

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

Thursday, 3rd December 2020

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

Hon. Speaker: I will give that Communication before we get to Order No. 8.

PETITIONS

Hon. Members, I do not have my brief on Petitions. Nobody has pressed the intervention button.

(Hon. (Ms.) Sabina Chege spoke off record)

Press the intervention button. Nothing shows that you are in the Chamber. Do you have a card?

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): No.

Hon. Speaker: You came on your two feet. You can now take your two feet elsewhere.

(Laughter)

I can see that there is an intervention by Hon. Chachu Ganya.

Hon. Chachu Ganya (North Horr, FAP): Hon. Speaker, I will contribute to the next Order.

Hon. Speaker: Hon. Koske Kimutai and Hon. Sabina Chege, it is advisable that you do not forget your card, especially on the last day. That is because you might not speak. The Member for Chepalungu is kind to you. He has given you his card. Proceed.

LIQUIDATION OF KAGAA FARMERS' CO-OPERATIVE SOCIETY

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Speaker, for allowing me to use his card. I want to present my Petition by members of Kagaa Farmers' Co-operative Society regarding liquidation of the Society.

I, the undersigned, on behalf of the members of Kagaa Farmers' Co-operative Society, draw the attention of the House to the following:

THAT, Kagaa Farmers' Co-operative Society was registered in 1964 as No. 1203;

THAT, that the objective of the Society was to farm coffee and rear cattle;

THAT, the Society owns two farms in Murang'a County named Kavuku Estate measuring 500 acres, Santamore Estate measuring 2,000 acres, as well as one plantation measuring 4,167 acres in Kilifi County;

THAT, the three land parcels have been sub-divided in equal portions amongst 2,041 members of the Society, most of whom have already settled on the said pieces of land;

THAT, some members of Kagaa Co-operative Society have settled in Kilifi Plantation Farm after being issued with title deeds;

THAT, the members of the Society who have settled at the Kilifi Plantation Farm were chased away from their land during the 1992 tribal clashes, despite having title deeds to the said land and, up to today, they have never settled;

THAT, the liquidator came to wind up the Society without informing the members of the intention;

THAT, in the prevailing circumstances, members of the Society risk losing their pieces of land in Kavuku and Santamore Estates, since the plots are still registered in the name of Kagaa Farmers' Co-operative Society;

THAT, the liquidator who was appointed by the Commissioner of Co-operatives has refused to vacate office;

THAT, the office documents were taken from the Society office under unclear circumstances on 10th August 2020 under the guard of Murang'a Sub-County Commissioner and the area chief;

THAT, efforts by members to seek redress with not only the police but also the Department of Registration of Co-operatives in the Ministry of Industrialisation, Trade and Enterprise Development, have been futile;

THAT, the matter presented in this Petition is not pending before any tribunal, court of law or independent body.

THEREFORE, your humble petitioners pray that the National Assembly, through the Departmental Committee on Lands:

(i) Intervenes to have the process of issuance of title deeds to members completed immediately, so that Kagaa Co-operative Society can be wound up;

(ii) Recommends that the police officers commence investigations on the case that was reported under OB No.0910082020 regarding office documents that were stolen on 10th August 2020 from the Society office;

(iii) Recommends that the Commissioner of Co-operatives withdraws the liquidator with immediate effect;

(iv) Makes any other recommendation it deems appropriate in the circumstances of the Petition.

And your Petitioners will ever pray.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Kilifi South, Hon. Kiti Chonga, you have the Floor.

RESETTLEMENT OF VILLAGERS IN KILIFI SOUTH CONSTITUENCY

Hon. Ken Chonga (Kilifi South, ODM): Thank you, Hon. Speaker. I rise to present Petition No. 49 of 2020 regarding the resettlement of Chidongo, Junju, Mirima Mine and Bodoi villagers in Kilifi South Constituency.

I, the undersigned, on behalf of the residents of Chidongo, Junju, Mirima Mine and Bodoi villagers in Kilifi South Constituency draw the attention of the House to the following:

THAT, the residents of Chidongo, Junju, Mirima Mine and Bodoi villages comprising of a population of over 2,300 people currently live on their ancestral land registered under Plot No.71/1/V/Mainland North and measuring approximately 1,776 acres in Kilifi South Constituency;

THAT, the residents have lived on that parcel of land for decades as evidenced by graves and mature trees that are over 100 years old, and are primarily composed of various Mijikenda tribes including the Chonyi, Giriama, Jibana, and Kauma who have intermarried and lived in peace and harmony during this time;

THAT, the community is composed mainly of farmers who have grown crops such as maize, cassava, cashew nuts, mangoes and coconut, and has expanded exponentially to the point of establishing infrastructure such as Bodoi Primary School, Chidongo Primary School, Junju Primary School, Junju Secondary School, Mirima Mine Primary School, Sirini Primary School, mosques, dispensaries, churches, hotels, saloons, shops and other commercial establishments some of which were started as early as 1943;

THAT, in 2003, the community, through the District Land Management Board, applied to be allotted the said parcel of land and to be duly issued with title deeds, only to be informed that the process could not be executed because there was no information in the Land Registry;

THAT, on 23rd February 2015, the community, through the Chijumibo Community Based Organisation (CBO), made another application to the National Land Commission (NLC) to have the squatters formally settled on this land, whereupon the NLC investigated the matter and noted that the squatters had been on that land and ought to be duly settled since no claimant to the land existed in the Land Registry records;

THAT, on 21st November 2017, the NLC advertised that parcel of land through the Kenya Gazette, and by the expiration of the 30days' timeline that had been provided, no individual or corporation made any claim to the land;

THAT, despite the expiration of this notice, the community was not allocated the land, with the NLC making no additional communication on the matter;

THAT, on 13th May 2020, the Office of the NLC Coordinator in Kilifi County wrote to the NLC seeking a second placement of parcel No. 71/1/IV/MN in the Kenya Gazette, but the request was not honoured;

THAT, the residents were utterly dismayed when an official search of the ownership of the land on 11th September 2020 revealed that their land had been illegally and irregularly registered under Messrs. Daniel Kimeu Muhia, Lucas Chimeza Kenga, Francis Kipkosgei Kemboi and Christopher Tuitoek Kiplagat commencing in 1995 under a 999 years lease; yet in 2003, the District Land Management Board had claimed that there were no records in the Land Registry;

THAT, efforts to have this matter addressed by the relevant authorities, including the NLC and the Kilifi Lands Registry have been futile;

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

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Lands:

(i) Enquires into the matter with a view to securing, with the assistance of the NLC, the revocation of the current title deed, and the subsequent allotment and subdivision of parcel No. 71/1/IV/MN to residents of Chidongo, Junju, Mirima Mine and Bodoi Villages of Kilifi South Constituency and the issuance of title deeds to them;

(ii) Secures the prosecution of all land officers and persons involved in the fraudulent allocation of the land to Messrs. Daniel Kimeu Muhia, Lucas Chimeza Kenga, Francis Kipkosgei Kemboi and Christopher Tuitoek Kiplagat so as to discourage repetition of such incidents of blatant impunity regarding land matters in the country; and,

(iii) Makes any other order or direction that it deems fit in the circumstances of the matter.

And your Petitioners will ever pray.

Hon. Speaker: The last Petition is by the Member for Lungalunga, Hon. Mwashetani. Hon. Mwashetani, present your Petition. Is Hon. Mwashetani anywhere near the precincts of Parliament?

Anyhow, I will allow just a few comments. Let it start with Hon. Baya. Hon. Members, make your comments very brief. There is a lot of business to transact.

Hon. Owen Baya (Kilifi North, ODM): Thank you, Hon. Speaker, for giving me this opportunity. The two petitions that have been presented are on land matters and one that has been presented by my neighbour Hon. Chonga shows the situation at the Coast in terms of land, especially in Kilifi.

The Petition presented by Hon. (Ms.) Sabina also touches on land in Kilifi. It is the same story. Both petitions tell the same story. The land they are claiming in Kilifi was acquired the same way as the one that Hon. Chonga has presented. The land that Kagaa Farmers are claiming is in my constituency. It has left very many families displaced. And to claim that they were sent away from that land is not true. They came and sub-divided the land. I do not know how they got the titles. Now there is a power line by the Kenya Electricity Transmission Company Limited (KETRACO) that was passing there and a lot of money was to be given to them. We have asked the Government to buy off that land from Kagaa, but the fact remains that they did not get that land legally. They grabbed some land in Kilifi and gave it a strange name 'Kagaa.'

This country needs to address the issue of land at the Coast. When we move into the Building Bridges Initiative (BBI) process, I would like to move an amendment in the Report, to have all the title deeds that were illegally obtained revoked and the land given back to the people there. I will do that so that we can settle a story that has taken very many years and the suffering of the people at the Coast.

Therefore, I support Hon. Ken Chonga because I know the suffering of the people there, and also tell Hon. Sabina Chege that she needs to tell her people to surrender the land and give it back to the people of Kilifi so that we can continue to exist peacefully.

Thank you very much.

Hon. Speaker: Please, do not drag the BBI issue here. I have only read a draft constitutional amendment Bill and our practice is, unless it is withdrawn and republished, there is

no opportunity or room for amendments. Do not go around telling villagers that you are going to move amendments. It does not help them.

(Laughter)

A constitutional amendment Bill is provided that it will be out there for 90 days for people to interact with it. Do not tell them that we are going to amend it.

Hon. Owen Baya (Kilifi North, ODM): We will amend it before it comes to the House Mr. Speaker. We will manage to amend it out there.

(Laughter)

Hon. Speaker: It has to be out there!

Hon. Owen Baya (Kilifi North, ODM): We will make too much noise so that they amend it.

Hon. Speaker: You can make as much noise as you want, but once it is published, the train would have left the station. Do not deceive anyone that you are going to amend. It does not happen that way. That is not the way we amend the Constitution.

I have always said here that in the last Parliament, there was an opportunity for people to do something and they failed to do so. This House passed a proposed Bill by Hon. Kaluma and very many people are seeing the consequences of not agreeing with him. Even now, you can see a few things happening all over out there. Hon. Kaluma had wanted to tame some of the things that are happening but, when it went to the other place, now they keep complaining that they are being interfered with... Hon. Owen Baya, it is okay. You know it is good to also entertain those kind of thoughts, but it is good also to be corrected.

An Hon. Member: On a point of order.

Hon. Speaker: No! There is nothing out of order. Just make comments on these two Petitions very briefly so that we can move to the next business. The next one is the Member for Makueni.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker. I would like to comment on the issue of land in the Coast region. The NLC has a task. One of the things it is supposed to do is to follow the facts. If people have been living on a parcel of land for over 12 years, they are also likely to be declared owners of that land adversarial. So, it would be very clear under the Constitution now that the NLC is angling, and the matter is not before any court for now. The NLC must do its job. I think the Committee, while handling this matter, has to make sure that the right thing is done and justice is served to the people of Kenya.

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

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I want to support the Petition by Hon. Ken Chonga.

When I was in the Departmental Committee on Energy, Hon. Chonga brought a Petition on electrification of his constituency. That was addressed with a lot of speed. I think the constituents are enjoying. This is a very timely Petition, Hon. Chonga. I think you are doing a good job. I really sympathise with the people of Kilifi South that somebody called Francis Kipkemoi, who does not come from that area, can dare to go and grab land that people have occupied since 1948 and get a title deed in 2020. I think it is a shame. It would be even important that the Directorate of Criminal Investigations starts working on those characters even before the

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Committee goes to listen to that Petition. It is because we are now going on recess. It is going to take time. Those people are going to be threatened. I think it is good that the Government machinery starts rolling to assure the residents living within that area of their safety.

Hon. Speaker: Let us now hear the Member of Ganze.

Hon. Teddy Mwambire (Ganze, ODM): Thank you very much, Hon. Speaker. It is very unfortunate to learn that most of the coastal land has been grabbed and the grabbers are walking scot-free. It is very unfortunate, but I believe the recommendations that we are going to give to the Departmental Committee on Lands should be taken seriously.

I have listened carefully to the Petition by the Chair of the Departmental Committee on Health when she was talking about Kagaa Farm, which we are sharing with Hon. Owen Baya. I am even wondering how they got that land. I believe that these issues need to be settled somewhere else rather than them trying to claim that piece of land because it is densely populated. My constituency alone, which has part of that land, has over 20,000 people who have been living there before; yet some people are claiming that, that piece of land is theirs. Some issues might provoke unnecessary bloodshed in this country. We need to make sure that the Government also acts against people who grab such big pieces of land so that people can be settled.

On the issue of Hon. Ken Chonga, it is evident that a number of people have been coming down to the Coast to grab land and even give it their names. In the same Kilifi South, we had a piece of land which had been having many disputes. They used to call it Gathecha Farm. Imagine having a farm by the name Gathecha in Kilifi. It was scrapped. We have managed to rescue that piece of land. Now we have another big piece of land with funny names and characters holding it.

Hon. Speaker, we are not going to allow such things. It is high time the Ministry and the National Land Commission act on such issues so that we, at least, do not have such characters within Coast Region. Our being very lenient in that region should not be taken as a weakness.

Thank you very much, Hon. Speaker. I support Hon. Chonga's Petition. We will handle the other Petition.

Hon. Speaker: Very well. Let us have the Member for Mwingi West.

Hon. Charles Nguna (Mwingi West, WDM-K): Thank you, Hon. Speaker. I know that settlement started in 1943 because I have interacted with very many people from that constituency. If there is a committee that does not even need to go to recess, it is the Departmental Committee on Lands. If there are people who actually need to work, it is the Ministry of Lands and Physical Planning. We have very many cases of disputed parcels of land and ranches in this country. Particularly, I am dealing with mine in Nzalae Location, which has really suffered.

Hon. Speaker: Comment on this one and not Nzalae.

Hon. Charles Nguna (Mwingi West, WDM-K): I would like to say that I am supporting the petitions. This problem needs to be resolved with the urgency it deserves.

Hon. Speaker: Very well. When you want to bring one on Nzalae, you will bring your petition. So, just comment on this one.

Hon. Charles Nguna (Mwingi West, WDM-K): I support the Petition.

Hon. Speaker: The Member of Funyula, you have the Floor.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. As much as I support the first Petition, probably I will just restrict myself to the issue of the legality of the Co-operative Society. It might be important that the Petition also enables us to discuss,

investigate and find out the circumstances under which the Society or the Co-operative was de-registered.

On the second Petition and the first one, the issue of land grabbing, so-to-speak, or inappropriate allocation of land, started in earnest around 1992. It went on up to 1997. That is the watershed period that probably the Departmental Committee on Lands and the National Land Commission, on their volition, need to undertake a very thorough and detailed analysis. The Ndung'u Report tried to do so. The Njonjo Report laid down the foundation on how to deal with these matters. They could use those two reports to really try and solve these issues.

Hon. Speaker: Member for Igembe North, you have pressed the intervention button.

Hon. Maoka Maore (Igembe North, JP): Hon. Speaker, I was just concerned when I heard the honourable Member talk about Hon. (Ms.) Sabina Chege and “your people”. So, I wanted to know who are those “your people”. That is why I was concerned. It needs to go on record that there is nothing like that! If it is, it is outrageous.

Hon. Speaker: Very well. Let us have the Member for Migori.

Hon. (Ms.) Pamela Ochieng (Migori CWR, ODM): Thank you very much, Hon. Speaker. I just want to add my comment on these two petitions. I support the idea of the relevant authorities looking into issues of land, especially along the Coast and everywhere else in the country.

The question of land grabbing by people who pose as developers to non-suspecting locals is spreading in Kenya. For example, we currently have a scenario where sometimes people who are in Government know that there is a project that is going to happen in an area. They go ahead and grab the land around that area. A recent case which we are yet to bring here is the irrigation scheme in Nyatike Constituency in Migori County. So, for the peace, the unity and the good living of Kenyans, it is important that each Kenyan gets a piece of land somewhere so that they can settle, instead of a few people owning large tracts of land and others remaining squatters.

This is the right time to make the institutions that are concerned with land issues to move with speed to settle every Kenyan in this country and promote peace and unity.

I support.

Hon. Speaker: Member of Mwea, you have the Floor.

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Speaker. These are two different petitions that have been brought forward by people with grievances – people who think the land was theirs and people who may have bought it. We are talking about people who may have bought land. The word “grabbing” has occasionally been misused. We know that people have given money for that land. Therefore, even as the Committee looks at the two petitions, they must bear in mind that there are people who paid for that land. They have been chased away. I know some people who have been chased away in the name of grabbing. If people sold land, they sold land. It is not about people grabbing the land.

Therefore, we urge the Departmental Committee on Lands to be very careful as they handle these petitions.

Hon. Speaker: The Member of Kangundo, you have the Floor.

Hon. Fabian Muli (Kangundo, Muungano): Thank you, Hon. Speaker, for giving me this opportunity to deliberate on this Petition.

It is true that land matters are sensitive and we have a lot of problems. In the last Petition, in his prayers, the Petitioner is requesting that we revoke a title deed which has already been issued. That matter is very sensitive and there is need to do due diligence especially on ownership. I do not want to demean the Petition but I want to request the Departmental

Committee on Lands to carry out due diligence especially on the title deed and ownership. There is a lot of confusion when it comes to land matters in this country. The right ownership is not respected and some families sell land and later on claim it was grabbed. It is true that there are grabbers in this country. There is need for a joint technical team to audit land matters in this country. Recently, in the Ministry of Lands, I saw a team from Kenya Defence Forces (KDF) doing online issuance of title deeds. If we have managed to issue log books through the National Transport and Safety Authority (NTSA) to millions of cars, why can we not do the same for land? I can search for any car I want online. Why is it that you cannot even do a land search? A land search is not respected in a court of law.

Recently, we saw a scenario in Ngong where people could co-operate to get you an official search but later on, you are told that the search is not the right one. The land matters are sensitive. As per the prayers of the Petitioner, in my view, we cannot rush to revoke an entity with ownership. I want to ask the Committee to undertake proper due diligence in this Petition.

Thank you, Hon. Speaker.

Hon. Speaker: As you are aware, this is one of the Committees that has had a lot of work. By and large, they have brought very reasonable reports. I do not think we have any fear that they will be making any outlandish recommendations. Let us have the Member for Gilgil.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Speaker. I support the two petitions. I want to join my colleagues in asking for impartiality. I intervened when Hon. Mwambire was on his feet because the words he used are meant to cause alarm. What did he mean when he said that there are funny people with funny names? We must be careful on how we handle these issues because the local leaders are the ones driving those forces. There are people from the Coast region who own land in Nakuru. Do we now say that because they are not Wanjiku or Kipkemboi, they are funny and not familiar? As leaders, we must not preach water and drink wine. Let us be at the forefront to seek the truth with impartiality. If there was a willing buyer and willing seller for a piece of land, you cannot say that since you have a funny name, you cannot stay there. The statement by Hon. Mwambire can cause bloodshed. That is a threat on the Floor of the House and I think it should be withdrawn.

Hon. Speaker: There is nothing un-parliamentary about saying that a name is funny. Hon. Mbadi's name is very funny. The Member for Tigania West has a funny name.

Hon. John Mutunga (Tigania West, JP): Thank you, Hon. Speaker. I support the two petitions. I want to allay the fears of those who believe their land has been unfairly taken. Every part of Kenya was declared a settlement scheme and an adjudication area and people were given pieces of land. In my area, we have people from different parts of the country who own land and no one cares about their names. No one and no name is funny. Anyone can own land in any part of the country, and we owe no one an apology for affording land in any part of the country.

Hon. Speaker: Let us hear the Member for Kisumu West.

Hon. Olago Aluoch (Kisumu West, FORD-K): Hon. Speaker, I want to comment on the two petitions, but mine is a word of caution. I have heard the utterances of the Members both against the funny names and funny things that are happening. Land issues are very sensitive and delicate and I want to appeal to Members that, as we address those issues on either side, we must temper our language in a way that brings peace and not bloodshed. You will agree with me that utterances from Members of this House from both sides would likely cause violence or bloodshed. As we address these matters, let us do it in a way that can reconcile communities and not make them go to war.

Hon. Speaker: Absolutely! You are right. The opportunity granted in the Standing Orders when petitions are presented is merely to make comments and seek clarifications. You have now turned it into a debate. I will begin to exercise discretion to allow or not to allow comments. As indicated by Hon. Olago Aluoch, when I allow you to make comments, you start uttering sentiments that could verge on incitement. If your colleague in the Chamber feels agitated on the basis of your comments, then it means that the villagers out there will start slaughtering one another. There are no more comments on the two petitions. They are referred to the relevant departmental committee.

One of the Members has suggested that the Departmental Committee on Lands should not go on recess. I want to state that they are your colleagues and they will proceed on recess like all of us. They have done a lot of work because we have been receiving petitions on land matters almost on a daily basis.

The Petition by Hon. Mwashetani, who has not shown up, up to now, is dropped. In any event, he can revive it from 9th February 2021.

(The Petition by Hon. Khatib Mwashetani dropped)

Next Order!

PAPERS LAID

Hon. Speaker: The Chairman, Departmental Committee on Communication, Information and Innovation, Hon. Kisang, you have the Floor.

Hon. William Kisang (Marakwet West, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Communication, Information & Innovation on its consideration of the Public Petition regarding provision of toll-free numbers in Government offices.

Hon. Speaker: Let us have the Vice-Chairperson, Departmental Committee on Labour and Social Welfare.

Hon. Gideon Koske (Chepalungu, CCM): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:

A Petition by the Kenya Association of Retired Officers on improved terms for pensions in Kenya; and,

A Petition on a proposal to enact legislation for provision of maintenance and welfare of parents and senior citizens.

Hon. Speaker: I want to acknowledge that the Departmental Committee on Labour and Social Welfare has completed considering all the petitions and business that had been referred to it. They close the year on a high note.

Let us have the Chairperson, Departmental Committee on Education and Research, Hon. Florence Mwikali. Do I see an indication that Hon. Eve Obara is doing it on behalf of the Chairperson?

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House:

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

- i) A Petition regarding funding of co-curricular activities in schools by Hon. Robert Mbui, MP, and,
- ii) A Report on the second International Conference of the Association of African Higher Education Financing Agencies (AAHEFA) held in Lusaka, Zambia from 24th to 26th November, 2019.

I have presented the Papers on behalf of the Chairperson. Thank you.

Hon. Speaker: The Chairman, Liaison Committee, Hon. Deputy Speaker, you have the Floor.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): The Chairman and the Vice-Chairman are bereaved.

Hon. Speaker: No! We are through with you. The Chairman of the Liaison Committee is the Hon. Deputy Speaker.

Hon. Moses Cheboi (Kuresoi North, JP): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today Thursday, 3rd December, 2020, Afternoon Sitting:

Half year Progress Report of the Liaison Committee on the operation of committees of the National Assembly between 1st January and 30th June, 2020.

Thank you.

Hon. Speaker: Very well. Let us have Hon. Chachu Ganya on behalf of the Chair of the Departmental Committee on Environment and Natural Resources.

Hon. Chachu Ganya (North Horr, FAP): Thank you, Hon. Speaker. I beg to lay the following Papers on the Table of the House today Thursday, 3rd December, 2020, Afternoon Sitting:

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

- i) Sessional Paper No.1 of 2020 on Wildlife Policy; and,
- ii) A Petition regarding effects of flooding along River Sondu Miriu.

Thank you.

Hon. Speaker: Chairman of the Parliamentary Broadcasting and Library Committee, Hon Kizito.

Hon. Justus Kizito (Shinyalu, ODM): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today Thursday, 3rd December, 2020, Afternoon Sitting for consideration:

Report on the formulation of Parliamentary Broadcasting Channels.

Thank you.

Hon. Speaker: I want to encourage all of you Members to have a look at this Report. It portends great things for the institution of Parliament, specifically the National Assembly.

Next is the Chairman of the Mediation Committee on Public Private Partnership Amendment Bill (National Assembly Bill No. 52, 2017). Is it Hon. Kaluma? Yes, please.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today Thursday, 3rd December, 2020, Afternoon Sitting:

Report of the Mediation Committee on Public Private Partnership Amendment Bill, (National Assembly Bill No.52, 2017).

Thank you.

Hon. Speaker: Very well.
Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT ON SESSIONAL PAPER ON WILDLIFE POLICY

Hon. Chachu Ganya (North Horr, FAP): Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on Sessional Paper No.1 of 2020 on Wildlife Policy, laid on the Table of the House on Thursday, 3rd December, 2020, Afternoon Sitting.

Thank you.

Hon. Speaker: Next Order!

Hon. Speaker: The first Question is by the Member for Murang'a, who appears not to have a card.

ORDINARY QUESTIONS

Question No. 364/2020

TRANSFER OF TEA FARMERS FROM GITHAMBO TO GACHARAGE TEA FACTORY

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Speaker. I rise to ask Question No.364 of 2020 to the Cabinet Secretary for Agriculture, Livestock and Fisheries:

- (i) When will the Ministry allow and facilitate tea farmers from Ndu-ini, Gikigie and Kiangenye tea factories to change the station of delivery of their green leaf from Githambo Tea Factory to Gacharage Tea Factory, so that they stand to benefit from the fair-trade funds availed at Gacharage Tea Factory and the existing road network, which is not as poor as the access roads to Githambo Tea Factory;
- (ii) what specific measures is the Ministry putting in place to facilitate the timely and uninterrupted transfer of the said tea farmers' produce as per their constant requests, in light of the fact that they have neither plucked nor sold green leaf since 1st November 2020, and by when will this be done?

Thank you.

Hon. Speaker: The Question is to be responded to before the Departmental Committee on Agriculture and Livestock. Next Question is by the Member for Sirisia. The Member for Sirisia indicated that... I know he is one of those alongside the Majority Party Whip. Hon. Waluke indicated that Hon. ole Kenta was to ask this Question on his behalf. Unfortunately, he had not spoken to Hon. ole Kenta because Hon. ole Kenta spoke to me five minutes before the House started sitting. He is, himself, away in Nakuru on official business. So, I do not know how Hon. ole Kenta would ask the Question unless somebody wishes to ask the Question on his

behalf. I will be making a communication soon hereafter. Hon. Pukose, do you want to ask on his behalf? Very well.

Question No. 378/2020

RATIONALE FOR SETTING UP THE INSTITUTE OF TEACHERS SUPPORT
AND PROFESSIONAL DEVELOPMENT BY TEACHERS SERVICE COMMISSION

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, you know, Hon. Waluke is our son. The mother is a Sabaot. I am his uncle. I can ask as an uncle.

On Behalf of Hon. (Maj.) (Rtd.) John Waluke, I rise to ask Question No. 378 of 2020 to the Teachers Service Commission:

- (i) Could the Commission explain its rationale in setting up schools to train all teachers on classroom management and effective teaching and yet, such training can be offered by existing TVET institutions and universities?
- (ii) How is the Commission addressing the teaching challenges, of ineffective teaching strategies, non-preparation of professional records, poor classroom management, and incompetence in handling learners with special needs as well as weak assessment and feedback skills, raised in the Primary Teacher Education (PTE) Report during initial teacher trainings?
- (iii) What was the objective of setting up the Institute of Teachers Support and Professional Development (TSPD)?

Thank you.

Hon. Speaker: The Question is for written reply by the Teachers Service Commission. It is directed to the TSC. Next is a Question by the Member for Lamu County, Hon. Ruweida Obo.

Question No. 385/2020

MEASURES TO ADDRESS FOOD SECURITY

Hon. (Ms.) Ruweida Obo (Lamu CWR, JP): Thank you, Hon. Speaker. I rise to ask Question No. 385 of 2020 to the Cabinet Secretary for Agriculture, Livestock and Fisheries.

What urgent steps is the Ministry taking to address the menace and food security threat caused by the invasion of locusts in Basuba, Hindi and Hongwe wards of Lamu County?

Thank you.

Hon. Speaker: Question to be replied before the Departmental Committee on Agriculture and Livestock. Next Question is by the Member of Kajiado North, Hon. Joseph Manje.

Question No.386/2020

PAYMENT OF DEFERRED PENSION TO RETIRED EMPLOYEES OF CENTRAL BANK OF KENYA

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Hon. Joseph Manje (Kajiado North, JP): Hon. Speaker, I would like to ask the Cabinet Secretary for the National Treasury and Planning the following Question:

- (i) Could the Cabinet Secretary provide an update on the fate of the 550 Central Bank of Kenya employees who voluntarily retired under the Bank's Voluntary Retirement Scheme in 1997 and who were eligible for deferred pension for staff below 55 years of age in line with the retirement terms?
- (ii) What urgent measures is the Ministry undertaking to ensure the prompt payment of the deferred pension and other benefits to the former employees of the Central Bank of Kenya who are currently struggling to earn a livelihood?

Hon. Speaker: That Question is to be replied before the Departmental Committee on Finance and National Planning.

The next Question is by the Member for Mwea, Hon. Kabinga.

Question No.387/2020

PURCHASE OF PADDY RICE FROM MWEA FARMERS

Hon. Josphat Kabinga (Mwea, JP): Thank you, Hon. Speaker. This is my third approach to have the problems in Mwea resolved. It is a clear indicator of the urgency of the problem.

I would like to ask the Cabinet Secretary for Agriculture, Livestock, Fisheries and Co-operatives the following Question:

- (i) Could the Cabinet Secretary explain the status of utilisation of Kshs200 million which was allocated for the purchase of rice for strategic reserves in the Financial Year 2019/20 Budget, through the Strategic Food Reserve Trust Fund?
- (ii) When will the Government start purchasing rice from farmers at the Mwea Irrigation Scheme for Strategic Food Reserve as was intended through the 2019/2020 Budget allocation?
- (iii) What policy measures has the Ministry put in place to facilitate the purchase and marketing of crops from farmers who have experienced a bumper harvest and have excess stock of the produce, in particular paddy rice farmers in Mwea Constituency, during the Financial Year 2020/21 cropping season?

Hon. Speaker: That Question is to be replied to before the Departmental Committee on Agriculture and Livestock. Member for Westlands, Hon. Ferdinand Wanyonyi, kindly have the Floor. Please get him a microphone. This is the more reason why we should go for recess; so that they repair the microphones that are not working. We cannot have situations where microphones are not working.

Question No.388/2020

MEASURES TO ADDRESS MISMANAGEMENT AT KABETE NATIONAL POLYTECHNIC

Hon. Tim Wanyonyi (Westlands, ODM): Thank you, Hon. Speaker. I arise to ask the Cabinet Secretary for Education the following Question:

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- (i) What action is the Ministry taking to address the recent action by the Kabete National Polytechnic Management Council to withhold salaries of the institution's employees, particularly part-time tutors?
- (ii) What measures is the Ministry taking to ensure adherence to human resource guidelines at the institution, including implementation of fair promotion procedures in light of the fact that some employees have not been promoted for over 20 years?
- (iii) What immediate plans does the Ministry have to address rampant cases of impropriety by the Polytechnic's management that include harassment and intimidation of staff, misuse of student capitation funds, illegal suspension of workers' committee representatives, single sourcing of services and supplies, mismanagement of Garnerville Apartments and unresolved land ownership wrangles?

Hon. Speaker: That Question is to be replied to before the Departmental Committee on Education and Research. I want us to go to the next segment. I would like to give a chance to Hon. Dennitah Ghati.

STATEMENT

INTERNATIONAL DAY FOR PERSONS WITH DISABILITIES

Hon. (Ms.) Dennitah Ghati (Nominated, ODM): Hon. Speaker, pursuant to Standing Order No.43(1), I wish to make a Statement on the International Day for Persons with Disabilities.

Today, Thursday, 3rd December 2020, and every 3rd day of December every year, we celebrate the International Day for Persons with Disabilities (PWDs). This year's theme is "Building Back Better: Toward a Disability-inclusive, Accessible and Sustainable Post-COVID-19 World." I stand with all PWDs across Kenya and the globe to mark this day. It is a day to celebrate collective gains as PWDs, recognising the challenges PWDs in Kenya and the world go through to be where they are today, ranging from rejection from homes and dismissals, among other issues.

The International Day for Persons with Disabilities is marked by people, organisations and parliaments. Parliaments, in particular, have a vital role to play in identifying and removing barriers to the advancement of PWDs. Parliaments need to re-examine the various legislations to include accessibility. We must acknowledge the BBI's progressive agenda for PWDs and Kenya in general. For instance, the proposal to have two MCA's in each county for PWDs and four Members of Parliament is laudable.

I urge that, moving forward, Kenya adheres to abide by the Constitution requiring the employment of PWDs. Kenya is surely making progress in empowering PWDs. It is notable that in 2018, Kenya became the first African country to co-host the Global Disability Summit in London together with the United Kingdom, to consolidate the gains and strategies for empowering PWDs.

As I present this Statement on behalf of PWDs in Kenya, I am honoured to report to this august House that just this week, I was honoured to be elected the African Representative to the Commonwealth CPA – representing disability, a duty I will humbly and respectfully take.

Lastly, registration of PWDs and tax exemptions and procedures must be devolved; provision of assistive devices and medical items must be implemented. All these are towards empowering PWDs in their villages and constituencies where they live. I also call upon the Government to quickly ratify the AU Disability Protocol and translate Gender and Disability Commitments into budgetary commitments. I will be proposing a Parliament Disability Day to give Members and PWDs opportunities to interact here in Parliament, so that they can understand more the needs and challenges of PWDs.

I thank you for giving me this opportunity. Please, allow Members to ventilate on this Statement because it is our day.

Hon. Speaker: You are now overstepping your mandate.

(Laughter)

Well, let me give this chance to the regional representative of Commonwealth Parliamentary Association (CPA) for Eastern Africa, Hon. (Dr.) Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you very much, Hon. Speaker. As we celebrate the International Day for Persons with Disability, I think it is a very great honour to this House that the same week we are celebrating this day, the CPA International did appoint nine regional champions on matters disability. Out of those nine regional champions, Hon. (Ms.) Dennitah Ghati was appointed as a Champion for Africa Region.

(Applause)

I think this is a great honour to this House. In addition, just to remind the House that even as you sit there as the Speaker of this House, you are also the Chairperson, CPA Africa Executive Committee.

(Applause)

In addition, yours truly, Hon. Speaker, is the Regional Representative for East Africa. Therefore, matters CPA in this House are really well represented and I must congratulate our sister, Hon. (Ms.) Dennitah Ghati, for this important appointment as a champion for Africa region. Moreover, I want to wish her well because she has done this duty very well even before becoming the champion. Now that she is a champion, I urge the House to support her as much as possible so that as she represents Africa region, Kenya will also be shining in those meetings.

With those remarks, Hon. Speaker, thank you very much for giving me the opportunity and congratulations to our sister, Hon. Dennitah Ghati. Thank you.

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

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Thank you, Hon. Speaker. I also want to join the voice of Hon. (Dr.) Makali Mulu and congratulate Hon. Dennitah Ghati and really say that I am speaking this out of having spent quite a number of years with her, when she first came to this House as the County Woman Representative for Migori County. In addition, she was a strong champion for the rights of women. Moreover, having watched her face the tragedy of an accident and become a person living with disability. In addition, I think the most inspiring thing about Hon. Dennitah Ghati is the fact that, that never brought her down. To many of us here, we probably would have given up on life. We would have turned back to our homes and stayed

there. However, she kept pushing on and I really want to thank her for being the greatest champion of persons living with disability in and out of this House.

(Applause)

Moreover, I think that gives us a chance to really realise that being a person living with disability does not mean that you must have been born with that disability. It will catch up with you at any time in your life and, therefore, it is important that we take care of everybody knowing that anybody can be in that state.

Hon. Speaker, I have no doubt that Hon. Ghati has what it takes really to be able to champion the rights of persons living with disability in Kenya and in Africa. We know her passion and I want to thank you because through your Chair, this House has also really given space for persons living with disability. Their voices have been heard and we should continue to listen to them. In addition, not just listen, but also act on the issues they articulate on this Floor.

I wish Hon. Dennitah well and also want to thank the ODM party. I want to thank them because the Rt. Hon. Raila Odinga actually, even after Dennitah went through what she did; he continued to see the value in the gracious lady and nominated her back to this House as an MP. Therefore, it means that he is able to see beyond whatever challenges one may face. Therefore, let us call a spade a spade and let us appreciate that he is a person who appreciates the people who add value to his party and to this country.

With those many remarks, I beg to support.

Hon. Speaker: Can I request that you make your comments brief? Let us have the Member for Seme.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker, for giving me this opportunity. May I also take this opportunity to congratulate Hon. Dennitah on this day when we are celebrating the International Day for Persons with Disability. I know she has done a great job on this and also know she is working a lot to improve things in the country.

However, I will tell her that there is a lot of opportunity and I know and she is working on it. The country has done quite a bit. We have the Persons with Disability Act of 2003 and I know there is an effort now to actually review that Act. Moreover, in that Act, there are services that have been put in place that may actually need a lot of improvement. The council is in place and we have funds for the council. We have funds for persons with severe disability because when you have severe disability, two people are actually involved. The person who is severely disabled and the person who takes care of him or her. Moreover, that is something that needs to be taken into consideration. I think those can be improved. The provision of assistive devices is actually in place and I know you have a Motion that is looking into that. We can look at that.

However, more importantly, is the area of access. I think in 2007 and 2008, we actually made regulations that related to access. In addition, as much as it has been done, there has been access to buildings using ramps, lifts that talk, lifts that have Braille and sign language. However, the greatest area where persons with disability need more support is in public transport. If you look at our vehicles, there is no way a person with a wheel chair can go in. There are many road networks and we had actually proposed that road networks actually have ramps. Moreover, we design the buses. We can do it. We can design buses that have floors that are flat and flush with ramps. It can be done. We had started that work. I do not know where it is. However, I think the area of access to public utilities is an area that much can be done on. Once

again, may I congratulate her. I know she can do a lot more to achieve these things that the persons with disability need.

Hon. Speaker: The Member for Kikuyu, you have the Floor.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you Hon. Speaker. I also wish to join my colleagues in congratulating Hon. Dennitah Ghati. Just this mid-morning, I was with Nominee 001, Hon. ole Sankok and His Excellency the Deputy President at Kijabe Mission Hospital for a function to inaugurate a new department to deal with people living with disability. In addition, I had an eye-opening experience as I listened to the Chief Executive Officer (CEO) of that hospital, the AIC CURE International Hospital at Kijabe. I left that hospital challenged as a Member of Parliament (MP) and as a leader in this country.

Additionally, we did pledge with Nominee 001, Hon. ole Sankok that, in the coming year, we will co-sponsor a Bill to assist people living with disabilities to be able to exempt some of the equipment that they use and that are still being levied duty and making their lives unbearable. If we are giving tax breaks to young people in this country, we must also be cognizant of the difficulties that the people living with disabilities live with. Some of the gadgets they use are still being levied duty as they import. Some of them can be made here. However, because of the raw materials used, they are levied duty.

Additionally, when we walked into the workshop at the hospital, the gentleman in charge of the workshop enumerated to us the cost of some of the assistive devices that they are giving to people living with disabilities. Moreover, he told us that some of those things without duty, the cost could go down by up to 50 per cent. Therefore, I will be asking Members of the House that when Nominee 001 and I co-sponsor that Bill next year to exempt especially assistive devices from paying duty to make them affordable, they will support.

The experience we have just had here with our own gadgets in this House when you gave the Hon. Member for Westlands an opportunity to speak... Unlike me who can shuttle between two microphones, the Hon. Member for Westlands or Hon. Dennitah Ghati cannot shuttle from their seats to another seat. Therefore, those are living examples of the difficulties that people with disabilities have to contend with. Therefore, as I congratulate her, let me also use this opportunity, on behalf of Nominee 001, who is on his way from Kijabe because he had to be left winding up that function and he requested me to come and convey his congratulations, ask Members to support the Bill when he co-sponsors.

I am not his uncle as Hon. Duale is asking.

Hon. Speaker: Let us have the Member for Suba North.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker. Let me also join Members in congratulating Hon. Dennitah Ghati.

I served and campaigned for her when she was very able-bodied and it was a shock when she moved from being able-bodied to a person living with disability. I went through some of the phases with her - she understands - and it is very challenging. I would say that sometimes God puts you in a place for a reason. All of us have agreed that she has done excellent in supporting issues of PWDs. We also sit with Hon. Dennitah in the Parliamentarians for Global Action. She has also become a *de-facto* representative of persons with disabilities, a work that she is doing excellently even there.

So, I just want to give two examples why, as a House, we must always put issues of persons with disabilities ahead. We grew up with a young girl whom we played with throughout our childhood up to high school. She was called Grace who was both deaf and dumb. After that, I did not see her for a while. One time, on the streets of Nairobi, I met her together with my

sister. In excitement, she wanted to introduce her husband who could also not speak or talk. Then by writing she indicated thus: “I am so excited to see you. This is my husband.” She then wrote his name. Then, she asked us about our names. We played together for years and we assumed she knew who we were. That shows us how many times we take for granted the persons with disabilities because we do not understand what they go through.

Secondly, at one point, I was asked to speak on advocacy to a group of people with disabilities. When I went to that group, all the items they gave were in Braille. Suddenly, I am the one who became disabled because I could not communicate in Braille.

Hon. Speaker, that is why it is important even as a House that whenever we make policy or legislative decisions, we must be conscious that we do not necessarily have to go through what Hon. Dennitah went through in order for us to be sensitive. Otherwise, let me congratulate you and the other Members of the Commonwealth. My sister, Hon. Dennitah Ghati, has done an excellent job and we are here to support her.

I thank you, Hon. Speaker.

Hon. Speaker: Let us have the Member for Westlands.

Hon. Tim Wanyonyi (Westlands, ODM): Thank you, Hon. Speaker. I also want to congratulate my sister Hon. Dennitah Ghati for accepting her condition. I know she really grappled with it after the accident, but we encouraged her to move on and accept.

Hon. Speaker, one of the issues that still affects us MPs...You can see where we are seated right at the back of Parliament. This is where Members engage in *kamukunjis* and sometimes we cannot follow the proceedings of the House. Ever since I was elected in 2013, I have been requesting Parliament to make adjustments on our sitting positions, but it has never been done. I hope when we come back from the recess, they would have done something about it so that we can also sit comfortably in a position that is easy to access.

Hon. Speaker, even as I dream of one-day sitting where you are seated, to be a Speaker of this House, but I cannot even contemplate how I can get there the way it is today. I know that, as we move forward, because we are trying to remove barriers that limit people with disabilities to participate freely in the development of society and even within their own limits... We know we can do it. I just wanted that Hon. Member to move away so that the Hon. Speaker can listen to me.

Hon. Speaker, I was saying there is need to make Parliament more accessible for us even as we go for recess, especially this Chamber, so that when we come back, I can sit where you are seated and preside over the proceedings of this House. That is because I want to be on your Chairman’s Panel next time. I thank you very much for giving me an opportunity. I have been elected twice on this wheel chair and it is not easy. It has always been a double-cost for us. Everything that we do is always a double-cost but we are managing and want to create an enabling environment for us to participate in all activities.

I thank you, Hon. Speaker. God bless you.

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

Hon. John Mbadu (Suba South, ODM): Thank you, Hon. Speaker. Allow me also to congratulate Hon. Dennitah Ghati who is a prominent member of my party. I congratulate her for this appointment to the Commonwealth Parliament. I have attended quite a number of those meetings and I see her contributions. She contributes with much passion on matters of PWDs. I think those who saw it fit to give her this appointment did the right thing in terms of fighting for the rights of persons living with disabilities.

I think, as a country, we have not been very considerate to matters pertaining to persons living with disabilities. As we appreciate and fully support the move by BBI, the proposal in the draft amendment to the Constitution of creating four positions for persons living with disabilities, I think we still need to do much more. It is not just about Parliament. Out there in the Public Service and other public appointments. We must treat this as a matter of affirmative action. Sometimes, when we talk of affirmative action, we only talk of gender. There are other factors on affirmative action that we must also take into consideration. I think the progress that we are making in the four positions is laudable. However, we must also, as political parties - and I speak as one chairing one of those major parties in this House - give much more attention to PWDs. They should give more nominations in terms of party tickets for PWDs to contest and win seats, like Hon. Tim Wanyonyi has won his seat twice on the Orange Democratic Movement (ODM) ticket and I thank him. I hope he is still going to continue. I think he is eyeing another bigger seat and our party will give him the support that is desirable.

Hon. Dennitah Ghata, I must just repeat and agree with Hon. Cecil Mbarire that ODM did not do her a favour. This is a very committed member of our party, very strong personality, even before she got involved in that unfortunate accident. It was in the line of duty. We know the person she was before and the person she is today. She is not of any lesser value to the party. We will still continue to support her.

Thank you very much as we wish all PWDs good luck and progress in this important day in our calendar.

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

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Speaker for giving me this opportunity. Let me join my colleagues in congratulating Hon. Dennitah Ghata whom we have been with in this august House since 2013. I have been in this House since 2013 and I have known Dennitah since we met in 2013 and after the accident. There is a very big difference and the spirit in her has been strong despite the accident. More so, she has even endured much and maybe in her disability, she has managed to do much more.

We are all candidates of disability and it does not mean that one has to be born disabled. At one time or another, you might find yourself, through an accident or any other way, being disabled. Like in my case, I almost lost my leg through gun shots. I used to play football very well and today, when I see people playing football, I feel hurt because of what happened. But I endured and decided to live with my disability. This is because nobody knows what will happen tomorrow.

Therefore, we should support people living with disabilities because we are all candidates and our brains and energy always remains strong. *Mhe.* Dennitah Ghata, I congratulate you and Hon. Members for standing with people with disabilities.

Thank you.

Hon. Speaker: Finally, Hon. John Olago Aluoch.

Hon. Olago Aluoch (Kisumu West, FORD-K): Thank you, Hon. Speaker. As we celebrate the World Disability Day today, allow me to congratulate Hon. Dennitah Ghata and all other colleagues who have spoken. I think Hon. Cecily Mbarire is the one who hit the nail on the head. She said that Hon. Dennitah Ghata has been able to rise above her tragedy to be who she is. I think that is what all of us should be aiming for. This House has men and women living with disabilities, but in all respect, are thinking intellectually like all of us.

In that part of the country where I come from, we have a saying that you cannot be fast enough to run away from disability. Meaning that at any stage in your life, you can have a

tragedy and be a person living with disability. In 1998, something happened in my life that changed my attitude towards how I look at people living with disabilities, when I suffered an accident on the road. If it were not for the quick rescue I had, I was going to be maimed from the neck downwards. I thank God I came from it alive finally.

There is something we need to do as leaders and legislators in this country. The words “living with disability” have some connotations which in my view are derogatory. I think the correct term should be people who are abled differently. If you look at men and women we refer to as living with disabilities, you will find there is something in them, that you and I do not have. Either it is the way they think, look at things or their attitude towards life is different. I think even in all our legal terms, we should change everything to refer to those men and women as abled differently.

I want to congratulate my colleagues in the House who have been able to rise above and see the silver lining on the cloud of the suffering they have gone through. I congratulate Hon. Tim Wanyonyi, Hon. Dennitah Ghati and the others for being who they are and encouraging other Kenyans to be people that deserve respect.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. That brings to an end that part of the Statements. Congratulations Hon. Dennitah Ghati. The next request is by the Member for Kikuyu.

REQUEST FOR STATEMENT

INCREMENT OF UNIVERSITY TUITION FEES

Hon. Kimani Ichung’wah (Kikuyu, JP): Thank you, Hon. Speaker, I rise to request for a statement pursuant to Standing Order 44(2)(c) from the Chairperson of the Departmental Committee on Education and Research on the exponential increment in tuition fees charged to university students.

Hon. Speaker, the Ministry of Education recently announced that tuition fees charge to university students will be increased exponentially from a sum of Kshs16,000 to Kshs48,000 effective from January 2021. The Departmental Committee on Education and Research has openly supported this increase in fees.

Hon. Speaker, in light of the fact that the House is proceeding for a long recess from today and further, given that Standing Order 44(2)(c) empowers the Speaker to either appoint a day for a response or direct that a statement on an issue raised be made on the same day, I wish to request your indulgence that you direct the Chairperson of the Departmental Committee on Education and Research to respond to the following issues during this Sitting, this afternoon:

- (a) Does the Committee support this proposed increase in university fees to our students effective January 2021 in the middle of the COVID pandemic?
- (b) Does the proposed increment have any budgetary implication with regard to capitation fees for university students, and if so, will such implication mean higher taxation being levied on Kenyans given that the increment was not factored in the 2020/2021 Budget? I know because I was the Chair at the time we were finalising the 2020/2021 Budget. Unless there is a Supplementary Budget that factors this.

- (c) The Chairperson to tell us whether given the short notice given to parents, has the Committee intervened with the National Treasury and the Ministry of Education to ensure that the Government fully shoulders the financial burden caused by this fee increment?

Hon. Speaker, if you indulge me, I think this is a matter that is very sensitive to many Kenyan parents. Especially those of us with students pursuing university education because of an exponential increment three-fold - from Kshs16,000 to Kshs48,000 per year.

This is at a time when MPs will tell you that, six months down the line, they are yet to get even Kshs1 in their National Government Constituencies Development Fund (NG-CDF) account. Most of our students back in our constituencies rely on NG-CDF bursaries to help them pay fees.

How can the fees be increased three-fold beginning this January in the midst of the COVID pandemic; knowing how much it has affected many parents? Some students even do odd jobs in the universities and communities surrounding them. They have been out of school for the better part of this year and many of them may not afford to reopen school. We may be denying millions of young people an opportunity. This is even as we appreciate that some of the legislative proposals coming with Building Bridges Initiative (BBI) include giving a waiver on repayment of the Higher Education Loans Board (HELB) loans for a period of at least four years.

In as much as this is a good idea, we may be shooting ourselves and those students on the foot, if from January we tell them we are increasing their fees from Kshs16,000 to Kshs48,000. Yet, they can wait for another four years without employment and are unable to repay their loans.

Hon. Speaker, I wish to seek your indulgence. If the Chairperson or the Vice-Chair is here, you should direct them to give an answer to Kenyans so that as parents and students break for Christmas, they know what awaits them in January. Does this proposal have the support of the Departmental Committee on Education? I noticed one of the dailies today had reported that Parliament has agreed with the National Treasury.

Being an MP, my phone had about 17 text messages, three WhatsApp messages and calls from my constituents asking me how I can allow this at a time when I know they have no money. Therefore, I would like to go on recess with an assurance to my constituents that, come January, either we have NG-CDF for bursaries or an assurance from the Departmental Committee on Education and the Government of Kenya that they will not subject our students and parents to further suffering beyond what they have suffered during this COVID pandemic period. You know close to two million people who were in formal employment are today out of employment. Those are parents who had students. Another three to four million people who are in the informal sector have been affected by this pandemic and will have no means to take care of their children. Therefore, if we increase their fees, I think it is a matter that is weighty enough for you to indulge us and direct the Chair to explain. When the dailies report about Parliament and I am counted as a Member of Parliament and maybe there are Members who may not be in support, for the record, I wish to state that I will not in any way support an increment of fees threefold, not even double, at this time.

Thank you, Hon. Speaker.

Hon. Speaker: The request for Statement is directed to the Chairperson of the Departmental Committee on Education and Research.

(Hon. (Ms.) Pamela Ochieng raised her hand)

This Member for Migori, you have a very unique habit. You are always raising your hand. You are not in a primary school. This behaviour is extremely irritating. Even when Hon. Olago Aluoch was speaking, your hand was up. What is this? Your hand is up all the time. Are you the Chair of the Departmental Committee on Education and Research? You are certainly not. Let us have Hon. Florence Mutua Mwikali.

Hon. (Ms.) Pamela Ochieng (Migori CWR, ODM): *(off record)*

Hon. Speaker: Forget. You cannot address me when you are seated like that. I have not given you a chance to speak. Just resume your seat or go back to Migori and wait.

(Laughter)

Let us have Hon. Florence Mutua. The Vice-Chair is Hon. Ngunjiri Wambugu. The Chairperson and the Vice-Chairperson have already taken their recess. They are both bereaved. So, Hon. Ichung'wah, unless the Leader of the Majority Party has something to say in response... He can say something on their behalf. Let us have Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I am aware the Chair of the Departmental Committee on Education and Research is bereaved hence she is involved in those arrangements. In our tradition in this Parliament, we do not rely on newspaper headlines as the basis for discussion. So, whatever is reported is for people to consume for their own entertainment. I am not aware of any report that has been tabled by the Committee here agreeing or disagreeing with the Ministry's statement. In any case, committees do not make the decision. It is this House that will pronounce itself on whether it agrees with the Ministry or does not agree with the Ministry. So, I would like to ask Hon. Ichung'wah to hold his peace until we have a report from the Committee into this House and the House will then determine the direction it wants to take, so that we do not just play to the galleries for purposes of political mileage, but we actually do things in a structured way as we have always done in this Parliament.

So, let us wait for the direction. I know the Committee is engaging with the Ministry. They will bring a report to this House and when we have that report, then we will be able to make a determination as a House in terms of where we go.

Hon. Speaker: Even as you say from your places that it does not require parliamentary approval, you as the House, if you find the need, through the Leader of the Majority Party or the Leader of the Minority Party, you can still write to me, if the need arises, to recall you for a special sitting. If that becomes a reality, you as a House are not without power to stop any such proposals. You are the people's representatives. Do not say you do not have the power. You have the power unless you want to... Is it because of what you are calling the BBI that you think you have lost power? No, you still have. Remember Article 95 of the Constitution.

Even the draft Constitution (Amendment) Bill does not touch Articles 93, 94, 95 and 96 of the Constitution. So, why are you donating your authority to the wind? Your powers and authority as the people's representatives under the Constitution remain intact. Remember it is uniquely provided in Article 95(1) that you represent the people of the constituencies and other special interests. In Article 95(2), you deliberate and resolve issues of concern to the people. That is so important. That is a matter of concern to the people. So, it is indeed within your power to deliberate and resolve through a resolution and if anybody disobeys the resolution of the House, again you have the powers to deal with whomever. The oversight authority of State organs and State officers again is invested in you.

It is this House which has the authority to commence the process of disciplining and removing State officers from office and not any other place. Please, do not forget that power now that you are going for recess. I know two months could be a long time and there could be momentary lapses of memory. Please, do not allow that to happen. Hon. Ichung'wah, that power is still with you. Even if we just speak for hours, it does not help. It could be misinformation. You know Kenya's newspapers write all manner of stories. Let us not deal with what they are saying. Let us deal with a written circular. If there is a circular, please, get and bring it here, so that the House can deal with it. Member for Garissa Township, you have the Floor.

MEASURES TO ADDRESS DIPLOMATIC RELATIONS BETWEEN KENYA AND SOMALIA

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, pursuant to Standing Order No. 44(2)(c), I wish to request for Statement from the Chairperson of the Departmental Committee on Defence and Foreign Relations on the diplomatic relations between Kenya and Somalia. It is clear that the Government of the Republic of Somalia has severed its diplomatic relations with the Government of Kenya largely because of the Kenyan perceived position regarding the upcoming elections in Somalia scheduled for February 2021.

As we are aware, Kenya troops serving under the African Union Mission in Somalia (AMISOM) have so many years participated in the reconstruction, peace and security building in Somalia. Concerned that any diplomatic differences or instability in the region affects our country's national security, I wish to obtain clarifications on a few issues emanating from this diplomatic matter. In light of the fact that the House is proceeding for a recess today and further in consideration that Standing Order No. 44(2)(c) empowers the Speaker to direct that a Statement on an issue raised be made on the same day, I wish to seek your indulgence that you direct my good friend, the Chairperson of the Departmental Committee on Defence and Foreign Relations, to respond to the following issues during this sitting if he has the relevant information:

1. What specific measures is the Government pursuing to ensure that diplomatic relations between Kenya and Somalia do not deteriorate further?
2. What is the Government doing to guarantee the safety of Kenyans working in Somalia given the ongoing diplomatic spat?
3. Could the Committee confirm the allegations that the State has taken antagonistic positions towards the upcoming elections in Somalia and is attempting to influence the same and the outcome?
4. What is the Government doing to ensure that Kenya's trade with Somalia is not affected by this diplomatic spat particularly with regard to the country's export of *miraa* and other imports and exports that the two countries trade in?

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Katoo, do you want to respond? Do you have any information?

Hon. Katoo ole Metito (Kajiado South, JP): Thank you, Hon. Speaker. It is very unfortunate that such important matters are coming on the last day of the Session. Allow me to just say a few things that are already in the public domain about the matter, but would be very important to say on the Floor of this House as we wait for a thorough deliberation on this. I just want to say that so far, there is no official communication - they call it *note verbale* in the diplomatic circles - from the Federal Republic of Somalia, requesting the Kenyan Ambassador to Mogadishu to travel to Nairobi for further consultation. So far, there is no official communication to the Ministry of Foreign Affairs here in Nairobi.

Secondly, the purported action by the Federal Republic of Somalia is regrettable as it is based on unsubstantiated claims or allegations as stated by the Leader of the Majority on the issue of claiming that Kenya is interfering with their internal affairs. Those claims are not substantiated.

Thirdly, I would like to say that the Government of Kenya respects and upholds the cardinal international principles of self-determination, sovereignty, political independence and territorial integrity of all countries and in particular those in Africa. Having said that, I also want to say that Kenya reiterates its support of the very positive steps taken by the people of Somalia in implementation of the Somali-owned political roadmap.

This morning, we were debating and ratifying the African Union Charter on Democracy, Elections and Governance which was brought by my Committee to the Floor of this House. It is very unfortunate that we concluded, many Members of this House contributed to it, but we were not able to...

(Loud consultations)

Hon. Speaker, protect me from this corner. This is very serious. I was saying that it is unfortunate that we were not able to put the Question to it for formal ratification because of lack of quorum. I tried through the Office of the Clerk, to request that it be put in this afternoon's Order Paper just for the Question to be put, but our Standing Order No.238 could not allow that. Hopefully, it will be put in the next Session.

The document was on democracy, elections and governance. One of the issues in that treaty is regular holding of free and transparent elections as enshrined in the constitution of the member states of the African Union, where Somalia is a member. Because of that, Kenya respected that element of political independence of Somalia, but there is need for them to implement the Somali- owned political roadmap on inclusive politics, including the September 2020 Agreement between the Federal Government of Somalia and the federal governments of member states on the election model and calendar for the 2020/2021 because they are in our region. It is, therefore, incumbent upon all political actors in Somalia to stay true to their political commitments and avoid distracting actions. Some of the distracting actions include the matter before the House right now, the issue of purporting to send the Ambassador from Mogadishu and the one from Nairobi for further consultation but rather engage constructively to ensure that there is timely implementation of election calendar which will mark another critical phase in the post-conflict reconstruction efforts in Somalia.

Lastly, I want to say that Kenya continues to support the people of Somalia in their quest for peace and stability by employing active diplomacy as well as by making meaningful contribution towards free establishment of institutions of political governance, security sector reforms, trade, development assistance and humanitarian aid, over and above the huge sacrifices made through the African Union Mission in Somalia and the objective of this effort is to foster peace, stability and good neighbourliness that will guarantee and set a firm foundation for political, social and economic prosperity for the people of Somalia.

Finally, I am aware that there is pressure especially from the Kenyan side to reopen the *miraa* shipment to Somalia and because of that, it may also be the other factor that is being used as a bargaining tool for what we are seeing. We are a country that stands for peace and diplomacy in the region and that is one of our foreign pillars on our foreign policy. I want to

assure this House, as the Leader of the Majority Party has said, we are in good diplomatic relation with Somalia and it will continue that way.

Thank you, Hon. Speaker.

Hon. Speaker: Let me just allow one more intervention from Hon. Duale. There is heavy business lined up.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I want to thank the Chairman for that Statement. Listening to him, without imputing any improper motive on him, the Chairman was only reading a Statement issued by the Foreign Affairs Principal Secretary when the ambassadors were recalled. I am sure it covers a number of areas. I think it is not the business of the Republic of Kenya to be concerned about the implementation of the democratic election roadmap of Somalia. That is not our business. Our business in Somalia is as far as our role in AMISOM is concerned. It is to make sure there is peace, reconciliation and stability in the region. That is why using the BBI, we want to implement our own system. Going forward, we must respect the territorial integrity of each country on how they do elections. What is at stake as I have said, there are many Kenyans who work in that country. There are huge businesses between the two countries, such as *miraa* and many other businesses.

I am sure, as a country, we have invested heavily in the peace and security of Somalia. Going forward, being the big brother - we are the big brother - and being the most stable country in the region when we look around what is going on, Kenya has been and will still maintain its neutrality. However, we must make sure that if there are any other differences, either politically or diplomatically, let us solve them for the interests of our countries. We have more issues that bind us together as two neighbours than divide our people and our country.

On the face of it, I thank the Chairperson, Hon. Katoo ole Metito, for that immediate and comprehensive answer.

Hon. Speaker: Let us not make this one a debate. There is something that was said earlier on when people were given a chance to comment on petitions. I can see some of the people raising their hands. Hon. Olago Aluoch cautioned that when you make comments, you must temper what you say. Now, I can see people from...

(Laughter)

Hon. Members, it is so important. The response given by Hon. Katoo ole Metito has been quite measured. I remember he has made reference to the use of the term *note verbale*. Some of you, I am aware, travelled there without my permission. Now you want to start discussing those issues.

Member for Mandera North, Hon. Major (Rtd.) Bashir S. Abdullahi, but I will stop you if you veer into some other issues.

Hon. Major (Rtd.) Bashir S. Abdullahi (Mandera North, JP): Thank you, Hon. Speaker, for the opportunity. I am fully aware that my statement and such kinds of engagements are measured. I have served in the Kenya Defence Forces (KDF) at a very senior level and so, I know what I am talking about.

Both our country and Somalia are two neighbouring states that cannot live without one another. We are joined at the hip. These little diplomatic spats should not make it look like we are enemies. So, my plea to our Government is that we need to resolve this matter as quickly as possible. We have trade that we need to engage with Somalia. Equally, we also have people

coming from there and investing in this country. So, the point is that without talking about meddling in the affairs of a neighbouring country, for our love for Somalia, we want a peaceful and prosperous country that can also be said we are part of.

Hon. Speaker, as has been said, Kenya is actually one of the countries in the Horn of Africa that are stable, secure and safe. When our neighbours are struggling to remain afloat, we need to make our voice, but ensure that our voice is tempered. Ours is to ensure that we have business with Somalia. Somalia will also have business with us and the spat that is ongoing is not good for us even for our own security. As we speak, *Al Shabaab* is trying to take advantage of this kind of spat. They are trying to make inroads into our region especially in northern Kenya because they are hearing that there is a spat between our two countries. That is very important.

Otherwise, I support the Statement by the Chairperson. I am a member of that Committee as well. We should ensure that both our country and Somalia remain friends, are stable and that we are good neighbours.

I thank you.

Hon. Speaker: The issue of some of the trends, Hon. Maoka Maore.

Hon. Maoka Maore (Igembe North, JP): Hon. Speaker, while supporting the Statement by the Chairperson of our Committee, the Departmental Committee on Defence and Foreign Relations, I would also like to plead with the huge number of Somali population who live in Kenya to also exert pressure across the border. Before this spat that happened on Sunday, we had been involved in pushing a trade pact that was about to be signed before the Foreign Minister was sacked two weeks ago. Then you hear an ambassador is asked to go back while the other one is recalled verbally, without the *note verbale*. So, those people who are making a fortune here, those who are enjoying their peace and prosperity here and those who are big investors here, also put pressure on one Mohammed Abdullahi Faarmajo to be friendly and soft on Kenyans. We are not his enemies. We need him and he needs us.

I thank you.

Hon. Speaker: This is what I was telling you. Hon. Junet Nuh, you referred to the Members to your left as Members from a different country. What is your comment, Hon. Junet Nuh?

Hon. Junet Nuh (Suna East, ODM): Hon. Speaker, I just wanted to agree with the Committee on the report they have presented. I also wanted to say that what shocks me about the issue of Somalia during their election time, and Hon. Aden Duale will bear me witness, is that the campaign is so intense here in Nairobi than it is Mogadishu. You may think the election is going to happen here in Nairobi and not in Mogadishu.

(Laughter)

If you move around town now, all hotels are full. All presidential candidates in Somalia must visit Nairobi. They are campaigning here more seriously than even in their country. I have never seen when we have an election in Kenya presidential candidates going to and campaigning in Mogadishu as though they will be voted for there. So, that is something that the Departmental Committee on Defence and Foreign Relations must investigate more to tell us why the presidential candidates of Somalia are campaigning more in Nairobi than in Mogadishu itself. That question must be determined.

Lastly, Hon. Speaker, I saw some Members of Parliament who visited Somalia the other day. That is why I said that there might be some stakeholders here that you need to give space to tell us. Maybe they have their preferred candidate.

With those few remarks, I support.

Hon. Speaker: Please, do not interfere with the internal affairs of the Federal Republic of Somalia. Hon. Ahmed Kolosh, I hope you will also be guided.

Hon. Ahmed Kolosh (Wajir West, JP): Thank you, Hon. Speaker. I agree with Hon. Junet Nuh that the leadership and those who are looking for positions, including Members of Parliament from Somalia are more in Nairobi than in Mogadishu itself. That is a show that there is interest by the Kenyan Government on the elections of Somalia and their level of influence.

However, the biggest tragedy, as far as we are concerned here, is that - I made a statement here in the House around January before the COVID-19 pandemic because of what is happening in Somalia, whether it is the political side or the *Al Shabaab* or whatever - the Kenya Government seems to have given up on the northern region. That is why there are no schools open even the Class Eight and Form Four students in our schools are doing it on their own. I believe that for the Kenya Government to exert its authority, not just in Somalia and the territorial integrity, it must ensure that it does not give up on services that are required by the Kenyan children within our country and do not give up on the pressures and instability that is coming from our neighbours.

Hon. Speaker, those of us who went to Somalia actually went there because we were told that *Al Shabaab* and whatever was happening was our problem and we should go and sort it out. We had nowhere else to go because it is the Kenya Government at the highest level that told us that they cannot address the issue of *Al Shabaab* and they cannot open schools. That is why we went to Somalia.

I thank you.

Hon. Speaker: Off course, you need to read your rules. When you undertake those kinds of sojourns, you must have the permission of the Speaker. It does not matter at what level of Government you have been told to solve the problem and then you start to take a walk into Somalia. That is a foreign country. You know very well what you did. When you were almost getting into trouble when you landed back is when you started looking for me. Now I can disclose since the matter is long over. When you came back and were getting into trouble is when you started looking for me. You should have done so before you left. Anyway, Hon. Kolosh, the matter has since been addressed.

Hon. Duale, what is the matter?

POINT OF ORDER

DELAY IN DISBURSEMENT OF NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, when the President came to make his Address in compliance with the Constitution about a fortnight ago, he made a categorical statement, which is in the *Hansard*, and urged Members of Parliament to participate and help in the reopening of schools in January 2021 using their NG-CDF resources, either through infrastructure, building schools, classrooms, laboratories and even bursaries. It is shocking that a presidential directive has not been complied with.

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I indulge you to ask the Chair of the Select Committee on NG-CDF, Hon. Wamunyinyi, and the Chair of the Departmental Committee on Finance and National Planning, Hon. Gladys Wanga, who oversee the National Treasury and the NG-CDF Board in terms of resources to make a statement so that it goes on record that until today, the amount disbursed to constituencies is less than 2 per cent or even zero. We are talking about the opening of schools. This is a serious matter because if we go for this long recess, our parents and voters expect us to pay bursaries in January. When infrastructure such as classrooms, schools, laboratories are not used for a long period, they need to be renovated so as to comply with safety and environmental regulations as well as COVID-19 regulations.

It is a serious matter, more so, when the President has urged Members to join him. It is also our cardinal responsibility. The NG-CDF has done well, particularly in the education sector. I urge you to ask the two Chairs to update this House and go on record on the *Hansard* on when these resources will be available and disbursed to the various constituencies.

I seek that clarification.

Hon. Speaker: Hon. Wamunyinyi, do you have anything to say in response?

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you, Hon. Speaker. The issue Hon. Duale has raised is very important. In fact, it is not only the direction of His Excellency the President, but we are also expected to utilise the funds appropriated to engage in activities that were proposed and approved by the Board.

When you forwarded to me the provisions of what the President had directed, as Chair of the Committee, I had deliberations with Members of the Committee and the Board and came up with regulations and guidelines on how we would implement the presidential directive. We invited the Cabinet Secretary for the National Treasury so that we could hear from him on what plans and arrangements had been made to disburse funds for utilisation by the NG-CDF committees. We gave him a week's notice. He was expected to appear this week on Tuesday. On Tuesday morning, he sent us a letter to say that he was not ready to appear before the Committee. He had not had adequate preparation to respond to the questions that we had put to him. We had also sought a clarification on why the Kenya Revenue Authority (KRA) was freezing some of the constituencies' accounts. They have been writing demand notices and letters to constituencies to pay the KRA. The Cabinet Secretary requested for more time, but we had wanted to know what the Ministry was doing to ensure that funds have been released for obvious purposes.

As things stand, there has been no disbursement in this financial year. We are halfway through the financial year and there has been no disbursement. What we received covered the arrears for the last financial year. That was about Kshs14 billion. Today, I was informed that, at the intervention of the Leader of the Majority Party, they are releasing Kshs2 billion which would benefit a few constituencies from Monday. However, we are seeking further release of more funds so that during the recess, Members will engage to ensure that they prepare for schools opening in January. They have to ensure that there is additional space, compliance with protocols, purchase of masks and so on.

We have also asked Members to be a little bit more innovative in ensuring that they comply with the President's directive. We have put down the guidelines. We are only waiting for the release of the money. I have spoken to Hon. Kanini Kega, the Chair of the Budget and Appropriations Committee, because last time when we sought audience with the Principal

Secretary, I was informed that the money they released which we treated as the last financial year's disbursement, they considered it as this year's disbursement.

(Loud consultations)

Let me explain. I have discussed with the Chair of Budget and Appropriations Committee and agreed that this has to be normalised by ensuring that there are funds provided for arrears and then disbursements for this financial year. I am hoping that we get additional funds in the course of next week to ensure that we are engaged when we are in the constituencies.

Hon. Speaker: There was also the Chair of the Departmental Committee on Finance and National Planning. Hon. Wanga, do you want to say something?

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Speaker. I would just like to agree with Hon. Duale and Hon. Wamunyinyi that in terms of our education sector especially in the villages, without NG-CDF, there will be zero preparedness for children to go back to school during this COVID-19 period. Our education sector relies almost 100 per cent on NG-CDF, whether it is the development of infrastructure in the schools or bursaries for our children.

We also understand. We do not want anybody to think that we do not understand that the economy has suffered shocks. What we are facing ahead of us in terms of children returning to school is so important. I would like to commit that I will work together with Hon. Wamunyinyi in the coming week to ensure that whatever can be disbursed for purposes of NG-CDF is disbursed urgently, quickly and in a way that ensures our constituencies are able to prepare. If you leave it too late, there will be no time within which the preparations can be made yet students are all going back to school on 4th January, 2021. It must be understood.

As the Chair of the Departmental Committee on Finance and National Planning, I give my commitment that I will work with Hon. Wamunyinyi to ensure that whatever can be done by the National Treasury is done. *Tutasukuma*.

Hon. Speaker: Hon. Members, let us not even debate this. I want to direct because this is a very serious matter. It is so serious that even the draft Constitution recognised the need to now entrench the NG-CDF in the Constitution. Therefore, it is a no-brainer. We cannot be getting to the end of the first half of this financial year and according to Hon. Wamunyinyi, the Chair of the Select Committee on the NG-CDF, nothing which was meant for this financial year has been released by the National Treasury. Please make sure that you have engagements not later than Wednesday, next week. That matter is so serious that we can have a Special Sitting even during recess to deliberate it.

(Applause)

That must be made clear to the Cabinet Secretary for the National Treasury. They release funds to do other things, but they do not appreciate the place of the NG-CDF. When you meet the Cabinet Secretary, let us get a report through the Leader of the Majority Party and the Leader of the Minority Party. If need be, Members be prepared to come back here for a Special Sitting. Otherwise, you will face a very bleak future. The country heard His Excellency the President from this Chair appeal to Members to make interventions, particularly in the area of infrastructure to facilitate the reopening of schools in January. You are not expected to do that with your personal or private resources. He was very clear that it is through NG-CDF.

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It means that whereas the rest of the country heard him loud and clear, the National Treasury blocked their ears. They are the only ones who did not hear. That is what it means. Up to now, they have not done anything to try and actualise or make it possible for the 290 constituencies to heed that appeal from the President. Hon. Wanga and Hon. Wamunyinyi schedule a meeting. Whatever the deliberations, if need be, through the leaders, let us know whether we will have a Special Sitting. There is no point of going for recess when everybody expects you to assist to ameliorate the situation on the ground with regard to social distancing. Everybody will be knocking your homes. That is what it means. The people you represent will camp in your homes. So, you are the ones who will be in greater risk. You will not actualise social distancing. Rather than discuss the issue, let the two Committees meet with the Cabinet Secretary for the National Treasury by Wednesday and then they will give us a report. I will be here. Let the leaders and I get the information. We must get a report which will be given here in the plenary in a Special Sitting. That is the only way. Let us not discuss that issue further.

The Chairperson of the Departmental Committee on Education and Research. Hon. Eve Obara, you have a Statement.

STATEMENTS

DISBURSEMENT OF TUITION AND GENERAL-PURPOSE FUNDS TO PRIMARY SCHOOLS

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you very much, Hon. Speaker. There was a request for a Statement by Hon. Olago Aluoch on disbursement of tuition and general-purpose funds to Primary Schools.

Pursuant to Standing Order No. 44(2) (c), Hon. Olago Aluoch requested for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding disbursement of tuition and general-purpose funds to primary schools by the Ministry of Education. The Committee sought response from the Cabinet Secretary, Ministry of Education.

The hon. Member asked how the Ministry expects schools to run seamlessly in the face of inadequate and irregular funding of tuition and general-purpose funds. He stated that the Ministry of Education should ensure immediate disbursement of free primary education funds which are received from the National Treasury. They disburse free primary education funds to public primary schools at the rate of Kshs1,420 per pupil per year. They disburse 50 per cent in term one, 30 per cent in term two and 20 per cent in term three. In the year 2020, the Ministry of Education constituted a technical committee to look into the cost of educating a child in public primary school in Kenya. The findings of the team will be used to advise the Government to review the rate of the funding towards free primary education.

Hon. Olago Aluoch asked why the Ministry is exposing teachers, learners and staff to COVID-19 pandemic by failing to disburse funds for mitigating the COVID-19 disease which has also placed undue pressure on the parents who are being compelled to fund COVID-19 mitigation measures. The Ministry disbursed all the funds which were appropriated by Parliament to schools. In September 2020, they disbursed funds to all public schools to aid in preparation of reopening of schools amidst the pandemic by installing hand washing facilities, ensuring hygiene is maintained amidst many other measures.

In the case of masks, the Ministry has asked parents to support their children by ensuring that they are provided with masks as they report to schools to safeguard them against contracting the Coronavirus. For children from poor households, the Ministry sought and received support

from the Kenya Commercial Bank (KCB) Group Foundation which donated one million masks. The United Nations International Children's Emergency Fund (UNICEF) donated 700,000 masks.

To support school infrastructure, the Ministry has spent Kshs1.9 billion which is part of the Economic Stimulus Programme for the provision of desks in some selected schools across the country. This has already been rolled out through the sub-county education offices across the 47 counties.

Hon. Olago Aluoch also asked what the Ministry is doing to sustain free primary education review of funding disparities of primary schools compared to secondary schools and to further motivate teachers to apply for the headteachers positions. As explained in the first response, the Ministry of Education disburses free primary education funds immediately they receive them from the National Treasury. They have constituted a technical committee to monitor the conduct of a study on equity-based financing in primary and secondary schools in Kenya. The outcome of the study will be used by the Government to address the disparities and to make any other donations required. As for the motivation of teachers to apply for headteachers positions, the Teachers Service Commission (TSC) is solely responsible, as constitutionally mandated, to deal with the matter.

Hon. Speaker, I beg to table the response. Thank you very much. The Statement is signed on behalf of our Chairperson, Hon. Florence Mutua.

(Hon. (Ms.) Eve Obara laid the document on the Table)

Hon. Speaker: Hon. Olago Aluoch, do you wish to make any comment on the response?

Hon. Olago Aluoch (Kisumu West, FORD-K): Asante, Mhe. Spika. Alhamisi wiki jana, niliamua kuongea kwa lugha yetu ya Kiswahili.

(Hon. Olago Aluoch spoke off record)

Hon. Members: Your microphone is off.

Hon. Speaker: Sorry, your microphone went off.

Hon. Member: *Microphone* haitaki Kiswahili.

Hon. Speaker: The place is being sanitised. Could you press the intervention button?

Hon. Olago Aluoch (Kisumu West, FORD-K): Bw. Spika, Alhamisi wiki jana, niliamua kuonyesha uzoefu wangu wa lugha yetu ya taifa; Kiswahili. Lakini kuna Wabunge kama Mhe. Millie Odhiambo waliolalamika kuwa nilikuwa ninawatesa kwa kuongea kwa lugha ya Kiswahili. Kwa sababu hiyo, nimeamua kuwa leo nitaonyesha uzoefu wangu kwa lugha ya Kiingereza.

(Laughter)

Bw. Spika ukiamua, naweza kuendelea kwa Kiswahili.

Hon. Speaker: Endelea.

Hon. Olago Aluoch (Kisumu West, FORD-K): Asante, Bw. Spika. Kama kuna sababu ya kuonyesha Wabunge wote kukubali BBI ni kwamba jibu lililopata Swali halionyeshi kwamba Waziri ameamua kulizingatia kikamilifu. Hili ndilo Swali ambalo kwa kimombo tungesema ni *inadequate and irrelevant*.

Bw. Spika, sehemu ya kwanza ya Swali iliuliza, inakuaje pesa kutoka kwa Wizara ya Elimu inafika kwa shule nusu-nusu? Jibu la Swali hili ni kwamba Wizara bado inafanya mipango kuona ni vipi itapata pesa za kutosha. Jibu hili halionyeshi ni sababu gani pesa hazipeanwi inavyotakikana. Ikiwa tuko na bajeti na pesa zimeenda kwa Wizara, inakuaje pesa hazifiki kimamilifu?

Pili, inakuwaje jibu la pili linatamka maswala ya viti ilhali sikuuliza Swali hilo? Swali langu lilikuwa, inakuaje pesa zinazofika shuleni hazitoshi kushughulikia swala la COVID-19? Jibu hili linaonesha kuwa Bw. Waziri hakuwa na jibu hakika.

Tatu, niliuliza inakuaje pesa ambazo zilitolewa kwa shule za msingi ni tofauti na zile ambazo zinaenda kwenye shule za upili? Jibu lake la tatu halijagusia Swali langu hata kidogo. Majibu ambayo nimeyapata hayatoshi kabisa. Ningependa kuuliza na kuomba kuwa Waziri wa Elimu, Bw. Magoha, aweze kupeana majibu ya kisawasawa kwa Wabunge. Haya hayatoshi kabisa.

Hon. Speaker: Basi atafanya hivyo Bunge litakaporejelea vikao vyake mwaka ujao, kuanzia tarehe tisa Februari, 2021.

Leader of Majority, do you have anything on Standing Order 44(2)?

BUSINESS FOR CONSIDERATION DURING RECESS

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. Pursuant to the provisions of Standing Order No.44(2)(a), I rise to give the following Statement on behalf of the House Business (HBC) which met on Tuesday, 1st December 2020, to prioritise business for consideration.

Hon. Speaker, this House is scheduled to proceed on a long recess commencing tomorrow in accordance with the Calendar of the House. In this regard, the HBC has not scheduled any business for next week, but as you have stated, we anticipate that there will be some urgent business coming in the course of our recess. We will be communicating to the House when that should happen.

I commend all Members for the good work and commitment to the legislative business throughout this Fourth Session. It is my hope that Members will have plenty of time with their constituents and come back next year, invigorated and ready to perform our roles as stipulated under Article 95 of the Constitution.

Even as we proceed on recess, it is important to note that in case of any urgent business- I have already alluded to that possibility - that may require the attention of the House, Members may be recalled for a special sitting, pursuant to the provisions of Standing Order No.29.

On behalf of the HBC and, indeed, my people of Kipipiri Constituency, I wish you all a happy festive season. Even as we get ourselves into the happy festive season, I ask Members that we not only make it happy, but also a safe festive season so that we see you all when we resume. We are living in very tricky and dangerous times.

I wish to lay this Statement on the Table of the House and thank you all.

Before I finish, let me also congratulate Hon. Dennitah Ghati. I would also like to confirm what the Chair of the National Government Constituencies Development Fund has said, that in addition to the consultation between the two Committees, I am also in contact with the National Treasury. We have already made some commitment for some release of funds next week. I think it is Kshs2 billion, but we are still negotiating to ensure that the amount is enough to ensure that Members are actively engaged in the course of the recess. The discussion is

ongoing and probably by tomorrow, I will get an update in terms of the quantum sum for release. A release of Kshs2 billion has been agreed for next week, but we are pushing for a bigger amount to ensure that Members have funds on a continuous basis as the constituencies also absorb the money that is currently in the constituency accounts. There are many constituencies with money in their accounts and all that is being looked at.

Thank you, Hon. Speaker.

(Hon. Amos Kimunya laid the Document on the Table)

COMMUNICATION FROM THE CHAIR

FATE OF BUSINESSES BEFORE THE HOUSE AND COMMITTEES AFTER THE FOURTH SESSION

Hon. Speaker: Hon. Members, before we go to Order No.8, I wish to make a Communication which relates to the fate of the various businesses before the House and Committees, and activities of committees during the upcoming recess.

Hon. Members, as you are aware, at the rise of the sitting today, the House is scheduled to proceed on a long recess, in accordance with its calendar. This marks the conclusion of the regular sittings of this part of the Fourth Session of the National Assembly in the 12th Parliament. I sincerely wish to commend Members for the diligence and commitment exhibited with regard to the business of the House, both in plenary and in Committees throughout the Session.

Despite the unprecedented challenge that was brought about by the COVID-19 pandemic during this Session, the House managed to transact a number of key businesses, including passage of the 2020/2021 Budget, the Finance Act, 2020 which provided various tax reliefs in relation to mitigation efforts to reduce the impact of COVID-19 on the economy; passage of several public orders and regulations relating to movement of persons across the country, sanitation and other preventative health protocols; and vetting of key State officers such as the Data Commissioner, among others. More comprehensive information on the activities of the House will be made available in the Annual Report on Business of the Assembly which is under preparation.

Hon. Members, as you will recall, the House adopted its calendar on 18th February 2020 and for the first time at the beginning of this Session also made a resolution on the last day of committee sittings this year as well as their commencement date in 2021. You are therefore invited to take note of the specific dates for resumption of sittings by the House and Committees under the Notices in today's Order Paper.

In this regard, no other committee sittings shall be convened during the said period unless special consideration is granted by my office upon written request. However, the Departmental Committee on Finance and National Planning is exempted from the suspension to allow for consideration of certain urgent business which is expected very soon. I would add to that exemption, the Select Committee on the National Government Constituencies Development Fund.

(Applause)

Hon. Members, as the Session winds up and the House proceeds on recess, I wish to remind Members of the fate of the various businesses that are currently before the House and the Committees. This is specifically with regard to Bills which ought to have certain stages concluded before the end of two Sessions, and petitions which have a given timeline pursuant to the Standing Orders. Conscious of the fact that the proceedings of the House and its Committees were disrupted during this Session by the unforeseen recess periods and reduced number of sitting days in an effort to mitigate the effects of COVID-19, the House Business Committee has proposed a Motion which is in today's Order Paper for consideration by the House. This is to enable the continuation of the said business in the next Session pursuant to provisions of the Standing Orders. However, Questions, Motions and Statements are traditionally sessional and will, therefore, lapse at the end of the current Session. Any Member wishing to revive them at the beginning of the next Session is welcome to do so.

In conclusion, as you proceed to spend valuable time with your families during the holiday season and also attend to your constituents, I take this opportunity to wish you all, along with the staff of Parliament, a happy and restful festive season and a prosperous New Year 2021. Remember to stay safe.

I thank you.

(Applause)

Hon. Kimani Ichung'wah (Kikuyu, JP): On a point of order, Standing Order No.44(2).

Hon. Speaker: Hon. Ichung'wah, what is the point of order under Standing Order No.44(2)?

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I rise on Standing Order No. 44(2). I appreciate what the Leader of the Majority Party has just informed us although I wish he would be more forthcoming for purposes of planning when he mentioned that there might be urgent business and he seems to have information on what that "urgent" might be that would occasion a special sitting and the fact that he is not giving us notice of what that business would be. Maybe, if he has an indication of what that important business would be, it would be good to communicate so that even as we go on recess, we are better prepared.

Instructively, on the same strength of that Standing Order No.44(2), the reason the Leader of the Majority Party rises every Thursday to inform Members on the business that is coming the following week, is so that we are able to prepare and know what business is before us. I just noticed in today's Order Paper that there is business that was not listed in his Statement of last week. I do not know why the business which is Order No.13 was not mentioned. This is a Bill that is quite heavy and that has very many issues that I am sure very many Members would also have wanted to participate in. Considering that there is even mention of a special sitting, that is what aroused my attention. It is the fact that this Order No.13 has just come into the Order Paper and was not there when the Leader of the Majority Party communicated to the House the business that would be coming this week. I was just wondering how it has found its way into the Order Paper of today, being the last day of this Session. If we are to embark on recess today, Hon. Speaker, and maybe the urgent business becomes either a continuation of this business or going into the Third Reading of this business, many of us have issues that we would want to bring amendments on. Therefore, I felt it may not be fair to subject us to getting into this Order today, being the very last day of the year. This is business that, maybe, the Leader of the Majority Party could have considered, if not during the next Session, if he finds it urgent, to give

us notice during that special sitting, so that we are able to prepare ourselves more and even for those who would be interested in having amendments to be able to bring our amendments in good time.

Thank you for your indulgence.

Hon. Speaker: Maybe you can raise that issue when we get to that Order. Next Order.

PROCEDURAL MOTION

EXEMPTION OF BUSINESS FROM PROVISIONS OF STANDING ORDERS 141 AND 227

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to move the following Procedural Motion:

THAT, noting that this House will be proceeding for a long recess from 4th December 2020 to 8th February 2021; taking cognisance of the implications of the judgment in the Nairobi High Court Constitutional Petition Number 284 of 2019 as consolidated with the Nairobi High Court Constitutional Petition Number 353 of 2019 on suspension of consideration of all Bills pending in both Houses of Parliament until the requirement of concurrence is first fulfilled; further noting the decrease in the number of sitting days of the House due to the COVID-19 pandemic; Now, therefore, pursuant to the provisions of Standing Order 256 (Exemption of Business from the Standing Orders), this House resolves—

- (i) to exempt all Bills pending at various stages of consideration in the House from the provisions of Standing Order 141(2) (Lapse and Re-introduction of Bills) during the period of the Fourth and the Fifth Sessions; and,
- (ii) that, with respect to all public petitions pending before committees of the House, the counting of the sixty days' consideration period prescribed under Standing Order 227(2) (Committal of Petitions), shall adjourn today and resume when the House next sits in the Fifth Session.

Hon. Speaker, I think you have already discussed this at length. The import of this Motion is to save all the Bills that are at different stages of processing in the House, which would expire today if, for some reason, this Motion is not passed. I hope the Whips are paying attention to the importance of this. This is because, as Members keep getting out, if we do not have enough Members to pass this Motion, then, all the Private Members' Bills, and they are many - I would expect all the sponsors to be here - and all the other Bills and petitions that are pending including the ones that were raised this afternoon, and I can see even those petitioners have decided to go, will have to be reintroduced afresh.

Hon. Speaker, for now, I am hoping the Members, the stakeholders of these Bills and petitions as it were, will have come before we close this Motion. The process was interfered with through these court cases that were brought by the other House and hence we were stopped from processing the Bills. Even some of the Bills that were are reintroducing today - I would have hoped Hon. Ichung'wah would ask a question and stay in the House to hear. The whole point is, we said even last week, that as we clear business with the Senate, as we get concurrence, we will continue reintroducing as and when it is cleared. So, it is something that we are alive to. The Notice Paper is published 24 hours before a Sitting, according to the Standing Orders. As of yesterday, 24 hours before today, people had knowledge of the business appearing before the House for them to prepare. Hence, there is nothing like any business being sneaked in because it

is the last day. All business is legitimately before the House and will continue. However, obviously, if for some reason Members do not want to participate, then we will have to continue. I would urge them to make sure that we actually save this Motion, but it is a decision of the House. We will want to be guided. We will take guidance from the House.

I beg to move and ask Hon. Junet, who is a Member of the House Business Committee, to second.

Hon. Junet Nuh (Suna East, ODM): Hon. Speaker, this is just a Procedural Motion that seeks to extend the life of Bills and petitions before the House. If there is any Member who feels that his petitions should be carried to the next Session, he should be here to pass the Motion. We understand how important it is to bring a Bill and how dear it is to a Member. If a Member has a Bill and he knows that after today it will lapse, he should have been here to ensure that the Procedural Motion passes. A few Members like Hon. Pukose are here, but we need numbers to put the Question. If the numbers are not there, let this Motion die, so that the Member can start afresh so that they know the importance of being here to make sure their Bills and petitions are in order. If there are no numbers, I will ask one of my Members to ask for quorum. If we do not get quorum, let this Procedural Motion die.

Hon. Speaker: Do you second?

Hon. Junet Nuh (Suna East, ODM): I second, Hon. Speaker.

(Laughter)

Hon. Speaker: Hon. Members, this afternoon's Order Paper is not a Supplementary Order Paper. Every Member who has made their way here and has a smart phone is expected to know the business on the Order Paper. Order No.8 is the first one and it is so clear. I want to agree with Hon. Junet and the Leader of the Majority Party that, indeed, this is a Members' Motion.

(Question proposed)

Let us have Hon. Millie Odhiambo, Member for Suba North.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker. As a Member with very special interest, with three pending Bills, I support this Procedural Motion. I have the Child Justice Bill, the Reproductive Healthcare Bill and Assisted Reproduction Technologies Bill. I want to request that we take into account Private Members' Bills because we put in a lot of effort and energy, and shame idlers. Recently, I saw some misinformed people demonstrating outside Parliament saying that I should withdraw a Bill they are purporting to call baby manufacturing Bill. Human beings are the only ones that manufacture babies and a Bill does not do that. We should shame such misinformed persons who are religious fundamentalists. People should understand that religious fundamentalists cut across all religions including Christianity.

Hon. Speaker, on that basis, I wish to fully support this Procedural Motion.

Hon. Speaker: Hon. Pukose.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I stand to support this Procedural Motion. I have a Private Members' Bill, the Kenya Food and Drug Authority Bill, that has been here for the last two years. It is an important Bill. When you look at the news today in the USA, Pfizer/BioNTech COVID-19 vaccine approvals are given by the Food and Drug

Administration (FDA). In the European Union, the approval is given by the European Regulatory Authority.

As we speak, in Kenya, we do not have an Authority that can approve any vaccine trial. We can only seek authority from the Kenyatta National Hospital Ethics Committee, and it is not the way other jurisdictions are doing things. My Bill speaks to many issues. It speaks to approval of drugs in the market, pharmacology, vigilance, new drugs in the market and their safety. Nobody looks at the amount of pesticides in the foods that we consume and we keep complaining of rising cases of cancer and other non-communicable diseases. It is time that some of these Bills go into record that this House passed something that is for monumental contribution for this country and generations to come. It is not just a Bill.

Hon. Speaker: You are now out of the Motion.

Hon. (Dr.) Robert Pukose (Endebess, JP): I am well guided, Hon. Speaker. It is a very good move for the HBC to propose that these Bills do not lapse and are taken to the next Session. I want to thank the HBC for that decision.

I support this Procedural Motion.

(Loud consultations)

Hon. Speaker: What is happening there? Give him a microphone that is working.

Hon. Kassim Tandaza (Matuga, ANC): Asante sana, Mhe. Spika, kwa kunipa fursa hii. Nina Mswada ambao nimeushughulikia kwa muda wa miaka mitatu na hadi sasa haujaisha. Ni jambo la busara kwa Kamati husika na Wabunge wote kuhakikisha kwamba kazi iliyofanyika kwa miaka mitatu haitapotea. Kama unavyojua, Mswada wangu umekuwa hapa na ni vyema ikiwa utahifadhiwa mpaka upitishwe na Bunge hili kuwa sheria ili uweze kuwanufaisha watu wa Matuga na Wakenya wote kwa jumla.

Asante sana na naunga mkono pendekezo hili.

Hon. Speaker: Member for Kiambu.

Hon. (Ms.) Gathoni Wamuchomba (Kiambu CWR, JP): Thank you, Hon. Speaker, for giving me the opportunity to support the Motion. I support it because I have an interest having moved a Private Members' Bill concerning the welfare of the elderly of Kenya and it is disheartening to note that the Bill has been here for the last two years. These are the people that are to benefit from my Bill, the Geriatric Bill, 2019.

I want to congratulate the Leadership of the House Business Committee led by yourself for considering to create more time and space for Private Members' Bills and other businesses of the House that have not been sorted out considering that the business of the House was interfered with by the advent of COVID-19 pandemic in Kenya. We stayed at home for a long time before we sorted ourselves in terms of who is to attend sittings from the House and from the Members' Lounge. Therefore, I support the proposal to allow Parliament to discuss and handle business that is pending, so that we do justice to the people who elected us to this House. I support the Motion.

Thank you.

Hon. Speaker: Member for Kanduyi.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Ahsante, Mhe. Spika kwa kunipatia fursa hii. Naunga mkono Hoja hii iliyoletwa na Mhe. Kimunya, Kiongozi wa Chama cha Walio Wengi hapa Bungeni. Naunga mkono Hoja ya kuhifadhi Miswada. Zaidi ya miaka miwili iliyopita, nilipendekeza Mswada unaohusu sukari, kwa kimombo unaitwa "Sugar Bill" ambao

uliamrisha uende kwa Kamati inayoshughulika na mambo ya kilimo ili iweze kufanya *public participation*, yaani kusikiliza na kuchukua maoni ya wananchi. Mswada huu umekaa kwa Kamati hiyo zaidi ya mwaka moja na nusu. Nilitoa lalama kwako kuwa kamati za Bunge hazifai kuweka Miswada Binafsi iliyoletwa na Waheshimiwa kwa muda mrefu sana mpaka ilazimike ziokolewe na *House Business Committee*. Naomba Wenyekiti wenzangu na Wabunge katika kamati za Bunge wawe wakitekeleza wajibu wao muhimu wa kuhakikisha wanajadili na kupitisha Miswada, na kuwasilisha ripoti zao Bungeni ili zifanyiwe *legislation* inayofaa.

Kwa hayo machache, naunga mkono Hoja hii. Naamini tukirudi baada ya likizo au wakati wowote tutakapoitwa kwa *special sitting*, tutaomba tukubaliwe kuleta hii Miswada iliyokaa siku nyingi.

Ahsante.

Hon. Speaker: Member for Mwea. Hon. Members, when you are dealing with these ones, you use your intervention button. The Member for Mwea is not present. Member for Chepalungu is the one who is next on the list.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Thank you, Hon. Speaker.

Hon. Speaker: No! No! It is Member for Chepalungu.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Speaker, I was given his card because I did not have my card.

(Laughter)

Hon. Speaker: Hon. Sabina Chege.

Hon. (Ms.) Sabina Chege (Murang'a CWR, JP): Hon. Speaker, I am happy that Members are back. We have important Private Members' Bills. We have the Cancer Bill; Blood Transfusion Bill; Breast Feeding Bill; Radiographers Bill; and Basic Education (Amendment) Bill. I thank my colleagues who have stayed in. We now have quorum. For sure, we need to save these important Bills including the Mental Health Bill. We have already done a lot of work. On the Food and Drugs Authority Bill, Hon. Pukose has already spoken on it, we are handling it. I want to confirm that it is among the important Bills that we have before my Committee, including the one sponsored by Hon. Millie Odhiambo on Assisted Reproductive Technologies Bill. It is not about children harvesting. It is an important Bill for the Republic of Kenya. The last one is sponsored by Hon. Jaldesa about organ transplant. It is an amendment to the Health Act to safeguard organs and tissue in the Republic of Kenya.

I thank Members who are here and I am happy.

Thank you.

Hon. Members: Put the Question.

Hon. Speaker: Is it the desire of the House that I put the Question?

Hon. Members: Yes.

Hon. Speaker: Do we have quorum?

Hon. Members: Yes.

Hon. Speaker: Well, it has been confirmed to me not by yourselves, but by the Serjeant-At-Arms, that there is quorum.

(Question put and agreed to)

Hon. Members, that is safe.

Next Order!

PROCEDURAL MOTION

CONSIDERATION OF BUSINESS RECEIVED DURING THE RECESS PERIOD

Hon. Speaker: The Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. As I move this Motion, I would like to ask Members that it is important that they stay in the House.

I beg to move the following Procedural Motion:

THAT, notwithstanding the provisions of Standing Orders 41 and 42 relating to conveying of Messages from the Senate and from the President or the national Executive, Standing Orders 120, 122 and 126 relating to publication, procedure upon publication and First Reading of Bills, and Standing Order 210(2) relating to tabling of statutory instruments, this House orders that, during the period of the long recess (4th December 2020 – 8th February 2021):

(i) upon receipt of any Message from the Senate, or upon receipt of any name of a person nominated for appointment to a State or public office from the President or any other office in the national Executive, the Speaker shall forthwith refer such Message to the relevant committee for consideration, without having to recall the House;

(ii) should a Bill be published during the said period, or a published Bill becomes due for First Reading during the period, the Speaker shall, upon lapse of at least three days following the publication of the Bill and following a determination that such Bill is of priority, forthwith refer such Bill to the relevant committee for consideration pursuant to the provisions of Standing Order 127 (Committal of Bills to Committees and public participation) and upon resumption of the House, cause the Bill to be read a First Time and the Second Reading may be taken forthwith, or on such other day as the House Business Committee may determine;

(iii) should any statutory instrument be transmitted for tabling before the House during the period, the Speaker shall, following a determination that the statutory instrument is of priority, forthwith refer the statutory instrument to the relevant committee for consideration and cause the statutory instrument to be tabled in the House upon its next Sitting in accordance with the provisions of Section 11 of the Statutory Instruments Act (No.3 of 2013); and,

(iv) should the Speaker receive a Message relating to the Senate's amendments to a Bill originating in the National Assembly, the Speaker shall forthwith refer the Schedule of the Senate amendments to the relevant committee for consideration pursuant to the provisions of Standing Order 145 (Senate amendments to Bills originating in the National Assembly), and, upon resumption of the House, report such fact to the House.

This resolution was taken by the House Business Committee for recommendation to this House to help process business during the recess. This is so that all the business requiring a First Reading before it is committed to a Committee can actually be committed to a Committee without coming to the House. This applies to all the proceedings. It is something we do at every

sitting. I urge that we process this Motion so that any business that may come to the House within the two months we will be on recess is expedited as if we were in the House.

I beg to move and ask Hon. Junet to second.

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

Hon. Junet Nuh (Suna East, ODM): I second.

(Loud consultations)

(Question proposed)

(Question put and agreed to)

MOTIONS

APPROVAL OF NOMINEES TO VARIOUS NG-CDF COMMITTEES

Hon. Speaker: Before this Motion is moved, is the Member for Ainabkoi in the Chamber? I can see the indomitable Hon. Chepkut. Is the Member for Chepalungu here? They are nominees for his constituency. Who will know them other than him? I have seen Hon. Wanjiku, the Member for Kasarani. Is the Member for Buuri here?

Hon. Wamunyinyi, kindly move the Motion.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Speaker, I beg to move:

THAT, pursuant to the provisions of Section 43 (4) of the National Government Constituency Development Fund Act, 2015 and paragraphs 5 (2) and (10) of the National Government Constituencies Development Fund Regulations, 2016, this House approves the list of nominees for appointment to the following four Constituency Committees of the National Government Constituency Development Fund, laid on the Table of the House on Thursday, 3rd December 2020. The Constituencies are:

1. AINABKOI CONSTITUENCY

NO.	NAME	CATEGORY	STATUTORY PROVISION FOR ASSUMPTION OF POSITION
1.	David C. Kimaiyo	Male Adult Representative	Fresh-appointment, pursuant to Sec.43(3)
2.	Simon K. Sambu	Nominee of the Constituency Office (Male)	Fresh-appointment, pursuant to Sec.43(3)

2. CHEPALUNGU CONSTITUENCY

NO.	NAME	CATEGORY	STATUTORY PROVISION FOR ASSUMPTION OF POSITION
1.	Weldinoh Keter Kipkurui	Male Youth Representative	Re-appointment, pursuant to Sec.43(8)
2.	Sang Kiprono Paul	Male Adult Representative	Re-appointment, pursuant to Sec.43(8)
3.	Chebet Winny	Female Youth Representative	Re-appointment, pursuant to Sec.43(8)
4.	Milca Cherono Kenduiywa	Female Adult Representative	Re-appointment, pursuant to Sec.43(8)
5.	Caroline Chebet	Representative of Persons Living with Disability	Re-appointment, pursuant to Sec.43(8)
6.	Joseph Kipkorir Chirchir	Nominee of the Constituency Office (Male)	Re-appointment, pursuant to Sec.43(8)

3. KASARANI CONSTITUENCY

NO.	NAME	CATEGORY	STATUTORY PROVISION FOR ASSUMPTION OF POSITION
1.	Benson Ngwaro Kirango	Male Youth Representative	Fresh-appointment, pursuant to Sec.43(3)

4. BUURI CONSTITUENCY

NO.	NAME	CATEGORY	STATUTORY PROVISION FOR ASSUMPTION OF POSITION
1.	Fredrick Mwiti Kithinji	Male Youth Representative	Re-appointment, pursuant to Sec.43(8)
2.	Charles Kinyua Kiara	Male Adult Representative	Re-appointment, pursuant to Sec.43(8)
3.	Elosy Kendi	Female Youth Representative	Re-appointment, pursuant to Sec.43(8)
4.	Lucy Nkirote Mbobua	Female Adult Representative	Re-appointment, pursuant to Sec.43(8)

- | | | | | |
|----|---------------------|---------|--|---------------------------------------|
| 5. | Joshua Mwarania | Murithi | Representative of Persons Living with Disability | Re-appointment, pursuant to Sec.43(8) |
| 6. | Leslie Muthamia | Murithi | Nominee of the Constituency Office (Male) | Re-appointment, pursuant to Sec.43(8) |
| 7. | Mary Gacheri Mwathe | | Nominee of the Constituency Office (Female) | Re-appointment, pursuant to Sec.43(8) |

Hon. Speaker, this is straightforward Motion. Some of these constituencies have been repeated. This is because some Members of Parliament raised the issue that some of the persons whose names had been published were not nominated properly in their constituencies. I asked the CDF Board to make corrections. I even asked Hon. Chepkut to talk to the Board Chair, who is responsible for committees and harmonise the membership of their constituencies.

Similarly, Buuri Constituency has a problem and that is why it is also repeated. In this occasion, I hope everything has been sorted. It is in order.

Therefore, I beg to move and ask Hon. Tandaza Sawa to second.

Hon. Speaker: The Member for Matuga, you have the Floor.

Hon. Tandaza Kassim (Matuga, ANC): Asante sana Mhe. Spika. Jambo hili, kama vile tulivyozungumzia, ni la uwazi. Sisi kama waheshimiwa, tuko kama vinara wa CDF. We are only patrons. Kazi yote hufanyika kupitia hizi kamati.

Ninaunga mkono. Ninaomba sisi sote tuiptishe Hoja hii. Hata zile pesa tulizozungumzia zikitoka kwenye Hazina ya Taifa ikiwa bado Kamati kwenye sehemu za uwakilishi bungeni hazijakuwa tayari, wananchi hawatanufaika.

Kwa hayo machache, ninaiunga mkono Hoja hii.

(Question proposed)

(Question put and agreed to)

APPROVAL OF AGREEMENT ON AVOIDANCE OF DOUBLE
TAXATION BETWEEN KENYA AND MAURITIUS

Hon. Speaker: Chairperson of Departmental Committee on Finance and National Planning, Hon. Wanga.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Hon. Speaker, I beg to move:

THAT, this House adopts the Report of the Departmental Committee on Finance and National Planning on its consideration of the Agreement for the Avoidance of Double Taxation between the Government of the Republic of Kenya and the Government of the Republic of Mauritius, laid on the Table of the House on Tuesday, 1st December 2020 and pursuant to the provisions of section 8 (4) of the Treaty Making and Ratification Act, 2012 approves the

Agreement for the Avoidance of Double Taxation between the Government of the Republic of Kenya and the Government of the Republic of Mauritius.

Hon. Speaker, just for the record, in the exercise of the powers conferred by Section 41 of the Income Tax Act, the Cabinet Secretary (CS) for National Treasury and Planning published a notice specifying the Agreement for the avoidance of double taxation between the Government of the Republic of Kenya and the Government of the Republic of Mauritius via Legal Notice No.114 on 30th June of 2020. The Notice was submitted to the Clerk of the National Assembly on 7th July 2020 and tabled before the House on 15th July 2020 and subsequently referred that Notice to us.

Hon. Speaker, currently, there is no agreement on avoidance of double on taxation between Kenya and Mauritius. This is done because there is a need to have a legal framework for the administration on avoidance of double on taxation with regard to Kenyan citizens living, doing business and working in Mauritius and Mauritian citizens living and doing business in Kenya. The Government of Kenya has several double taxation agreements with countries such as Canada, Denmark, France, Germany, India, Korea, Qatar, among others. There are several others that are under consideration. Some are also signed, but not in force such as the one, we have signed with the East African Community.

Hon. Speaker, more often than not, these agreements have not found their way to Parliament. In fact, this particular Agreement only found its way to Parliament, after the Tax Justice Network went to court and made their plea in court that the National Assembly had not considered this Agreement. That is when the court ruled that the Agreement should come and that is when it was brought. When it is brought - and one of the issues we are raising- it is brought under the Statutory Instruments Act. Therefore, even when we held public participation and listened to various stakeholders, we were not able to make any changes. This was because the Agreement is signed, by the time it is coming to the House. Therefore, this is one of the recommendations we will be making- so that our engagement is not in vain because when we engage and we listen - and we are talking about various taxes and taxation rates - the House should be able to make an input rather than just either agree with or annul as per the Statutory Instruments Act. Therefore, one of the things that we are saying is, we should amend the law so that these agreements come under the Treaty Making and Ratification Act. This is so that they are dealt, looked at and can be reviewed by Parliament, rather than just looking at the agreement and either agreeing with it or not agreeing with it.

Hon. Speaker, therefore, we were really in a catch 22 situation because if there were any issues that were raised, for example, by the stakeholders in public participation, we told them that. While on some of them, we might agree with you, but at the end of the day, we have to weigh whether it is worth annulling the Agreement in totality or we hear you, but there is no change we can make. Therefore, one of the recommendations moving forward is these double taxation agreements- as they continue to come to the House- should be under the Treaty Making and Ratification Act. This is so that we can look at them, change whatever we would like to change before they go for final signing.

Therefore, there are many sections of this Agreement providing for taxation regarding income from immovable property, enterprises and taxation on dividends. For example, it provides that dividends paid by a company, which is resident, say in Kenya, to a resident other than that of the contracting State, which could be Mauritius, if you are taxed in Mauritius you could be taxed in Kenya, but at a capped rate. Additionally, those rates are capped within the Agreement. Taxation of royalties and taxation of technical fees... How do we treat our lecturers

and professors either from Mauritius teaching here or from here teaching in Mauritius or students from Kenya working in Mauritius or from Mauritius working in Kenya or learning in Kenya and have some small income? How do we treat taxation?

Hon. Speaker, during public participation some of the issues that the Tax Justice Network raised... They submitted that Parliament needs to scrutinise double taxation agreements as they sometimes present the following challenges:

- (a) It constrains national sovereignty since it overrides the domestic tax laws.
- (b) It gives away rights to tax foreign companies within Kenya.
- (c) It does not protect Kenyans

These were the views presented by the Tax Justice Network. They also said there is lack of sufficient data to tell us whether there is an actual benefit the country derives from these double taxation agreements. Is it that we are benefiting anything? At the end of the day, apart from just good political and diplomatic relations, is there real benefit? They have urged that there could be actually real danger of loss of revenue through exemptions. Various exemptions could lead to loss of revenue. Foreign companies are likely to abuse the treaty by using loopholes to avoid paying taxes in Kenya. If you know there is a double taxation agreement here, rather than register your company here you go and register it in Mauritius, even though you are Kenyan so that you can benefit from exemptions in these double taxation agreements. These are some of the things that, if we have an opportunity as a House to thoroughly scrutinise those agreements, then we can only go with what is in the best interest of the country, rather than just some people negotiating somewhere and then signing the agreement and putting the country into these huge obligations, sometimes without necessary public participation. Therefore, even as we pass this Agreement, we would like to urge that looking at future agreements, Parliament should have a primary role and not just a passive role under the Statutory Instruments Act.

Hon. Speaker, having examined this Agreement for avoidance of double taxation, the Committee, despite the concerns we have already raised, we recommend the House approves the notice as published. However, the future double taxation agreements follow a better path so that Kenyans feel protected sufficiently.

Hon. Speaker, with those many remarks, I beg to move and ask my Vice-Chairperson, the Hon. Member for the “royal suburbs”, Hon. Isaac Ndirangu Waihenya to second.

Hon. Speaker: Member for Roysambu. The English men called it the Royal Suburbs, but the Africans after Independence called it the Roysambu.

Hon. Isaac Ndirangu (Roysambu, JP): That is true Hon. Speaker. Roysambu is a corruption of Royal Suburbs, which we accept.

Hon. Speaker, thank you very much for this opportunity. I also wish to second the adoption of this Report by informing the House that agreements on avoidance of double taxation are tax treaties created to make favorable taxation policies affecting the people and the citizens of Mauritius who are doing business or working in Kenya, and Kenyans operating business or working in Mauritius. The policies involved affect trade between both our nations in matters of employment, human resources, repatriation of profits and non-discrimination of business and trade.

Hon. Speaker this agreement encourages tax compliance by residents of both counties. It also eliminates double taxation on the residents of both countries. The truth is that it also discourages tax evasion and tax avoidance by citizens of Mauritius operating in Kenya and of citizens of Kenya operating in Mauritius sometimes as business people, as expatriates and some as diplomats.

Hon. Speaker this is like a list of tariffs or agreements on what tariffs will be put on goods, services and human resources requirements of citizens of this two countries. Among the Articles that have been provided is Article 7 which covers business profits. We also have articles which provide on how profits of an enterprise from the operations or rental of ships, aircrafts and international traffic shall be taxed. It also provides how and the rate of taxation on dividends in Kenya and in Mauritius. It also provides how income derived by residents from the contracting states will be charged ranging from accountants, IT specialists, lawyers, quantity surveyors, architects, sportsmen, diplomats and even surveyors. Hon speaker, it also touches on requirements for distinguished services and human resources like Professors, teachers and specialists.

This agreement reaffirms and makes further commitments to the cooperation, political and economic that subsists between our two countries. This agreement was signed on 10th April 2019 when his Excellency the President made a state visit to Mauritius, had a political and economic negotiation with the President of the republic of Mauritius. When he came back, key stakeholders of this country were called upon by the National Treasury, the Ministry of Foreign Affairs, Kenya Revenue Authority (KRA) and the office of the Attorney General. That is when our country developed the protocols to amend the specific Articles of this agreement. Hon. Speaker, I invite this House to support the adoption of this Report.

With those few remarks, I beg to second.

(Question proposed)

Hon. Speaker: Hon Kimunya you want to speak to this?

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon speaker. Let me start by commending the Departmental Committee on Finance and Planning for the wonderful job they have done in considering this Double Taxation Agreement or the double taxation avoidance agreement between our great Republic and the Republic of Mauritius. It has been a long journey. It started in 2012 and was ratified, but then the ratification was challenged. At least, we are now doing it the right way.

In between 2012 and now a lot of business opportunities have been lost because when you look at even from the United Nations Conference on Trade and Developments (UNCTAD) reports of 2018, it recognised Kenya. The world trade that has grown exponentially between countries and Kenya has not been left behind. If you look within the region and Mauritius is within the Common Market for Eastern and Southern Africa (COMESA), Kenya has been a major player in facilitating trade. Mauritius took a strategic decision within its forward plan to become the financial capital to the region and hence most of the businesses have ended up getting into Mauritius, but are trading with Kenya, including Kenyan companies.

There are big names, we know of some of the banks and big insurance companies in this country are actually having their headquarters in Mauritius strategically because Mauritius created that environment for being a business hub that facilitates people to lease there, do business and access global finance from within Mauritius. Unfortunately, because of being in the two places people have been suffering the double taxation. So, you are taxed in Mauritius because you are registered there and you are also taxed in Kenya because you are doing business in Kenya. This agreement was meant to resolve that problem.

There are several such agreements within the different countries such as the UK, US with several countries where there is voluminous business and investments flows between the two

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countries. So, if you look at the Intra-African exports from Kenya, as of 2019, we were talking about Ksh5 billion worth which is something to think of. Now between Kenya and Mauritius once we ratify this agreement it is not only going to save people who are operating in Kenya, but are residents in Mauritius. They will also attract some of the business in Mauritius that can now be resident in Kenya, to trade in Kenya because they know they will only suffer lesser of the two.

There is a capping formulae that is agreed upon and it basically says you choose which tax regime to pay for which is your primary tax regime. You pay that and in the other country you can only pay a little, you do not end up suffering the impact of double taxation. So, I believe that this is a positive thing and I agree with the Chair of Finance Committee that, this should have been brought within the framework of ratification of treaties between countries rather than the way it is coming. This is because, it is an international agreement for all intents and purposes. It is not just a matter of regularising the regulations; it also has the gravitas. Kenya has also been on the forefront. As much as we do not want to keep referring to the BBI Report, but at least, this House knows the content because we tabled the report here.

One of the provisions within that is anchoring it into the Constitution as Kenyans are committed to regional trade and integration. This is part of that regional integration and so we are not only saying, but walking the talk that within the East African Community (EAC) and the COMESA we have a common market, going beyond and even within Africa. Going beyond those common market protocols, now we also are saying that between the two countries, we are recognising that our citizens and our businesses operating within those two countries will be insulated from double taxation. I think this is a good move. We support it and hope it will send a signal to investors in both countries that Kenya is the place to do business.

Like I said the day before yesterday, on the Floor of this House, and the President alluded to this in his State of the Nation Address, Kenya is currently ranked number 56 in terms of doing business globally. There is an intention of moving to top 30 by 2022. Mauritius and Rwanda went that route. The more we go higher in ranking, the easier it is to do business. This is because there is no corruption in the country and all parameters that ease the cost of doing business are met.

We will then attract foreign direct invest which is required to create jobs in this country, so that our hardworking youth or population, who are highly educated and recognised on a global basis; can move from manual work to leaping the benefits of why they went to school and the skills they have developed. This is by working not just in Kenya, but within the region because they are exposed to regional integration.

With those few remarks, once again I thank the Departmental Committee because they are doing a super job. I want to single out their Chair who is not exactly finance oriented, but has been talking more finance than people who are trained in finance. Congratulations Hon. Wanga. I think you have done a super job in that Committee. It shows leadership is not just about the technical knowledge of the subject matter. It is about leading the people to extract the expertise in the Committee and share it with the rest of the House.

I beg to support.

Hon. T. J. Kajwang' (Ruaraka, ODM): On a point of order, Hon. Speaker

Hon. Speaker: Let us have the Member for Ruaraka.

Hon. T. J. Kajwang' (Ruaraka, ODM): Hon. Speaker, I am rising to ask if it would be in order for the Mover of this Motion to be called upon to respond. This Report has been with us and the Committee has considered it anxiously. It has been explained fairly well by the Leader of the Majority Party.

You know the Leader of the Majority was in office when this Report began. I do not think there is any authority other than him being able to explain it to us as it is. You know it was hard to believe him when he was in office. This is because then he doubled as a Member of the House and elsewhere. But now he is here with us and is leading the Government. So, we want to trust that he has the best interest of this House.

The most important thing as I have heard from the deliberations on this Motion, it seems to me that we are just creating a procedure. So, future involvements can come to us through the Act rather than statutory instruments. When this happens, we will respond accordingly.

Hon. Speaker, I know it is you who faithfully knows the mood of the House. But the mood of the House must also look at the business before us and the line is still long. Unless there is a Member who has done a lot of research and is able to give us more information than we have. I respectfully submit that you ask the Mover to respond.

Hon. Speaker: It looks like there are a number of Members who want to speak. If I go by the request before me the one who is first is the Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Speaker. Let me take this opportunity to congratulate the Departmental Committee on Finance and National Planning for the wonderful job they have done by dissecting the agreement to avoid double taxation.

I sit in the Departmental Committee of Trade, Industry and Cooperatives. Last week on Friday, the Ministry took us through the various bilateral trade agreements they are discussing with various countries and trading blocs. One of the issues that came out very clear is the issue of taxation regime. There is a perception all over the world that taxation regime in Kenya is too high. So, consequently there must be mechanisms. There could be a reason why many of the trading partners are including the issue of taxation as part of their agreement.

I know we are just about to conclude the discussion with the United Kingdom on Economic Partnership Agreement (EPA) dealing with various issues. I believe as a policy issue, the Departmental Committee on Finance and National Planning needs to look at the issue of taxation so that we are not disadvantaged in the global market. Generally, Kenyans are fairly educated and we export a massive amount of labour, skilled and unskilled to various parts of the world.

It is important, therefore, that a succession regime is put in place to avoid a situation where you are taxed where you work and when you come back here as you file your tax returns you are asked to pay taxes again. This happened to me sometimes in 2010 when I was a lecturer in Rwanda and probably that is one of the reasons why I left. There is a genuine concern outside there that these kinds of agreements probably provide room for unscrupulous Kenyans to repatriate money to tax havens. We just hope and pray that in as much as it is important for this country, it will not be abused to hide money and avoid paying taxes, yet the country as we stand today is leaning against inadequate revenue.

As I conclude, it is important to also note that Kenya as a trading bloc and strong trading country in the region is starting to face challenges which are inborn. We must address these challenges, otherwise we will lose our exalted position as the premium trading partner or bloc in the East Africa and African region.

Hon. Speaker, with those few remarks, I support.

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

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Speaker. I want to ask Hon. T.J. Kajwang, my very good friend, that when he sees Hon. Millie, you and I seated here are on matters we have researched. So we really want to add value, therefore, do not gag us.

What is double taxation? Double taxation in layman's language is levying of tax by two different jurisdictions or countries. In this case we are talking about income tax, capital tax and cess tax. The meaning of double taxation is when countries engage each other. The principle benefit to those two nations is to discourage or not threaten any cross border trade between them. Also, to allow the free flow of international trade and investment since this is the core.

For most countries to increase international trade and investment they want to reduce or avoid internal double taxation on income, property or assets. An exemption from tax payment or reduced tax on respective payments is why you introduce double taxation, or some incomes are being taxed by two different countries. I do not agree, unless we amend the Ratification Act, as of now, which is domiciled at the Ministry of Foreign Affairs and since, we are dealing with matters of finance and taxation which are under the National Treasury...

This is not that easy unless an amendment is done to the principal Act. Let us be very honest, we have serious tax regimes within the East African Community, the common East Africa tariffs. The question that this House must ask itself is: Has this been implemented? Is this working in favour of our business people in our companies? For example, unilaterally, Tanzania does not allow some Kenyan companies to operate. Farmers' Choice is one of them and many others.

How do they deal with this? They bring other difficult, anti-business, internal regulations to that country, but at the top of it we have the East African Community (EAC) common tariffs. Before we even do with Mauritius and other countries, we need first to see how we are faring within the tax regime of the EAC and the tax regime within the COMESA. It is very sad and Kenyans will agree with me that in terms of budget, business and investment, Kenya is a big brother within the region. By offering and having a common tariff within our neighbours, Kenya should have gained. Go to Namanga here and count the trucks that are coming from Tanzania and compare them with the trucks that are leaving Kenya crossing the border. That itself will tell you that the environment is more attractive for Kenya.

Finally, sometime double taxation is signed between countries to favour one or two big corporations where maybe certain people have an interest. When we do double taxation, it should cover across the board, but you do not just form a double taxation because certain people somewhere have an interest on a business between the two countries. I think the Departmental Committee on Finance and National Planning will need to find out. That is why they said we need to go into detail and look at the reasons that are making...

Hon. Speaker: Next is the Member for Suba North.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker, for giving me the opportunity. I congratulate the Departmental Committee on Finance and National Planning for this.

I will not focus a lot on the contents of the agreement. I think the Chair of the Committee has talked at length about them and I have them here in terms of the scope and issues that are covered. The former Leader of the Majority Party also spoke at length about the benefits. So, I am not going to go to that. I just want to speak to the legal regime that ought to have been used. When the Chair of the Departmental Committee on Finance and National Planning was moving it, she made reference to the fact that the Tax Justice had gone to court and the court had directed that this matter be brought to Parliament. When I actually look at the documentation, what we

have that has been brought to us, that is why it is actually under statutory instruments, is Legal Notice No. 114. What it then does is basically to get Parliament to approve the subsidiary legislation pertaining to the agreement.

My worry is that the court did not make a direction on subsidiary legislation. The court made a direction in relation to the treaty. Section 3 of the Treaty Making and Ratification Act talks about the application. It says:

- (1) “This Act applies to treaties which are concluded by Kenya after the commencement of this Act.
- (2) This Act shall apply to -
 - (a) multilateral treaties;
 - (b) bilateral treaties which deal with -
 - (i) the security of Kenya, its sovereignty, independence, unity or territorial integrity;
 - (ii) the rights and duties of citizens of Kenya;”

Hon. Speaker, if you actually look at it from a very narrow perspective, then you would say that this agreement may be excluded maybe for somebody who wants to look at the word “tax” or “finance” or such wording. However, if you look at (b) which talks about rights and duties of Kenyans, then it actually falls within the framework of the Treaty Making and Ratification Act. So, what should be before this House is not this document that has been brought to us. What should be here, based on the decision by the court, is actually the treaty itself so that Parliament gives approval before the Government of Kenya agrees. I am glad the Chair of the Departmental Committee on Finance and National Planning is here.

We need to actually have a meeting with the relevant Ministries and inform them that any further agreements that they go through, so long as it touches on the issue of rights and duties of Kenyans – and there are so many fiscal responsibilities that are expected of Kenyans in the Constitution and there are many rights of Kenyans that touch on this, including the right to non-discrimination through double taxation – it actually falls squarely under the Treaty Making and Ratification Act. If this team that went to court were to go to court again, then we are likely to see the ratification coming back. This is because what I believe the court was saying in essence is that the process of ratification that the Government of Kenya went through was flawed. Since we have this law, the Government must now do things the right way.

I am the one who sponsored the Treaty Making and Ratification Act. It was at a time that is very similar to BBI here. We had people who were opposing the Constitution by saying that there were provisions that took away the legislative power of Parliament. So, we brought the legislative power of treaty making back to Parliament. What we are having now are people who are not used to that who are now using shortcuts to do treaties without the involvement of Parliament. We have formed a dual approach now that treaty making in Kenya must now come to Parliament. I think all the relevant departments and Ministries ought to be informed. With that, I reserve whether I am supporting or not because I think we have a flawed system. In principle, I support the treaty, but the process is flawed. I thank you.

Hon. Speaker: Member for Molo.

Hon. Kuria Kimani (Molo, JP): Thank you, Hon. Speaker, for giving me this opportunity to contribute to this Motion. At the outset, I would like to congratulate my Chair, the Chair of the Departmental Committee on Finance and National Planning, for having led us through this very good process.

This agreement was first of all signed on 7th May 2012 and that is the first time His Excellency the President signed this agreement. It has taken a cool eight years for it to come to Parliament so that it can be effected. What does that mean to the eight years that it has taken for this process to go through? There is a concept called the value of time. So, any business decisions that someone needed to make by virtue of this agreement means that they are eight years late. Eight years of doing business is so long that if there were particular entities that, for example, had seen some potential in some particular industry in Kenya, then they most likely would have already pulled off. How have we found ourselves in such a situation? Despite us having legal experts in every Ministry and state department, we still find a lot of these errors happening and a lot of these treaties being signed without the ratification of Parliament. It is very sad that it has to take intervention of the civil society and our courts so that the correct procedure is followed and consequently wasting eight years of having the potential to do business.

Hon. Duale could not have put it any better about the importance of double taxation. One of the challenges we have as the Departmental Committee on Finance and National Planning, and we are seriously deliberating on how to bring a solution to this, is that we also have double taxation in our own country. For example, you pay Income Tax, Corporation Tax for our companies and recently we introduced a minimum tax that is supposed to take effect next year. As a result, it is confusing the tax regime in this country and makes Kenya unfavourable to do business in terms of our taxation.

I took some time to find out why Mauritius is one of the countries in the world that has signed the greatest number of such treaties in the world. So, what has Mauritius done that is very different from us? They have realised that increasing their taxation does not necessarily mean that they get more revenue. It is said that Mauritius has the most generous tax regimes with only 15 per cent Corporate Tax and 15 per cent Income Tax. The companies that think of locating here in Kenya would rather go and domicile themselves in Mauritius because of the very good tax regimes there. They would then come to do business in Kenya as subsidiaries. Consequently, although we benefit from them doing business here, we have already signed a treaty saying that we cannot double-tax them. So, who are the real beneficiaries? The real jobs that should have stayed here in Kenya are going to Mauritius. Despite how many treaties we sign, this particular one is more beneficial to Mauritius than it is to Kenyans. We do not have an option. If we do not do this, those companies would rather go and operate in Mauritius than in Kenya.

We need to make deliberate decisions on how to simplify our tax regime. We should make sure that we have a one-stop tax system so that collection of taxes happens once, consequently making it easier for companies to do business. I also note that Mauritius is said to have the best infrastructure in Africa. Here in Kenya, we are making great steps, but as long as we do not connect our villages - our Njoro-Molo Road remains unfixed and other inter-country roads remain terrible - we may not get to benefit. We should look forward to ratifying such agreements where Kenya is a bigger beneficiary.

I support.

Hon. Speaker: Hon. Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM-K): Hon. Speaker, let me also join my colleagues in thanking the Committee for this important Motion more so on the issue relating to double taxation. We have said it here that taxation is a good evil. This is because for a country to develop, you must tax. So, it even gets worse when it is double taxation. Any time you tax, you either increase the price of a good or you increase the cost of production through Value Added

Tax and such other taxes. When we have agreements where we avoid double taxation, it means that the country becomes attractive to investors, be they local or foreign.

As I listened to my colleague from Molo talking about Mauritius, I realised that the more attractive you make your country by having a favourable tax regime, the more you attract investors. That is why we are saying that through this Motion, we can easily make our country as attractive as Mauritius. When an investor wants to decide whether to invest in Kenya or Mauritius, the first thing they would look at is the tax regime. The next thing that is considered is infrastructure. You and I, Hon. Speaker, have been to Mauritius. You know the kind of infrastructure that exists in that country.

The other thing is what the Leader of the Majority Party was talking about, that is, ease to do business. Kenya used to rank 80, but now we rank 56. Rwanda, our neighbour, ranks 32. If I have money and I want to invest, I will look at the ease of doing business index. If I find Rwanda is more favourable than Kenya, obviously, I will go to Rwanda before I come to Kenya. That is why this agreement is very important to our country. We need to put Kenya at a place where any investor who wants to invest will always be attracted to invest in Kenya. We might not be able to reach Mauritius for now as it is ranked first or second in terms of ease of doing business.

I support this Motion so that we start putting our country on the right track in terms of ensuring that double taxation is avoided as much as possible. That way, we will attract investors to come to Kenya.

Hon. Speaker: What is your point of order, Hon. Pukose?

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, I rise on Standing Order 95. Since most of the Members who have spoken are in agreement that we should avoid double taxation, could I request that the Mover be now called upon to reply?

Hon. Speaker: Is that the mood of the House?

Hon. Members: Yes!

Hon. Speaker: So, we should not hear the Member for Kitui South.

(Loud consultations)

The Member for Kitui South has indicated a concurrence. Therefore, since that is the mood of the House, I put the Question.

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

Hon. (Ms.) Gladys Wanga (Homa Bay, ODM): Hon. Speaker, I would like to thank Members for their very useful contributions to this Motion. Most of the Members have spoken to our competitiveness as a country and an investment destination. They have spoken about how our tax regime supports all that. As a Committee dealing with finance, we will endeavour to ensure that even as we introduce new taxes or adjust our taxation regime, we adhere to making Kenya the most attractive investment destination in the region. I thank Members for their kind remarks.

I beg to reply.

Hon. Speaker: Hon. Members, I would have, obviously and naturally proceeded to put the Question, but looking at the House... I want to find out from the Sergeant-at-Arms whether or not we have quorum for me to put the Question on this Motion.

Hon. Members: We have no quorum.

Hon. Speaker: We do not have quorum. So, the Question will be put on such other occasion when we have quorum.

(Putting of the Question deferred)

CONSIDERATION OF PUBLIC PETITION
ON A RESOLUTION OF THE HOUSE

THAT, this House adopts the Report of the Committee on Implementation on its consideration of the Public Petition on Reconsideration of a Resolution of the House on the Report on the Crisis facing the Sugar Industry in Kenya, laid on the Table of House on Wednesday, 5th August 2020.

Hon. Speaker: As I had indicated earlier, the Chairperson, Hon. ole Kenta Moitalel telephoned me from Nakuru before the House sat at 2.30 p.m. to indicate his unavailability to move this Motion. He claimed that he got to know about it very late in the day. He requested, which request I acceded to, that we take out this business from the Order Paper. So, it is accordingly ordered that this business be taken out of the Order Paper for today.

(Motion Deferred)

BILL

Second Reading

THE NATIONAL AVIATION MANAGEMENT BILL

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

Hon. Speaker: What is your point of order now, Hon. Pukose?

Hon. (Dr.) Robert Pukose (Endebess, JP): Hon. Speaker, without anticipating debate on this Bill, I ask that we need to have quorum. This is an important Bill. It speaks on issues of Kenya Airways, which is a strategic national asset. It is important that Kenyans are clearly briefed and Members are able to debate this issue. Under Standing Order 35, we need to have quorum for us to debate this Bill adequately. I am, therefore, asking that we have quorum.

Hon. Speaker: Hon. T.J Kajwang', are you also on a point of order?

Hon. T.J Kajwang' (Ruaraka, ODM): Hon. Speaker, this thing about quorum is the easiest way when a Member wants to either get this House to move in a certain manner or even for filibustering. It is an old concept that we now know very well. When Members want the House to skip certain business, they raise a quorum issue.

However, quorum, according to the Constitution and Standing Orders, is only as necessary as when the Speaker puts the Question. We cannot stop the business of this House because we are 49 people. Business is transacted when the Question is put.

We have previously passed a Motion that says Bills will attract three hours. I do not know, I may be mistaken, but it is three hours. The Speaker knows this. We are not going to stop the debate until the end of the three hours that have been given to Members to ventilate as much as they can. We have been sitting here since 2.30 p.m. and then when we now have the real

business that we came here for, we are being told that we need to go home. Yes, let us go home, but going home will not help us pass businesses unless we are able to take these things head on. I think that is a flippant thing. Let us continue with the business before us.

Hon. Speaker: Hon. (Ms.) Gladys Wanga, do you also want to weigh in? I only hope that you people look at your Standing Orders.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Yes, Hon. Speaker. I know what the Standing Orders say on the matter on quorum but I just wanted to say that we have just concluded some very important business just as we are. Lack of quorum did not stop us from debating and expressing ourselves on this matter.

Hon. Pukose is a ranking Member of this House. Somebody once told me that it is not expected that ranking Members rise under this particular Standing Order. The Standing Order is left to others, but not ranking Members like Hon. Pukose because it is meant for filibustering. I think he only rose on it in the elementary stages. I rose on it once in 2014 when Hon. Aden Duale had spoken to me. I have never risen on it again because we need to transact business. Even if you stall this business today, we will debate it tomorrow and the House will make a decision either way. So, stalling it is only a waste of the time of this House.

I thank you.

Hon. Speaker: Well. Let me, for avoidance of doubt, just read to you Standing Order No.35. The subheading is “Quorum during proceedings of the House.” The Standing Order says as follows:

“(1) If at any time after the chair is taken, or when the House is in Committee, a Member objects that there is not a quorum present, the Speaker or the Chairperson shall count the Members in the House or the Committee as the case may be.

(2) If on the count under paragraph (1) a quorum does not appear to be present, the Speaker or the Chairperson shall cause the Division Bell to be rung as on a Division, and if no quorum is present at the expiration of the ten minutes –

(a) If the Speaker is in the Chair, the Speaker shall adjourn the House until the next sitting without Question put; and,

(b) If the House is in the Committee, the Chairperson shall leave the Chair and report the fact to the Speaker, who shall adjourn the House until the next sitting without Question put.”

Hon. Pukose rose in his place and claimed that there is no quorum. We just confirmed in the previous business. So, even in any other business, if you want to rise and claim that there is no quorum, you are perfectly in order. If you do not draw the attention of the Speaker that there is no quorum present, the Speaker has no business being the one to make the decision about quorum.

Let me order that the bell be rung for 10 minutes. Ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

Order Members! Let us take our seats.

Hon. Members, before I make the next announcement, I want to announce that pursuant to the provisions of Standing Order No.28(3) relating to the Calendar of the National Assembly, I notify that upon the rise of the House today, at the appointed time or any time earlier:

(i) regular sittings of the House will resume on Tuesday, 9th February 2021 at 2.30 p.m.; and

(ii) sittings of Committees will adjourn on Friday, 11th December 2020 and resume on Monday, 1st February 2021 with the exceptions that I have already granted to the Departmental Committee on Finance and National Planning and the Select Committee on the National Government Constituencies Development Fund (NG-CDF).

ADJOURNMENT

Hon. Speaker: Hon. Members, the time being 6.47 p.m., and after ringing the Quorum Bell for 10 minutes, we have only been able to realise a membership of 29. Therefore, we do not have the requisite quorum as stipulated in the Constitution. This House, therefore, stands adjourned until Tuesday, 9th February 2021 at 2.30 p.m.

The House rose at 6.47 p.m.