-at-the-Table)*

Hon. Tonui, thank you for giving me those few minutes to consult.

*(Hon. Midiwo consulted loudly)*

Hon. Midiwo, you should be paying more attention. Please listen! I am going to give hon. Tonui time to move his amendment. But the import of it--- We feel that we should make it very clear. Those who know the Standing Orders know that this can negate the whole of what hon. Serut has clearly said. That is the point of order you are moving. I want you to know about the consultations we have had here, hon. Keynan. We are forced to continue that way because it is the right of the hon. Member to move his amendments, prosecute them and then put them to vote as we normally do. Hon. Serut has already raised it. He has made us consult on it. I think you have a right to speak hon.

Keynan, but I will continue with the Mover because he had already started moving his amendment. We will give the Mover a minute to speak and then we will come back to you.

**Hon. Keynan:** Hon. Temporary Deputy Chairlady, I stand under Standing Order No.133; procedure in the Committee of the whole House on a Bill. Section 5 of the same Standing Order says - this is what my good friend, hon. Tonui, has failed to appreciate. What he has basically done is that through this amendment, he has rewritten and rearranged the whole Bill in a way that fits his own imagination. Our Standing Orders completely prohibit it and for this House to debate an issue that we know outright, as far as our Standing Orders are concerned, is an illegality is not proper. That is what the Standing Order says and I want hon. Tonui to bear with me. I also want the Leader of Majority Party to listen because, if you look at all the amendments on Clause 2, the New Clause 2A, Clause 3 and New Clause 3, what he has attempted to do is to rewrite the whole Bill and configure it in the way that he understands it. That is illegal. This is the reason pursuant to Standing Order No.133(5):-

“No amendment shall be permitted to be moved if the amendment deals with a different subject or proposes to unreasonably or unduly expand the subject of the Bill, or is not appropriate or is not in logical sequence to the subject matter of the Bill.”

So, all the amendments by hon. Tonui completely negate the Standing Orders and I want to believe that they should be removed. He should withdraw them with a lot of humility.

**Hon. Tonui:** Hon Temporary Deputy Chairlady, I believe that you have already ruled on this issue. For any of these amendments to reach the Floor of the House, they had gone through various stages of confirmation. You have clarified that. Whatever has reached the Floor of the House has already been confirmed to be constitutional and obeying all the Standing Orders. I know he might have quoted one and I am not a specialist in the Standing Orders, but the experts within Parliament must have gone through and approved it. So, I believe this is constitutional and it is in order.

**Hon. Midiwo:** Hon. Temporary Deputy Chairlady, this is a House of rules.

*(Loud consultations)*

They are fighting already! There is a Jubilee war going on. There is URP war going on. This is a House of rules. If you read the amendment by hon. Tonui, it negates the object of this Bill. The Bill talks about some Kenyans. On his amendment, he starts with any Kenyan. That is against the rules of this House. He may be right and you may be right that any hon. Member has a right to attempt to bring an amendment, but it is for this House to interpret its own rules correctly. Through the Chair, I can tell you the point of order by hon. Keynan is the right way. If we do not do it that way, we will be opening a *pandora's* box for future amendments. Anybody will do anything on the Floor of this House.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I want to hear more ventilation on this matter.

**Hon. (Prof.) Nyikal:** Hon. Temporary Deputy Chairlady, on this one, my understanding of the law during the time I have been here, if we accept this amendment,

then the whole morning we have been sitting here was absolutely unnecessary, if we say that anybody can fly a flag. For me, I think the appropriate thing is for the amendment to be withdrawn.

**The Temporary Deputy Chairlady** (Hon. (Ms.) Shebesh): I want to change Chair. The reason I am doing this is because the decision that is going to be made here will be made by our Deputy Speaker. But hon. Members, remember that is already on the Order Paper and it has the right to be in it. You also have the right to vote but I will now be changing the Chair.

*[The Temporary Deputy Chairlady*

*(Hon. (Ms.) Shebesh) left the Chair]*

*[Hon. Chairlady took the Chair]*

**Hon. Chairlady:** Order, hon. Members! It is quite true what many Members have already alluded to. The fact is that the passage of this amendment will negate all that has been done since morning. Nonetheless, we should have dispensed of it first before doing the other so that, if it passed, then the rest would not be valid then. Now that it has come in this order, I think the best way of disposing it at this point is really through the Members themselves. We put the Question and either it is passed or not. Then we can take it from there.

Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Chairlady, I want to say that from the outset, these amendments could have served me very well because, as you know, we are nomads and we cut cross from one country to the other. So, you just put the Kenyan flag on your camel, go for grazing to Ethiopia and Somalia, come back and your identity will have been protected. But reading the mood of the House, I oppose.

*(Laughter)*

**Hon. Chairlady:** Hon. (Ms.) Odhiambo- Mabona.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Deputy Speaker. Actually, I wanted to say that even though I did not agree with the procedure, I agree with the substance. I agree that every Kenyan should fly the flag. If it is an issue of patriotism, why should we be ashamed of flying our own flag? I, as a Member of Parliament, should fly the flag; the Cabinet Secretary should fly the flag; the President should fly the flag and the shoemakers should fly the flag. We are all proud Kenyans. Why are we creating a culture of making other Kenyans look more superior than others? We are all Kenyans. I support you, hon. Member

**Hon. Chairlady:** Hon. Linturi.

**Hon. Linturi:** Thank you, hon. Deputy Speaker. You know this is a very serious House and we must look at matters that come before this House for debate holistically. When you look at the effect of whatever laws that we must pass--- We cannot make laws just for the sake of it. We make laws for the people to abide by them and there is no

other institution that has authority to make any other law other than this Parliament. What I am saying is this: For those people like hon. (Ms) Odhiambo-Mabona that have never formed a government and have no possibilities of forming governments, they have that excitement of trying to fly the Kenyan flag because---

I oppose this amendment because of the reasons earlier stated. I kindly ask you, please, hold your horses until such a time that you are able to form a government and fly a flag. That is because it is something that is revered and respected. It is not for everyone.

I oppose.

**Hon. Chairlady:** I have given hon. Ng'ong'o the chance. Please, the rest of you, let us listen to each other.

**Hon. Ng'ongo:** Thank you, hon. Deputy Speaker. I do not want to get into the discussion on the unfortunate statement by hon. Linturi who is my friend but, at times, he finds himself making statements that he regrets later.

*(Laughter)*

**Hon. Chairlady:** Order, hon. Members! Can we hear the point you want to make? Can you desist from making comments that you know are going to raise temperatures so that we can move on? There shall be order in this House. I say that to both sides. Can you desist from making those comments? We want debate to continue on the issues at hand. We do not want to raise other issues that are really irrelevant to the topic that we are moving on with.

Hon. Ng'ongo, please, stick to the point.

**Hon. Ng'ongo:** Thank you, hon. Deputy Speaker. I want to say, with a lot of humility, that this is a House of rules. Much as I would support that all Kenyans should fly flags and that was my position, but based on our procedure this amendment cannot be allowed. The Standing Orders allow you to make a ruling and if you look at Standing Order No.133(6), it says:-

“No amendment shall be moved which is inconsistent with any part of the Bill already agreed to or any decision already made by the Committee and the Chairperson may at any time during the debate of a proposed amendment, withdraw it from the consideration of the Committee if, in the opinion of the Chairperson, the debate has shown that the amendment contravenes this paragraph.”

I would request you to find that this particular provision is important. If this amendment is allowed, it is going to negate--- Actually, the old Standing Orders had, in the caption, the words: “Negating the objective of the bill”. Much as I would not agree with the Bill, but when the procedure is wrong, I would request that you get the procedure right and order that this amendment be withdrawn from the consideration of the House.

**Hon. Chairlady:** Hon. Abongotum

**Hon. Abongotum:** Thank you, hon. Deputy Speaker. I want to be heard on this and---

*(Loud consultations)*

**Hon. Chairlady:** Order, hon. Members! We agreed to listen to Members' contributions.

**Hon. Abongotum:** Hon. Deputy Speaker, I just want to say that by allowing this superfluous amendment, we will have actually made nonsense of the entire debate on this Bill. There are two confusions. Let the Member not confuse the normal fliers--- We will allow the normal fliers. It is like when Harambe Stars is playing with Uganda. You are allowed to have it on your head. You can have a piece of paper. An official flag is different from a flier, but fliers are allowed. So, let us not mix the two because patriotic Kenyans are allowed to hold national colours. You can have the fliers. We are not actually gagging anybody. So, I totally oppose.

**Hon. Chairlady:** Hon. Kaluma.

**Hon. Kaluma:** Hon. Deputy Speaker, the flag is a symbol of patriotism and pride for our nation. It is one item of national unity which should be used by all. I do not think my good friend, hon. Abongotum is right to suggest that the Mover of this amendment is not aware of the flag. The flag is defined in the Act. It is demeaning to think that a Member can say it before interrogating to know. We want all Kenyans to have the flag. The only proposal I would make is that the "vehicle" be amended to include donkeys and camels. We should all fly the flag.

*(Laughter)*

**Hon. Chairlady:** Order, hon. Members. I would like to go with what has been read to us and to stick to our Standing Orders and rules. I disallow this amendment on the grounds that it negates the objects of the Bill. So, let us move on.

*(Proposed amendment to Clause 3 by hon. Tonui disallowed)*

*(Clause 3 agreed to)*

*New Clause 2A*

**Hon. Chairlady:** So, hon. Member move your amendment on the new Clause 2A. Order, hon. Chachu!

**Hon. Tonui:** Hon. Deputy Speaker, I believe that the ruling which you have just made will affect all these sections. It is quite unfortunate that the national flag will disappear, if I have it on my dashboard.

**Hon. Members:** That is unfortunate because it is a flag!

*(Loud consultation)*

**Hon. Chairlady:** Are you withdrawing based on my ruling?

**Hon. Tonui:** Hon. Chairlady, the spirit of this is already killed. It is quite unfortunate that we are denying Kenyans to fly this. We are going the direction of hero-worship by having specific people fly these flags. The common man we are denying this will fly the American and *Al-Shabaab* flags.

**Hon. Chairlady:** Hon. Tonui, you either move or withdraw your amendment so that we move on because I have already made a ruling.

**Hon. Tonui:** I withdraw, hon. Chairlady.

**Hon. Chairlady:** I believe that you have withdrawn the two amendments. The Member has withdrawn that. Therefore, we are not discussing any more question of hon. Tonui's amendment.

*(Proposed amendments by hon. Tonui withdrawn)*

Let us move now to the next Clause.

*(Clause 4 agreed to)*

*(Clause 2 agreed to)*

*(Clause 1 agreed to)*

*(Title agreed to)*

**Hon. Keynan:** Hon. Chairlady, I beg to move that the Committee doth report to the House its consideration of the National Flag, Emblems and Names (Amendment) Bill (National Assembly Bill No.23 of 2013) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

### **THE NATIONAL FLAG, EMBLEMS AND NAMES (AMENDMENT) BILL**

**Hon. (Dr.) Laboso:** Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered The National Flag, Emblems and Names (Amendment) Bill (National Assembly Bill No.23 of 2013) and approved the same with amendments.

**Hon. Keynan:** Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

**Hon. Midiwo** seconded.



*(Question proposed)*

*(Question put and agreed to)*

**Hon. Keynan:** Hon. Temporary Deputy Speaker, I beg to move that the National Flag, Emblems and Names (Amendment) Bill (National Assembly Bill No.23 of 2013) be now read the Third Time.

**Hon. Abongotum** seconded.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, before I propose that Question, I would like to urge you to consult in lower tones so that we can make good progress.

*(Question proposed)*

A few Members can comment on this. Let us have hon. Jakoyo Midiwo, the Deputy Minority Leader.

**Hon. Midiwo:** Thank you, hon. Temporary Deputy Speaker. Let me thank hon. Keynan for, at least, attempting to create order. When hon. Keynan proposed the Bill, I was against it but when I realized what he was trying to achieve, that the Governors can fly their flags within their counties, and they need to improvise as per the provisions of the County Government Act, I thought that this House was getting an opportunity to create order.

Further, let me also say that what this House has achieved today, and we hope that the President agrees with it, is that the amount of traffic jam in Nairobi will go down. Traffic jam in Nairobi, 90 per cent of it, is caused in the morning by everybody wanting express drive into town using these flags.

Hon. Temporary Deputy Speaker, you know a Cabinet Minister was on record as saying that they use the flag just to beat the traffic. So, hon. Keynan must go further and I am happy that he is proposing further that the people to use sirens should be the President, his Deputy and the two Speakers so that we can have order in our country.

**Hon. Members:** And the Chief Justice!

**Hon. Midiwo:** The Chief Justice and ambulances so that every Kenyan obeys traffic rules. This will ensure that we create order on our roads. As a Parliament we have a duty to help create order under the new constitutional dispensation. I want to urge many of our colleagues to help in doing this because there are hundreds of new legislations that we must bring to this House.

I support, hon. Temporary Deputy Speaker.

**Hon. Ekomwa:** Thank you, hon. Temporary Deputy Speaker. I think I am the happiest person in Kenya today. This House is not a photocopy of the various Houses. The Eleventh Parliament has its own integrity and it must be respected.

I want to put it on record that the flag of Kenya has the greatest value and it cannot be compared with any flag in the world. It is the only flag that is most beautiful. For anyone to enjoy flying it, he or she must have the intensity of power in Kenya.

*(Laughter)*

So, let it go down on record that the President, the Deputy President, the two Speakers and the Chief Justice--- All other people who are below them should wait for their time.

*(Applause)*

We do not want to dilute the Executive powers of Kenya. We are all eying that position and when we allow everybody to just flay that flag, it will be dilute. We want to maintain the integrity and dignity of the Executive power. I want to thank the Members of this House for being very intelligent and focused. I want to pass this message to Cabinet Secretaries. We have not reduced their salaries. We have not done anything, but we have created order.

**The Temporary Deputy Speaker** (Hon. Cheboi): You have made your point, hon. Ekomwa. Let us have hon. M'ruaki.

**Hon. M'uthari:** Hon. Temporary Deputy Speaker, I am very glad that this House today has come up with this Bill which is going to bring sanity and order in this country. The fact that we have provided that the flag has to be flown by a certain number of people does not mean that we will reduce patriotism. The idea of patriotism is not only displayed by just flying the flag. What has been happening has been a recipe for chaos. I stand and I am glad we have done this.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us still have two Members because I can see the excitement here. Let us have hon. Junet.

**Hon. Nuh:** Hon. Temporary Deputy Speaker, I would like to thank hon. Keynan for bringing this Bill. It is going to bring order into the issue of flying flags. This country is running amok. We have a situation where everyone is carrying a flag and chase car behind him. People who had no enemies a few months ago now have a lot of enemies that they need to have chase cars just because they have been given certain positions in the Government.

In spite of that, I plead with this House that we need to bring an amendment, so that we can allow the governors also to fly the flag.

**Hon. Members:** We have allowed them!

**Hon. Nuh:** You have allowed them? I have just come.

**Hon. Members:** County flags!

**The Temporary Deputy Speaker** (Hon. Cheboi): Order, Members! Order! I think you are digressing.

**Hon. Nuh:** The county flag is a small flag. We are discussing about the Kenyan flag. I am on record here saying that county flags have elephants and other things decorated on them. We want the governors to fly the Kenyan flag. I support the Bill and I thank the House for putting its effort in this Bill. For the governors, I plead that we allow them to fly the Kenyan flag.

**Hon. Waweru:** Thank you, hon. Temporary Deputy Speaker for giving me an opportunity to contribute on this important Bill. This is one of the best days of my life. At least, I will have some peace in the streets of Nairobi. First, I would like to start by appreciating some students from my constituency sponsored by the World Vision and I welcome them to *Bunge*. We have the future leadership of this country here.

This House today has risen to the occasion. I want to thank all the Members. We have to appreciate that it has been a bit chaotic in the whole country. We have been having people flying the Kenyan flag, even those who are in the pecking order a way below some of you who have been elected by the constituents. Going forward, this House will look at ways in which we can even help them to come up with county flags, if they so wish. We are saying that when somebody is coming from one county to another, they can as well just fold that flag and put it in their pockets. I thank the House. We are looking forward to even calling these governors and to hold them responsible.

**Hon. Okoth:** Thank you, hon. Temporary Deputy Speaker. I rise to oppose this Bill as it has gone through.

**The Temporary Deputy Speaker** (Hon. Cheboi): Just make a comment, it has gone through.

**Hon. Okoth:** It has not yet gone through. Sorry for predicting.

**The Temporary Deputy Speaker** (Hon. Cheboi): I will actually deny you the opportunity because that is not how we are supposed to do it at this point in time.

**Hon. Okoth:** I withdraw.

**The Temporary Deputy Speaker** (Hon. Cheboi): You had the opportunity to oppose a little earlier but not at this point. It is through now.

**Hon. Okoth:** I sat here all morning and I never got a chance. So, I wish that we would have found a way to allow all Kenyan citizens as patriots the right to own, carry and fly a flag because on the economic sense of it, we would have created an industry of flag production and replacements. Our young people do not have jobs. The opportunity to sell a flag to a market of 40 million people would occur. Now we have restricted these flags. I know the Members of this House like hon. Duale who wanted the Cabinet Secretaries to fly a flag. If we had allowed all Kenyans to fly the flag, his needs would have been met, but we would have created jobs and boosted our economy by allowing more people to sell and replace flags. When your flag looks dirty, you are required to buy a new one and have a sweet nice flag. We would have been pushing the economy of Kenya forward. But by restricting this flag like we have done, it looks like at first we were fighting the governors and then next, we have some supremacy issues.

**The Temporary Deputy Speaker** (Hon. Cheboi): Just a comment and it is over now, hon. Okoth.

**Hon. Okoth:** So, let me just finish my comment by saying that I regret that we lost the opportunity to allow any Kenyan citizen to fly and carry the Kenyan flag, like they do in countries like the United States of America.

**The Temporary Deputy Speaker** (Hon. Cheboi): Let hon. Ngikor contribute briefly as we wind up. Hon. Keynan, just give hon. Ngikor a minute to contribute and then I will give you an opportunity.

**Hon. Ngikor:** Thank you, hon. Temporary Deputy Speaker for giving me this chance. Much has been said on this issue of the flag. I want to state to the House that the

national flag is not a piece of cloth, which we can allow to be carried by everybody across the country. Those who have been allowed to fly the national flag as per the Bill before us are those who have united us, namely, the President, the Deputy President, the two Speakers and the Chief Justice. The counties also need to have their own flags, so that they can unite the people in the counties.

**The Temporary Deputy Speaker** (Hon. Cheboi): I do not want you to digress. It is just a small comment on it. I am trying to see as many Members as possible. It is not normal at this stage. So, I want you to understand when I ask you to be extremely brief.

**Hon. Ngikor:** So, I support the passing of this Bill.

**The Temporary Deputy Speaker** (Hon. Cheboi): Thank you, hon. Ngikor. I now give the Floor to hon. (Ms.) Galgalo to make just one comment and then we wind up this debate.

**Hon. (Ms.) T.G. Ali:** Thank you, hon. Temporary Deputy Speaker. I stand to support the Bill.

The national flag is very important to all of us. The Bill is not prohibiting anybody to have flags in their respective homes, in their cars and in the places of work. I know that the national flag is already being flown by institutions and in places of business. What we are saying in this Bill is that we only allow those in the Executive to fly the national flag as a symbol of national unity.

With those remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, I can see 39 requests on my screen. I am not clear what specific requests the hon. Members have placed. To me, the requests are a show of much interest. This is the Third Reading. I am about to put the Question but I will proceed and give the Floor to one more person.

Yes, hon. Gikaria.

**Hon. Gikaria:** Hon. Temporary Deputy Speaker, I rise to support hon. Keynan's amendment Bill.

Hon. Temporary Deputy Speaker, I once flew a flag although it was that of the former Municipality of Nakuru. I know what it means when you lose it. In fact, a former colleague of mine died when he lost an election as a mayor. So, I totally agree that the national flag is a symbol of national unity. It is important for us to respect that position, so that we can have that patriotism. However, that does not deny any Kenyan the right to celebrate with the national flag on special occasions. I am a football fan. Maybe, when Harambee Stars will be playing, I will be allowed to carry my flag and be happy, just as I did when the Supreme Court ruled in favour of President Uhuru Kenyatta during the presidential election petition. We were happy there, flying the national flag not because it belongs to Uhuru Kenyatta but because I am a patriotic Kenyan.

With those remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, I will now put the Question.

*(Question put and agreed to)*

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

**BILL***Second Reading*

## THE VALUE ADDED TAX (AMENDMENT) BILL

*(Hon. Ng'ongo on 12.3.2013)**(Resumption of Debate interrupted on 19.3.2014)*

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Ababu Namwamba has three minutes. I hope that he is here. If he is not, he cannot claim those minutes later on.

Since hon. Namwamba is absent, I am giving the Floor to hon. Simba Arati. Are you interested in this Bill or were you interested in the previous one, hon. Arati?

**Hon. Simba:** Hon. Temporary Deputy Speaker, I was interested in the previous Bill, which I intended to oppose.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well. Let us have Abdikadir Omar, the Member for Balambala.

**Hon. Aden:** Thank you very much, hon. Temporary Deputy Speaker.

I would like to take this opportunity to contribute to this very important Bill. When we passed the VAT Bill last time, a number of issues came up. As a result of the VAT adjustment in a number of commodities, it happened that the cost of living of the common *mwananchi* was affected. Therefore, this is an opportunity to for us to amend that particular Bill and put things in the right perspective.

I support this Bill because of the waiver it gives to certain very important items relating to the daily common life of *mwananchi*, like milk, making it possible for Kenyans to afford milk for infants. As it is now, infant milk is too expensive for ordinary Kenyans to provide it to their children. This amendment Bill gives us an opportunity to rectify that mistake.

In addition to that, other common household items like mosquito nets and fishing nets, which are very important for our fishing industry, are now getting the opportunity of being exempted from VAT. Recently, the Constituencies Development Fund (CDF) of Balambala opted to buy an ambulance for our constituency. One of the things that turned out to be prohibitive was the cost of taxation on ambulances. This amendment Bill gives us an opportunity to remove those kinds of costs.

Therefore, I do not want to say much. I only want to say that I support this Bill. I really thank hon. Mbadi for taking this very bold step to correct these kinds of things that caused the kinds of riots and demonstrations that we witnessed across the country. I call upon other hon. Members to pass this amendment Bill, so that we can make the living of the common *mwananchi* to be less painful than it is currently as a result of the VAT Bill that we passed earlier on.

Thank you.

**The Temporary Deputy Speaker** (Hon. Cheboi): Yes, hon. Nyokabi!

**Hon. (Ms.) Kanyua:** Thank you, hon. Temporary Deputy Speaker, for giving me the opportunity. I am also happy to raise my voice on the matter of the VAT

(Amendment) Bill and give my friend, hon. John Mbadi, qualified support. In the Jubilee Coalition, where I serve as a Member, the VAT law is extremely important in terms of raising revenue, part of which has been used for the cash transfer programme. Coming to the VAT regime, I really want to support the removal of taxation from Solar for the benefit of not only Nyeri County but actually in the interest of the whole country where we still have many homes outside the national grid.

Only 22 per cent of households are on the national electricity grid. The majority of our households are using kerosene, which has a lot of challenges. Kerosene causes a lot more poverty to the homes that are already poor. If we could have solar equipment outside the VAT regime, the country would be encouraging most of those homes to get into kerosene-free society. Therefore, I would urge that the solar power equipment matter be looked into as we debate this Bill.

Hon. Temporary Deputy Speaker, speaking to hon. John Mbadi, who is the Mover of this Bill, there are powers given to the Minister in the Act, through which he can exempt some commodities from VAT. So, without foretelling the fate of the Bill, it would be important that some of these matters are pursued within the powers that the Cabinet Secretary has to exempt some commodities from VAT.

It is true that some of the medicaments that have been mentioned in the Bill ought to have been removed from the taxation regime even for a period of time. So, whether the Bill passes or not, the issue will be to pursue the matter with a view to ensuring that those medicaments are exempted from taxation even through the powers that the Cabinet Secretary has. That is something that will be effective for a period of time. The problem with passing law is that we make these matters permanent for our country.

Even as I support exemption of VAT for solar equipment, we may need solar now but in another ten years, more households may be connected to the national electricity grid, which means that they will no longer require solar. So, it should be possible for us to review the tax regime. Including these items in the law may not be the best idea. The best idea might actually be to convince the Cabinet Secretary to remove some of the items from the VAT bracket for a period of time.

As I speak about the items to be exempted from VAT, there was also the question of books. Many of us are young parents. This country has many children in school. Again, looking at the tax regime and the VAT in particular, we forgot to exempt text books and exercise books from the VAT regime. There might be reason in a country that is promoting academic standards to look at the matter of books.

Hon. Temporary Deputy Speaker, you do know the joke about Kenya; that if you want to hide money from a Kenyan, you put that money in a book. The Kenyan is never going to find that money. And I think that we need to challenge those stories by exempting taxation from books so that our children and even those of us who have left school can continue to read. We need books to be cheaper in our country. That may not necessarily require a change of law, but it may require the use of powers of the Cabinet Secretary. So, the VAT amendment Bill, we can support it to the extent that it streamlines collection of taxation; trade in the country and creates offences so that traders do not abuse the tax regime. However, whichever way, some of the products that we think are very important for our families and especially the lower income families, can be exempt even through the powers that are given to the Cabinet Secretary.

As I wind up, I also want to urge this House, and especially ourselves as Members of Parliament, to spend less time on political laws and spend a lot more time on economic laws. The law that we just passed on flags and emblems had a lot more support, a lot more attention, a lot more excitement than the law on VAT. I think it is time that with a country suffering 50 per cent poverty and high percentages on unemployment, this House spends a lot more time on economic laws.

**The Temporary Deputy Speaker** (Hon. Cheboi): Very well, let us have hon. Joyce Lay.

**Hon. (Ms.) Lay:** Thank you Temporary Deputy Speaker for the opportunity. I would like to thank hon. Mbadi for recognizing the need to cushion the low income earners by increasing the list of goods and services such as supply of electricity through the Rural Electrification Authority (REA). It is high time we realized that electrification is not a cost to the Government, but a source of revenue. When we electrify the rural areas, we stand to develop through creation of industries which will create jobs to our people in the rural areas. Therefore, being exempt from the VAT charged on the supply of electricity, the REA will eventually enhance electrification of the rural areas.

I also support the Bill because it calls for the inclusion of importation or supply of mosquito nets in the First Schedule. We know that we still have areas where malaria is prevalent in this country. According to statistics by KEMRI, 25 million Kenyans are at risk of malaria and it accounts for 30 to 50 per cent of all outpatient attendance and 20 per cent of all admissions in health facilities. With exemption of VAT with regard to supply and importation of mosquito nets, we would be helping in the fight against malaria by easing access to mosquito nets at cheaper cost. This will also eventually reduce the pressure of patients in the few health facilities that we have in the country.

In addition, I support the amendment of Section 33 of the principal Act to punish fraudulent claims by five times what one claimed, as opposed to two times. This will facilitate the administration of the Act and at the same time discourage fraudulent claims which have always been a threat to revenue submitted to the taxman. I know that the Jubilee Coalition has promised to grow the economy in double digits but surely by raising VAT on everything, that will not be a solution. I think a solution lies in creating more employment by making sure that we go in manufacturing and value addition so that we add value to all the produce that we have in this country. That way, we will create more revenue in the country instead of raising VAT on everything else.

I urge this house to know that every rule and law that we pass here affects everybody else.

Hon. Temporary Deputy Speaker, it affects everybody else and we should not be selfish because it is either the CORD Coalition or the Jubilee Coalition side. We should know that this is the right of Kenyans and we should pass laws that affect Kenyans on a more positive way.

I wish to thank hon. Ng'ongo for bringing these amendments. I support.

**Hon. Robi:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to support this amendment Bill, brought to this House by my good friend, hon. Ng'ongo.

Hon. Temporary Deputy Speaker, we understand and we know the economy of Kenya is growing and it is this House which can put things straight. There are things

which can enable the common man to, at least, achieve his or her goals. On electricity, for example, we know that the Jubilee Government has tried to supply electricity and, at least, it has reached to the ordinary *mwananchi*. But there is a big problem of affording the cost of dropping the line to the house.

Hon. Temporary Deputy Speaker, there are so many products which many people cannot afford right now. If we can consider this amendment Bill, we will assist the ordinary *mwananchi*.

**Hon. ole Lemein:** Thank you very much, hon. Temporary Deputy Speaker. I rise to support this Bill and I also want to thank my friend, hon. Ng'ongo, for coming up with these amendments.

Hon. Temporary Deputy Speaker, I believe the intentions of these amendments are to help the very ordinary Kenyans. However, I know that at the moment in this country, we are talking about the wage bill and other things. When I look at these amendments; the livestock industry has not actually been taken care of. When you look at Clause 45, where he is talking about insecticides, fungicides, herbicides and so forth, I would request hon. Ng'ongo, though I will still come with my amendments, livestock keepers are suffering a lot when it comes to acaricides, antibiotics, antiemetics and so forth. I will support these amendments, but we need an amendment for the sake of the big livestock industry in this country.

Thank you, hon. Temporary Deputy Speaker.

**Hon. Ganya:** Thank you, hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Bill. I really want to appreciate the good work of my colleague, hon. John Ng'ongo, for ensuring that the very poor people in this nation are protected through the good work of this House.

Hon. Temporary Deputy Speaker, we know that every government in this world must tax its citizens for it to deliver services to them. Every government which comes to power has a duty and obligation to realize its manifesto. This Bill is before the House with a good motive, in good spirit and to ensure that the poor of the poor are cushioned.

Hon. Temporary Deputy Speaker, one element which this Bill is trying to exempt is provision of water to Kenyans. Water is life. There are some constituencies in this country where our women still walk for hours and hours just to get 20 litres of water for their families. By exempting water drilling services from VAT, we will enable our county governments with the mandate to provide water services to engage as many companies as they can and ensure more and more Kenyans have water. This is an obligation this country has even under the Millennium Development Goals (MDGs) to ensure that Kenyans have water and this is one particular exemption that I am very proud of in this particular Bill.

Hon. Temporary Deputy Speaker, in relation to that, the need to exempt rural electrification services from VAT will ensure more and more Kenyans have access to power. Some Kenyans walk for days and days just to get firewood to cook for their families. With easy access to power and electricity, they may have an option of using electricity to cook food for their families.

Hon. Temporary Deputy Speaker, I represent a constituency where up to today not a single house is connected to the national grid. An independent power station is yet to be established but I am glad to note at least in North Horr and Maikona the progress is



good and very soon my people in my constituency will see electricity for the first time, except for the few who are able to have solar panels on top of their roofs.

Hon. Temporary Deputy Speaker, this will enable our kids to study and also enable them to be competitive in schools. The kids in Kalacha, North Horr and Gade will compete against those of Nairobi, Mombasa and Kisumu. This exemption for rural electrification services will ensure more and more kids are able to go to school and also be able to study even late at night and early in the morning as it is in most parts of this nation.

Hon. Temporary Deputy Speaker, some basic services and commodities must be exempted. Any country or Government worth its salt, with the mandate to govern must ensure those whom they are governing are able to have food on their tables, to secure employment as much as possible and to sleep at night in peace.

Hon. Temporary Deputy Speaker, once we exempt most of these commodities from VAT, we will ensure our companies in Kenya are more competitive, are able to recruit more Kenyans to have gainful employment. The insecurity, terrorism and *Al Qaeda* business we have in this country is highly linked to very many Kenyans who are jobless, have nothing to do and who have no reason to live for. The Jubilee Government has committed itself that it is going to create employment and there is no way they will do that by taxing companies in this country to death. They can only create jobs and employment if at least those companies that are providing basic services are exempted from the taxes.

Hon. Temporary Deputy Speaker having said that, I strongly believe those Kenyans who are lucky enough, wealthy and who have acres and acres of land must be taxed.

Hon. Temporary Deputy Speaker, we have the most progressive Constitution in this country. It is the most progressive Constitution in the sense that we will have a Constitution which has enabled us to have the maximum and minimum land holding. If it is fallow and you are not willing to put that land to gainful production, the State can tax you. So, while I strongly support the question of exempting the poor from taxation through the VAT, I believe that the rich of the rich; those British companies must be taxed to a level where this country can generate enough revenue to support the services required for Kenyans to have decent level of living enjoyed by other Kenyans or other citizens in the world.

With those few remarks, I beg to support.

**Hon. Kiso:** On a point of order, hon. Temporary Deputy Speaker. I am standing under Standing Order No.72. Given that hon. Members largely support this Bill and reading the mood of the House, would I be in order to call upon the Mover to respond?

**The Temporary Deputy Speaker** (Hon. Cheboi): I want to be sympathetic to that position; I see many hon. Members are still interested in contributing. Let Hon. Ichung'wah finalize briefly his contribution and then I will seek the concurrence of the House.

**Hon. Ichung'wah:** Hon. Temporary Deputy Speaker, thank you for your indulgence. I will not take a lot of time but let me first take this opportunity to thank hon. Ng'ongo for having brought this amendment to the VAT Act. Particularly, I want to draw the attention of the House to the proposal to include in the exempted products, inputs to

animal feeds. This is something that is very progressive. You would be astonished to learn that since we passed this Bill last year - and I say this with a lot of pain because a majority of my constituencies are in Kikuyu and the people of Kiambu County, because of the small landholding they have, they depend on animal husbandry in livestock, poultry farming and rearing of pigs. The increases that were there in the prices of a bag of animal feeds; the price rose from an average of Kshs.400 to Kshs.500 per bag.

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

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Wambugu, do you have an intervention?

**Hon. Wambugu:** Yes, hon. Temporary Deputy Speaker. I am standing on a point of order regarding the request by a Member to stop the debate. This issue had come even the last time and we had requested for extension because we had many hon. Members here who want to give input to this Bill which is very critical to this country. There is the issue of industry which is going down because of VAT. I would request that we continue so that we also get time to contribute.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Wambugu, this House will proceed. When he ends his contribution, we will dispose of the first issue which is what has been requested by hon. Kiso. Probably, you have one or two minutes to canvass your hon. Members. If they feel like there should be some more hon. Members to discuss, they will be free to make that decision. So wind up hon. Ichung'wa for us to dispose hon. Kiso's request.

**Hon. Ichung'wah:** Hon. Temporary Deputy Speaker, I was saying that because of the increased prices of animal feeds throughout the country, we have seen occasions where our farmers are losing out even on our local market for the products like milk and eggs. You will be astonished to learn that in the markets that are right next to the City of Nairobi, where most of our farmers have been bringing their produce, especially eggs, it is cheaper to buy them from outside the country. It has now become cheaper to import eggs from Tanzanian farmers in Arusha to our towns around Nairobi and selling them at a price that is cheaper than of those eggs that are produced locally because of the cost of animal feeds. Therefore, it is very important that we do all that we can as a House to protect our farmers.

Indeed, I congratulate the Mover of this Bill, hon. Mbadi. This is what leadership is all about. It is this House that passed this Bill. I call upon the county governments because the same things are happening in the county governments, where you will find county assemblies passing finance bills which are detrimental and prejudicial to the national economy, to be bold enough and have the kind of leadership skills that we see in hon. Mbadi and Members of this House. They should even go back to the decisions that we have made as a House and review them for the benefit of our people.

Hon. Temporary Deputy Speaker, lastly, when we come to the Third Reading, I will move an amendment to touch on locally manufactured pharmaceutical products. It has become cheap again for pharmaceutical products to be imported from China and India. I say this with a lot of pain because there is a pharmaceutical company in my constituency which has employed over 1,000 people. Last month, it had to retrench over

300 people. These were young Kenyans who were earning a living from this company but they are now jobless because the price of pharmaceutical products has become unmanageable because of the VAT Bill.

Therefore, I support this Bill and I will move the amendment at the right time.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): I will, therefore, dispose of hon. Kisoi's request and it is good for Members to be clear on this. If hon. Kisoi's request is taken, when hon. Mbadi will be responding, he will not be allowed by the Standing Orders to donate any time. So, you better make up your minds. That is the position under the Standing Orders. I have seen repeatedly Members donating time when the House had actually made up its mind to call the Mover to reply.

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

Therefore, I will proceed and give hon. Wambugu the first shot. I had indications from you that you wanted to have Members contribute very briefly; that is one minute each. Is that what you said? I do not know whether that makes any sense but two minutes will be more appropriate. Even with that, it is important to get the concurrence of the House.

**Hon. Wambugu:** Yes, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Cheboi): You have two minutes, hon. Wambugu.

**Hon. Wambugu:** Thank you, hon. Temporary Deputy Speaker. I think I will be very brief because mine is not a very detailed request and report.

First, I want to commend hon. Mbadi for bringing the amendment Bill to this House because he is touching on very necessary commodities, insecticides, the Rural Electrification Authority (REA), the mosquito nets, sanitary pads and all that. Raising of revenue is very key to this country. However, as we look into ways of raising revenue, we need to look at the other industries which could be affected. Departments such as infrastructure or aviation industry for a long time have been exempted from the VAT until the 2013 VAT Act. It affected some of the aeroplanes which are the backbone of the aviation industry in this country.

In the Act, aeroplanes which were below 2000 were subjected to tax but those above that were exempted. However, there are very many issues that came up. The aviation industry is the backbone of the tourism industry in this country. If you look at the Vision 2030, you will find that one of the issues that we need to strengthen is the tourism sector. With the introduction of the VAT, issues like training and maintenance of aeroplanes in this country were affected. Employment will very soon be affected because maintenance facilities are closing down and relocating to the neighbouring countries. It is worrying if we kill the general aviation industry which is supposed to be in airlines.

Issues like air navigation fees which were introduced are making even our national airline not competitive at all. That is why you see fares from Kenya have become very high.

**The Temporary Deputy Speaker** (Hon. Cheboi): We will have hon. Tiren and lastly thereafter, hon. Millie-Odhiambo. Two minutes each. I am trying to save time.

**Hon. Tiren:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity to comment on this Bill. First, I would like to thank hon. Mbadi for the wise move that he took to think about our people. I support but with a few amendments.

We have been advocating a lot about efficiency and improved production.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Tiren, you are either supporting or opposing.

**Hon. Tiren:** I am supporting with a few amendments. I just want to add a few issues here. We have been advocating for efficiency and improved production for mechanizing agriculture. Adding VAT to land and machinery would be discouraging farmers from mechanizing their operations, which would reduce the production of food. I am also supporting the Government in subsidizing and creating a Fund that will reduce the cost of living for our people.

A big percentage of Kenyans or the Kenyan economy is supported by agriculture. Agriculture also supports and contributes a lot to the economy and the GDP of this country. Adding VAT to agricultural inputs would be discouraging farmers.

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Millie Odhiambo. I can see that I have two more minutes. So, I will give that to hon. Bishop Mutua.

**Hon. (Ms.) Odhiambo-Mabona:** Thank you, hon. Temporary Deputy Speaker. First of all, I just want to thank hon. Mbadi for this clever initiative. I wish to support him especially as fellow Subarian given also that we are promoting intellectual tourism in Mbita and Suba. I want to thank him especially because this Bill is pro-poor, pro-women, pro-children and pro-fishermen. On the fishing issue, a lot of challenges that we have faced as fishermen and fisherwomen is on the issue of high cost of nets. So, I want to thank him for thinking very clearly of fishermen. I want to thank him for thinking about the issue of women in terms of milk products and mosquito nets, so that women can access them. We will be able to ameliorate on the issues of malaria. He is thinking of children when he thinks of issues of milk. He is also thinking of the poor people when we talk about the rural electrification and ambulances, especially for my constituency that is amongst the poorest in this country.

I thank hon. Mbadi and with those few remarks, I beg to support.

**Hon. (Bishop) R. Mutua:** Hon. Temporary Deputy Speaker, I rise to support this VAT (Amendment) Bill that my friend has brought at the right time. I thank hon. Mbadi for this. My addition to this Bill is that we need to include religious reading materials. Religion preserves the morals of the nation. Once we make religious materials very expensive, then we do not encourage good morals in our society. I would like to see religious reading materials included in this Bill.

**Hon. (Ms.) A.W. Ng'ang'a:** Thank you, hon. Temporary Deputy Speaker. I want to thank hon. Mbadi. If he goes to Thika, he is a hero because the cost of animal feeds was very high. Kenyans are buying eggs from Uganda because they cannot afford the local eggs because they are very expensive. They prefer to get eggs from Uganda. If the cost of animal feed goes down, then it means that we will be able to market our eggs locally. All of us from Kiambu - and the rest of the Members are not here - can attest to the fact that animal feeds are very expensive for our farmers.

I support.

**The Temporary Deputy Speaker** (Hon. Cheboi): Since we have saved sufficient time, let us give one very last opportunity to hon. Anna Nyokabi for purposes of gender.

**Hon. (Ms.) Gathecha:** Thank you, hon. Temporary Deputy Speaker. I wish to support this amendment mainly because I am the one who sent the members from my county to go and speak before the Finance, Planning and Trade Committee. They were losing and their businesses had shut down. In the last two weeks, more than 5,000 chickens have been sold off. People have sold off their businesses simply because they cannot run them because of the high cost of animal feeds.

I want to thank hon. Mbadi for bringing this VAT (Amendment) Bill. We need to look at our VAT properly and soberly because when we start imposing VAT on means of production, we are killing this economy and our industries instead of supporting them. We need to grow this economy and ensure that our young people, especially the women of this country, are empowered and can support themselves.

With those remarks, I support.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Members, it is now 12.30 p.m. It is, therefore, time to adjourn the House. The House is, therefore, adjourned until this afternoon at 2.30 p.m.

The House rose at 12.30 p.m.