

**PARLIAMENT OF KENYA**  
**THE NATIONAL ASSEMBLY**

**THE HANSARD**

Thursday, 11<sup>th</sup> February 2021

The House met at 7.00 p.m.

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

PRAYERS

QUORUM

**Hon. Speaker:** Can you ring the Division Bell for quorum.

*(The Quorum Bell was rung)*

**Hon. Speaker:** We can now start.

**COMMUNICATION FROM THE CHAIR**

SUSPENSION OF COMMITTEE ACTIVITIES DURING CONSIDERATION OF THE  
CONSTITUTION OF KENYA (AMENDMENT) BILL, 2020

**Hon. Speaker:** Hon. Members, I wish to make this Communication. As you may recall, I recently guided the House with respect to the expected expeditious consideration of a Bill introduced in the House, pursuant to the provisions of Article 257 of the Constitution which deals with amendment of the Constitution by popular initiative. The House is also aware that the Constitution of Kenya (Amendment) Bill 2020, promoted by the Building Bridges Initiative (BBI) is currently undergoing public participation before the Departmental Committee on Justice and Legal Affairs and the Senate Standing Committee on Justice, Legal Affairs and Human Rights. The Committees are expected to report to the respective Houses on or before Tuesday, 23<sup>rd</sup> March, 2021.

Hon. Members, in keeping with the requirements of Article 257(7) of the Constitution, the House Business Committee has prioritised the Bill to be considered immediately upon resumption of the House. In this regard, the Bill is scheduled to undergo consideration in Second Reading, Committee of the Whole House and Third Reading immediately the House resumes from the short recess, so that the process may be concluded by Saturday, 27<sup>th</sup> March, 2021.

Hon. Members, it is important to note that this is the very first time this House is dealing with a Bill of this kind. Further, Article 257(8) of the Constitution provides:

“(8). A Bill under this Article is passed by Parliament if supported by a majority of the Members of each House”

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Hon. Members, this requirement places emphasis on the need for participation of all Members in the consideration of a Bill proposing to amend the Constitution by popular initiative. In this regard, and in order to accord the Constitution of Kenya (Amendment) Bill, 2020 the necessary time and attention, particularly in view of the provision of Article 257(7) of the Constitution, during its meeting held on Tuesday, 9<sup>th</sup> March 2021, the House Business Committee resolved that any committee sittings and activities scheduled to be held during the period of the consideration of the Bill in the House, are held within the precincts of Parliament.

To this end, this is to notify all the Members and committee leaderships that no committee sittings or and activities will be held outside the precincts of Parliament during the consideration of the Constitution of Kenya (Amendment) Bill 2020, promoted by the BBI, which is expected to be concluded at the end of the month of March, 2021. I also direct the Clerk of the National Assembly to ensure compliance with this directive.

The House is accordingly guided.

I thank You.

Member for Kitui, please, take your seat. You can take the seat next to you, the Member for Gilgil.

### PETITION

#### REMOVAL OF MS. TABITHA MUTEMI AS A MEMBER OF THE MEDIA COUNCIL OF KENYA

Hon. Members, Standing Order No.225(2)(b) requires the Speaker to report to the House any petition other than those presented through a Member. I, therefore, wish to convey to the House that my Office has received a Petition regarding the removal of Ms. Tabitha Mutemi as a member of the Media Council of Kenya (MCK).

The Petition is signed by Muriuki Muriungi, Advocate, on behalf of KMK Africa Law Advocates of P.O Box 51957-00100 Nairobi, stating that Ms. Tabitha Mutemi has acted in gross misconduct and in breach of the Constitution and several other laws of the Republic by holding two public offices. The Petitioner contends that Ms. Mutemi has, *inter alia*, violated the following provisions of the Constitution and written law:

1. Article 77(1) of the Constitution, which restricts fulltime State officers from participating in any other gainful employment, by knowingly serving as a member of the Media Council of Kenya, while at the same time being a fulltime employee of the Independent Electoral and Boundaries Commission (IEBC), as the Manager for Corporate Communications;
2. Article 201(d) of the Constitution regarding prudent and responsible use of public funds by allegedly drawing emoluments, both as a member of the MCK and an employee of the IEBC, amounting to wastage of public funds;
3. Section 2(1)(b) of the Fourth Schedule to the IEBC Act, which provides that members and staff of the Commission shall not, during the tenure of office, be eligible for appointment to another public office, by knowingly taking up appointment as a member of the MCK Board, while on fulltime employment at the IEBC; and,
4. Section 26(2) of the Leadership and Integrity Act, which restricts fulltime State officers from participating in any other gainful employment.

The Petitioner further claims that Ms. Tabitha Mutemi acted in gross misconduct and insubordination by her failure to adhere to lawful directions and advisory by her superiors and appointing authority. In particular, the Petitioner cites disregard for the advisory of the Attorney-General and the Principal Secretary in the Ministry of ICT, Innovation and Youth Affairs, to the effect that it was not tenable for her to lawfully hold two State or public offices, as she ought to have relinquished either her membership to the MCK or employment with the IEBC.

In this regard, the Petitioner, therefore, prays that the National Assembly considers the Petition and:

1. resolves that the Petition discloses grounds for the removal of Ms. Tabitha Mutemi as a member of the MCK provided for under Section 14 of the Media Council Act; and,
2. recommends to the Cabinet Secretary for ICT, Innovation and Youth Affairs to appoint a tribunal to investigate Ms. Tabitha Mutemi, in accordance with the provisions of Section 14 of the Media Council Act.

A Petition of this nature is similar to those contemplated to be processed in the manner provided for in Standing Order No.230 regarding Petitions for Removal of a Member of a Commission or a Holder of an Independent Office.

Having determined that the matters raised by the Petitioners are well within the authority of this House, I order that, pursuant to the provisions of Standing Order No.230, this Petition is hereby committed to the Departmental Committee on Communication, Information and Innovation. The Committee should consider the Petition and guide the House by way of a report on whether the Petition satisfies the requirements of Section 14 of the Media Council Act, and any other relevant laws relating to the grounds of removal of a chairperson or member of the MCK.

Section 14(3) of the MCK Act requires the National Assembly to conclude a petition for removal of a member of the council within seven days. However, given that the House will proceed on short recess from tomorrow, the counting of days will commence upon resumption of the House on 23<sup>rd</sup> March 2021.

Finally, I hasten to remind the Committee that the process of removal of a person from office is *quasi-judicial* in nature, hence, calling for judicious attention and moderation. In this regard, I implore the Committee to exhaustively examine each of the grounds and the particulars claimed by the Petitioner with a view to unequivocally determining whether or not the Petition discloses grounds for removal of Ms. Tabitha Mutemi from office.

## BILL

### *Second Reading*

#### THE DIVISION OF REVENUE BILL

*(Hon. Kanini Kega on 11.3.2021 - Afternoon Sitting)*

*(Resumption of Debate interrupted on 11.3.2021 – Afternoon Sitting)*

**Hon. Speaker:** The person I had given a chance to speak had not even commenced. Let us have the Member for North Horr.

**Hon. Chachu Ganya** (North Horr, FAP): Hon. Speaker, I was just preparing to contribute to the next Motion.

**Hon. Speaker:** Very well. The one who follows him is the Member for... There is a point of order which has been raised by Hon. Sabina Chege.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Speaker. I want to rise on a point of order.

**Hon. Speaker:** When you come here and you intend to speak, please, carry your card. Member for Murang'a, you are a very diligent ranking Member of the House. Proceed.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Speaker. My apologies. I rise under Standing Order No.95. Based on the mood of the House, I request that the Mover be called upon to reply to this Bill.

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

**Hon. Members:** Yes!

**Hon. Speaker:** Could the Member for Kangema take his seat, so that we can test this mood? Is that the very mobile Member for Tiaty?

Hon. Members, as you all heard, the Member for Murang'a, Hon. Sabina Chege, who is also called Maitu, among many other names, rose in her place and claimed under Standing Order No.95 that the Mover be called upon to reply.

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

**Hon. Kanini Kega** (Kieni, JP): Thank you so much, Hon. Speaker. I thank Members for their contributions.

I beg to reply.

*(Applause)*

*(Loud consultations)*

*(Several Hon. Members spoke off record)*

*(Several Members stood in their places)*

**Hon. Speaker:** Order Members! Those of you who are making their way into the chamber, take your seats. Members, take your seats!

Hon. Members, you can express yourself in very many ways. However, once you get into the chamber, please, you must observe some order and decorum.

*(Question put and agreed to)*

*(Several Hon. Members spoke off record)*

*(Loud consultations)*

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

**Hon. Speaker:** Hon. Members, you are within your rights to claim for a Division. There is no need for too much cacophony.

*(Several Members stood in their places)*

*(Loud consultations)*

*(Hon. Silvanus Onyiego consulted loudly)*

Is this Hon. Osoro? You have claimed for a Division. The only thing that is required is for the Clerks-at-the-Table to count the Members. They have counted and found that you have the numbers to claim for a Division.

**Hon. Members:** Yes!

**Hon. Speaker:** What is the cause for alarm? You can now relax. We will proceed to the next stage.

*(Loud consultations)*

*(Several Members stood in their places)*

Order Members! We cannot run a House this way. Hon. Members who are on their feet, resume your seats. You claimed for a Division and you got it. So, sit down. There are procedures in this House. I encourage many of you to constantly remind yourselves. Once it has been announced that you have the numbers to claim for a Division, the next thing is to resume your seats, so that we can go to the next stage. The Division Bell will be rung for not more than 10 minutes. There is no need for shouting. You are okay. You are within your rights to claim for a Division. Ring the Division Bell.

*[Division Bell was rung]*

**An. Hon. Member:** Social distance. No (NG-CDF, no business!)

*(Loud consultations)*

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

*(Hon. Members stood in their places)*

Take your seats! Take your seats!

*(Loud consultations)*

Order, Members! Order, Members! Take your seats! It does not really matter. You are all Hon. Members.

**Hon. Members:** Frustrations!

**Hon. Speaker:** I fully understand.

*(Applause)*

Hon. Members, I fully understand. A number of you have explained to me the cause for this very unusual behaviour this late evening. A number of you have requested that I allow you to make some interventions.

*(Loud consultations)*

A number of you have indicated that you make some interventions before you take the vote.

**Hon. Members:** No!

**Hon. Members:** Yes!

**Hon. Speaker:** Hon. Members, whether or not you take the vote, it is up to you.

*(Loud consultations)*

Please, do not push me to use Standing Order No.207. It is not necessary. You are almost getting to the fifth year and you will not get a good name for it; and there is really no need for that. I fully understand why many of you are agitated. Some said they want to ventilate while others said they do not want to.

Let me say one thing about the process we are about to engage in.

*(Hon. Odhiambo-Mabona spoke off record)*

Is that the Member for Suba North?

Hon. Members, you are all aware of the issue of the place or the Division of Revenue Bill in Kenya since 2013 has been a controversial one. Those of you who were in the 11<sup>th</sup> Parliament are aware that this matter was taken by our sister House to the Supreme Court, after this House had passed the then Division of Revenue Bill 2013 without involving the Senate.

At that time, there was an advisory from the Supreme Court which decreed that the Senate must be involved in the processing, if only to comply with the provisions of Article 96 of the Constitution that they participate. So, the Supreme Court affirmed that they needed to participate in the passage of the Division of Revenue Bill. You all know that the Division of Revenue Bill or Act once passed, paves the way for the processing of the County Allocation of Revenue Act in terms of Article 218(1)(b).

Subsequently, you will also recall that in 2019, the issue of the Division of Revenue Bill again found its way to the Supreme Court. I do not know whether many of you are aware of what the court decreed and insisted to stress the point that this advisory opinion must be taken as an order of court. The long and short of the decision was that Parliament, meaning the two Houses, shall not pass an Appropriations Act without first there being a Division of Revenue Act. So, we have to comply with that Supreme Court decision. It is for that reason, I believe, that the Chairman and the entire Budget and Appropriations Committee have been pushing for us to consider this Division of Revenue Bill, so that once we are through with it, it is taken to the Senate, so that they also consider it in good time to allow for the other processes which will kick in the process of releasing funds. But that is for the next financial year. As you know, it is titled Division of Revenue Bill, 2021.

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I am aware the issues that have angered many of you, especially those of you from the 290 constituencies, is failure by the National Treasury of the Republic of Kenya, first to release all the funds for the NG-CDF for the Financial Year 2019/2020.

*(Applause)*

There is a balance.

*(Hon. T.J. Kajwang' spoke off record)*

It amounts to the same thing Hon. T.J. I am informed that there is a balance which has not been remitted. Whatever the reasons, I agree with you that you have reason to demand the funds to be released to the NG-CDF Board for onward transmission to the constituencies that are owed.

More importantly, I am also informed that even for this financial year, which is barely three months away to the end, quite substantial sums of NG-CDF have not been released to the Board. That I understand to be the reason many of you would prefer to do something different from what you normally do in the chamber. I appeal and beseech you not to do that. I am only laying these facts bare. I am not saying you act one way or the other, but it obviously means that if as you desire, from what I have heard, and if you vote in the negative for the Second Reading of the Division of Revenue Bill (National Assembly Bill No.7 of 2021), it means that unless you are again, as a House, through a Special Motion...

*(Loud consultations)*

Many of the people saying that they know... It, therefore, means also that this Bill cannot be introduced again before six months are over.

*(Loud consultations)*

Yet that notwithstanding, Hon. Members are also aware that the National Treasury has submitted Supplementary Estimates or the Budget which is before the Budget and Appropriations Committee. You know you have the power. That is why where you want to exercise it is there. The Supplementary Estimates are with the Budget and Appropriations Committee, which I am informed you intend to request for a Special Sitting to come and consider. It is in that Bill where you need to come and take the action you want to take.

*(Loud consultations)*

I hear some of you saying that you are aware. It is very good when everybody is aware that what you do is likely to lead this or other steps which may include among others, of course, even us having to shut because what is the point of coming for that Special Sitting? Why would you need to come to do the Supplementary?

Hon. Members, my plea to you is to let us not take precipitate action.

*(Loud consultations)*

Hon. Members, I hear you and it is for that reason, and because I was asked by some of you that you wanted to ventilate...

*(Loud consultations)*

Some of you want to ventilate on the matter. Yeah? Do, I allow some of you to...

*(Loud consultations)*

Let me allow the Member for Ugunja, Hon. Wandayi.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker, how I wish my colleague Members would give me a hearing.

*(Loud consultations)*

Hon. Speaker, on the matter of the NG-CDF, we are all in it, but let me just say one or two things.

**Hon. Members:** No!

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Speaker...

*(Loud consultations)*

Given that the cost of this stalemate is the failure of the National Treasury to release the NG-CDF funds, in the circumstances, it would be advisable that we put on hold the vote, but then...

*(Loud consultations)*

**Hon. Members:** No!

**Hon. Opiyo Wandayi** (Ugunja, ODM): Let us give the National Treasury a maximum of say, seven days, to release the funds to the NG-CDF Board, and then we come back to take the vote.

**Hon. Members:** No!

**Hon. Opiyo Wandayi** (Ugunja, ODM): That is the middle ground. The Standing Orders allow Hon. Speaker to postpone the vote on any Motion and, indeed, on any Bill. Therefore, the best route, in my view, is to postpone the vote and allow the National Treasury to release the funds to the Board for us to proceed in the best manner.

Thank you, Hon. Speaker.

**Hon. Members:** No! No! No! We will not allow that.

*(Loud consultations)*

**Hon. Speaker:** Member for Kikuyu.

*(Loud consultations)*

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. As much as there is so much loud consultation...



*(Hon. (Ms.) Fatuma Gedi consulted loudly)*

Hon. Speaker, protect me from the Vice-Chairperson of the Departmental Committee on Administration and National Security.

Hon. Speaker, I have keenly listened to your Communication and advice to the House on this matter. In a very humble way, I want to submit first. I now qualify as an elder of this House given that I am serving my second term and having served in the Parliamentary Powers and Privileges Committee as an elder in the last Parliament.

*(Hon. Korei ole Lemein consulted loudly)*

Hon. Speaker, protect me from the Member for Narok South. I also qualify as an elder. I have experience as the Chairperson emeritus of the Budget and Appropriations Committee. What you have enumerated is, indeed, true. The matter before the House is weighty. As you have said rightly, emotions at this time are quite high.

*(Applause)*

We may rush to make a decision which, of course, may have consequences that are not very good for the country. To begin with, to the people we represent and even our own constituencies. I have listened to the Member for Ugunja who, amidst a lot of noise, was trying to ask the House and you, if the Standing Orders allow us to defer the vote as much as we are in the voting period.

*(Applause)*

This is to ensure that we do not rush into making a decision today that we may also suffer its consequences. What you have said is, indeed, true. The Division of Revenue Bill that will give rise to the Division of Revenue Act is about the vertical division of revenue between the national Government and the county governments. Members are asking themselves why the Treasury wants to give money to the county governments at the expense of the National Government Constituencies Development Fund (NG-CDF). That is a justifiable question. The simple answer is what you have given in your Communication that, without the vertical division of revenue there will be no Appropriation Act to share the national Government sharable revenue, from which the NG-CDF would also benefit. That is why I beg that we soberly relook this issue.

I know our emotions have been raised by things we have said to each other, particularly by the Leader of the Majority Party, Hon. Kimunya. When Members were ventilating on this issue, and you were in the Chamber, Hon. Kimunya walked into the Members' Lobby and threatened Members that he could ask the President to dissolve Parliament.

*(Loud consultations)*

Those were unfortunate sentiments because you do not ask people for support by threatening, coercing or even intimidating them in any manner. It is by talking to people that you persuade them with reasons.

I want to use reason, just as you have done, to tell Members that it is between us and the people that we represent. When we ask for the NG-CDF, we do not ask for a favour from Ukur Yatani or anybody else; not even from the President of the Republic of Kenya. The NG-CDF Act is a law that was made by this House. The money does not go into Members' pockets, it goes to development activities in the constituencies of the people we represent. That is why you see the emotions are quite high.

I request that we all bring down our emotions so that we let reason prevail. If it is possible, we should defer voting at this particular time and have time for people to ventilate a little bit on the matter, so that the leadership can soberly engage with Members in whichever forum we will be able to engage each other. This is not about Hon. Kimunya. Hon. Kimunya can go, and he may go. It is not about Hon. Duale who is already gone. It is not about Hon. Kimani Ichung'wah who is already gone. It is not about my friend, Hon. Kanini Kega. It is about the people that we represent.

Hon. Speaker, I beg that you use your normal Solomonic wisdom to defer voting today to any other appropriate time once we have engaged each other. That will be the right thing to do for the country.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Junet.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Speaker, for giving me an opportunity to ventilate on this matter. This is a very important matter, and the issues being raised by the Members of this House are very important.

Irrespective of our party affiliations or where we come from, the issues that Members are raising are very important because it is about their work at the constituency level. Every Member of Parliament will be held accountable at the end of his or her term for what he or she has done for his or her people.

*(Applause)*

He or she will not be held accountable for what he or she has done for the Government or for other people, but for what he or she has done specifically for his or her constituency. Since the last Parliament, this is the first time I have seen, three months to the end of the financial year, that there is no money that has gone to the NG-CDF Board. I do not know why the Cabinet Secretary of the National Treasury cannot explain to the NG-CDF Committee, the Budget and Appropriations Committee and even to this House what is causing this delay. He should take Members through so that they can be fully aware of what is happening. Members are agitated because they have been kept in the dark on what is happening. When they speak to their fund managers, they are told that there is no money that has come. Now we want to debate the Division of Revenue Bill to give money to the counties.

We must agree, as a House, that this is an important matter for all of us. For that reason, I support what Hon. Kimani Ichung'wah has said.

*(Applause)*

We should leave this matter in abeyance so that we can negotiate with the National Treasury. We shall pass this Bill when they pay the NG-CDF money.

*(Applause)*

We suspend the voting for now.

*(Loud consultations)*

**Hon. Speaker:** Order, Members. Allow him to finish, even if you are in agreement.

**Hon. Junet Nuh** (Suna East, ODM): It is my humble request that we suspend the voting process. You have properly told us the consequences of whichever way this vote goes. If it goes through, well and good; if the Bill is lost, the consequences will be bigger. Leadership comes with responsibility. We do not want to put the country in a situation where it cannot move forward. We have a Special Sitting in a few days. We can sort out this issue of the NG-CDF. We can agree on a way forward then we bring this Bill, we vote on it and all of us will pass it unanimously.

With those remarks, that is our position. I think that is the best route for us. I thank you for indulging us and for telling us the importance of this Bill.

Thank you so much.

**Hon. Speaker:** Hon. Duale.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, first I want thank you because procedurally you have allowed us to ventilate when we were to take a vote. You have used Standing Order 1 and we thank you for that. The matter before us is vital. I have been here for 14 years and there are many people who served in the 10<sup>th</sup> Parliament. The NG-CDF is a very emotive issue, even during *Mzee* Kibaki and Prime Minister Raila Odinga's Government, when we were in the Grand Coalition Government.

I agree. It is the first time I have seen, three months to the end of the financial year, a majority of constituencies have not even received a penny. This matter was boiling and was in the corridors of Parliament for the last two weeks. It is incumbent upon the Cabinet Secretary of the National Treasury and Planning, your office and the offices of leadership to always consult and make sure that we do not reach this stage. I really want to beg my colleagues and ask them that our case is very genuine, but we should not... One of the toughest valleys in Kenya — if you happen to know it, it is difficult to come out if you go into it — is called the Suguta Marmar Valley in Samburu. I do not want us to go into that. We are faced with this animal called the Division of Revenue Bill. In fact, if it is about counties, we should have denied them money. If it was the County Allocation of Revenue Bill, we could have refused to pass it because that one is giving money to counties. This Division of Revenue Bill is a vertical division between two levels of Government.

If you allow me, there are two things that bind this House to pass this Bill. One is the Supreme Court...

*(Loud consultations)*

I am saying we have to pass it subject to the NG-CDF issues. That is where I am going. As we sort the issue of the NG-CDF, the only route available tonight is you step down this matter and tell the leadership and the Chairperson of the Budget and Appropriations Committee... If you read Standing Order 233(3), it gives you only 10 days from the day this thing is tabled. If you listen to the advisory opinion of the Supreme Court No. 3 of 2019, it says this House cannot enact an Appropriations Act without passing it. So, I think you can use Standing Order 1 to postpone this

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item tonight. It is very volatile. Let us even come back for a Special Sitting next Thursday but we sort out this issue of the NG-CDF so that we do not throw away the baby with the bathwater. Let us not throw away this Bill because of the issues of the NG-CDF.

I really indulge you.

*(Loud consultations)*

In fact, you can use Standing Order 1. Shelve this Bill so that we can vote in the next Sitting, either in a Special Sitting or on 23<sup>rd</sup> March 2021. In that window we will have the Chairperson of the NG-CDF Committee, the Chairperson of the Budget and Appropriations Committee, the leadership and the Executive sort out this issue of NG-CDF 2020/2021.

I rest my case.

**Hon. Speaker:** Member of Kitutu Chache. Is it Kitutu South? I try as much as possible to know the exact name of the constituency. The Hon. Richard Momoima Onyonka.

**Hon. Richard Onyonka** (Kitutu Chache South, FORD-K): Ndugu Spika, ni Eneo Wakilishi la Kitutu Chache Kusini.

**Hon. Speaker:** Kabisa!

**Hon. Richard Onyonka** (Kitutu Chache South, FORD-K): Ningependa kusema hivi: Niko kwa Kamati ya Bajeti na Uidhinishaji wa Matumizi. Tulimuita Waziri Yatani tukamuelezea hivi. Mheshimiwa Wamunyinyi ambaye ndiye Mwenyekiti....

*(Hon. Vincent Tuwei gestured to the Speaker)*

**Hon. Speaker:** Hon. Tuwei, I just allowed people to ventilate. Oh! Is it about the mask? Hon. Onyonka, please look for a mask. Members, please, on this question of masks...

**Hon. Richard Onyonka** (Kitutu Chache South, FORD-K): Ilikuwa imeanguka.

**Hon. Speaker:** Not that. Hon. Members, please, let us observe that even in Committees because it has been reported to me that we have a tendency not to wear masks when we go to Committees. It has been reported. As you know, I am sure if you look around you will see that one or two of your colleagues are not here. Do not ask where they are. It is this new variant.

**Hon. Richard Onyonka** (Kitutu Chache South, FORD-K): Asante ndugu Spika. Utaniwia radhi.

Ningependa kusema kuwa, kama Mwanachama ambaye yuko katika Kamati ya Bunge ya Bajeti na Uidhinishaji wa Matumizi, tulimuambia Waziri Yatani kuwa sisi tulisikia mawaidha ya Makamu Mwenyekiti, Mhe. Wamunyinyi, aliyemwambia kuwa Wabunge wamesema hawataki kuzungumzia suala la ugavi wa pesa katika nchi hii kama suala la NG-CDF halijazungumziwa.

Jambo la pili ni kuwa yale tuliyazungumzia ni kuwa hata mawaidha ya wale Wenyeviti wa Kamati ambao walikuwa wameleta Mswada kujadiliwa na kuzungumzia vile pesa za Serikali zinagawanywa hayakusikizwa.

Jambo la tatu ni kuwa Mwenyekiti wetu wa Bajeti na Uidhinishaji wa Matumizi, Kanini Kega, alimuambia Waziri “usipoenda uzungumze na Rais umuambie Wabunge hawatapitisha huu Mswada kama hamtabadilisha yale mambo Wabunge wanataka, hatutapitisha huu Mswada.”

Kwa hivyo, ndugu Spika, vile wenzangu wamesema, tutawachilia kujadili hili jambo. Tunataka siku karibu tano, sita au saba tuzungumze kati yetu. Tunataka NG-CDF irudishwe, pesa zetu ziletwe halafu tuanze kuzungumzia mambo ya ugavi wa hela zinazoenda kwa kaunti. Hayo mambo yasipofanyika, huu Mswada hautapita.

Asante.

*(Applause)*

**Hon. Speaker:** Member for Yatta. Is it? Sorry.

**Hon. Charles Kilonzo** (Yatta, Independent): Thank you, Hon. Speaker.

If I have your audience, we are politicians. Our profession is politics. We have been reading between the lines. It is good that you have allowed us to ventilate. One reason we are very disappointed is, if you recall, barely about two weeks ago, there was even a move to censure the CS for National Treasury and Planning. It took a lot of interventions for Members to go slow on the move. Members are aware that the CS for National Treasury, Yatani, was against the current Chief Executive Officer of the NG-CDF Board. We can read between the lines. What has annoyed us is the letter responding to the letter in which the CEO requested money from the Treasury. The letter, written by one Mr. Muia, of course on the instruction of the CS, was a very rude one. It basically said there is no money. We all sit on Committees. If there is no money, why bring a supplementary budget in the first place?

To summarise this matter, if you want us to move ahead, we have only one week. We can defer the entire matter and go on recess. When we come back, let us find money in the accounts. That is the only way. Standing Order 1 allows you, Hon. Speaker, to postpone a vote even if the Division Bell has been rung.

Finally, the current Leader of the Majority Party has no respect for Members of Parliament.

**Hon. Members:** Yes.

**Hon. Charles Kilonzo** (Yatta, Independent): The biggest complaint is that he assumes he can run this House with only the Chairs of Committees while they do not have respect for him. You need to borrow from your predecessor. You must negotiate with every Member of Parliament if you are going to run this House. I do not need to remind you of what you went through in the 10<sup>th</sup> Parliament. It can happen again. There is enough time.

Thank you.

*(Applause)*

**Hon. Speaker:** Member for Kandara.

**Hon. (Ms.) Alice Wahome** (Kandara, JP): Hon. Speaker, I do not want to join Hon. Millie Odhiambo because she has a different trademark. Thank you very much for the opportunity to speak to this issue. I am one of the Members who were saying ‘no NG-CDF money, no quorum’. Our NG-CDF account has received two disbursements, one of Ksh9 million and another one of Ksh8 million. We are in March and the total amount Kandara has received is Ksh17 million. I am told there are Members who have received less than that or zero. So, we are not speaking to politics. We are speaking about development projects in the constituencies, particularly bursaries.

Following the COVID-19 situation, it is necessary that the CS understands that he cannot continue to conduct business in the manner in which he is doing. I say that because the CS has been advised by two Committees, the Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning. He has decided to either defy the advice or do his own things, meaning he places no value on Members of Parliament or on our work or that the Government has decided to frustrate Members of Parliament. This is the last year before elections.

Hon. Kimunya, the Leader of the Majority Party, made a grave mistake that informed the mood that you saw in the House. He threatened Members with dissolution of the House. He was doing that to whip Members. How do you threaten Members with dissolution of the House? Would he not be affected by the dissolution? Unfortunately, he said that the dissolution would be by the Head of State. I do not think he had such a brief. He needs to go back and learn public relations.

We put the Chair of the Budget and Appropriations Committee, Hon. Kanini Kega, to task as to where the money is. He said there is a schedule that will be attached to the Supplementary Budget. Together with other Members, we told him that we want to see an allocation, not a schedule. The schedule, according to most Members, is a promissory note. A promissory note does not have to be honoured. We want to see where the Ksh13 billion is. We understand the deficit has been created because the owed debts have benefited from allocation in this Budget. We cannot continue working like that. We were ready to vote. We are still ready to vote but we also have to consider the proposals on the Floor. It could be a win-win situation. We are in the era of win-win situations. We should defer this matter to be able to get NG-CDF money in the accounts.

Also, the leadership is in a problem. Some members of the leadership have paid themselves the entire amount of NG-CDF money for their constituencies. So, they do not care about other Members. That is something that needs to be investigated. Although I may not have the material evidence, another allegation is that members of the Budget and Appropriations Committee have also allocated themselves an extra Ksh100 million. Shame.

*(Loud consultations)*

I want to take the middle ground. A majority of us are in agreement that the NG-CDF matter is a priority. Therefore, we could be persuaded to actually defer this matter but the deferment must be followed by action. We want the money in the constituency accounts. We do not know whether Kenya is broke. It cannot be broke. We have agreed Kenya is not broke.

The other issue is that we want to see allocation of the remaining money in the Supplementary Budget. Hon. Kanini Kega said he would include the money in the second Supplementary Budget. We do not want that. It cannot be. Hon. Kanini, I am saying you were proposing. I am not saying that is what you wanted to do. There was a proposal that because the money is not in this Supplementary Budget, it could be included in the second one. There was also the observation that there may not be and there will not be a second Supplementary Budget. So, the money has to be included in this Supplementary Budget.

Thank you, Hon. Speaker.

**Hon. Speaker:** Let us hear the Member for Suba North then we hear the Chair of the Select Committee on NG-CDF. All these issues are about the NG-CDF. It is only fair that we hear the Chair. Is Hon. Wamunyinyi in the Chamber? Hon. Millie, please.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker. My good friend Hon. Charles Kilonzo is trying to give me some update. I sit on the Budget and Appropriations Committee and we have been sitting for very long hours, sometimes until 1.00 a.m. The day before yesterday we sat until almost 9.00 p.m. Part of the reason we sit for long is because we have been unable to agree with the CS. I was categorical to the CS, in the same manner Members are talking here. I told him that I have been in this House for some time and that I could read the mood. I told him that the mood of the House was foul, and unless he deals with what Members are saying, he would be in for a big problem.

Members, let us walk in one direction and not be divided because NG-CDF affects all of us. As a matter of fact, the Departmental Committee on Budget and Appropriations has not made any decision. We got a presentation from the CS and his team thereafter and they said they had made some corrections. We told them that they cannot make corrections without consulting the Departmental Committees that came before us and because of that, we refused. He was persuading and rushing us to bring the Supplementary Budget today, which we refused.

We must hear from Members so that all these things that are flying all over become clear. Let us also not be divided. There is always a divide and rule strategy. You will hear rumours like what my friend, Hon. Charles, is telling me: that the Chairman has put this or that. Bring it the Departmental Committee on Budget and Appropriations so that we see if the allegations are true. Better still, the most important thing to do so that the CS can see how serious it is, let him not just appear before the Departmental Committee on Budget and Appropriations, but also before a *Kamkunji* of this House so that he can know that Members are serious.

On one hand, sometimes, I think these things have a blessing. I am glad Hon. Alice is saying her constituency has received Kshs18 million. I have received none because I had not been paid accumulative amount of Kshs80 million in the past budgets. One of my constituents went and reported to the police that we had stolen that money. I went to NG-CDF and told them that they were saying we had stolen Kshs80 million. I have now received my Kshs80 million. Thank you. I am only waiting for the Authority to Incur Expenditure so that the Suba people can have their development done.

*(Loud consultations)*

Yes, Kshs80 million, past money. I have just been dwelling there. Now that I have received my Kshs80 million, I am at zero in the current Financial Year. It may sound that I have received a lot, but Kshs80 million is for Financial Year 2019/2020. I told the CS that there is no way we are going to move on when other Members have arrears. I inherited that problem and in trying to catch up, we kept being pushed back. When will we ever catch up and clear that? Let them give all Members with arrears and who have no other problems their money and let the pending bills be in the 2021/2022 Budget. Supplementary Budget should deal with unforeseen issues, according to the law. In this case, however, it is not business as usual. We are being told that we cannot get NG-CDF, yet if you look at certain budget lines, there are even new projects.

Hon. Charles is seeking to inform me.

**Hon. Speaker:** Do you want to be informed?

**Hon. (Ms.) Odhiambo Mabona** (Suba North, ODM): Yes, I am willing. I will then conclude in a minute. Hon. Kilonzo, kindly, have a minute.

**Hon. Charles Kilonzo** (Yatta, Independent): On a point of information. I wish to inform my good friend that the particular CS, in a matter which our Committee handled, had allocated so much money to his own county. In another Committee, a matter which was also prosecuted in this House, it was said that he also allocated more money to his own county.

**Hon. (Ms.) Odhiambo Mabona** (Suba North, ODM): Hon. Speaker, I wish to indicate that, that has not been brought to our attention as the Departmental Committee on Budget and Appropriations. I would not want to imply improper motive on somebody without information. I want to acknowledge that even when you exercise your discretion under Standing Order No.1, you cannot do it on a matter that has clear provisions in the Standing Orders. Let us ventilate and use

our political intelligence. Let us use our intelligence to make sure that the CS comes here next week even though we would have gone for recess.

People are struggling because of NG-CDF issues. They have no bursaries and we are willing to come back.

Thank you.

**Hon. Speaker:** Can we hear the Chair of the Select Committee on the National Government Constituencies Development Fund? Hon. Wamunyinyi, kindly have the Floor.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Speaker for giving me a chance to ventilate.

First, I want to thank you for your intervention and the decision you have made of, using your powers in accordance with the Standing Orders, allowing Members to ventilate on this issue and defer the vote.

Yesterday, my Committee had a session with the CS on the sidelines of another meeting with the Departmental Committee on the Budget and Appropriations Committee. We took the CS through the facts as they are and the consequences.

First, I did point out to the CS that many children from poor families who rely on bursaries are out of school.

*(Applause)*

I also informed him that the ongoing projects funded by NG-CDF have stalled and when they do, the costs escalate. Of course, it affects the communities. We also pointed out to him that delay or even failure to release NG-CDF funds is a breach of the law. We made that very clear. We then went into record and explained clearly that there is so much money that has not been released. This started in the Financial Year 2019/2020, when Kshs13.78 billion was not released. It brought the figure to about Kshs59 billion. Out of that, only Kshs26 billion has been received. After we explained to the CS, we agreed with him that there was need to release the funds and that by June, there should be no outstanding coin in Financial Year 2019/2020 and 2020/2021 so that there would be no arrears carried forward.

I then did a presentation to the Departmental Committee on Budget and Appropriations which is chaired by Hon. Kanini Kega. I presented the paper which pointed out what we had agreed with the CS. I will be tabling it in a short while. However, let me just explain what we agreed.

First, that the CS had undertaken and committed that he was going to clear all the remaining balances for Financial Year 2019/2020 and 2020/2021 by latest 30<sup>th</sup> April. Because of cash flow, he was going to release Kshs2 billion every week.

Secondly, the arrears of Kshs13.74 billion would be cleared between 1<sup>st</sup> May and 30<sup>th</sup> June. This he also committed that he was going to do and because of this agreement, we proposed to the Budget and Appropriations Committee, in the presence of the Cabinet Secretary, that these funds for the past financial year be captured in the current Supplementary Budget. That is a proposal we gave to the Committee. The arrears of Ksh4.9 billion, which have some historical issues I am not sure about, are subject to discussion and could have been considered in the main Budget if there would have been some agreement of some sort.

Hon. Speaker, after that we left the Budget and Appropriations Committee to relook at the issue but this morning, I received a copy of another letter from the Principal Secretary, National Treasury. Unfortunately, I do not have a hard copy. This letter was also giving an undertaking that the Treasury was going to expeditiously disburse all the balances totaling to Kshs41 billion.

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*(Loud consultations)*

Since we are now talking as a family and House, we have agreed that if we are deferring this vote - we will definitely agree - the CS will be invited to talk to us so that we can agree. What is most important as I conclude is that I have a list of all the beneficiaries, all the monies that have been received and how it has been released to the constituencies. There are those constituencies which never received last year's allocation and that has been the main problem. I like Hon. Millie Odhiambo who confessed she has received Kshs80 million for the last financial year, but that money for last year has not been released because when the year ended there was no provision for it. We have agreed that all this money must be paid to the constituencies in the shortest time possible.

The problem sometimes is that this CS does not fulfill his promises. If he was committed to the promises he made in the past, we would not be where we are. Members would not be complaining and yelling the way they are. So, if the CS can commit and release... In fact, I told him to release some lump sum, then talk of the weekly installments and disbursements which will ensure that by 30<sup>th</sup> April, you are done with the Kshs41 billion.

Hon. Speaker, Hon. Junet would like to inform me, and I am willing to be informed then I will continue.

**Hon. Speaker:** Hon. Junet you have information for Hon. Wamunyinyi?

**Hon. Junet Nuh** (Suna East, ODM): Yes, Hon. Speaker, I want to inform the Chairman that he has been meeting the CS for the last five months and they have not been having any information. The way he is now putting his case here, it is like a union negotiating with their employers, that they can release some amount now then give installments.

Hon. Speaker, this is not the Kenya National Union of Teachers (KNUT) or the Kenya Union of Post Primary Education Teachers (KUPPET) negotiating with the Teachers Service Commission (TSC).

Hon. Speaker, that is what I wanted to inform him.

*(Laughter)*

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Hon. Speaker, if I knew that was the information I would not have agreed to take it. However, for those who do not understand the NG-CDF is an annual stimulus package for our rural areas. When you build a classroom, the *fundi* will be paid. The bricks will be bought from the village. The sand will be bought from the village. Those building will buy bananas from the locals and so, money circulates. It is a stimulus that must be taken seriously.

I would like to insist that you help us stop this CS from undermining Parliament and the NG-CDF. I have told him every time and he does not seem to understand.

*(Applause)*

Since you have made this Solomonic decision, I would like to urge colleagues to remain focused. Let us allow time so that we can get these matters resolved, otherwise, I am grateful that we have agreed to resolve the matter.

I thank you, Hon. Speaker.

**Hon. Speaker:** Can I hear the Member for Wajir.

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Hon. Speaker, I should not be threatened. I am on a point of order. The Chair of the NG-CDF is misleading Hon. Members and Members of the Budget and Appropriations Committee can bear me witness. When the CS, National Treasury came before the Committee, the Chair NG-CDF was nowhere to be seen. The person who came to defend the NG-CDF was the CEO of the Board. So, is he in order to incite Members when he himself was not in that meeting?

**Hon. Speaker:** Hon. Osoro, let us hear from the varied corners of the Republic.

**Hon. Silvanus Onyiego** (South Mugirango, KNC): Thank you, Hon. Speaker, for allowing me to also ventilate on this matter.

Hon. Speaker, the issue of NG-CDF is very emotive to us. We are within the pandemic period from March 2020 up to this period. We all remember the lockdown in the entire country that also locked us within our compounds. When there was resumption of studies in schools, our students went back to schools with expectations that their Government would help them. We all must agree that within the period that the pandemic was very high, the children's parents were not working. The parents of children who were studying in universities, colleges and secondary schools were not working because of the lockdown. Here we are with full resumption of operations except the curfew with limited access to bursaries that are very fundamental to the studies of our children.

Hon. Speaker, if we all show the messages that we receive from our students or constituents, you will understand why this House is so emotive today for lack of a better word with some unruly actions. Some constituents are blaming us because of lack of knowledge. Out of their lack of knowledge, they believe that we have sat on their bursaries and the NG-CDF, yet it had not been disbursed.

As Hon. Alice Wahome has said, this is happening because some constituencies have received funds and are already operating. It is important for the Budget and Appropriations Committee to note that it should not allow itself to bow to pressure. They had sittings with the CS to get something small and then he comes to this House to convince us to allow the Executive Bills to pass while we are suffering.

It is very wrong for the leadership of this House and Committee Chairs to tell us to pass the Division of Revenue Bill as it is. They are afraid of the disciplinary action that will be taken by the President. This is a wrong direction to take. As a House we are fighting for our people. Unless we receive the full NG-CDF amounts in the next one month, we will not vote. We are demanding the full amount. If we must get a certain percentage then there must be equitable distribution.

It does not make sense for me to receive Kshs8 million, Hon. Alice Kshs17 million and somebody else Kshs50 million. How do I explain to my people? What do I do with my Kshs8 million? I have about 10,000 applications for NG-CDF bursaries. Whom do I give? I received Kshs8 million the other day when the rest were receiving Kshs17 million. Who do I give? If there is distribution of money, then it should be equitable.

This favouritism that when you sit in the NG-CDF Committee you get the full amount or 50 per cent yet, you happen to be my neighbour in Kisii is wrong. How do I explain to people that for example, the Hon. Member from the neighbouring constituency received Kshs70 million and I got Ksh8 million? He is giving bursaries and I am not giving simply because he sits in the NG-CDF Committee.

This should be relooked into. There should be no favouritism, it should be equitable distribution. If we receive Kshs10 million, let each of us get Kshs10 million. If we receive Kshs20 million, let each of us get Kshs20 million. The element of giving one Member Kshs50 million and another Kshs5 million should stop.

That is all, Hon. Speaker.

**Hon. Speaker:** Hon. Rasso.

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Speaker.

**Hon. Speaker:** Hon. Members, sometimes when you sit here you have to know Kenya is very wide and apply your mind all over.

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Speaker. The die is cast and we as Members of this House our position is very clear. We are not prepared to pass the Appropriation Bill, if there is no NG-CDF. There is no ambiguity and your Solomonic advice to the House is good for the time being. But as Members what we wanted to hear from both the Chair of the NG-CDF and Chair of the Budget and Appropriations Committee is when this money will arrive in our accounts.

Some of us have served a second term and others longer. The problem in this House which we should not look away from, is when the Chairs and leadership are in bed with the Executive this House will suffer. This must stop. Article 95 of the Constitution is very clear, you are a stickler for both the Constitution and the Standing Orders. The NG-CDF is about our people, it is a matter of great concern to them. As Hon. Wamunyinyi said many of the children are not in school. This is because they cannot afford to pay Kshs5,000 or 6,000. They used to be helped by NG-CDF. For that reason, I think you have already alluded to putting a stalemate on this particular matter. We need some assurance that we will meet and this NG-CDF matter put forward as priority for this House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Embakasi South.

**Hon. Julius Mawathe** (Embakasi South, WDM-K): Thank you, Hon. Speaker. The NG-CDF funds are very important to all constituencies in Nairobi and the whole of Kenya. For some of us our constituents are low-income earners. When you tell somebody from Mukuru they will not get their bursaries because CS, National Treasury, has decided to redirect the funds elsewhere that is wrong.

We want the Budget and Appropriations Committee and the CS to ensure that the entire NG-CDF funds are in the Supplementary Budget. Anything short of putting the funds in the Supplementary Budget, I am sure this House will continue to relay the message like it has done today. *Bwana* CS about the arrears do not give us some stories about some Acts being superior to others. We have the NG-CDF Act passed by this honourable House and that is the one we will continue to follow.

Thank you, Hon. Speaker.

**Hon. Speaker:** Member for Murang'a you have one minute.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Speaker. Clearly, there is a problem with the National Treasury. Yesterday, we were recalled as Chairs to relook at the Supplementary Budget. I happened to meet with the CS, National Treasury, and I was shocked by his attitude. I meet him when they were having lunch with the NG-CDF team. After this he met the Budget and Appropriations Committee.

The Chair of the Departmental Committee on Environment and Natural Resources tried to explain to him how they had met the Ministry and he was quite rude to him. As we go on recess

and talk about the revenue, I can clearly say the House has no problem with the Division of Revenue Bill but we need to relook into the attitude of the CS, National Treasury. We also need to check how the National Treasury is working.

I do not think the problem is money. The problem is how we are allocating money from the National Treasury. Even as Chairs, we cannot be sitting with ministries, we do our proposals to the Budget and Appropriations Committee, just for the National Treasury to pass things without consulting with this House. As we go on recess, allow me to tell Members that we have a third wave of COVID-19. Let us be careful. Today I was looking for a space for someone in the Intensive Care Unit (ICU) and all of them are full. So, let us take care and be safe.

Thank you, Hon. Speaker.

*(Loud consultations)*

**Hon. Speaker:** Order Members! Order! Hon. Members, many of you have asked me to use Standing Order No.1 but if you read through, it applies to situations where there is no specific provision in the Standing Orders. Once you commence the process of voting in the House, as happened this evening, that process is provided for between Standing Order No.69 through to Standing Order No.76. The Division Bell was rung. The next step was for the doors to be locked and the Bar to be drawn. Hon. Members, this is because you could not proceed otherwise.

However, I must thank you, Hon. Members, for what you said. It appears that reason has prevailed. I am sure that those who cared to listen to what the House said have heard and if they have not; when we next sit, I will put the Question again. There will be no debate. It is just the Question to be put again as long as there is quorum. Quorum in this matter is only 50 Members. You can see that we have more than 100 who are here today. This should send a very clear signal to whomever it is, and that is the cause of the anxiety that we have witnessed in the Chamber today.

Therefore, Hon. Members, I want to thank you because you have allowed the House and yourselves to go to short recess at the risk of, from what I am hearing, a Special Sitting. The Leader of the Majority Party is advised that if that Special Sitting does not, in the first instance, address the issues you have raised, the House is in the mood of doing something called RTS – (Return to Sender). I guess that is the mood in the House. So, anybody who cares to listen, and if people are to take this House seriously, that message is now loud and clear. It is not fair. This financial year is just about three-and-a-half months to end. Surely, nobody can explain how the NG-CDF funds for this financial year have not been disbursed to some of the constituencies and in some, those for the last financial year. I think it is a situation that must not be allowed to obtain at all. The message is now very clear.

## ADJOURNMENT

**Hon. Speaker:** Hon. Members, it is time to adjourn the sitting of the House. The House stands adjourned until Tuesday, 23<sup>rd</sup> March 2021 at 2.30 p.m.

The House rose at 9.00 p.m.