

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 4th May, 2016

The House met at 9.30 a.m.

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

PRAYERS

Hon. Deputy Speaker: Hon. Members, there is no quorum. Ring the Quorum Bell.

(The Quorum bell was rung)

Order, Members! Let us settle down. We now have quorum.

PAPERS LAID

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House:-

An additional list of Nominees to the National Government Constituencies Development Fund Committees from the National Government Constituencies Development Fund Board.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Lessonet, are you tabling a Paper?

Hon. Lessonet: Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Select Committee on the National Government Constituencies Development Fund on its consideration of 140 Constituencies Committees of the National Government Constituencies Development Fund.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Next Order.

Hon. Keynan: On a point of order, Hon. Deputy Speaker.

Hon. Keynan: Hon. Keynan, I am not aware that you are supposed to be tabling. Do you have a Paper to Table?

Hon. Keynan: Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House:-

The Report of the Public Investments Committee on the Inquiry into the Allegations of Fraud and Financial Mismanagement at the Youth Enterprise Development Fund.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Keynan, has that been approved by the Speaker?

Hon. Keynan: Yes.

Hon. Deputy Speaker: Well, apparently, we seem not to have been informed. If it is approved, that is okay.

NOTICES OF MOTIONS

ADOPTION OF REPORT ON CONSTITUENCIES COMMITTEES

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

THAT, this House adopts the Report of the Select Committee on the National Government Constituencies Development Fund on its consideration of 140 Constituencies Committees of the National Government Constituencies Development Fund, laid on the Table of the House today Wednesday, 4th May, 2016.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Keynan.

ADOPTION OF PIC REPORT ON YOUTH ENTERPRISE DEVELOPMENT FUND

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

THAT, this House adopts the Report of the Public Investments Committee on the inquiry into the allegations of fraud and financial mismanagement at the Youth Enterprise Development Fund, laid on the Table of the House, today Wednesday, 4th May, 2016.

Hon. Deputy Speaker: Next Order! Hon. Geoffrey Odanga, do you have a Statement?

POINT OF ORDER

FAILURE TO ESTABLISH STATUS OF NASEWA NUCLEUS LAND ISSUE BY IMPLEMENTATION COMMITTEE

Hon. Odanga: On a point of order, Hon. Deputy Speaker. I rise once more to seek your indulgence. As you will remember, two weeks ago, I sought your indulgence over the implementation status of a committee report of the 10th Parliament. This was about the recommendations of that Committee on the Nasewa Nucleus Land. Up to-date, nothing has been done regarding your directive to the Committee on Implementation.

Last year, I requested for a Statement from the Cabinet Secretary, Ministry of Interior and Coordination of National Government, Hon. Nkaissery. He appeared before a Committee of Parliament and assured us that he was going to provide--- In fact, he called the Inspector-General (IG) of Police and told him that he was going to give a patrol vehicle to Matayos Division in a week's time. From 28th July, 2015 to date, Matayos Division does not have a patrol vehicle. As such, insecurity has risen in the recent past and very many people have been killed by criminals using *boda bodas*.

Mine is really to seek your indulgence and find out how we can make the Committee on Implementation do its work and give us its reports. It looks like the Committee is not working as per our expectations. It is not able to meet the Executive and push for the implementation of what they promise to do.

Hon. Deputy Speaker: This matter is coming up a second time. Do we have the Chair or Vice-Chair of the Implementation Committee? Is Hon. Soipan here or the Vice-Chair? If none of them is here, maybe, they can give us an indication or tell you directly what they are doing.

This is the second time you are bringing it up and we directed them to give you a status of what they have established. We will leave it at that and ask you to get in touch with that Committee directly. If you want an answer, it is better to find out where exactly they have reached with that matter.

Hon. Deputy Speaker: Next Order!

BILL

Third Reading

THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

Hon. Deputy Speaker: Hon. Members, settle down, this Bill had been sufficiently discussed and even passed in the Committee of the whole House.

I am left with putting the Question for the Third Reading. Can I have Members settle down so that I can put the Question?

(Question put and agreed to)

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

Next Order!

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF THE SUPPLEMENTARY APPROPRIATION BILL

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

THAT, pursuant to Standing Order 120, this House resolves to reduce the publication period of the Supplementary Appropriation Bill (National Assembly Bill No.15 of 2016) from seven days to four days.

Hon. Deputy Speaker, this Bill was published following the passage of the Supplementary Estimates last Thursday. The House is going on recess and the Cabinet Secretary (CS) for the National Treasury can only spend that money if the House approves the Supplementary Appropriations Bill. This does not just apply to the Executive and Parliament, even our constituency offices have a stake in this Bill. Last night, at the House Business Committee (HBC), we felt that we should reduce the publication period of this Bill. The law allows us to go through all the stages of this Bill today to enable Parliament, the Judiciary and the Executive to access the funds allocated to them in the Supplementary Estimates 2.

Hon. Deputy Speaker, I cannot see the leadership of the House, but I will request Hon. Makali, who is a Member of the HBC, to second the Motion.

Hon. Mulu: Thank you, Hon. Deputy Speaker. I rise to second this Procedural Motion.

As the Leader of the Majority Party has said, we are all aware that we passed the Supplementary Estimates last week. It is, therefore, important that we approve the Supplementary Appropriation Bill. This will enable the various Government departments and Parliament to use the resources that have been allocated to them through the Supplementary Estimates.

I plead with my colleagues that we approve this Procedural Motion so that the Government can use the money that has been approved. If we do not, we will have to wait for a whole month. The financial year will be coming to a closure by the time we come back.

I second.

(Question proposed)

(Question put and agreed to)

BILLS

First Readings

THE PENAL CODE (AMENDMENT) BILL

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

THE SUPPLEMENTARY APPROPRIATION BILL

(Orders for First Reading read – Read the First Time and ordered to be read the Second Time today by leave of the House)

Second Reading

THE SUPPLEMENTARY APPROPRIATION BILL

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move that the Supplementary Appropriation Bill (National Assembly Bill No.15 of 2016) be read a Second Time.

I wish to commend and thank the House for its dedication and commitment in providing oversight in the budget-making process and, more so, during the implementation of the Budget for the Financial Year 2015/2016, despite the various challenges.

Hon. Deputy Speaker, under Article 223(1) (a) and (b) of the Constitution, the National Government may spend money that has been appropriated by Parliament if the amount appropriated under the Appropriations Act is insufficient or a need has arisen for expenditure for the purpose of which no amount has been appropriated. The basis for preparing Supplementary Estimates or the Appropriation Bill is where a need arises. Where there is an emergency, the

National Treasury CS is allowed, under Article 223, to come to the National Assembly and seek more resources, or to reallocate resources. If money has been withdrawn from the Consolidated Fund, that is also provided for under this Article.

That, notwithstanding, under Article 223(5), the national Government may not spend more than 10 per cent of the sum appropriated by Parliament for a given financial year. The law, in allowing for Supplementary Estimates, does not give the CS a blanket cheque. The Constitution has given the CS a ceiling of not more than 10 per cent of the sum appropriated by Parliament for a given financial year, unless Parliament has approved a higher percentage. If the CS needs to spend more than 10 per cent, he must have parliamentary concurrence and approval.

During the Financial Year 2015/2016, the National Assembly approved expenditures amounting to Kshs2,211,229,000,000 as the total appropriation for the Government. In summary, this is comprised of a Recurrent Expenditure of Kshs784 billion, a Development Expenditure of 721 billion, Consolidated Fund Services of Kshs441 billion and a County Allocation of Kshs264 billion. That gives us the Kshs2.2 trillion that I have just talked about.

Hon. Deputy Speaker, the Budget implementation during the 2015/2016 Financial Year started on a very low pace, under-performance of revenue by the Kenya Revenue Authority (KRA), certain borrowing which was delayed by the disbursement of funds to Ministries, Departments and Agencies (MDAs) and counties, *El Nino*-related rains, threats of terrorism and global economic slump. All those factors disrupted the socio-economic projected revenue and increased demand for security-related expenditures. Nevertheless, in the last quarter, the situation has improved and we expect the implementation of the programmes to go ahead as scheduled and approved by Parliament and more so, the National Assembly. To address all those gaps and challenges, the Government, through the Cabinet Secretary (CS) for National Treasury, has prepared the 2015/2016 Financial Year Supplementary Estimates 1 to align the Budget to the revised revenue which we were collecting and the borrowing which was focused to end in June 2016.

What did the National Treasury come to borrow based on the Supplementary Estimates Report of the Liaison Committee that was chaired by the Deputy Speaker and brought to the House? The National Treasury received a request for additional expenditure amounting to Kshs130 billion. Due to the fiscal constraint, that request has been rationalised and harmonised and the National Treasury decided to only provide resources for critical areas that were found necessary in the country. Those critical areas included, among others - and I am sure we did this in the Supplementary Estimates Report that was tabled by the Liaison Committee - a provision for salary shortfall of Kshs9.4 billion, recruitment of the 10,000 new police constables at Kshs2.2 billion, security intervention done at Kshs7 billion both internally and externally, purchase of land (Coast squatters, Waitiki and others) at Kshs1.3 billion, the Higher Education Loans Board (HELB) at Kshs1.5 billion, and many other critical areas. The total cumulative charge under the Supplementary Estimates amounted to Kshs50.5 billion or 2.6 per cent of the original appropriation by the National Assembly, including an increase of Kshs24.4 billion under the Consolidated Fund. The CS is still within the ceiling of the 10 per cent.

Hon. Deputy Speaker, as demonstrated above, the National Treasury has largely implemented the Budget within the provisions and the reading of Article 223 of the Constitution. I can confirm that the National Treasury has observed the fiscal responsibility principles provided in the Constitution and the Public Finance Management (PFM) Act. The overall Development Expenditure remains at 47.5 per cent of the total Ministry budget. Of the entire

Ministry budget, 47.5 per cent will go to Development Expenditure. Recurrent Expenditure is at 52.5 per cent. As a country, we must re-look at our wage bill. We must know if we can sustain it. Can we reach a day where the Development Expenditure is higher than the Recurrent Expenditure? The National Treasury is under obligation, at all times, to ensure that the debt levels as set out in the PFM Act regulations are strictly adhered to.

Finally, the additional expenditures presented under the Supplementary Appropriation Bill following the passage of the Supplementary Estimates have been financed through a wide budget rationalisation programme by the National Treasury. I want to further assure Members that the Government shall ensure that funds allocated to MDAs are utilised efficiently and effectively in order to achieve the intended outcomes to benefit the citizens of this country.

I want to thank all the Members for their continued support and co-operation and ask them to support and approve the Supplementary Appropriation Bill so that Parliament, the Judiciary and the national Executive can withdraw the money now.

With those many remarks, I want to ask Hon. Makali Muli to second.

Hon. Mulu: Thank you, Hon. Deputy Speaker. I want to second this Motion and remind the Leader of the Majority Party that I am Mulu and not Muli. Those are two different names.

As I support the Supplementary Appropriation Bill, I want to appreciate the good work that was done by this House last week. That work started at the level of the Liaison Committee that you chair. We will not be doing justice to the Members if we do not appreciate the good work that has been done by the Liaison Committee, and Members who approved the Supplementary Estimates which have resulted into this Bill.

As a result of the estimates which were approved, this Bill should not be a complicated matter because during the debate, we highlighted areas that require improvement and the ones that the Government needs to take into consideration as we move into the future for purposes of having an effective budgeting processes.

Looking at this Bill, most of the areas which have been amended from the original Budget will go a long way to assist this country to achieve the already projected high economic growth. Once it becomes an Act of Parliament, the Supplementary Appropriation Bill is expected to address shortfalls in terms of financing within the MDAs so that they can achieve their targeted outputs for this Financial Year. Amendments that have been made to the Bill will assist Kenyans to better their lives.

In this Bill, the allocation for the social safety net has been increased. This means that our elderly people and orphans will benefit more and we are likely to get more numbers. Once we approve this Bill, those who have been waiting for this money will now access it. As this House approves that amount, I want to plead with the national Government and, more so, the National Treasury to release the required money in time. It does not make sense for people to be told that they have qualified for such an allocation and we are aware that they get Kshs2,000. Some end up waiting for the money for 10 months. We have lost some of the elderly people in the process of waiting. I am sure we do not want our elderly who benefit from that fund to die before they can benefit. The National Treasury with the relevant ministries should fast-track the process of releasing money to the districts or sub-counties so that our people can get it.

The tourism sector has been factored in the Bill. It has been allocated some additional money. As Kenyans, we all know the role that is being played by that sector in economic growth and contribution to the Gross Domestic Product (GDP).

Hon. Deputy Speaker, once this Bill becomes an Act of Parliament, we will access more resources. This will enable us to achieve whatever we had planned. This is important. Members should be aware that we will assist the tourism sector to start growing. We know that it has been on a downward trend.

The other area which is also benefitting and important is the agricultural sector and, more so, the area of irrigation. A sum of Kshs400 million has been allocated to the National Irrigation Board (NIB). Those are additional resources. We are aware that NIB is currently being faced with challenges, including corruption allegations. We know that some Board members have been suspended, although there is talk that they are being reinstated. My plea is that once this House approves this allocation, the funds should be disbursed for use. The absorption rate of the Budget in this sector is very low. This House appropriates resources which are never spent because the spending entities do not have the capacity to use those resources. I hope that the agricultural sector will utilise the funds and grow. The agricultural sector is very important to this country and, once this House approves this Bill, it will benefit. We always say that the agricultural sector is the main saviour of our economy. It is important that, that sector gets additional resources.

Even though this House will approve the Supplementary Appropriation Bill, there is an important area which we need to take note of. This will help this House, as we continue to approve supplementary appropriation Bills in future. Since we are allocating more resources to certain ministries and reducing the budgets of others, it is important that we know the implications of the reductions and increases in terms of targets to be met. This country has moved to programme budgets where we talk about outputs and outcomes. We talk about performance targets. As a House, it is important to know how the targets will change outputs where we have increased the budget. Where we have reduced the Budget, it is also very important to know how that will affect the outputs. This will enable the House to monitor the Budget.

We should also ensure that once supplementary estimates are submitted to this House, we get budget monitoring. We should have half year budget monitoring so that, as we increase the resources, we know how far the resources we had allocated in June last year, for instance, have been utilised; and whether they have achieved the expected targets. That will provide important information to this House, on the basis of which we can agree whether we need to add or reduce the resources.

With those few remarks, I second the Supplementary Appropriation Bill.

(Question proposed)

Hon. Deputy Speaker: Hon. Silverse Anami.

Hon. Anami: Hon. Deputy Speaker, first and foremost, I would like to thank Hon. Mulu for the comprehensive comments that he made while seconding the Supplementary Appropriation Bill. I want to underline his statement on absorption of resources. Every now and then, we have supplementary estimates Bills because work has not been done or the funds that have been allocated have not been spent. When resources are not spent, it means that services have not been rendered to the citizens. We should not just approve the supplementary budgets without making a follow up. I would like to commend the proposal on monitoring of the implementation of our budgets.

There is also the issue of cash transfer to the elderly people, which is a confusing exercise. We have people who are taking advantage of the conditions of those very important citizens who have made Kenya what it is. We need to have a mechanism for monitoring and evaluation of that policy, so that we can be sure that that money reaches the elderly people. We have elderly citizens out there who have challenges of food and health. They need those resources urgently so that they can sustain themselves in their condition.

There is also the issue of reallocated resources and procurement. This needs to be examined so that procurement is done effectively. We have stalled projects because of mistakes in procurement. We should adhere to the time limits that have been provided for the procurement process so that we can save resources. We have many stalled projects in the country. Supplementary budgets should be focused on this so that we do not have stalled projects at all, especially now that we are coming to the close of the year. I am also worried about the time that we have between now and the closure of the financial year.

I recall Hon. Mulu's sentiments that we need a mechanism that will guarantee that during the time left, we can have a rapid results initiative approach to ongoing activities. This works very well. Every ministry needs to come up with a proposal on how they are going to expedite the implementation of their programmes for which resources have been voted.

With those few remarks, I support the Bill.

Hon. Deputy Speaker: Hon. Onesmus Njuki.

Hon. Njuki: Thank you, Hon. Deputy Speaker, for giving me the opportunity to contribute to the Supplementary Appropriation Bill. It will allow the National Treasury to use the money that we have allocated in the Supplementary Budget. Even as we allocate some money to fill the gaps between the previous budgets, it is very important that we ensure the prudent use of funds.

The shortfall of Kshs130 billion, which is required to be provided for in the next Budget, is not little money. There is need to prioritise what exactly needs to be funded and leave out what can wait. That is what supplementary budgets are all about. I agree that the recruitment of 10,000 police officers to enhance our security is very important. We will spend Ksh9.4 billion in that exercise. That is not little money. It should be used prudently. I am a bit disappointed. My disappointment has nothing to do with the Bill, but with the procedure that is followed in recruiting police officers. When we use criteria such as height, which has no bearing on the performance of a police officer, we leave out so many youths who are interested in the jobs. It is not a very motivating thing to most youths. That is because 5.9 inches height is not achievable in most African communities, especially the one I come from. You can see my height. I remember last year, one of the best performing security guard from the corporate security companies was very short. He saved the life of one of the Members of Parliament here.

Having said that, I support the purchase of land to settle the landless, especially the ones we normally refer to as the Internally Displaced Persons (IDPs), and the ones who occupy the Waitiki land that has been in contention for a long time. Those Kenyans need a place to settle down. It cannot wait for the next Budget because you can see the rains. We need to settle those who have not been settled. We need to look at that sector.

A substantial amount of money will finance the gaps in the energy department – the Rural Electrification Authority (REA) and the connection of electricity to primary schools. This is because the laptop project has not been completed. Some of the money is going to the Last

Mile Connection Project, which will ensure that every Kenyan is connected to the grid to enjoy the quality of life that comes with the use of electricity.

Even as we appropriate this money, I am perturbed by the expenditure vis-à-vis the development budget. Every time we give out money, most of it goes to Recurrent Expenditure. That money can be reduced by having prudent measures of ensuring that we reduce the unnecessary expenditure. If we continue doing that, we will finance what we call “a budget of hand to mouth” rather than getting Kenyans out of the situation of relying so much on money that is given, instead of money that can generate itself in terms of development projects. It is important that we spend more money in empowering people who are investing to create more jobs and become employers, rather than wait to be employed and even look for more money to pay employees.

As I finish, last week in my constituency, we had an incident that most Kenyans have heard about, including you, Hon. Deputy Speaker. The equipment that had been given by the national Government to our Level 5 hospital was stolen. That is an anaesthetic machine for Chuka Level 5 Hospital. The equipment given to the county government was worth Kshs4.5 million. It is not small equipment that can be pocketed or put in the boot of a car. It is supposed to change the lives of mothers in the theatres and operating rooms. When it is stored in a building that is under construction and we still expect the safety of that machine, it leaves a begging question whether we take care of the monies that the taxpayers have given and appropriated by this Parliament to help Kenyans who are suffering in this nation. That is why we are talking about prudent use of funds. This is a disappointment. I join the other Kenyans in condemning that incident. I hope that the long arm of the law will move fast. I hope the County Government of Tharaka Nithi will co-operate and crack the whip to ensure that, that machine is recovered and taken back to Tharaka Nithi, where it can be utilised by the Kenyans there. It is not an ordinary machine. It must have serial numbers.

With those few remarks, I support the Motion.

Hon. Deputy Speaker: Hon. Ferdinand Wanyonyi.

Hon. F.K. Wanyonyi: Thank you, Hon. Deputy Speaker, for giving me the opportunity to contribute to this Supplementary Budget Bill. My stand is very clear. Something somewhere is not correct. The 2015/2016 Financial Year has come to the end and yet, we see budget requests from various spending units. I wonder what is happening. People are not clear on what they need for one financial year. One financial year is 12 months. It looks like the people who have been given the responsibility to prepare the budget do not do that right. In the last three years, we have seen this country coming up. In one financial year, we have more than three supplementary budgets. To me, that is not very good for a country that is moving forward.

We have looked at the requests from various areas. We reluctantly pass those from the departments of agriculture, livestock and fisheries. We have given only Kshs400 million, which may not be enough. I am saying this because we have a very huge project at the Coast – the Galana Project. It needs a lot of funds. Given what I have seen, this may not be enough. That means somebody somewhere did not do a good job.

Speaking on the same, a department or ministry prepares a budget which goes to the National Treasury. Without involving the requesting ministry, the figures are reduced. This habit should stop because, if the Ministry of Agriculture, Livestock and Co-operatives has sat down and given its figures, those are the figures that are required. I am not wrong because I have said this many times, including last year. The National Treasury officials reduce the figures arbitrarily

at their own pleasure. That should stop. We have heard complaints where departments like security and agriculture ask us to give them more money because the National Treasury has reduced their budget without any due reference to the people who are preparing the figures.

The Supplementary Budget has requests for some money, particularly for the Higher Education Loans Board (HELB). That is right because most of our children are now going to universities. In most cases, they come back to us to give them bursaries from the Constituencies Development Fund (CDF). Those bursaries are not enough because a student doing a parallel programme requires like Kshs75,000 per semester. Because there are so many people, you will find yourself giving a student only Kshs20,000. In my case, I was forced to reduce what I had approved. Sometimes, voters come to me directly and I promise to give them Kshs25,000. I am forced to come down to Kshs8,000, which is not enough. I reluctantly support. I hope this money will go to HELB to help our students.

When you look at the expenditure as proposed by the Leader of the Majority Party, the Cabinet approved 47 per cent of the Budget for Development Expenditure and 52.6 per cent for Recurrent Expenditure. Something is not in order. I think for this country to move, it should be the other way round. We should have more money for development. There are so many projects that are stalling out there. We need funds to be able to move forward. As it is now, we have more funds going towards Recurrent Expenditure. Something should be done about the wage bill in this country. There are people who do not even deserve what they are getting. There are those who get less than what they should get in terms of wages. Something is not right.

I have been a Chief Executive Officer (CEO) for a very big organization in this country. The introduction of performance contracting made the people to work. As Hon. Makali has mentioned, the output of most of the parastatals is suspect. Maybe, it is because of the corruption that is in this country. It has become a habit. As far as I am concerned, we should enforce the performance contracting scheme so that people are given targets and, at the end of the year, we monitor their performance. I do not know what happened to the Efficiency Monitoring Unit (EMU) in the Office of the President. I have no idea what is happening in this country. My performance as a CEO spoke for itself. We had targets which we had to meet. Now, we have people who are just working by groping in the dark and there is nothing to show. I want to challenge the EMU in the Office of the President to do its work. We have people who are supposed to find out whether people are actually working properly or not.

Thirdly, on performance contracting which sets targets, we have no idea whether people are meeting their targets or not. That programme should be reinforced so that people who are given targets are monitored by EMU. At the end of the financial year, when people report, it should be able to find out whether targets are being met or not.

To conclude, we have set aside some money for the recruitment of 10,000 police officers. That is something that can be justified because we did not expect it. I want to thank the Government for that programme because the worldwide expectation is that one police officer should be in charge of 450 citizens. In this country, the ratio is not very good. The money that is going to the recruitment of police officers is okay. We want to meet the international standards of the ratio of police officers to civilians. That is something that I agree with. However, people should be able to give the right figures at the beginning of the year, rather than bothering us towards the tail-end of the financial year by asking us for money for programmes that are supposed to have been covered in the entire year.

With that, I support the Bill.

Hon. Deputy Speaker: I see you are on intervention, Hon. Waititu.

Hon. Francis Waititu: Thank you, Hon. Deputy Speaker. I request that you call upon the Mover to reply because we had debated this matter before.

Hon. Deputy Speaker: Is that the feeling of Members?

Hon. Members: Yes.

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

I, therefore, call upon the Mover to reply.

Hon. Katoo: Thank you, Hon. Deputy Speaker. In replying, I want to thank Members. They had contributed on this matter when the Motion came up for debate last week. I just want to make four points.

One, the shortfall did not necessarily result from an increase of the original Budget, but because of some unforeseen expenditures. The shortfall has been funded through re-allocation of votes by increasing and decreasing vote allocation, respectively. The shortfall has been caused by unforeseen expenditures like calamities or emergencies like *El Nino* and insecurity-related cases, less revenue collected caused by fluctuating economic projection such as less tourists' arrival and less rainfall received in some parts of the country affecting the agricultural projection.

Finally, Members have been talking about the absorption rate by ministries and State departments. I think State departments and ministries should be given only an equivalent of what they have absorbed in the preceding financial year. It is also important that the National Treasury seals the loophole of revenue wastage.

With those few remarks, I beg to reply.

Hon. Deputy Speaker: Have we confirmed that we are properly constituted?

(Question put and agreed to)

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

Next Order.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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

IN THE COMMITTEE

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

THE SUPPLEMENTARY APPROPRIATION BILL

The Temporary Deputy Chairman (Hon. Cheboi): Hon. Members, we are now in the Committee of the whole House to consider the Supplementary Appropriation Bill (National Assembly Bill No.15 of 2016).

(Clauses 2, 3, 4 and 5 agreed to)

(First Schedule agreed to)

(Second Schedule agreed to)

(Title agreed to)

(Clause 1 agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Supplementary Appropriation Bill (National Assembly Bill No.15 of 2016) and its approval thereof without amendment.

(Question proposed)

(Question put and agreed to)

(The House resumed)

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

REPORT AND THIRD READING

THE SUPPLEMENTARY APPROPRIATION BILL

Hon. Cheboi: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the whole House has considered the Supplementary Appropriation Bill and approved the same without amendment.

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

Hon. Gaichuhie: I second.

(Question proposed)

(Question put and agreed to)

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Supplementary Appropriation Bill be now read the Third Time.

Hon. Gaichuhie: I second.

(Question proposed)

(Question put and agreed to)

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

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Next Order.

BILLS

Second Readings

THE SEEDS AND PLANT VARIETIES (AMENDMENT) BILL

(Hon. A.B. Duale on 27.4.2016)

(Resumption of Debate interrupted on 27.4.2016 – Morning Sitting)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, if you want to speak on this Bill, press your intervention buttons. I will assume that those on my requests list want to speak on this Bill. If you do not, please log out.

Hon. Timothy Wanyonyi, do you want to speak on this Bill?

Hon. Wetangula: Hon. Temporary Deputy Speaker, I have spoken on this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you.

The Member for Shinyalu, have you spoken to this Bill? Please go ahead if you have not.

Hon. Anami: Hon. Temporary Deputy Speaker, this amendment Bill is very important to this House because it gives effect to Article 11 of the Constitution. It says that communities are supposed to be compensated for exploitation of their heritage.

I also want to underline the fact that seeds in their varieties, especially indigenous seeds, are very important to our communities because they have different roles. Among those roles is medicinal. Some seeds are food substances while others are used for different cultural purposes. It is important that we have an institution that regulates and continues to research on these seeds. We are losing a lot. We are losing so much indigenous knowledge. Some of it is being taken away because we do not have related patents on them and yet they are medicinal and important.

I had an opportunity to participate in the International Decade for Promotion on African Traditional Medicine. We tested a lot of medicinal substances used by our communities. All of them were found to have efficacy that supports treatment and prevention of certain diseases.

By passing this law to protect our seeds, we will be enhancing our regime for traditional medicine. It is important that this is carried out even in the education process. The African child always went through the process of knowing how to use certain medicinal plants. This knowledge is disappearing every day as we take to modernity. It is very important that the

institution we are going to establish through this amendment takes its work beyond the office. It should take it to educational institutions. Traditional institutions and systems that were used to educate our people on these indigenous products are not there anymore. We need to incorporate them in our modern education system and technology.

I want to specifically make reference to the Kakamega Forest. Within it, we have indigenous plants which support the ecosystem. Protection of these seeds and plants will not just protect the plants but also the ecosystem in that forest. This is a very important undertaking. It needs to be mainstreamed even in the security and administrative processes. Some of these indigenous products have been used to resolve conflicts amongst institutions and in the ecosystem. We have talked a lot about conflicts between wildlife and humanity conflict. Some of these indigenous systems have been used to mitigate bad relationships in the ecosystem.

We have climate change and we need to address interventions towards this. Protection of our indigenous seeds, especially those that form the fabric of indigenous forests, will help us to mitigate challenges of climate change. It will save our rivers and continue to provide the much needed rainfall especially in tropical areas.

Hon. Temporary Deputy Speaker, I wish to support particularly the introduction of an institution. During the Committee stage, I intend to bring amendments that will take the work of this institution beyond research to policy because we need to have policies. This is particularly important because indigenous plants are not the same everywhere. You will find, for example, that the use of cactus here is not the same use the Mexicans have for it. Whereas they use the cactus as vegetable, we do not use it for the same purpose. So, we need a legislation that will serve the different locations. For instance, Kakamega Forest, which I am very interested in, cannot be managed on the same basis as other forests which are just plantations. It is majorly an indigenous forest that needs an exclusive legislation that will incorporate protection of not just the forest but the plantations and wildlife in it as well as the birds and butterflies. We have very unique products there that enrich our ecosystem and we need to have specific legislation and regulations that protect that.

With those few remarks, I wish to support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to Hon. Jacob Macharia of Molo. Is he in the House? Johana Ng'eno, do you want to speak on this?

Hon. Kipyegon: No.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): The last one on my list is the Member for Igembe North. After him, I will give the Floor to the Leader of the Majority Party to reply.

Hon. M'uthari: Thank you, Hon. Temporary Deputy Speaker. I rise to support the Seeds and Plant Varieties (Amendment) Bill. This Bill is important because it recognises the importance of seeds, inclusion of food and other plant materials that are important. This Bill also supports the possibility of preservation of germplasm. This helps because plant materials and what we have within our environment support the livelihood to a large extent. We recognise the importance of these genetic materials in various aspects like in medicine and various food types. This preservation is also important for preservation of our heritage. The plant materials are part of our heritage. The preservation of seeds supports our very essence as a people. We have some important plants or crops that have never been recognised like *Miraa* which received the recognition by the President the other day.

This recognition supports the understanding, verification of various species of plant materials and qualities that can be identified by carrying out research and by trying to preserve and come up with the correct varieties for various places.

With these few remarks, I support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now call upon the Leader of the Majority Party to reply.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. I want to thank the Members for contributing to the Seeds and Plant Varieties (Amendment) Bill. I want to report that this is the only remaining constitutional implementation piece of legislation that is with the National Assembly after we finish with the Land Laws (Amendment) Bill this afternoon. We hope we will bring this to the Third Reading tomorrow so that by the time we go on recess, we will have sent all the relevant pieces of legislation with the constitutional deadline of 27th August, 2016 to the Senate so that they can have the month of May, June and July in anticipation of the mediation process. We have catered for it.

With those many remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will not put the Question at this time. So, we will move on to the next Order.

THE MISCELLANEOUS FEES AND LEVIES BILL

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Miscellaneous Fees and Levies Bill (National Assembly Bill No.30 of 2015) be now read a Second Time.

This was one of the Bills that were submitted by the Cabinet Secretary (CS) for National Treasury in the Budget last year. Unfortunately, this Bill has stayed since September, last year. It is a very important Bill. It is part of the pieces of legislation that were to be passed in tandem with the Budget proposal that the CS read to the House.

After the customs law became part of the East African Community Customs Management Act in 2004, and having proposed a standalone Excise Duty Bill, 2015 which we passed, it was found necessary to create the Miscellaneous Fees and Levies Bill to cater for levies and fees which were anchored in the Customs and Excise Act which this House repealed when we came with the Excise Bill, 2015. The moment we harmonised the Customs and Excise Bill into one law called "Excise Bill, 2015", there were certain levies and miscellaneous fees which were left hanging. It is now prudent that we create these miscellaneous fees and levies to cater for those laws.

That is why this Bill provides for the legal basis for the charging of the import declaration fee which is already there and the railway development fee which was introduced in the previous Budget. Certain percentage of this fee was used in the construction of the Standard Gauge Railway (SGR) that we expect to reach Malaba. These fees had no legal basis after the repeal of the Customs and Excise Act. This law specifically caters for those. The export levies are to be charged on hides and skins, scrap metals of iron and steel in order to encourage value addition in our country. So, even the levies and the fees which were to be charged on hides and skins and scrap metal were left out. We felt as a country that we must introduce some extra levies on scrap metal in order to encourage more investors to do value addition on our products before they leave the country.

I would also like to highlight that goods exported to the East African Community (EAC) partner states are exempted from export levy. They are also exempted from the Railway Development Levy and the import declaration fee (IDF). These levies are exempted on goods from East African partner states. If a Kenyan wants to export goods from Tanzania, Uganda, Rwanda, Burundi and South Sudan - which is the latest entrant to the EAC - they will be exempted from IDF. These goods must meet the EAC rules of origin, in the spirit and commitment that we signed with our partner states. Those goods must be confirmed to originate from the partner states. One can bring sugar from Brazil and repackage it in Uganda or Tanzania so as to evade IDF.

In order to comply with our commitment to the Vienna Convention, this Bill has proposed to exempt levies on railway development goods imported by the United Nations (UN) and diplomatic missions for their official use. This is a small Bill. It has very few provisions which I want to highlight. I have highlighted some of them so that I can give Members time to look at them.

Part I of the Bill gives the preliminary provisions which are found in any Bill. Part II of the Bill deals with the functions and powers of the Commissioner as well as the appointment of authorised officers necessary for the administration of this Act within the Kenya Revenue Authority (KRA).

Part III of the Bill provides for the imposition of export levy on goods which are specified in the First Schedule of the Bill. This includes the Railway Development Levy and the IDF on goods imported for home use. This part also provides leeway for the Commissioner to make adjustments in the unlikely event of an increase in inflation. Depending on the rate of inflation in our country, the Commissioner has been given certain leeway and powers to make adjustments to the specific rate of the export levy.

Further, Part III gives the provisions relating to the exemptions from the IDF and the Railway Development Levy. It also provides for the application of the East African Community Customs Management Act relating to the assessment, collection and enforcement of payment of IDF, Railway Development Levy and export levy.

Part IV contains normal miscellaneous provisions. It stipulates how to deal with penalties and provides for fines on a person convicted of an offence under this Bill. It also gives powers to the Cabinet Secretary of the National Treasury to introduce regulations.

The First Schedule of the Bill provides for goods subjected to the export levy. It specifies which these goods are. In the First Schedule, you will see the goods which are subjected to the export levy and the specific applicable rates. The schedule further provides for the kind of goods which are exempted from the export levy and are exported to the EAC partner states or to the Export Processing Zones (EPZ).

Finally, the Second Schedule provides for the goods that are exempted from the payment of IDF and the Railway Development Levy.

Article 209(1)(c) of the Constitution states that imposition of customs duty and other duties on import and export goods is the responsibility of the national Government. That gives us the comfort that this Bill does not concern county governments. This Bill will not head to the Senate within the reading of Article 209 (1)(c) of the Constitution. Finally, the enactment of this Bill shall not occasion any additional expenditure or public resources.

With those remarks, I ask the Vice-Chairperson of the Departmental Committee on Finance, Planning and Trade to second.

Hon. Gaichuhie: Thank you, Hon. Temporary Deputy Speaker. I rise to second the Miscellaneous Fees and Levies Bill (National Assembly Bill No.30 of 2015) that has just been moved by the Leader of the Majority Party. I will be very brief because it is a small Bill. After we passed the Excise Bill - which is now an Act - it repealed the Customs and Excise Act which created a vacuum. The purpose of this Bill is to make sure that there is a legal basis on which we impose the railway development fee and the export levies. One would wonder why we want to impose levies on exports and yet we are supposed to encourage people to export so that we can have a good balance of trade. We are only encouraging export levies on some few items like hides and skins. We need to add value to our hides and skins before we export them so that we can create jobs for our youth. There are special economic zones where we will do this. We also want to discourage export of scrap metal. When it is processed here before it is exported, we can know whether it from the Kenya Railways Corporation (KRC) or Kenya Power (KP). That will add value and create jobs for our youth.

The Railway Development Levy has been exempted on goods that are brought in by the UN and diplomatic missions according to the Vienna Convention. We will have no problems with the East African countries, the UN and diplomatic missions. When we exempt them, there are certain goods which will be exempted which are only locally produced within East Africa. The exemption will only be for goods that are produced within East African countries. This Bill will establish the legal basis for charging these fees. Otherwise, without this Bill, we will be charging fees illegally. The purpose of this Bill is to legalise the collection of those levies and the railway development fee.

With those few remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us have Hon. Wangamati.

Hon. Wangamati: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Bill, which is very important for our country. People fear being charged fees, taxes or having rates levelled against them. I want to congratulate those who have been involved in drafting this Bill. It is important for this country to continue valuing the way fees and rates are charged so that we encourage investors and our people. This will also enable money collection. I am happy with the way the Leader of the Majority Party detailed how the Bill will deal with collection of fees and levies and how it will avoid duplication when we think some goods are from one of the East African countries and yet they have been brought from somewhere else, packed and brought to Kenya without paying fees, duties and even taxes.

Hon. Temporary Deputy Speaker, some of us have been in other countries and seen how developed countries collect or charge non-citizens and their citizens fees and rates. This is an issue that is given a lot of weight by the governments and the agents doing the work.

I support this Bill because collection can be managed and improved continually. If we collect our fees and check our levies regularly, this country will get a lot of income which will be used to devolve the country.

I support this Bill very much.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Wangamati. I now give the Floor to Hon. Jacob Macharia.

Hon. Macharia: Thank you, Hon. Temporary Deputy Speaker. I rise to support the Miscellaneous Fees and Levies Bill of 2015 by Hon. Duale. I am pleased with the fact that goods imported by people who live in the Diaspora will not attract IDF and all the other goods that have been listed in this schedule.

Thank you. I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I give the Floor to Hon. Jakoyo Midiwo.

Hon. Midiwo: Thank you, Hon. Temporary Deputy Speaker. Sometimes because we do not pay attention, we really pass laws that hurt our people. As things stand, this country basically manufactures nothing for home use. Nothing is made in Kenya for our home use. If you tell Parliament to pass a law that says that there shall be paid a levy known as the Railways Development Levy on all goods imported into the country for home use, in other words, you are levying everything we use in our households. Where we stand, the microphone you are using, the water containers and the pens we use will attract this levy.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Quote where you are reading.

Hon. Midiwo: Clause 8 of the Bill says “imposition of the levy”. It goes further to say that the purpose of the levy shall be to provide funds for the construction of the SGR network in order to facilitate transportation of goods, which is a very good idea. It says that this levy shall be 5 per cent of the value attached by customs on the goods. Already we have a mess at our entry points. It means that you are giving customs’ officers power to value all goods coming into this country. Even if you went for a conference in Kampala and bought an African shirt there, it must be valued by customs and you must pay 5 per cent levy on it. This is a very bad law.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Jakoyo, is it 5 per cent or 1.5 per cent, if I read 8 (2)?

Hon. Midiwo: Clause 8(2) says 1.5 per cent. Nonetheless it is a levy on a good you have already paid Excise Duty and other duties on. What is interesting is that you are making nothing from the good. It is for your home use. If that is not choking our economy or choking our households with taxes, I do not know what it is.

The point I want to raise for the consumption of the Executive is, could it not be possible for someone in the Executive to realise the fact that Kenyans are already overtaxed? A Kenyan who is of any income is expected to pay 30 per cent Income Tax. In Scandinavia, there are people who pay 40 something per cent. But where that much tax is paid, security and other amenities like transport, education and health are provided. But what are we faced with? Somebody is taxing you 16 per cent VAT, 30 per cent on Income Tax and still in our estates, especially the ordinary people, we still have to pay for a watchman and for trash collection. Besides the national Government taxation, there is city tax. You still have to pay property tax. Why are we taxing a nation without ploughing in what we tax our people into services? The only thing you see day in, day out, in our media is that our tax money is being stolen. Is it possible, first of all, to seal the tax loopholes? Is it not possible, first of all, to seal the corruption loopholes? The same person is still expected to pay their fair share of the debt we are borrowing day and night, left right and centre. Is it not possible that this National Assembly could pump very soberly some sense into the Executive that has run amok in money collection without giving our people relieve?

I thoroughly oppose this Bill. A few months ago such a Bill came before this House and it was very controversial. The Government of the day, through tyranny of numbers, had its way

but what is the result? Motorcycles, the *boda bodas*, are charged Kshs10,000, a standard charge beyond the Excise Duty.

Even if it costs 20,000 there is a standing charge of Kshs10,000. The prices increased. The Excise Duty for fuel guzzlers that we, as Members of Parliament (MPs) drive was reduced by nearly Kshs700, 000. However, a normal saloon car's Excise Duty was increased. What are we telling Kenyans? Is it not possible that even through the Departmental Committee on Finance, Planning and Trade, we could reason amongst ourselves on behalf of our people, that our people need some tax relief? Is money better off when it is in my pocket so that I decide what to spend on it or is it better with the Government to misuse it? Is it better to give it to Bruce Odhiambo or Waiguru? Is that where my money ought to go?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Sunjeev, what is your point of order? I think Hon. Jakoyo knows what the point of order is about.

Hon. (Ms.) Sunjeev: Hon. Temporary Deputy Speaker, in as much as I tremendously respect Hon. Jakoyo Midiwo, is he in order to imply names of our very able MP Hon. Millie and other Members who have been in Government by saying things that are not supposed to be said if they are not here and claiming that money has gone in the wrong direction?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Birdi, he spoke about Bruce Odhiambo and Waiguru.

Hon. (Ms.) Sunjeev: Sorry, I probably misheard.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): However, that notwithstanding Hon. Jakoyo you know that if you want to discuss somebody, you bring a substantive Motion.

Hon. (Ms.) Sunjeev: In any way I stand corrected. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your point is made. Hon. Jakoyo please refrain from naming people.

Hon. Midiwo Hon. Temporary Deputy Speaker, I do not stand guided because I am talking about the thieves who are plundering taxpayers' money. This is about taxes. It is about our money that we are collecting and we do not get accountability for it. We are telling Kenyans to keep giving even if they do not have it. This is what is driving us to steal because we have no more money left to be taxed.

If I go to Arusha and buy a spoon I have to build a railway, after the 30 per cent and the 16 per cent I pay in Value Added Tax (VAT) has been plundered. Let us seal the loopholes. There is enough money in this country. The reason why this economy has not collapsed is because it is resilient and there is enough money. Why can the Kenya Revenue Authority (KRA) not broaden the tax space? The Constitution does not give anybody any more tax exemptions but how much tax are we collecting from churches running *matatus*? Broaden the tax space. Why are churches involved in providing residential--- Members get called every day to do fundraising for the church to provide hostels and they are not declaring that income. Broaden the tax space. We already gave them the law. To keep taxing the willing and the easily accessible is not going to help the economy.

Kenyans are angry at the Government and they cannot differentiate between an MP and the Government. Kenyans are angry at you that you are not doing your work and yet every opportunity that we get, we do a wrong thing. This is a wrong thing. This Government needed to have brought a tax policy if it wanted to do a railway. We gave them authority to collect Eurobond which was passed here. Why are we not doing this in terms of policy? You cannot just say give me authority to collect levies on anybody coming to the country or anything coming to

the country for home use. How? What will be left? Where else do we want our people to go? If you buy an underwear or anything you will pay that 1.5 per cent tax. It means our people have nowhere to go.

I am only pleading---

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Manson you are not using the right order. Can you press your intervention button? Give him the microphone and ask him what he wants to do. Who do you want to inform? Hon. Midiwo, do you want the information?

Hon. Midiwo: Yes, I accept to be informed.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Okay. Give him the microphone.

Hon. Nyamweya: Thank you, Hon. Temporary Deputy Speaker. I wanted to share with the Hon. Member the fact that we are already paying this tax. We have been paying it for a long time and they only want to legalise it. Kenyans are already suffering on this taxation.

Hon. Midiwo: I agree to that. The Member has come in a bit late but I had said it. Look at the mess at the airport, while somebody is coming home and is Kenyan, what they do to you if you are not a politician. Recently my wife was told to open her suitcase by officers from the Customs Department at the airport or give USD100.

The beneficiary will not be the person who is expecting the railway but will be our common criminals and thieves. We must do laws that make our tax collectors honest. However, this is a Bill that if passed legalises a serious anomaly and the opposite is what Parliament should have been confronted with. I want to plead with this House to reject this Bill so that any attempt to further tax our people is one that is discussed and what is done by our money that is collected is explained so that we carry the people along.

Hon. Temporary Deputy Speaker, as I conclude, did you know that the money that is paid to pensioners is already taxed? We have said that these pensioners cannot be taxed twice but what is the National Treasury doing? Any pension is deducted the 30 per cent which had already been taxed when you are contributing. We are being so insensitive to the taxpayer. So, I oppose and recommend that we discuss and agree on how further to tax our people.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Okay. I give the Floor to Hon. Birdi.

Hon. (Ms.) Sunjeev: Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to give my thoughts on the Miscellaneous Fees and Levies Bill. When I first laid my eyes on this Bill, I was a bit taken back. I needed to do some research and calm down to understand the gist of this Bill. When Bills such as this come, they raise a lot of concern among the citizens. The fact is by the time the citizens get concerned, Bills have already been passed and the damages already done or if not a damage, people out there are benefitting.

Money goes from one pocket to another. This Bill intends to promote trade amongst our East African states which include Burundi, Rwanda, Uganda and Tanzania and because they are not expanding as fast as we are, they benefit on that front.

When this Bill was drafted, I asked myself: "Where are the MPs from the pastoralist communities in this House and why are they not saying anything? This Bill actually wants to increase export levy on hides and skins by 80 per cent. By slapping that export levy, what happens is that it becomes expensive and difficult for the commercial sector that deals with hides and skins. Are we trying to kill that particular business or push them towards the EAC? Either

way it needs to be made very clear. In my opinion it does not do the common *mwananchi*, who deals with hides and skins, any good by raising export levy by 80 per cent.

The other business it touches on is scrap metal and the export levy on that is 20 per cent which is also very high. It says that and I repeat, that export levy on goods and services through the East African borders is exempt. That just means one thing: That we trying to increase trade within the EAC, but we are trying to change the course of our ship very seriously by pushing it very hard and wanting our people to do something which is going to hurt them eventually.

I have reservations in as much as I know that this Bill wants to increase trade in East African states. My feelings lie very strongly with the people on the ground dealing with hides and skins and those in the scrap metal commercial section. I am sorry, but I rise to oppose.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to Hon. David Ochieng.

Hon. Ochieng: Thank you, very much, Hon. Temporary Deputy Speaker. I want to speak on this Bill because it seeks to do something that ought to be done quite often, based on research, a country's strategic interest and where the county thinks it wants to go industrially.

Export tax is seldom used by countries nowadays. With the liberalisation of economies and World Trade Organisation (WTO) coming, you hardly get countries using export tax. This was left for countries because it gives them policy space when they want to develop infant industry, industrialise or identify a sector that needs more domestic input than exports coming in. Whenever a country wants to impose export tax, it looks strategically at what is there for it.

If you remember, for the last three years, this Assembly has voted money to the Ministry of Industry, Investment and Trade to develop, re-develop and rejuvenate the leather industry. As we speak, this is one of the industries where we put in so much money. We are trying to develop a processing zone for it so that, as a country, we can have a long lasting leather industry. It will create jobs and withstand competition from outside and ensure that our leather products are of good quality.

You can imagine that as we speak, our military boots are imported. Bata nowadays does not produce in Kenya. They produce out there in South Africa and other parts like West Africa. You can imagine that we import all leather things from across the border in Ethiopia because they have a better and more developed leather industry and yet, these products from Italy like the good shoes we buy every day, the hides and skins they use to manufacture them come from Kenya.

This is one of the things, in my opinion, the Government has talked about well. The fact is that, they have to realise that if they continue allowing the export of hides and skins they are basically starving and killing the domestic industry. So, I want to support this fact but with a rider. Countries have used export taxes for a long time to develop. We are now building a railway line; the one we are replacing was actually built by the British. Why was it built? So, that they could transport raw materials from the hinterland to the port and then to Britain to produce. The British used export taxes for a long time to industrialise. The United States of America (USA) also continues using export taxes to industrialize and so does Russia. As we speak, Russia, Canada, Mongolia and Mexico have export taxes on wood products. They do not export so that they are able to develop their timber industry. Down in Mozambique, they are doing the same thing and so these are policy instruments available for a government that thinks it wants to create jobs.

Listening to Hon. Birdi, one major thing that must be done is that we must ensure that products with export taxes are bought competitively. We must buy hides and skins from our people at good prices. Let us not impose export tax on products and then buy them locally at throw away prices. This is because we have given money to this Government and it must provide good prices for products they impose export tax on.

Two, we must, as soon as possible, develop required capacity to process products we want exported. We are giving money. We want to see the ministries concerned working on this early. Three, the President himself has said that he wants to build a culture of buy Kenya, build Kenya. If we are going to promote this industry, we must, going forward, ensure that the products that are hides and skins-related in this country, be it furniture, boots for the military and National Youth Service (NYS), are charged an extra price. We must ensure that we buy locally and at good prices. That is how we will create jobs in this country.

As we do this, we must ensure that we put enough money to develop the required technology and personnel that will work in this industry. That is how you build economies and create jobs. When an economy dies, to build a new economy you re-tool people so that they are able to fit into the new jobs. I hope that with these export taxes and the monies coming from them we will do this.

One major thing is that you must then have the capacity to enforce the law. Just two days ago, we saw presidents burning ivory. We banned export of ivory a long time ago but we still export ivory as a country. The only way that this Bill will work and help the country is if we have a proper and strong enforcement mechanism to ensure that no hides and skins leave the country without taxes being paid. The idea is that we want to prohibit, discourage and stop export of hides and skins. If we want to do this, we must enforce it. If we do not enforce that then we will not achieve the purpose.

A job has been given in this Bill to the Commissioner of the KRA. He must do his job to ensure that we have the capacity to enforce this if our leather industry is to pick and grow. You know when Goldenberg was happening here, in Korea they were killing people. If you were allowed to claim compensation based on export and lied, you were killed. That is how Korea was able to industrialise.

I always hear politicians comparing Kenya with Korea and Malaysia. What did they do better? They are better and clear on how they enforce laws. This Bill only works if you enforce. It will shock you if you go to our ports that Kenya actually exports aviation products, cars and aircraft to Europe as scrap metal. Yesterday, I received an answer from the Cabinet Secretary for Transport and Infrastructure on a Question I asked on the SGR. I wanted to know what is being sourced locally and from abroad. You will find that most of the things being brought from abroad are steel or metal-based. Why do you not allow metal to be smelted here so that we can use it here? This is what this Bill is doing. It is going to help us to develop our local steel industry. We needed it like yesterday. In that regard, this Bill is very important. I call upon the Government to put in place a proper enforcement mechanism.

One thing that is amiss in this Bill is the imposition of the two varied yet very similar taxes. On one hand Clause 7 says that we are now imposing IDF. What is this and how does it happen? Clause 7 talks about imposing something called IDF, while Clause 8 talks about imposing Railway Development Levy at 3.5 per cent. We are charging 2 per cent for the IDF and 1.5 per cent as Railway Development Levy. Why would you be imposing a levy of 2 per cent? Why not 0.1 per cent? At times we borrow like the world is ending. This is a bad culture. I will

oppose this. The Bill has good intentions, like seeking to create jobs and building infant industries to grow the economy but Clauses 7 and 8 do not do that. These two clauses cancel the gains we would have made in imposing the export tax.

With those few remarks, I would like to congratulate the Leader of the Majority Party for bringing this Bill relating to scrape metals, skins and hides, but I hope to bring amendments to remove Clauses 7 and 8.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Joseph Manje, the Member for Kajiado North.

Hon. Manje: Thank you, Hon. Temporary Deputy Speaker, for giving me the chance to contribute to this very important piece of legislation.

If we want to create employment in this country, this is the way to go. We have to impose levies and fees to bodies that export unprocessed materials.

Hon. Temporary Deputy Speaker, I will address two issues. The first one is on scrap metals. In this country, scrap metals are collected and exported to countries like China, where they are processed into steel. The steel is then exported to our country at a very expensive price. If we want to create employment, we must support our local industries that are doing the same job so that we can manufacture steel in our country. Creating more factories to produce steel is the only way we can employ our youth instead exporting our scrap metal to China and indirectly employing Chinese youth. It is becoming very hard to maintain roads supported by metallic bars in this country because unscrupulous people steal metallic bars and sell them as scrap metal. This is the law we need to cushion ourselves through imposition of 20 per cent duty on export of raw materials.

The other area that I want to speak to is on hides and skin. I support this but with slight amendment. I have realized they have imposed the same duty for people exporting raw hides and skins and tanned hides and skins. Those are two different things. When you tan hides and skins to a certain level, you remove the upper part and get wet blue. In wet blue form it is about 50 per cent processed. So, if you put the same duty, tax or levy the same way as somebody who is exporting raw hides, the person exporting raw hides will have more advantage and this is what we should discourage.

We have about 16 tanneries in this country which are at the verge of collapse if we keep on allowing export of raw hides and skins. If we put heavy levies on the exporters of raw hides and skins, we are assured of continuation of tanneries where our youth will get employment. There is also the issue of value addition. You will find that a tanned wet blue is slightly expensive. Which means it will attract more foreign exchange than raw hides. It will even be better to go to the completion where the raw hides go to leather stage. That is when you will get the maximum value for the hides from the skin. I want to report that from the time we devolved some of these functions the quality of hides and skins in this country has gone down terribly. I do not know what happened to the officers who were in charge of hides and skins.

Hides and skins are being taken as bi-product in our slaughter houses such that they are slaughtered in improper areas. After fraying, they try to again get meat from the hide, making the situation even worse. When they are taken to tanneries, most of them are rejected. This is one sector that the Government can come out strongly to improve the quality of hides and skins in this country. You will find that they will take hides and skins as a bi-product of an animal but in other countries, like Brazil, where they take care of their hides and animals by spraying them

when they are being grazed to have good skins that do not have tick marks, they are frayed properly to get good quality hides and skins.

With those remarks, I support this Bill but I will bring some amendments to make sure that we cushion our tanneries from closing down.

Hon. Nyamweya: Thank you, Hon. Temporary Deputy Speaker, for giving me a chance. First and foremost, I support this Bill even though it needs a serious amendment so that we can achieve two agenda. The first agenda we have as a nation is to grow our industries. If we have to grow our industries, there is no way we can impose export levies at the same rate with somebody who is exporting raw skin. We need to amend this. If we do not amend it, local industries will not develop and investors will not come to the country. If somebody is going to invest money internally in tanning skins and hides to make leather products, he needs to be protected by ensuring that the raw materials required for production of leather products are available. This cannot happen if tariffs on raw and tanned hides and skins are going to be the same. This needs to be looked at and amended.

On administration, the Commissioner is given the authority, but in equal manner, that authority is taken from him and given to the CS. Under Clause 3(i), the last sentence says “subject to the direction and control of the CS.” Basically, the Commissioner has no authority as provided for by the Act. This small section contradicts the authority given to the Commissioner of Customs. A Commissioner is supposed to work without the direction of the CS. This clause has made it clear. The CS will have authority to direct how the Commissioner will charge this levy. My concern is that, at the moment, we are not paying taxes, but tariffs. It is not the first time we are going to pay. We are paying the IDF and the Railway Development Levy. My problem is that we are not conscious of the cost of living of Kenyans. The Government is imposing these levies without considering the end products. We have raw materials which are imported and we need pharmaceuticals and drugs, which are critical.

Hon. Temporary Deputy Speaker, when you put the Import Declaration Fee (IDF) at 2 per cent, the levy at 1.5 per cent and add it to the duty, the import duty will go up for the end product. I do not know why it is coming up now because the rate has already reached there. It is good to put levy because we need this money but it has to be very specific. A particular account where this money goes must be opened so that we are aware of a specific purpose, for instance, to develop railway. There is a clause in the Bill which says that later on, the commissioner can form an authority. This is not conditional. It is not the first point that an authority must be formed before this money is collected. The Bill only provides that the authority will be formed later. Given the levels of corruption in this country, this money can be easily diverted to other activities.

In general, I support this Bill because we need money to develop but we must be aware that as we do so, we should have a small and young industry which must be protected. We need hides and skins in our country. We should allow export to take place and the levy should be prohibitive so that it discourages people from exporting skins but rather process them. You can have processed skins so as to create employment and reduce poverty. We should look at the Bill properly and sections which contradict the current given position by the Commissioner for Customs should be removed.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. (Eng.) Nicholas Gumbo.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker. From where I sit, I do not think there is any Kenyan who would be reluctant to pay taxes if they were aimed at addressing problems facing our country. Our taxation regime is more of a punishment than a source of revenue for the country and for tackling the problems we face. That is why some people have described a fine as a tax for doing something wrong and a tax being a fine for doing something right in the sense that people who diligently pay taxes more often than not, do not see commensurate services to those taxes. It has been said that the best things in life are free but sooner or later, the Government will find a way to tax even those free things. Our aim has been to build Kenya by buying Kenya. The only way to do that is to develop our own industries. Kenya today is more or less an import country. It is no wonder our problems continue spiraling. I want to advise whichever Government that would be because being in Government and the Opposition are not permanent conditions, that whenever we levy taxes just like when we shear sheep, it is worth to stop when we get down to the skin. When you overtax citizens, their attitudes change. Why do we aim to develop larger industries? We are imposing levies and tariffs to tanned or crust hides and skins of swine, without wool on or hair on at 80 per cent. This is failing to know when you get down to the skin. The 30th President of the Republic of the United States of America, the late Calvin Coolidge once said, "Collecting more taxes than is absolutely necessary is legalised robbery." Are we going to legalise robbery through indirect or direct taxation such as what we are proposing? If this House passes this Bill the way it has been proposed, it would amount to insensitivity to the way Kenyans out there are living.

As I conclude, the intentions of this Bill might be good but its framing is completely wrong. If it is left in this manner without copious supply of amendments, I will definitely oppose. Whatever tax regime we have in this country, it can only make sense if it aims to tackle our problems. Extreme inequality in this country is a major problem that creates other problems. As leaders, we should be asking why Kenya being the largest economy and our income per capita which is almost twice that of Uganda and Tanzania, has almost 50 per cent of its population living below the poverty line. The reason for that is found on the extreme inequality in our nation. No wonder most people have said that much as the richest person in East Africa lives in Kenya, the poorest person also lives here. The moment we have a society that is designed in that format, we are preparing the people we leave behind to take us down. The walls around our houses do not matter. We will only be secure in those homes but even then, our homes will look like jails. Why do we put electric fences and razor wires around our homes? It is not for fear of lions and buffalos from Nairobi National Park but for fear of fellow Kenyans. We must do something about extreme inequality in this country if we are to live in harmony.

Hon. Chepkong'a: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Chepkong'a, what is your point of order?

Hon. Chepkong'a: On a point of order, Hon. Temporary Deputy Speaker. Is Hon. (Eng.) Gumbo in order to contradict the Constitution which guarantees the right of wealth? He stands here to glorify poverty by telling us that the richest man cannot come from Kenya and that we should have poor people. I thought the aim of every Kenyan is to be rich.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, I never said that. Maybe he is speaking from the point of being a lawyer. He is my great friend I respect him. He does not probably understand why countries that seek to develop invest more in engineers than lawyers. I will challenge him to show me one country that has sued itself to greatness. Countries have

become great by building edifices like the Thika Road Superhighway which is the work of engineers.

My friend, I did not say, and I will never say that I glorify poverty. All I am saying is that these income disparities are bad for our country. We must do something about them. The more people we leave behind, the more insecure we become. There is no contradiction there.

As I conclude, our tax regime must also tackle the extreme cases of youth unemployment in our country. They must also tackle the cost of living. Those of us who left the university in the early 1990s know that with Kshs10 in Nairobi, you could get by because from my house in Zimmerman, in the morning, with Nyayo Bus Service, I only needed Kshs0.50 to get to Nairobi. A plate of chips was Kshs1.50. I am not saying that we go back there. However, the cost of living in this country is something that we must tackle. We must also tackle insecurity.

Finally, let us embrace transparency in the collection and utilisation of the taxes and levies that we impose. Why are we not speaking boldly about this? The other day, a friend of mine told me that a clerk at the Kenya Revenue Authority (KRA) owns four blocks of 64 units in Kitengela. Why are we allowing these things to happen? The clerk earns a monthly salary of Kshs60,000. How much do we earn? I do not even own a block of 10 flats. How can a clerk at the KRA own four blocks of 64 units?

Hon. Member: --- (*Off-record*)

Hon. (Eng.) Gumbo: I do not own flats. You can audit me. I am putting myself forward to be audited.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Please complete, Hon. Gumbo.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, we cannot allow our tax managers to be living in largesse. They are wasting our taxes while we watch but we do not do anything about it.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): What is your point of order, Leader of the Majority Party?

Hon. A.B. Duale: On a point of order, Hon. Temporary Deputy Speaker. This is a House of records.

Hon. (Eng.) Gumbo: Yes!

Hon. A.B. Duale: Sit down, Hon. Gumbo. I have the Floor. You must substantiate every statement that you make. There is no one called "clerk of KRA". The KRA is an institution. We want the Member for Rarieda, who is the Chairman of the Public Accounts Committee (PAC), to go on record and name the particular KRA clerk who owns 64 flats. He should also give us his telephone number, so that the institutions that have been created by this House can investigate. This is not a talk shop place or a *baraza* or a funeral gathering. We cannot just say that a clerk at KRA owns this or that. There are Kenyans we represent who work in the KRA. We do not want their names to be soiled where they cannot defend themselves. I will ask that this mysterious KRA clerk is either named or the Member withdraws and apologises to the KRA.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Gumbo, I heard you say that somebody told you. Please complete.

Hon. (Eng.) Gumbo: Hon. Temporary Deputy Speaker, Hon. A.B. Duale is a great friend of mine. Who does not know that most people at the KRA live beyond their incomes? The President himself has said so. What is there to substantiate? Who does not know that some of the people who do inspection at the Kenya Bureau of Standards (KBS) are living beyond their means? If we avoid the realities in our country, how will we move forward? Instead of asking me

to substantiate a problem that everybody knows about, as a House, why should we not propose to audit all the employees of the KRA, so that we see whether their incomes are commensurate with what they own? I do not need to substantiate because it is common knowledge.

What I am saying is that no Kenyan would be reluctant to pay taxes, if there would be transparency in the usage of the revenue collected and most important, if they can be assured that every cent of the revenues collected goes to address the problems that are bedevilling our country.

With those few remarks, I support with a notice that this Bill has to be amended. Otherwise, I will oppose it.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I give the Floor to the Leader of the Majority Party to reply.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, before I reply, I have a number of Members of Parliament who want to make one or two important comments. They are the Member for Turkana Central, Hon. Nakara; Hon. Otsiula, Hon. Wangwe, Hon. Rotino, Hon. Alfred Keter and Hon. Kangara, in that order.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Let us start with the Member for Turkana Central. Leader of the Majority Party, are you giving them two minutes each?

Hon. A.B. Duale: Yes.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Please, press the intervention button.

Hon. Nakara: Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute to this Bill. I support it. However, I want to make an appeal to the Leader of the Majority Party on goods exempted from import declaration fee, when imported or purchased before clearance through customs.

If we are going to accept gifts and donations, including the motor vehicles that are imported by faith-based organisations--- I appeal that churches are the ones improving the lives of people in some counties like Turkana and other pastoralist areas. There are many friends in the United States of America (USA) and the United Kingdom (UK) who are willing to send such gifts but the levies which are charged on those goods are very high. I appeal to the Leader of the Majority Party to exempt from tax goods and vehicles imported by churches so that they can help the poor in those counties.

Finally, the railway development fee must be reduced so that we encourage trade between local and international communities.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Your two minutes are over. Who was the next one in that order? Is it Hon. Otsiula?

Hon. Otsiula: Yes.

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

Hon. Otsiula: Thank you, Hon. Temporary Deputy Speaker. I stand to support this Bill. As Kenyans, we all know the contribution that railway transport made in this country. I know it is in the interest of all Kenyans that once again, we have the railway business up and booming. Besides the challenges and the other issues raised by Members, we must support the Jubilee Government because we know what the Standard Gauge Railway (SGR) means to it.

I urge the Leader of the Majority Party to look at the education sector, particularly for university and college students. We must ensure that the computers which are being used by

college and university students, and those used for research, are exempted from tax so that we can improve the quality of education of our students.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Wangwe.

Hon. Wangwe: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill based on three facts. This Bill will facilitate job creation. It will also check the balance of payment as a result of creation of the jobs that will come from exports and imports.

I also support the Bill because it envisages the drive for the industrialisation of this country. Considering that the Jubilee Government is establishing a lot of Technical Training Institutes (TTIs) in the country, we need to entice the young graduates who will come out of those TTIs to make sure that our country is fully industrialised. Manpower in technology shall also be available. I have a concern with three issues, in respect of which I will introduce amendments during the Committee of the whole House stage. The first one is on Import Declaration Fee (IDF). This Bill suggests that IDF shall be levied at 2 per cent. That is too much for importation. On this provision, I differ with the Leader of the Majority Party. There is also the issue of the Railway Development Levy. We are going to allow East African Community (EAC) member states to import from the EAC partner states provided that they meet the EAC rules of origin. The EAC and Kenya are one. I will differ with that at the Committee of the whole House. The percentage levied on metal exports is a bit lower. During the Committee of the whole House, I will propose a higher figure so that we can check the issues of metals and the effect of metal works in the economy.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Rotino.

Hon. Rotino: Thank you, Hon. Temporary Deputy Speaker. At the outset, I support this Bill because there is no country that can develop without taxes. So, it is important to impose taxes on exports and imports. We should utilise well the taxes that we collect from our people. We should monitor and ensure that the taxes are used well. I will propose an amendment on the taxes levied to hides and skins during the Committee of the whole House because, I believe, they are high. We should reduce it to less than 8 per cent. Some of us went to school because of hides and skins. Our parents used them to get money and I know the value of hides and skins. That taxes levied on iron is low. We should increase them.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I give the Floor to Hon. Alfred Keter.

Hon. Alfred Keter: Thank you, Hon. Temporary Deputy Speaker. At the outset, I support this Miscellaneous Fees and Levies Bill. It will expand tax collections and create employment to many young people who have cleared training and cannot access employment opportunities. It is also going to control the export and import of these specific items that have been levied. When you levy tax on a product, you can control the transactions that, that item will go through. We have seen how the scrap metal business has been running. Businessmen have been getting a lot of money exporting tonnes of scrap metal. Until we levy taxes on them, we cannot control such a business. I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Kangara.

Hon. Kangara: Thank you, Hon. Temporary Deputy Speaker. I join my colleagues in supporting this Bill. I will start by saying that for a country like Kenya to develop, we must raise

money from levies and taxes which must come from the citizens. So, it is right for this Bill to impose taxes. It is the right way to go for this country so that we can have money to develop.

I have seen in the Bill that there are exemptions of exports which are within the EAC. This goes a long way in encouraging integration with the East African countries so that we can move goods within the EAC. We need to look at the relationship between us and the other countries within East Africa, which may be willing to bring their goods to this country and they are not opening their borders to our goods and our people to move freely. We need to look at that.

I have seen the Railway Development Levy. We are coming up with the Standard Gauge Railway (SGR), which is going to help ease movement of goods from our ports in Mombasa to Nairobi and the neighbouring countries. We need to levy it so that it can push the railway to go to the neighbouring countries.

Lastly, I have seen that there is tax on scrap metal. Scrap metal dealers have done a lot of damage in this country. Most of the metal is stolen.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, your point is made. Let us have the Leader of the Majority Party.

Hon. A.B. Duale: Thank you, Hon. Temporary Deputy Speaker. First, I thank members for contributing to this Bill. As I said earlier, this Bill is at the Second Reading. So, there is an opportunity for members to bring amendments at the Third Reading. If members read the memorandum of objects and reasons, they will get the gist of this Bill. When we repealed the Customs and Excise Act and created the Excise Act, which is now the law being used, there were certain levies and fees which were left unattended. They had no legal binding. This includes the IDF and the Railway Development Levy that has been introduced since the beginning of the construction of the SGR. The moment the SGR is complete, the Cabinet Secretary (CS) for the National Treasury will see if he will need that levy or not.

The other thing in this Bill which we need to discuss soberly is how to protect the leather industry. Do we allow our raw leather to be exported and value addition to be done somewhere else before it is brought back to our country and we buy the goods? Do we protect our local leather industry and, through budgetary provision in this House, allow value addition to be done, jobs to be created, revenue to be received by Government and Kenyans to get value from that sector?

The Public Accounts Committee (PAC) Chair has left. He was saying that Kenya is the only country where the rich are found. You should be proud of that. Countries compete to be in the list of the five richest countries in the world. There are people who compete. Our Gross Domestic Product (GDP) has grown. You must set a mind-set of empowering the people and not one of poor people. As leaders, we should always give vision. We should empower the women, youth and the small businesses. If Kenya can produce the top 100 richest people in the world, this country will be great. That is why you see people like Mr. Dangote of Nigeria. Even though he is not a Kenyan, some of us are proud of him. He is one of the richest guys in the world. So, the PAC Chair needs to inspire the people of Rarieda. Unless he wants all the people of Rarieda to be very poor, he should be proud when there are two or three millionaires and billionaires from Rarieda. Some of us believe in empowerment.

This is a small Bill that deals with levies and fees which were left when we created a very strong and vibrant Value Added Tax (VAT) regime. The Excise Act we have is the best in the region. Taxation is part of how a country can develop. The salaries that you earn as Members of Parliament are collected through the taxes collected. So, you cannot say that you do not want

taxation and you want the economy to do well. All that we need to do as a House is to make sure that we balance our debt and taxation level.

I want to go on record. When President Moi was leaving power in 2002, the Kenya Revenue Authority (KRA) was collecting close to Kshs600 billion. Today, we are proud of KRA. They surpassed the Kshs1 trillion mark last year. We must thank people like Njiraini as the top leadership, the board and the National Treasury for making sure that in a span of about 12 to 14 years we grew our revenue collection from Kshs600 billion to Kshs1 trillion. Very few countries in Africa have achieved that. If you combine the budgets of Rwanda, Tanzania and Uganda, it is not even a half of the Budget of our country. This is a small Bill. Before we go on recess, or maybe when we come back in June we can look at the leather industry. The leather industry is one industry that has been collapsing because of the very many cartels.

With those many remarks, I want to thank Members because this morning we have done a lot of work. That is why this House is serious. This morning we have finished considering the Supplementary Appropriation Bill in all the stages, we have concluded the Seeds and Plant Varieties (Amendment) Bill, which is a constitutional Bill, we are now finishing consideration of the Miscellaneous Fees and Levies Bill, 2015 and we are going to consider the Election Laws (Amendment) Bill. So, I thank Members.

This spirit should be brought tomorrow afternoon. If Members can listen to me, Hon. Alfred Keter and the team and Hon. Ombaka listen to me, tomorrow at 2.30 p.m. we must all be here to pass the gender Bill.

With those many remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, we will not put the Question at this time, so we go to the next Order.

Second Reading

THE ELECTION LAWS (AMENDMENT) (NO. 3) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): The Chair of the Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to move that the Election Laws (Amendment) (No.3) Bill (National Assembly Bill No. 63 of 2015) be read a Second Time.

This is a Bill that has been developed jointly by the Departmental Committee on Justice and Legal Affairs, the Independent Electoral and Boundaries Commission (IEBC) and other stakeholders. The object of this Bill is to seek to reform the electoral process. As you know, the Elections Act of 2011 was the first Act to be passed after the promulgation of the Constitution. After the holding of the first elections under the new Constitution, it was discovered that there were a number of anomalies in the Elections Act of 2011. Therefore, we are seeking to rectify and transform the Act so that it can work well in the next elections. Basically, this Bill is intended to remove those particular sections that became an impediment in the last general election after the promulgation of the Constitution.

The central gist of this Bill is to ensure that various State and non-State actors work together during the election so that we can have smooth elections come 2017. As you know, elections are set to be on 8th August 2017. It is intended that this law be brought into place much more in advance to allow various actors in this field to implement this legislation.

Clause 2 of this Bill seeks to remove the anomaly that we saw in the definition of what a Returning Officer and a Referendum Officer is. We are removing replacing the Referendum Officer with Returning Officer.

In Clause 3, we are proposing to amend Section 5 of the Elections Act to provide for the period during which the continuous registration of voters may be temporarily stopped or halted during a referendum, and removes entitlement for persons who have applied for national identification (ID) cards to register as voters before the issuance of actual identification documents. We have had consultations with the Registrar of Persons and we have agreed that the process be speeded up so that Kenyans do not use the waiting cards for purposes of registering as voters. We are trying to remove those anomalies. We have been informed that it will take only a maximum of two weeks for one to obtain their ID card. The Registrar of Persons tells us that there are too many IDs lying in their offices in various parts of this country. It is important that Kenyans collect them because they are ready.

In Clause 4, we are seeking to amend Section 6 of the Elections Act by increasing the period within which the Commission must open the register for inspection, from 60 days to 90 days before the date of the general election. The register will be available for inspection by whoever seeks to check whether their names are there or by the political parties. We want to increase that period from 60 to 90 days. We think that is reasonable. We had problems in the last elections because we could not inspect the register. It also increases from 14 to 30 days before a general election during which the Commission must publish a notice and transmit copies of register to all registration officers.

In Clause 5, this Bill seeks to amend Section 13 of the Elections Act 2011 by making it a requirement for a political party to nominate their candidate for a general election at least 90 days before the election. This section also requires a political party to hear and determine any disputes arising from political party nominations within 40 days. That is the internal mechanisms for parties. In these proposed amendments, we seek to provide that the IEBC will not hear disputes arising from party primaries but that will be the work of the Political Parties Dispute Tribunal.

Clause 6 seeks to amend Section 16 of the Elections Act, 2011 to clarify that a vacancy in the office of a Member of Parliament shall be deemed to occur on the date of issuance of a notice to the Commission, which shall not be later than 21 days from the date of the actual occurrence of the vacancy. At the moment we have to wait for the Speaker of the National Assembly or the Senate to issue that notice before the Commission issues a notice declaring that a Member of Parliament's seat has become vacant.

Clause 7 seeks to amend Section 22 of the Elections Act, 2011 to require that a person who is seeking nomination for an elective position should possess, as a minimum qualification, a degree in the case of parliamentary elections and a diploma in the case of county assembly elections. This clause also contains a proviso to the effect that in the 2017 General Election, a member of a county assembly (MCA) shall be required to possess a degree from a university recognised in Kenya. The foundation of this amendment arises from the requirement under Article 99 (1)(b) of the Constitution, which states:-

“A person is eligible for election as a member of parliament if the person satisfies any educational, moral and ethical requirements prescribed by this Constitution or by an Act of Parliament.”

As you know, this House has already expressed itself on the moral standards every elected Member of Parliament, governor or President must comply with before they are allowed to participate in any election. That is contained in the Leadership and Integrity Act that was passed by this House.

What has not been done is to set the minimum educational standards for Members of Parliament and Members of the County Assemblies. As you know, the standards to become governor or deputy governor have been set in the Constitution. As a minimum, they must have a degree. The foundation of this is Article 43(1) of the Constitution, which says that every person has a right to education. There is no one prevented from seeking education. This Constitution guarantees education as a minimum right every Kenyan is expected to enjoy.

Hon. Temporary Deputy Speaker, as you know, Members of Parliament are listed as State officers number 43. When we asked the Salaries and Remuneration Commission (SRC), we were told that one does not require any qualification to become a member of parliament or a senator or a member of county assembly. In fact, even if you have not gone to standard one, you still qualify to be a member of parliament. That is a very dangerous thing to say. All the Members of Parliament you see here have struggled in their education. It will defeat the purpose of having almost 60 universities in this country if a Member of Parliament did not obtain minimum educational standards.

I have been lobbied a lot by Members who think they do not qualify according to this Bill. As the Departmental Committee on Justice and Legal Affairs, we have discussed and agreed that this House needs to express itself. Members who do not possess the minimum qualification will be allowed to participate or come to Parliament. However, there must be differences in salary. Those who will be elected to Parliament without certain minimum qualifications will earn less salary. That is how it is in any employment.

I was a Chief Executive Officer (CEO) at the Communications Commission of Kenya (CCK). If one did not have any qualification, we made them a sweeper. Unfortunately, we are not allowed to make you a sweeper in Parliament. We will allow you to speak but you must be paid a salary commensurate to your educational standards so that we encourage people to go school. However, that is debate for this House to express itself on.

In Clause 8, the Bill seeks to amend the Elections Act to require political parties to submit party nomination rules to the Independent Electoral and Boundaries Commission (IEBC) six months before an election. This section further requires that an amendment of those rules have effect 90 days after notification to the Registrar of Political Parties. The clause further empowers the IEBC to issue political parties with compliance certificates. No political party will be allowed to participate in the next election if it has not submitted their nomination rules. This has been a point of contention. Most parties hide their rules. Candidates who seek to participate in elections do not know what rules they are supposed to follow. It will now be a requirement that parties file their nomination rules for a minimum of at least six months before the elections. The primaries will be held at least 60 days before the general election. It will be within that timeframe that candidates will acquaint themselves with the rules of elections.

Clause 9 amends Section 28 of the Elections Act. It requires a political party to nominate a person for an election. It shall then submit a party membership list of the party to the commission. That should be at least 60 days before the date of the general election and 45 days before a by election. This is to leave a window for Members of Parliament or candidates who seek to participate in the general election but they have, for one reason or the other, been dealt

unfairly by the parties. This is the so-called ‘party hoping provision’. It allows Members to escape the injustice in their party.

Clause 10 proposes to amend Section 30 of the Elections Act, 2011 to allow a registered referendum committee to appoint an agent at each polling station.

Clause 11 seeks to amend Section 32 of the Elections Act, 2011. It will require that an independent candidate shall submit to the commission the symbol they intend to use during an election. It should be at least seven days before nomination. This opens a window for those who did not succeed in their party’s primaries to participate as independent candidates.

Clause 12 seeks to amend Section 34 of the Elections Act, 2011. It is to require that party lists include a certification in the manner prescribed by the commission, in the case of a person nominated pursuant to Article 177(1)(c) of the Constitution. This clause further requires that the commission verifies the list and issues a certificate of compliance. The commission is to prescribe regulations on the standards to be complied with while developing a party list. As you know---

(A phone rang)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Members, whoever’s phone is ringing is out of order.

Hon. Members: It is there.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Where is it?

Hon. Chepkong’a: The owner has absented herself or himself.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Serjeant-at-Arms, please take that phone away.

Hon. Chepkong’a: It is memory lapse. The owner must have intended to walk out with the phone but forgot.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Okay. Go on, Hon. Chairman of the Departmental Committee on Justice and Legal Affairs.

Hon. Chepkong’a: This is to streamline the process of presenting a list for nominated members of Parliament and members of county assemblies to the commission. As you know, there has been a lot of contention over the manner parties have been forwarding the list of nominees. This clause seeks to streamline that process by ensuring that those who have been listed for nomination as persons with disability bring a certificate from the National Council for Persons with Disabilities. That is so that one does not say “I see this person as one who lacks one eye” yet that may be untrue. It will not be an assessment by the IEBC but one based on professional expertise.

Clause 13 of the Elections Act is sought to be amended by inserting a new section in Clause 38(a). It says that the number of voters per polling station in a general election should not exceed 700 people. The import of this amendment is to require the IEBC to ensure that they open another line which will also be a polling station if there are more than 700 persons in that line. That is so that we have a maximum of 700 people per polling station. In Nairobi, we have seen lines snaking round. You can take an hour to cast your vote in such lines. We want Kenyans to cast their votes without being inconvenienced. We know many people who have refused to cast their votes because they say it is a waste of time to exercise their democratic right. This is

because they waste about an hour queuing on the line. We want to streamline this process so that we can allow faster voting at the polling stations.

Clause 14 seeks to amend Section 43 of the Elections Act to clarify that a public officer intending to stand for election must resign one year before the general elections and within seven days of the declaration of a vacancy hence a by-election. We want to ensure that State officers do not use public resources to campaign. We want to allow people who have made up their minds to run for elective positions ample time. That is so that they can meet their proposed voters. We do not want to allow people or hold people to ransom in their positions of work. Such are the people who do not know whether to get out or stay in. We want to make it clear so that we help them. That way, they will campaign against us effectively and in a manner that does not compromise their offices.

I am almost concluding.

In Clause 20, we are seeking to amend Section 76 of the Elections Act. It is to ensure that a petition questioning the validity of an election is filed within 28 days after the date of declaration of the results rather than the publication of the results of election. There has been confusion on this. It has been a subject of interpretation at the High Court. We want to make it very clear that if you wish to do so, you should count 28 days from the date of declaration of election results; not from the date of determination or issuance of a certificate of victory.

Clause 22 of the Bill seeks to amend Section 86 to require an election court to notify the relevant Speaker of Parliament of its determination of the validity of any question raised with regard to an election. We do want a situation where we do not know what the courts have decided and the Speaker is not aware. We want the courts to forward the ruling to the Speaker because we are the users of that ruling. We do not want it to be kept in courts; it must be sent to Parliament.

Section 87 of the Act is proposed to be amended to require an election court to send to the Director of Public Prosecutions (DPP) and the Independent Electoral and Boundaries Commission (IEBC) a report in writing indicating whether an election offence is likely to have occurred in connection with the elections. Based on the results of the investigations, the DPP then initiates prosecution or closes the matter. It should not be the election court which determines that one is criminally liable. It can only make recommendations that it suspects that there is a crime that has been committed, not a final determination. That is a matter that should be left to the DPP to investigate, if it is a criminal offence, and prosecute the person if he finds that they are culpable.

Clause 24 of the Bill seeks to amend Section 91 of the Elections Act to make it a requirement that where no petition for the referendum results is filed within the time specified, the declared but not gazetted result shall have effect. This is to ensure that we do not have to wait for the gazettelement because there is a lot of human intervention before one gets it to be gazetted. It should be from the time it is declared.

Clause 29 seeks to amend the IEBC Act by deleting certain sections which have been obsolete, for instance, by providing for the procedure and criteria for the delimitation of electoral boundaries. More so we are dealing with the electoral boundaries which will be a subject in 2019 not next year.

With those remarks, I beg to move and request Hon. Otsiula to second.

Thank you.

Hon. Otsiula: Thank you, Hon. Temporary Deputy Speaker. I rise to second the proposed amendments. I also want to thank Hon. Chepkong'a, on behalf of the Departmental Committee on Justice and Legal Affairs, for the long period of time we have taken to run through these amendments.

(Loud consultations)

Hon. Sunjeev: On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): What is your point of order, Hon. Birdi?

Hon. Sunjeev: Hon. Temporary Deputy Speaker, there is a very loud noise coming from down here. We are unable to hear the Member speaking. Is it in order for them to hold a *baraza* in the Chamber?

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon Keter, Hon. Tong'i, Hon. Kering and Hon. Peris Tobiko, Members are complaining that your consultations are too loud and they cannot hear the Member contributing. Go ahead Hon. Otsiula.

Hon. Otsiula: Thank you for the intervention. I was appreciating the contribution by the Departmental Committee on Justice and Legal Affairs. As ably explained by our Chairman, these are very robust amendments as we look forward to proper election management in this country.

I want to particularly appreciate the provision requiring that members of Parliament and members of county assemblies should have some minimum requirements. It should not be free for all. If you are a Member of Parliament, my Hon. Colleagues and the MCAs, we should not be scared when we talk of degree for a Member of the National Assembly and a diploma for the MCAs. If we give out bursaries, we need to lead by example. We give out bursaries for students to study in the universities and colleges. Why should we shun studies? Why should we be afraid of books? We must lead by example. The best example is for you to show those students you are issuing bursaries so that you are also ready to lead by having a relevant certificate in the area where you are proposing to promote.

In this country, elections have been managed very poorly. It is like party leaders are owners of the elections. They decide on who comes in and who goes out at any time and at will. With these robust amendments coming up, I believe we are moving in the right direction as a country right from the time of voter registration, the election date, management of the election, arising disputes and deciding which disputes will go to the tribunal and which ones will go to the court. Those proposed amendments also streamline the nature of the party lists to be presented to the electoral body. All this will go a long way in ensuring that we have free, fair and well-run elections.

In any game where there are no proper rules, there are always problems. As you see, what is happening now is that unless we revamp the electoral institutions, it is going to be a big challenge to us as a country. Therefore, without taking much time because I know quite a good number of my colleagues would wish to contribute on this amendment, I second.

Thank you.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I give the Floor to Hon. Christine Ombaka.

Hon. (Ms.) Ombaka: Thank you, Hon. Temporary Deputy Speaker, for this opportunity. I support this Bill with all those amendments. I want to highlight the fact that worldwide, people cherish education. What has been introduced here although it may be negative for those who may not have had the opportunity to go to school, it gives them an opportunity to go back to school because we are all highlighting education in everything that we do.

I remember one time when I was at Maseno, we were looking for a watchman and it was very interesting that they were required to have reached Form Four and have some kind of leaving certificates. We challenged that a lot and asked why everybody was required to have gone to school even for a job that does not require much education. It was said that if you are a watchman, you need to identify people who drive through gates for security purposes. You need to take down the registration and other details. It was necessary, therefore, to accept that education was still necessary even at that level.

As leaders, and those who are going to be in Parliament and deal with Bills and change all this into laws, there is need to have some level of education and some kind of control and standards set. I support the fact that one can have a diploma or a degree much as I know that it is very punitive for those other people.

It is important to appreciate that education plays a very critical role in leadership, especially when you are coming to the National Assembly and you are reading Bills and interpreting them. One needs some level of education.

I support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): I now give the Floor to Hon. Richard Tong'i.

Hon. Tong'i: Thank you, Hon. Temporary Deputy Speaker for the opportunity to also support the Election Laws (Amendment) (No.3) Bill with all its amendments. I stand to support it on two grounds.

First, it is trying to explain our election laws more clearly than has been done in the past. We know of cases in the Supreme Court and the Court of Appeal, most of which have been challenged on technicalities based on the understanding of the law. For instance, do we start counting the 28 days after the elections have been announced or after the certificate has been issued? This law goes a long way to define that. That helps the country to move forward so that we can now understand what the law stands for and when that counting starts.

We need to have people who are serious about campaigns and who are going to engage in politics, not as a part-time hobby but because they believe in it as a career. The requirement that public servants who want to contest in elections should resign at least six months before the Election Day makes a lot of sense. In the past, we have had a scenario of contestants who want to have their cake and eat it too. These are people who are not serious and are opportunists, for lack of a better word, who wait for the last minute to ditch their jobs. They may be working but their heart is elsewhere because they want to contest and, therefore, do not give Kenyans the service they deserve. This requirement of resigning six months before the elections if you are serious is a reasonable period for one to quit. This will give you a chance to interact with the people and build the network that it takes to win an election.

You need brains in politics just like in any other career. You need people who have gone to school. If there is any place that we ever needed people who have gone to school it is in

Parliament or in any elective position. The law has conferred on us the power to make laws. We make laws based only on the knowledge that we have. The Bible says, “My people perish for lack of knowledge.” If the Bible recognises that people perish for lack of knowledge, it is only fair that we also empower people so that even as they come to Parliament, they are people who are prepared both emotionally, intellectually and in every other aspect to make laws for this country. We cannot keep whining that we have bad Members of Parliament yet we are not doing anything about it. This law has given us a good chance to get people who can understand concepts, issues and projects which have an impact on the society.

In the 10 years President Kibaki was in office, we were able to achieve a lot more than we ever achieved in almost 30 years of the previous leadership. That goes to explain that when we have leaders who have gone to school, have a vision and people who can interpret the vision and see the impact it will have in 10, 20 or 30 years ahead, we will be a country to look up to. We want Kenya to be one such country. All our leaders should look at the bigger picture and see what is good for the country.

Having said that, it is only fair that we get a way of ensuring that the members of county assemblies we will elect into office are people who understand issues. You cannot be a manager of a governor who has gone to school and has three or four degrees yet you cannot understand or even read a simple statement. You are supposed to manage and ensure that the resources which go to the county are utilised properly. It is only fair that we have MCAs who have also gone to school, understand issues and prioritise county projects for the good of the economy. To date, we have given counties almost Kshs1 trillion. That is a lot of money. If this money is used well for the good of this country, this country will be a very good place to live in. We cannot keep on whining and saying that we are in a bad country where corruption thrives, yet we have not ensured that the people who are supposed to check that corruption have been given the skills or have the necessary skills to ensure that scenario does not happen again.

Hon. Temporary Deputy Speaker, in the interest of time, I support the Bill, the amendments and the changes therein. We need a few amendments as we move forward. For now, it is a good Bill meant to make Kenya a better place to live in.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Thank you, Hon. Member. I now give the Floor to Member for Rangwe.

Hon. Ogalo: Thank you, Hon. Temporary Deputy Speaker. I take this opportunity to congratulate the Chairman of the Departmental Committee on Justice and Legal Affairs for bringing this Bill to this House because it is going to give us the opportunity to cleanse the elections process in Kenya and to ensure we give Kenyans an opportunity to participate in free and fair elections to ensure that the loopholes we saw in the last elections do not reoccur. This Bill allows us to look at the entire election laws not only those elections that have been targeted for amendments by this Bill.

For free and fair elections, there must be determination of registration of voters. The first step of elections is that each and every person who should participate in that election is given ample and a fair chance to participate in that elections by registering. Elections flaws in this country have been mostly on determining how many people participated during the voting day. The voter turn-out during the voting day has caused contentions in elections in this country. This House now has an opportunity, using this law, to deal with this matter conclusively and

extensively to ensure that in 2017 no elections will be tampered with in-between the polling station and the tallying centre.

A returning officer for an election should be the returning officer for all elections. We should not have one person sitting in Nairobi to be the returning officer for the presidential elections yet those elections are carried out in polling stations and declared in constituencies by returning officers. This Bill should now allow the National Assembly to prescribe in detail the processes of determining elections, how the votes are counted, how the results are transmitted and how we can ensure that the integrity of those results are not interfered with in-between that process.

I am a little concerned and I will be seeking guidance on whether prescribing qualifications for a candidate in election seats bodes well with the Constitution. Article 38(3) of the Constitution says every adult citizen has the right, without unreasonable restrictions, to be registered as a voter; to vote by secret ballot in any election or referendum; to be a candidate for public office or office within a political party of which the citizen is a member and if elected, to hold office. I am not sure if a bill of right, like this political right of a citizen, can be curtailed by a statute. It is very clear in the Constitution that any adult has a right to vie. It is the job of the electorate to determine who to bring to this House, any other House or any other office. That is the principle of universal suffrage as enshrined in the Constitution. So we should not limit people on who they cannot vote for. If Kenyans want illiterate people to be in the House, that is their business. If they want people with PhDs only, that is their business. As I speak about this, I hold a degree from the University of Nairobi, a very integral education centre.

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): Hon. Member, I am sorry to interrupt you. You will have five more minutes when the Bill comes back to the Floor for debate. It could be this afternoon.

Hon. Members, I am going to use my discretion with regard to Standing Order No.1 to allow the Chief Whip of the Majority Party to lay a Paper on the Table of the House.

Hon. Katoo: Hon. Temporary Deputy Speaker, I beg to lay the following Paper on the Table:-

An additional list of nominees to the National Government Constituencies Development Fund Committees from the National Government Constituencies Development Fund Board.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Shebesh): The time being 1 p.m., this House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1 p.m.