

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Tuesday, 27<sup>th</sup> October 2015

The House met at 2.30 p.m.

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

### PRAYERS

### MESSAGE

#### THE HIGHER EDUCATION LOANS BOARD (AMENDMENT) BILL

**Hon. Speaker:** Hon. Members, I have the following Message being Message No.34 of 2015. You may recall that on 19<sup>th</sup> August 2015, the National Assembly passed the Higher Education Loans Board (Amendment) Bill, National Assembly Bill No.9 of 2015. Thereafter, the Bill was presented to His Excellency the President for assent in accordance with the provisions of our Constitution and Standing Orders. However, His Excellency the President by way of a Memorandum, has since referred the Bill back to the National Assembly for reconsideration pursuant to provisions of Article 115(1)(b) of the Constitution.

The President has expressed reservations on Clauses 2, 3, 4 and 5 of the Bill and has recommended amendments to the said clauses. The said clauses relate to the proposed change of the composition of the Board, the granting of loans to students who are minors and the change of repayment mode for loanees who have not secured employment.

The Memorandum stands committed to the Departmental Committee on Education, Research and Technology for consideration. For avoidance of doubt, Standing Order No.154 requires the National Assembly to consider the President's reservations within 21 days upon receipt of the Memorandum. The Committee is, therefore, expected to table its report on or before 26<sup>th</sup> November, 2015.

In considering the Memorandum, regard should be given to the guidance given in the Speaker's Communication dated 28<sup>th</sup> July, 2015 concerning consideration of the President's Memoranda and amendments thereto. I wish to remind the House and the Committee that only clauses of the Bill that have reservations will be considered. I also direct the Clerk to circulate the Memorandum from the President to all Members so that they can familiarise themselves with its contents.

I thank you.

### PAPERS LAID

**Hon. A.B. Duale:** Thank you, Hon. Speaker.

I beg to lay the following Papers on the Table of the House today, Tuesday, 27<sup>th</sup> October, 2015:-

The Teachers Service Commission (Code of Regulations for Teachers) 2015 and the Explanatory Memorandum.

The Report of the Auditor-General on the Financial Statements of the Constituencies Development Fund (CDF) for the year ended 30<sup>th</sup> June, 2014 and the certificates therein in respect of Suba Constituency, Emuhaya Constituency, Bomachoge Borabu Constituency, Bomachoge Chache Constituency, Kasipul Constituency, North Mugirango Constituency, South Mugirango Constituency, Lugari Constituency, Makadara Constituency, Nyatike Constituency, Lagdera Constituency, Seme Constituency, Butere Constituency, Nyakach Constituency, Ugunja Constituency, Luanda Constituency and Nyando Constituency.

**Hon. Speaker:** Let us have the Chairman of the Departmental Committee on Finance, Planning and Trade, Hon. Benjamin Langat.

**Hon. Langat:** Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today, Tuesday, 27<sup>th</sup> October, 2015:-

The Report of the Departmental Committee on Finance, Planning and Trade on the consideration of H.E. President's Memoranda on the Excise Duty Bill, 2015.

Thank you.

**Hon. (Dr.) Pukose:** Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today, Tuesday, 27<sup>th</sup> October, 2015:-

The Report of the Departmental Committee on Health on its consideration of the Health Bill, 2015.

Thank you.

**Hon. Speaker:** Let us have Hon. Jamleck Kamau.

**Hon. Kamau:** Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of the House today, Tuesday, 27<sup>th</sup> October, 2015:-

The Report of the Departmental Committee on Energy, Communication and Information on its consideration of the Petroleum (Exploration, Development and Production) Bill, 2015.

Thank you.

**Hon. Speaker:** I can see there is an intervention. Yes, Hon. Esther Murugi, the Member for Nyeri Town.

**Hon. (Ms.) Mathenge:** Thank you very much, Hon. Speaker. On Wednesday, last week, Hon. Washiali said he would table the Report on the Petition from Nyeri coffee farmers the following day, which was on a Thursday. I believe that it has not been tabled up to now. I would like to know when the Petition will be tabled taking into account the time that has lapsed. I presented the Petition on November, 2014 and it is now almost a year.

Thank you.

**Hon. Speaker:** Had Hon. Washiali, on that occasion, taken the role of the Chairman or the Vice-Chairman of the Committee or an agent of necessity? Was he just a Member? Is there another Member of that Committee who would like to be an agent of necessity?

Yes, Hon. John Serut.

**Hon. Serut:** Thank you, Hon. Speaker. We adopted the report. As you know, reports from the committees do not come straight to this House. They have to pass through the Director of Committees and the Clerk's Office before reaching here. The report will be tabled in this House in the course of this week.

**Hon. Speaker:** It should be tabled this week, is it not?

**Hon. Serut:** Yes, Hon. Speaker.

**Hon. Speaker:** It is almost one year. The Clerk's Office is directed to ensure that the report is brought to me for approval anytime today or tomorrow. If you have adopted it, there is nothing that should keep it away from here, Hon. Serut.

**Hon. Serut:** Much obliged, Hon. Speaker.

**Hon. Speaker:** I can see somebody who wants to make an intervention but it looks like the person is standing next to me. He has pressed an intervention button but he is here.

*(Hon. Lessonet consulted with the Speaker)*

Indeed, there was need for the Member to consult with me because what he wants to do was not in the Order Paper but I am sure, for the convenience of the House, I will exercise my discretion to allow the Member to table the kind of report that he wants to table because it may be of interest to Members.

Yes, Hon. Lessonet.

**Hon. Lessonet:** Thank you, Hon. Speaker for indulging me. I rise to table the report on disbursement status for this financial year. As we mentioned last week, we expected the National Treasury to disburse some money to the CDF Board. They have, indeed, disbursed Kshs2 billion and the same has been disbursed to various constituencies which I just want to table for the information of Members.

I thank you.

**Hon. Speaker:** For the interest of Members, Hon. Lessonet, since I have taken the liberty to allow you, you can read that to the Members.

**Hon. Lessonet:** Thank you, Hon. Speaker. In this report, the Kshs2 billion which the CDF Board received has been disbursed to 66 constituencies. That is a total of Kshs1.5 billion. Those 66 constituencies are the ones which had arrears for the last financial year to the tune of Kshs1.5 billion. The amounts are quite huge. Some constituencies had not received as high as Kshs75 million. At least, the CDF Board has disbursed money to the 66 constituencies which had arrears. For the 46 constituencies which were compliant and had very low balances, they have each received Kshs10 million. I will table this report and it will be photocopied for each Member to go through. That is the report.

The National Treasury has confirmed to us that another Kshs2 billion is on transit to the CDF Board. Equally, by the end of the week, that Kshs2 billion will be disbursed again. So that is the report.

I thank you.

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

**Hon. Speaker:** Very well. Yes, Harrison Kombe.

**Hon. Kombe:** Thank you, Hon. Speaker. It is disturbing when we talk about the 2014/2015 Financial Year arrears. We are using money for the current year to pay arrears for the previous year. Where did the money for the previous year go?

*(Applause)*

**Hon. Speaker:** Hon. Kombe, I can see some Members applauding you. Unfortunately, they are out of order because you cannot ask me a question. I do not handle CDF. I have no constituency. My constituency is this one. So, Hon. Kombe maybe that will become an issue if any of the monies set aside for this financial year are not available to the constituencies.

I do not want to allow that debate to start because figures will have to be brought and documents will have to be produced. This was just information-tabling of a document. So, if you want to interrogate Hon. Lessonet and his team, that will not be now. That will either be through a *Kamukunji* or at a meeting called by the CDF Select Committee.

Let us not make it a plenary matter. Sometimes, certain matters are dealt with away from the plenary. Are these interventions about the CDF?

Yes, Hon. Abdullswamad Nassir.

**Hon. Nassir:** Hon. Speaker, you are right. It is about the CDF.

**Hon. Speaker:** No! I will not allow that. Sit down. No more debate on the CDF disbursement. Hon. Moses Injendi, is it about the CDF? There is nothing here for debate.

**Hon. Injendi:** It is about the CDF debate.

**Hon. Speaker:** No! There is nothing to debate.

**Hon. Injendi:** I want to inform---

**Hon. Speaker:** No! Informing who? I do not want any information.

**Hon. Injendi:** *(Inaudible)*

**Hon. Speaker:** Hon. Members, allow these CDF matters to be debated elsewhere. Do not make some of these matters, matters of the plenary.

*(Hon. Injendi spoke off- record)*

No! No! You know you cannot just sit there and start saying different--- At this time, are you claiming to rise on a point of order? Under which Standing Order? Let us not just make ourselves look like Members of County Assemblies (MCAs). You cannot just sit on your seat and claim to rise on a point of order.

Yes, Hon. Kamanda.

### PAPER LAID

**Hon. Kamanda:** Thank you, Hon. Speaker. I beg to lay the following Paper on the Table of this House today, Tuesday, 27<sup>th</sup> October, 2015:-

The Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of the Kenya Roads Bill, 2015.

**Hon. Speaker:** Hon. Members, before we go to the next business, I wish to draw the attention of the Chairs of the following Committees that in keeping with our recently adopted procedure tomorrow, Wednesday, 28<sup>th</sup> October, 2015, when the House sits at 2.30 p.m. I expect updates on reports, status or business pending before the Departmental Committee on Defence and Foreign Relations; the Departmental Committee on Education, Research and Technology and the Departmental Committee on Energy, Communication and Information. Those are the three Committees to apprise the House on the status of the various businesses which have been referred to them by the House.

**MOTION****THE MINING BILL**

THAT, the House do agree with the Report of the Committee of the whole House on its Consideration of Senate Amendments to the Mining Bill (National Assembly Bill No.9 of 2014).

*(Hon. Ganya on 21.10.2015))*

*(Resumption of Debate interrupted on 22.10.2015))*

**Hon. Speaker:** Hon. Members, debate on this Order was concluded and what remains is for the Question to be put. I proceed to do so.

*(Question put and agreed to)*

Hon. Members, as you go to the consideration of the business of the Committee of the whole House, I wish to draw your attention to the existence of the Supplementary Order Paper, in which, in keeping with the requirements of the rules, the Speaker has determined that the proposed amendments have the effect of negating the President's reservations. Therefore, on all of those proposed amendments, you require a two-thirds majority to pass them.

**COMMITTEE OF THE WHOLE HOUSE**

*(Order for Committee read)*

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

**IN THE COMMITTEE**

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

**CONSIDERATION OF THE PRESIDENTIAL MEMORANDUM ON  
EXCISE DUTY BILL**

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Members! We will be looking at the Excise Duty Bill (National Assembly Bill No.28 of 2015). We will be dealing with the Presidential recommendations and you have been sufficiently advised by the Speaker. Therefore, we will move with speed and deal with the specific reservations.

**Hon. Midiwo:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Jakoyo Midiwo, what is out of order before even the Order begins?

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, I seriously need some clarification on the Order Paper and the Order before the House. On this Order Paper, there are Committee recommendations. What we have here is not just the President's Memorandum but also the Committee amendments.

**The Temporary Deputy Chairman** (Hon. Cheboi): That is correct.

**Hon. Midiwo:** Just for clarity, what are we considering?

**The Temporary Deputy Chairman** (Hon. Cheboi): Well, we will be considering both, Hon. Midiwo. We will be considering the Presidential reservations. The Committee has made proposals for amendments and we will be handling them step by step. Of course, we will be guided by the rules and if the Committee amendments are to be taken, we would have to have a two-thirds majority because it will have the effect of negating the Presidential recommendations.

**Hon. Midiwo:** Yes, and that is precisely where my concerns are. I have looked at the Committee recommendations and I know it is in the eyes and the views of the Speaker, if they negate. The reason I am raising this issue is because it is routine now that every Bill that we pass in this House, the Executive, if they do not like even a signature or dot, they return it.

Hon. Temporary Deputy Chairman, we are setting a very dangerous precedent in this House. The substantive Speaker can do us a favour by sitting here to guide us because the views of the Committee do not correspond with the views of the Speaker.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Midiwo, I want you to clarify what you have just said, that the views of the Committee do not reflect the views of the Speaker which, in my opinion, is fairly obvious. What the Speaker has done is simply to state the position as it is in law. The Committee has done its work of proposing amendments. If we will have the numbers, we will negate the Presidential recommendations. If we do not have the numbers, unfortunately, we will have to abide by the law as it is now.

If you are talking about the Speaker having to be seated here for you to raise the issues you are raising, he was seated here a few minutes ago and we should have handled the issues at that point. Remember, he gave a position before he left.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, that is true, but because we are raising the issue so that we can inform ourselves for posterity.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have heard you, Hon. Midiwo. The only thing is that you rose on a point of order. You did not specifically indicate what was out of order. However, you have made your very valid observations. Unfortunately or fortunately, we will be guided by the law as it is now and that is that if we have to negate the Presidential recommendations, we will have to have a two-thirds majority. That is the position. We can raise the rest in any future sittings. As it is now, that is the position.

**Hon. A.B. Duale:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order, Hon. Leader of Majority?

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, the substantive Speaker made a Communication on this matter barely two months ago, and this is on record. A serious deliberation was made by a number of Members and the Speaker was asked to make a ruling which he did.

Hon. Temporary Deputy Chairman, the matter before us is the application of Article 115 of the Constitution on Presidential Assent and Referral. Now that the President has used Article 115 of the Constitution to send a Memorandum as provided for under the Constitution on any

law that we pass here, the bone of contention which Hon. Jakoyo was raising is that the Committee has made certain amendments. It is within the Legal Department of this House to look at those amendments and see whether they negate the President's Memorandum on all the four issues. If in the opinion of those experts, under the leadership of the Speaker, the amendments negate the President's Memorandum, then we will use the application of the two-thirds majority rule. So, that is where we are coming from. The Speaker has spoken to the matter before he left the Chair. He said that the four areas that the President has returned fall within the confine of raising the two-thirds majority but, on the application of Article 115 of the Constitution, the substantive Speaker has made a Communication on this matter. It is on record and available in Room 8. We need to have a copy and read it every time.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, if you look at the Order Paper, you will realise that the Speaker has pronounced himself in each of the four proposals. The pronouncement is that all the four proposals have the effect of negating the Presidential Memorandum. Therefore, we will require a two-thirds majority for the amendments by the Committee to go through. I will give an opportunity to the Chair. I can see that the Chair of the Departmental Committee on Finance, Planning and Trade has something to say. I will give a few Members a chance.

**Hon. Langat:** Thank you very much, Hon. Temporary Deputy Chairman. First of all, I wish to inform the House that all the amendments that are before us are reversing all the amendments that this House passed when we were passing the Bill. There is a trend in this House. I even heard the Speaker reading another Memorandum that all the Bills are being transformed into constitutional Bills by a certain group of people who have led the House and noted that all of you cannot raise two-thirds majority. A few people calling themselves advisors are sitting somewhere, waiting to make the law and bring it back in the name of Presidential Memorandum. We sit as a Committee of Parliament. We receive representation from all stakeholders. What you are seeing today is like the Bill would have come from the National Treasury, be approved by the Cabinet and then signed by the President. What you see today is taking the Bill to where it was when it was First Read in this House.

Hon. Members, you are elected to make laws in this House. I was also elected to make law. I am a Chairman of a Committee that has 29 Members. There is no way a Cabinet Secretary can advise the President to rubbish 100 per cent of the amendments which the Committee has done: 349 Members cannot be wrong unless you admit that we are fools in this House. I want the House to rise and take back its power because some people are taking it through the back door.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Benjamin Langat, you realise that I have given you some time, but I have realised that you are speaking to a constituency other than what we have here. This is how we are going to proceed. Hon. Members cannot say that they cannot raise the two-thirds majority. If you want, you can. So, this is the way we are going to proceed.

*(Several Hon. Members stood up in their places)*

I do not want Members to be standing. I will give a few Members a chance to speak to this. So, let us not be unnecessarily excited. You will have an opportunity to speak. I will give a few Members a chance before we start the process. Let us start with Hon. Muluvi.

**Hon. Muluvi:** Thank you very much, Hon. Temporary Deputy Chairman, for giving me this opportunity to contribute. I want to be on record as saying that the business of legislation under the Constitution is vested in this House. We cannot pass things that go to State House, like the Chairman said, and get reversed. If they want to be members of the legislative arm of the Government, tell them to come here through a normal election. We are representatives of the people and this is the position. If they want to be Members here, let them come to the House.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, just relax. You will get an opportunity to contribute. I am giving a chance to Hon. Chepkong'a. Let us have Members expressing themselves before we proceed on the matter.

*(Loud consultations)*

Hon. Members, let us listen to each other.

**Hon. Chepkong'a:** Thank you, Hon. Temporary Deputy Chairman. I would like Members to listen to me. I am surprised by my counterpart, the Member for Ainamoi. I am the Member of Ainabkoi Constituency. If he knows that there is anybody who is using the President, he should disclose it here. There is no reason why somebody should draw an innuendo which he has no business bringing to this House. To say that the President is being used is a very dangerous thing.

*(Loud consultations)*

If Hon. Langat knows anything that we do not know, he should make full disclosures here so that we do not engage in guesswork and rumour mongering that someone else is being used. Kenyans, in their own wisdom, crafted this new Constitution and it is important for Members to read it. Article 109 of the Constitution is very clear. That is why I am pained as a lawyer when we argue to the exclusion of the Constitution. At the heading, it states: "Exercise of legislative powers." Let me read it for avoidance of doubt. Article 109(1) says:-

"Parliament shall exercise its legislative power through Bills passed by

Parliament and assented to by the President."

Article 155 of the Constitution gives the power to the President to assent and make referrals. The President has exercised what Kenyans have given him. If there is one Member of Parliament who sits here today and had more votes than what the President got in the last general election, let him stand. Kenyans, in their own wisdom, gave the President the power to assent and make referrals to Bills. It is a constitutional mandate that was given to the President.

*(Hon. Midiwo consulted loudly)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Jakoyo Midiwo.

**Hon. Chepkong'a:** Unless we want to operate as a House---

**The Temporary Deputy Chairman** (Hon. Cheboi): You have made your point.

**Hon. Chepkong'a:** No, I am going to finish. I have stood here and quoted the Constitution. Article 2 of the Constitution is very clear particularly to Members of Parliament. They must uphold and defend this Constitution. Anybody who is talking outside this Constitution should be ruled out of order; either you quote the Constitution or have no business speaking.



This is a House of rules and laws. There is a maxim that states “ignorance of the law is no defence”.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Chepkong’a, you have made a very valid argument. The only problem is when you start insinuating that there are particular Members who are speaking out of ignorance. That is out of order.

I will give an opportunity to Hon. Eseli. I know that Hon. Members want to speak to this matter but the bottom-line is that once we move to the specific clauses, we will require the two-thirds majority. Therefore, I am giving you an opportunity to raise your two-thirds majority if you want. Let us proceed because this is the law that we are handling.

**Hon. Wandayi:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order? Hon. Eseli has not even spoken, Hon. Wandayi. What is your point of order?

**Hon. Wandayi:** Hon. Temporary Deputy Chairman, I am just taking cue from your words. This House cannot sit in vain. The Speaker has pronounced himself; that for us to make any changes to what the President has recommended, we require the support of two-thirds of the membership of this House. Will I be in order, under the circumstances, therefore, to suggest that this House adjourns until we get a two-thirds majority? We cannot sit here, pretending that we are legislating and yet we cannot do it. Given what the Speaker has said, we should adjourn and get the numbers before we start transacting this business. Otherwise, we make it impossible for that business to continue.

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Hon. Wandayi! You have made your point. The only issue is that we would expect Hon. Members to attend in droves since they knew that this Memorandum would be coming to the Floor of the House this afternoon. Let us hear Hon. Eseli.

**Hon. (Dr.) Simiyu:** Thank you, Hon. Temporary Deputy Chairman. This matter will keep recurring and raising temperatures for no reason. Therefore, by way of paraphrasing what Hon. Wandayi has just said, I would plead that the Committee that reviews the Standing Orders looks at the relevant Standing Orders again to ensure that, if at all we will be going through Presidential Memoranda, we insist that we have the two-thirds majority in the House first. That would require an amendment to the Standing Orders. This is something we need to do because as the saying goes, “you make laws for posterity and not expediency”. If we relook at the Standing Orders, we might cure this problem once and for all.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I am still giving you an opportunity to express yourselves. We will proceed at the right time. At this point in time, I would expect that any Hon. Member who would like to have this position negated would be looking for the numbers.

In the meantime, what is your point of order, Hon. Njagagua? The Leader of the Majority Party, I know that you are a ranking Member of this House, but let us have Hon. Njagagua contribute to this matter.

**Hon. Njagagua:** Thank you, Hon. Temporary Deputy Chairman, for giving me this chance. Hon. Langat was very passionate in his thoughts and expressions. However, I heard him say that once the President brings his Memorandum to this House and we are not able to overturn it, then we are confirming that we are fools. Was that gentleman in order to call us fools?

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Njagagua, honestly, I did not hear it. So, I do not want to go back looking for the record. I did not hear that. Had I captured that specific statement, I would have asked---

**Hon. Njagagua:** Hon. Temporary Deputy Chairman, the HANSARD is very clear; it captured him on that bit. You have the power to order for the HANSARD to be produced. Those are the words that Hon. Langat used in reference to Hon. Members.

**The Temporary Deputy Chairman** (Hon. Cheboi): I did not hear it, Hon. Njagagua. I was very keen. Let me assume that nothing like that was said. Let us give this opportunity to more Hon. Members to ventilate the matter. Let us not deal with that issue. Let us give more Members time to speak so that we can proceed.

Can we hear the Leader of the Minority Party?

**Hon. Nyenze:** Thank you, Hon. Temporary Deputy Chairman. The Members of the National Assembly have three roles: oversight, legislation and representation. Our role of legislation seems to have been eroded by the Executive. If there was a Committee headed by Hon. Langat which sat and looked at these things in detail and came up with recommendations, it is wrong for a small section of the Executive – who do not have legislative powers – to usurp the powers of this House. The President has the power to assent to Bills, but it should not be the case that whenever we pass laws, they are returned to this House through the back door for reconsideration. We need to be protected as a House. A Committee of this House sat and came up with these changes.

**The Temporary Deputy Chairman** (Hon. Cheboi): As I give opportunity to the Leader of the Majority Party, let me clarify that the law does not seem to help in terms of the protection you are seeking, Hon. Francis Nyenze. It is very clear. If we have to make any amendment to this Presidential Memorandum, we must have a two-thirds majority.

Hon. Members, I have repeated it many times. It is not like we have never raised a two-thirds majority in this House before. I would expect that by giving you sufficient opportunity to discuss, you would be running around getting the numbers so that you can overturn the deficit, if you so wish. Let us hear the Leader of the Majority Party.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, this is a House of records. I want to go on record in the HANSARD that barely two or three months ago, we were in a similar situation and the substantive Speaker gave a lengthy communication on the matter.

**Hon. Member:** This is not a funeral---

**Hon. A.B. Duale:** I am not at a funeral! You do not just shout at me!

**The Temporary Deputy Chairman** (Hon. Cheboi): The Leader of the Majority Party, just proceed.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I agree that the National Assembly has three functions as provided in the Constitution. They are oversight, legislation and representation. As I speak, the Chairperson of the Departmental Committee on Finance, Planning and Trade should go to my office and send text messages to whip people. I will help you in lobbying to raise the two-thirds majority.

Parliament has a legislative function. However, Parliament does not have absolute legislative powers. The laws that we pass here can be challenged in the Judiciary and whole or part of it can be annulled. That shows that we do not have absolute legislative powers.

Secondly, on the matter before us today, the framers of the Constitution, under Article 115, gave those powers to the President. I had the privilege of serving in the last Parliament.

President Kibaki used that provision and President Uhuru will also use it until we amend the Constitution.

**The Temporary Deputy Chairman** (Hon. Cheboi): The Leader of the Majority Party, you have had your say. There is a point of order by Hon. Ganya.

What is it, Hon. Chachu Ganya?

**Hon. Ganya:** Hon. Temporary Deputy Chairman, is it in order for the Leader of the Majority Party to mislead the House by saying that the Executive has the overall or conclusive mandate to make laws in this country when that constitutional power lies with the Parliament of Kenya? Is he in order to mislead this House that President Kibaki used advisers to make legislative instructions as President Uhuru does at State House?

**The Temporary Deputy Chairman** (Hon. Cheboi): I do not want it to be an exchange between the Leader of the Majority Party and Hon. Ganya. I want to give another Hon. Member an opportunity to speak to this matter. We want to give more Hon. Members an opportunity.

The Leader of the Majority Party, just answer and sit down.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, Hon. Chachu comes from the biggest constituency in the country. Whether advisers are there or not, Article 115, under the title “Presidential assent and referral”, specifies that those powers can only be exercised by one man called “Uhuru Muigai Kenyatta”. Unless we change the Constitution, he has those powers.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, let us allow a few more Hon. Members to make their contributions, then we proceed at the right time. Hon. Members whoever wants to influence this Memorandum can use his time better by bringing more Members to the House. I have given you almost 30 minutes to speak to each other and I am not seeing the effect.

Proceed Hon. Nassir.

**Hon. Nassir:** Hon. Temporary Deputy Speaker, I would like to explain where my Chairman is coming from. I am speaking as a Member of the Departmental Committee on Finance, Planning and Trade. It should go on record that we sat as a Committee till very late to go through these amendments.

There was a reason, and there is a lot of bitterness in the whole Committee regarding all the amendments we suggested. These amendments were brought to the House and were adopted. But when they went for the Presidential assent, the President explained that he needs to get an input from the National Treasury. When the National Treasury gave him the input it meant that they rubbished all our suggestions.

First of all, Kenyans need to know that some of the amendments we are against are, for example, a simple bottle of soda going up by 43 per cent. When our learned friends on the other side defend these amendments, they should tell Kenyans that when a bottle of soda goes up by 43 per cent, we were not part of it. The cost of a small vehicle is going to be unbearable. We are no longer talking about having a middle income generation in this country. People are being overtaxed. I can assure one thing, that we stand---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Nassir, you have taken some time. I would like to give the opportunity to a few more Hon. Members.

**Hon. Nassir:** Allow me to finish.

**The Temporary Deputy Chairman** (Hon. Cheboi): You have made your point, Hon. Nassir.

**Hon. Nassir:** I would like to remind my colleagues that there is no nation that has ever grown by overtaxing its citizens. That is what is happening here right now.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have Hon. Dalmas Otieno. I will come to this direction and give an opportunity to two Members. We will work like that. We will proceed at the right time.

**Hon. Angwenyi:** Hon. Temporary Deputy Chairman, consider gender.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Jimmy, I notice your gender. Proceed Hon. Dalmas Otieno.

**Hon. Anyango:** Thank you, Hon. Temporary Deputy Chairman. What we are facing is a conflict between two key organs of governance. Certainly, the Presidential reservations are works of the Executive whether they are advisors, ministers or whoever they may be. They are the work of the Executive.

Traditionally, the Executive has always had a strong interest on any legislation that has financial impact. Similarly, it has interest on any legislation that is critical to key strategic policies of the Government in power. What should be done under this circumstance? The Speaker knows that our relevant Committee has consulted people and come out with recommendations, and the President has a reservation which is negating that one. Hon. Members are entitled to a good notice that a vote should be taken on such a day and at such a time on certain Presidential reservations which the Committee of Parliament has amendments that would have the effect of negating the Presidential reservations.

A vote of 233 Members is required and if they do not turn up in those numbers, absence or voting “yes” or “no” has the same effect. This is in the same manner we have been giving notice to votes that affect constitutional threshold. The votes that are negating the reservations of the President should be given adequate notice at the discretion of the Speaker, without having to amend the Standing Orders. That way we will avoid either the dictatorship of the President or that of the National Assembly.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Members, I will give an opportunity to the independent Member for Kibwezi West.

**Hon. Musimba:** Thank you Hon. Temporary Deputy Chairman for this opportunity. In order to cure this, I would like to invoke Standing Order No.134. I would like us to report progress and ask the House to sit again another day.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Musimba, you might have cited something, but it is going to be procedural at this point in time. This is what we are going to do.

**Hon. Musimba:** It is under Standing Order No.134.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have heard you, Hon. Musimba. We will proceed in the manner we have indicated. At the right time, you will have the opportunity to cause the Bell to be rung. Hon. Members will come and if we can raise the numbers we require---

**Hon. Musimba:** Hon. Temporary Deputy Chairman that is not what I am asking for. If you will indulge me Standing Order No.134 states:-

“If any Member before the conclusion of proceedings on a Bill in a Committee of the whole House moves to report progress and such motion is carried, the Chairperson shall leave the Chair and the Chairperson, or, if the Chairperson has taken the Speaker’s Chair, the Member in charge of the Bill,

shall report progress to the House and shall seek leave to sit again, and a day for the resumption of the proceedings shall be determined by the House Business Committee in consultation with the Member in charge of the Bill.”

**The Temporary Deputy Chairman** (Hon. Cheboi): I have seen that very clearly. We have not even started.

**Hon. Musimba:** We are already in the Bill.

**The Temporary Deputy Chairman** (Hon. Cheboi): We have not even started looking at any clause. That particular Standing Order you are trying to invoke is very clear. It states in part: "...before the conclusion of the proceedings", which we have not even started.

Once we come to specific clauses, probably you can raise those issues at that particular point. You could even go the other way of causing the Bell to be rung, and Hon. Members will come here. We are trying to be in conflict with the law. It is in our Constitution. I am giving you the opportunity to express your views. This would be like the Truth, Justice and Reconciliation Commission (TJRC) of some sort. I will give the Floor to a few Hon. Members starting with Hon. Jamleck Kamau. We will have to proceed somehow.

**Hon. Kamau:** Thank you, Hon. Temporary Deputy Chairman. I would like to tell the Chairman of the Departmental Committee on Finance, Planning and Trade that I understand where he is coming from. Unfortunately, we have laws which must be followed. The Constitution is very clear on this matter. As Hon. Dalmas Otieno said, it is a clear conflict between the Executive and the Legislature. The only way it can be cured is through legislation of new laws that will take care of the problem. It starts right now. The law is clear that once the President receives the Bill, if he has any issues in it, he will give some reservations to this House. When the reservations come to this House, they are read by the Speaker to the entire House. After they are read out and even before they are put on the Order Paper, the HBC which comprises Hon. Members from both sides of the House will look at them and set the day for discussion. We did this as the HBC. Therefore, on this Bill, we do not seem to have a choice, unless we get the two-thirds majority.

**The Temporary Deputy Chairman** (Hon. Cheboi): Okay. I will give another independent Member a chance, that is Hon. Wesley Korir. Hon. Members, why does it appear like this thing was ambushed on Members? It is in the Order Paper. The Chair seems to have sat with his Committee Members and that is how they proposed these amendments. Let us have Hon. Korir. I am sure Hon. Members you had information that this was coming. So, raising the numbers should not have been an issue.

**Hon. Korir:** Thank you, Hon. Temporary Deputy Chairman for giving me an opportunity to contribute on this issue. There is one thing that I want us to understand. The Constitution---

*(Hon. Wakhungu consulted loudly)*

Excuse me, Hon. Chris Wamalwa. There is one thing that we need to understand and that is the difference between recommendation and reservation. The President is doing the wrong thing. The Constitution says that the President will send back the Bill with reservations and not recommendation for amendment. What the President is doing is recommending that he wants this to be done. He is not saying what his reservations are. I want someone to tell us the difference between “recommendation” and “reservation”.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give the Minority Whip this chance. He has been waiting for a long time. We will then proceed, Hon. Members.

**Hon. Mwadeghu:** Ahsante, Mhe. Naibu Mwenyekiti wa Muda. Ninaomba Waheshimiwa tuelewane. Tumesoma Katiba na tumeielewa. Tumeona vile vipengele vinavyompatia Rais nguvu. Hata hivyo, lazima tutumie akili zetu. Kuna akili za kuzaliwa na zingine tunazipata shuleni. Hapa tunatakiwa tutumie akili za kuzaliwa.

*(Loud consultations)*

Mhe. Naibu Mwenyekiti wa Muda, ninaomba nisikizwe. Jogoo likikutana na mwamba halizingatii kuvunja mwamba lakini huwa linazunguka mwamba. Mhe. Naibu Mwenyekiti wa Muda ninaomba umfahamishe Mhe. Duale kwamba nasi pia tulienda shule na si yeye pekee alienda shule. Ninataka pia nikuambie, avumaye baharini ni papa lakini pia kuna nyangumi. Sio lazima kila wakati yale Duale amesema yachukuliwe kama Bibilia. Wakati umefika Mhe. Duale pia aambiwe kuwa ubabe wake si ule utakua unatupeleka kila mahali.

*(Hon. A.B. Duale stood up)*

Mhe. Duale, ninaomba utulie. Ninasema hivi, wakati umefika ambapo wakati hizi sheria zinapopitishwa, jamani tuangalie tuone kama tunaweza kuahirisha kikao hiki. Kama kinaweza kuahirishwa, kiahirishwe ili tupate muda wa kuzingatia haya mambo ili tumalize hii sheria.

**The Temporary Deputy Chairman** (Hon. Cheboi): The Leader of the Majority Party, I know the Minority Whip has mentioned your name.

*(Laughter)*

Order Members! Nitampatia Mhe. Duale nafasi na nitamtaka ajibu kwa Kiswahili.

**Hon. A.B. Duale:** Mhe. Naibu Mwenyekiti wa Muda, unajua ninataka nimwambie Mhe. Mwadeghu kwamba hoja tunayojadili, ni Memoranda. Lakini tangu walipokua kwa mazishi ya mamake ndugu yangu Mbadi, wanachama wa Coalition for Reforms and Democracy (CORD) wanaongea tu juu ya Duale. Wana kasumba na Duale?

**The Temporary Deputy Chairman** (Hon. Cheboi): Order Members! Hon. Members, let me give a few Members who have not spoken a chance. Let me give them an opportunity as I consider gender. The Member for Teso West, we are having problems tracing your card because you were way down.

**Hon. (Ms.) Otucho:** Thank you, Hon. Temporary Deputy Chairman. I think we do not need to remind you that this House consists of both elected men and women. So, the issue of gender should not be taken for granted. You cannot only give men the opportunity to speak.

Thank you for the opportunity. I stand guided.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Mary Emaase. The first thing is that you were not even cited in the list here. I have decided to go the gender way. That is how you got the benefit. Now, rather than being grateful, you are beginning to tell us that Members are both men and women. All Members of this House are Hon. Members including you.

Proceed without having to be---

**Hon. (Ms.) Otucho:** Thank you, Hon. Temporary Deputy Chairman for the opportunity. I want to speak as a member of the Departmental Committee on Finance, Planning and Trade. Before we made the decisions we made, we consulted the stakeholders. We represent people and one of our major responsibilities is legislation. The decisions that we made are what we believed as a committee, after consultation, are good for this country. I want to support the position of our Chair that the recommendations by His Excellency the President are not good. I belong to the Jubilee Coalition.

The Departmental Committee on Finance, Planning and Trade is constituted legally comprising of all Members from both sides of the coalition. So, I want to remind my colleague Hon. Nassir that this is not about that other side. It is about this country and our people. Those recommendations are not good for this country. Somebody is trying to usurp our powers. We need to stand our ground and reclaim our position. We cannot lie to ourselves that we cannot raise the two-thirds majority. I want to support the position that this debate be adjourned and come back to the House and make the right decisions.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us have the Member for Awendo. I am simply following the list, Hon. Kaluma. I almost referred to you as Hon. Ogendo who was a very bright land lawyer but---

**Hon. Opiyo:** Thank you very much, Hon. Temporary Deputy Chairman. What I can observe here with regard to this Bill is that we have an Executive that is trying to legislate through the back door. I think the Constitution under Article 115 suggests explicitly that the President shall indicate his reservations. It does not state that he shall give his recommendations.

**The Temporary Deputy Chairman** (Hon. Cheboi): This is something that I really need to clarify because I have heard a few Members speak about it. If the President, therefore, expresses his reservations, how is it disposed of in this House? I will be happy to listen to you on what the Member for Awendo has said. If he expresses his reservations---

**Hon. Opiyo:** My understanding is that in his communication to Parliament, he should say that he is not comfortable with specific clauses and they should be relooked at. But if he gives us specific recommendations we, as a Parliament, must decide whether to start a cycle of legislation all over again.

**The Temporary Deputy Chairman** (Hon. Cheboi): If you were citing new clauses, that would be different, but if he expresses his reservations with a proposed recommendation, it still falls under the purview of Article 115. Let me tell you the Member for Awendo that you might have a very genuine concern, but the unfortunate or the fortunate bit is that it has been addressed by the Constitution.

Now, the substantive Speaker made an official Communication on 25<sup>th</sup> June, this year. All these issues were brought before this House. At that point, if you had any issues with the Communication from the Speaker, you should have raised it then. So, the position as it is now is that after we have spoken and the Members are coming in, we will see whether we meet the two-thirds majority threshold and make the decisions that the House needs to make, if it has to. So, we have finalised that and I will give an opportunity to another Member.

**Hon. Opiyo:** Hon. Temporary Deputy Chairman, let me conclude on that matter, please.

**The Temporary Deputy Chairman** (Hon. Cheboi): The Member for Awendo, let us give a chance to the Member for Turkana South.

*(Loud Consultations)*

Order Members! Let us give Members opportunity to be heard. Let us have the Member for Turkana South then I will come to another Member from this side, this way and then we finalise. We will stop it at that point. Hon. Members, this is something that we are going to transact this afternoon. So, proceed the Member for Turkana South. Be brief.

**Hon. Ekomwa:** Thank you, Hon. Temporary Deputy Chairman. First and foremost, I was raising a point of order when Hon. Emaase was also on a point of order. This is just introduction.

*(Laughter)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I did not hear you, the Member for Turkana South.

**Hon. Ekomwa:** Hon. Temporary Deputy Chairman, you need to guide this House. Most of the time I hear the female Members talking about gender. Does it mean that the word “gender” has been given a new description to mean female? I wanted to make that correction.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Lomenen, leave that agenda completely and let us proceed to the real agenda.

**Hon. Ekomwa:** Yes, I am coming to that. Hon. Temporary Deputy Chairman, Article 115 of the Constitution has been quoted. The President is there to protect the Constitution. I want to ask the Members of Parliament who has been given a constitutional mandate to assent to Bills that we pass here. Let anyone say that he has been given that mandate.

*(Laughter)*

That is vested on the President.

Secondly, we are only arguing on the procedure that a Bill undergoes. The Bill was taken to the President and he performed his constitutional mandate and it has been brought back here. As a House, if we are not comfortable with the recommendations or reservations, we should mobilise the House to indicate that we are not comfortable with the recommendations instead of making noise.

**The Temporary Deputy Chairman** (Hon. Cheboi): Order, Member for Turkana South! Members do not make noise but they sometimes consult loudly.

Order Members! Hon. Members, it is time that we have to transact this. I have listened to the Members this afternoon---

*(Loud consultations)*

Order Members! I have given Members sufficient opportunity. We will proceed. I have heard Members and I heard no Member who said specifically what law the President has violated. The way forward will come when we start the process. We will come to that, Hon. Members. Let us proceed. If you want to raise issues, raise them once we have started the substantive scrutiny of the recommendations. I would not like to overrule Members at this point in time because I wanted us to be as accommodative as possible. You have been heard both in the House and even outside the House.



Hon. Members, even if I gave four Members a chance from now, I still know many other Members would like to speak.

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

Hon. Jakoyo, please, let us proceed. Order, the Member for Kisumu Town! We will have to proceed. The Communication from the Hon. Speaker has been in public domain for the last three months. If you wanted to challenge it, you should have challenged it before. So, even if it is a Supplementary Order Paper, I do not want to exchange words with the Members. The Member for Homa Bay, please, let us leave it for today.

Let us proceed. We will handle this. You can cause the Bell to be rung. You do not have the power, but you know what you can do and then we will have the Members come in, if that is the position that you require. Hon. Members, you have been heard. We cannot hear everybody. So, let us proceed.

### *First Schedule*

**Hon. A. B Duale:** Thank you, Hon Temporary Deputy Chairman. I beg to move:-

THAT, Part I of paragraph 1 of the First Schedule be amended by –

(i) inserting the following items and the corresponding rate of excise immediately before the item on “Food supplements” as follows:-

Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter.	Shs. 10 per litre
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(ii) deleting the items relating to cigarettes appearing immediately after the item on “catridge for use in electronic cigarettes” and substituting therefor the following item and the corresponding rate of excise duty:

Cigarettes containing tobacco or tobacco substitutes	Shs. 2500 per mille
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(iii) deleting the item relating to “Motor vehicles of tariff heading 87.02, 87.03 and 87.04” and the corresponding rates of excise duty and substituting therefor the following:

Motor vehicles of tariff heading 87.02, 87.03 and 87.04	Less than three years old from the date of first registration Kshs. 150,000 per unit
	Over three years old from the date of first registration

	Kshs. 200,000 per unit
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(iv) inserting the following item and its corresponding rate of excise duty immediately before the item referring to “Plastic shopping bags”:

Motor cycles of tariff 87.11 other than motor cycles ambulances	Shs. 10,000 per unit
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Hon. Temporary Deputy Chairman, the rationale of this is that Excise Duty on fruits was at 7 per cent. It was raised to Kshs10 per litre for two main reasons, namely, to raise revenue and to finance the 2014/2015 Budget Expenditure and the Division of Revenue. It is very important for the House to hear that the Budget process is a function of this House. When you pass the Division of Revenue Bill and the Budget Estimates, any revenue that is projected to finance that Budget must be sustained. The House cannot have the leeway to give with one hand and withdraw with the other hand. That is not fair to the overall budget-making process and the fiscal framework. That is the concept.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I will give a chance to two Members, namely, Hon. Midiwo, but I will start with the Chairman of the Committee. Hon. Members, let us do it in a manner that we will listen to each other. Let us have Hon. Langat.

**Hon. Langat:** Hon. Temporary Deputy Chairman, on behalf of my Committee, I propose to move an amendment to delete the Presidential recommendation, the effect of which---

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Langat, kindly read what is on Page 1083 of the Order Paper. It will be much easier so that we can deal with that.

**Hon. Langat:** Hon. Temporary Deputy Chairman, I beg to move:-

THAT, the recommendation by H.E the President to insert a new item in Part I of Paragraph 1 of the First Schedule, relating to *Fruit juices (including grape must), and vegetable juices, unfermented and not containing added spirit, whether or not containing added sugar or other sweetening matter and corresponding rate of Excise Duty*, be deleted.

This is something this House had considered and approved to reduce the rate from Kshs10 to Kshs5. After conducting the public hearing process, in which we spent a lot of money listening to the public who are the stakeholders, it was felt that Kshs10 would cause a serious increase in prices. I agree with my good friend Hon. Duale in terms of revenue, but it is also wrong to assume that the higher the price, the higher the taxes that the Government would raise. Higher prices will affect consumption and will reduce the revenue at the end. We were listening to both sides to see what is sustainable to the taxpayers and what will actually lead to collection of revenue in a manner that does not cause problems to the economy.

Thank you.

**The Temporary Deputy Chairman** (Hon. Cheboi): Therefore, what Hon. Langat is proposing is a deletion.

*(Question of the amendment proposed)*

I want to inform the House that it has been determined that the amendment has an effect of negating the President's reservation and that two-thirds majority Members is required for its passage. I give the Floor to the Member for Gem.

**Hon. Midiwo:** Thank you, Hon. Temporary Deputy Chairman.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Cheboi): I wish Members can listen to one another. Every Member here wants to speak.

**Hon. Midiwo:** First of all, it is not clear whether what we are deleting is the proposal moved by Hon. Duale or that moved by Hon. Langat. Can we be guided?

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Midiwo, just for clarity so that you can be up to speed, Hon. Duale has proposed the President's reservation and recommendation to the House. What Hon. Langat has done is to propose a deletion of the President's reservation and recommendation. So, that is what we are handling now.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, I support Hon. Langat. Let me say this: What is happening before this House is an illegality. You are saying that the Speaker has recommended that the amendment moved by Hon. Langat requires a two-thirds threshold to be passed. You cannot give us a Supplementary Order Paper at 2.00 p.m. and you have not informed my Whip or the other Whip to call Members here. Who are the two-thirds? Where will we get the two-thirds if Members are not whipped over a possibility of a two-thirds vote?

Secondly, sometimes we rush things. I watched you on television on the day we were passing the clauses touching on the media in the Parliamentary Powers and Privileges Bill. We made unnecessary noise. You were sitting on the same seat. When we rush, we make bad laws. The President said on *Mashujaa* Day that we need to watch what we do. The import of this amendment, if it not deleted, means that the price of soda will go up by 43 per cent. That is the import. Ask Members of the Committee.

You are pleading for help as the Jubilee Government and you deny us a chance to help you. How then do we help you? I can tell you that five days ago the President of this country pleaded with this House to make good laws and five days later, we are busy on a technicality making a bad law. There is no way you can increase Excise Duty on raw materials for sodas and juices. Even if you are greedy, what are you trying to collect money for? We know you are over-stealing! What is it you want to do with the money? I plead with you.

**Hon. Ichung'wah:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): Member for Kikuyu. As you have the Floor, Hon. Ichung'wah, I want to tell Hon. Midiwo that we are not rushing at all. We have taken more than 30 minutes.

**Hon. Ichung'wah:** Thank you, Hon. Temporary Deputy Chairman. I seek that you find Hon. Midiwo completely out of order for saying that people are over-stealing. I do not know who those people are because the recommendations that have been brought by the President are for this House to consider and make a decision on. Therefore, Hon. Jakoyo Midiwo, as a seasoned parliamentarian in this House, is completely out of order to insinuate that the Government seeks to collect revenue for it to be stolen.

If Hon. Jakoyo Midiwo and his cohorts in CORD were collecting revenues to steal when they were in the Government, they must be aware that this is a Government that wants to be accountable to the people of Kenya. To make my point, it is also completely misleading for Hon. Jakoyo Midiwo to tell this House and the country that the juices that are being referred to in this particular amendment are soda. It is juices that are being done by the Zucchini of this world. They are juices that are being drunk by rich men like Hon. Jakoyo and his cohorts in CORD. Those are not juices that are being processed for the poor Kenyan. The poor Kenyan depends on that revenue that will be raised from the juices for the rich man to provide social programmes.

Therefore, it is out of order for Hon. Jakoyo to mislead the House that it is about sodas and juices for the poor. It is about taxing the rich to afford services for the poor. Some of those things are very dangerous to our health.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have tried to get the point of order. It sounds like a point of order but there also is a lot of argument in it.

Hon. Jakoyo Midiwo, the Chair does not make the decision for you. When we preside over the House here, the decision that we make is what you Members of Parliament decide. It will be unfortunate if Hon. Jakoyo Midiwo will even insinuate that laws made here are determined one way or the other by the person presiding. It does not happen like that. You know that, Hon. Midiwo. It is not in order for you to come here and say that you watched television. That is not right.

So, Hon. Midiwo, make your arguments without having to cast aspersions because the net result of that is that you will have laws that are not well respected. It is thought that we rush them sometimes or make decisions that are not supported by the House. The decisions are made by the House. Every time we put the Question here, you have the opportunity to vote on it one way or the other. The Chair does not vote.

Proceed, Hon. Midiwo as you finalise.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, I will finish in one minute. Let me withdraw the part that seems to offend you personally.

**The Temporary Deputy Chairman** (Hon. Cheboi): It really offends the Chair.

**Hon. Midiwo:** But I cannot withdraw the one for the Jubilee because it is true.

**The Temporary Deputy Chairman** (Hon. Cheboi): That you can transact between yourselves, but I have to protect the Chair.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, it would have been kind of you to also answer me on the Supplementary Order Paper that was brought when many Members were already sitting here. When you are talking about two-thirds majority, this is the sanctity of the law. The decision you have made---

**Hon. A.B. Duale:** On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Cheboi): What is your point of order, Hon. Duale?

*(Loud consultations)*

A point of order is a point of order.

**Hon. A.B. Duale:** Hon. Temporary Deputy Chairman, I have absolute respect for Hon. Jakoyo and the leadership of this House. As leaders, it is not good to mislead. The House Business Committee (HBC) met on Tuesday last week. I was in attendance and so was Hon.

Jakoyo. Hon. Mwadeghu was not able to attend, but a number of Members here attended. Today's matter on Excise Duty was approved by HBC. The Order Paper was submitted before the Supplementary Order Paper had this agenda. So, the matter before us is the application of Article 115 of the Constitution on Presidential Referral and Assent. A serious Communication, which is on record in this House, has been given by the substantive Speaker. Let us not turn the House into something else. Let us debate and, if we get the numbers, we will vote.

**The Temporary Deputy Chairman** (Hon. Cheboi): The only thing that Members would want to know is that what is missing in the original Order Paper are the proposals by Hon. Benjamin Langat. Otherwise, these other ones were already in the original Order Paper. Finalise, because I want to give a chance to your colleagues. You cannot take all the time, Hon. Midiwo. I have other Members who want to speak.

**Hon. Midiwo:** Hon. Temporary Deputy Chairman, I agree with you, but I keep getting interrupted. This House is debating everything, including the proposals by the Committee led by Hon. Langat. Members need to see Committee Reports. You know that I am not lying. You cannot come here in the afternoon and ambush us with a report and expect us to have 232 Members to support it. That is not right. Something is seriously amiss. This thing was not before us. I am a Member of HBC.

**The Temporary Deputy Chairman** (Hon. Cheboi): I have given you enough time, Hon. Midiwo. Let us listen to the Deputy Chief Whip of the Minority Party.

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Chairman.

**Hon. A.B. Duale:**--- (*Off-record*)

**Hon. Wakhungu:** Hon. Temporary Deputy Chairman, can you control the Leader of the Majority Party?

**The Temporary Deputy Speaker** (Hon. Cheboi): Let us listen to Hon. Wamalwa.

**Hon. Wakhungu:** Thank you, Hon. Temporary Deputy Chairman. What we are doing is very disappointing. We cannot preach water and drink wine. I support Hon. Langat's proposal because Article 115 of the Constitution says that when the President has a reservation, Parliament may consider it procedurally. The procedure, in line with Article 118 of the Constitution, is that there must be public participation. The legislative authority of this country belongs to this House and not to the President. The Chairperson of the Departmental Committee on Finance, Trade and Planning has mentioned clearly that they met stakeholders on this matter and their proposal was to bring down the rates. So, it is important that whatever we do today, we must consider the input of the stakeholders as far as this matter is concerned.

The Speaker's ruling talks of the two-thirds threshold. It is high time we considered the two-thirds threshold to be of the Members present in the plenary. That is what we have to do because we cannot raise the numbers. We must consider the two-thirds of the Members present today. That is the right thing to do.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let us now hear Hon. Jimmy Angwenyi.

*(Hon. Angwenyi moved to the Dispatch Box)*

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Angwenyi, I would rather you address us from where you are seated.

**Hon. Angwenyi:** Thank you, Hon. Temporary Deputy Chairman, for giving me a chance to contribute to this important matter.

A few months ago, the President of the Republic of Kenya, His Excellency Uhuru Muigai Kenyatta, gave an edict that we must destroy all alcoholic drinks that are destroying our youth. I saw many Members, particularly of the Jubilee coalition, destroying all kinds of alcoholic drinks in Dagoretti South, Gatundu South and even in Gucha, where I come from. However, we were not destroying juices and sodas because we were giving the people the option of taking them instead of the hard drinks. We now want to make juices and sodas unaffordable.

We are here to legislate for the people of Kenya.

**Hon. Members:** Yes!

**Hon. Angwenyi:** The people of Kenya would like to take juices. Whenever a visitor comes to my house, my wife, who does not drink – I drink a little – offers them juice or soda. If we make juices and sodas unaffordable to her, what will she offer those guests?

**The Temporary Deputy Speaker** (Hon. Cheboi): Hon. Jimmy, you must be a very unlucky husband. If your wife only eats and does not drink at all, that is extremely dangerous. Proceed to finalize.

*(Laughter)*

**Hon. Angwenyi:** Hon. Temporary Deputy Chairman, there is one more thing. I understand that the *Coca-Cola* Company wants to move their headquarters from Kenya to another country because of high taxation. This Parliament must ensure that we attract investors in this country and not to expel them.

With those few remarks, I support the Chairperson of the Departmental Committee on Finance, Planning and Trade.

**The Temporary Deputy Chairman** (Hon. Cheboi): Let me now give the Floor to Hon. Musimba.

**Hon. Musimba:** Thank you, Hon. Temporary Deputy Chairman. I rise under Standing Order No.134 to move that we report progress to the House so that we can settle this issue.

**The Temporary Deputy Chairman** (Hon. Cheboi): Hon. Musimba, before you proceed, approach the Clerks-at-the-Table so that you can be guided accordingly. Hon. Musimba is a very good telecommunications expert, but his communication sometimes needs some guidance.

*(Hon. Musimba consulted the Clerks-at-the-Table)*

## PROGRESS REPORTED

### CONSIDERATION OF PRESIDENTIAL MEMORANDUM ON EXCISE DUTY BILL

**Hon. Musimba:** Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Presidential Memorandum on Excise Duty Bill (National Assembly Bill No.28 of 2015) and seek leave to sit again another day.

**Hon. Langat:** I second.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

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

**Hon. Cheboi:** Hon. Speaker, I beg to report that a Committee of the whole House is considering the Presidential Memorandum on Excise Duty Bill (National Assembly Bill No. 28 of 2015) and has instructed me to report progress and seek leave to sit again another day.

**Hon. A.B. Duale** seconded.

*(Question proposed)*

**Hon. Members:** Put the Question! Put the Question!

**Hon. Speaker:** Hon. Members, I know you are eager for the Question to be put. However, let me hear a few of you properly. I was not hearing and seeing you well. I can hear a few of you before I put the Question.

Leader of the Majority Party, you have the Floor.

**Hon. A.B. Duale:** Yes, Hon. Speaker. Now that you are here, I want to state very clearly and go on record that this matter was canvassed. I am sure the records of the House like the HANSARD will bear me out. At a later stage, specifically on 25<sup>th</sup> June 2015, you gave a very comprehensive communication. I do not expect the Speaker to give another ruling on the same matter.

Hon. Speaker, the matter before us is the application of the subtitle “Presidential assent and referral” of Article 115 of the Constitution. We must speak to the nation and the rule of law. The minutes of the House Business Committee (HBC) of last Tuesday will bear me out. The HBC decided to slot in the Excise Duty Bill and, therefore, it is before this House procedurally.

Two, since you read the Memoranda from the President as a Message, 21 days have elapsed. Today is the last day for this House to deal with this matter in either way. If you disagree with the President, you must raise the required numbers. If you have no numbers, then that is it.

Hon. Speaker, it has been like that in all Parliaments, starting with the 1<sup>st</sup> Parliament of Mzee Kenyatta up to the current one, the 11<sup>th</sup> Parliament. From the Parliament where Mzee Moi was the President to the 10<sup>th</sup> Parliament of President Kibaki in which I served, assent and referral has been there. So, the Standing Orders and the Constitution provide for that. This is a Money Bill and you referred this matter to the Departmental Committee on Finance, Planning and Trade and they looked at it. The law provides that you do not need to raise the two-thirds majority where you substantially agree with the reservations of the President. Where you fundamentally disagree with the President’s reservations, the only route available to this House is the two-thirds majority. Let us not re-invent the wheel. Let us not create an atmosphere where we want to be the same people to violate the Constitution which we swore to defend the first day we became Members of Parliament.

In my opinion, the determination of this matter was done a long time ago. This afternoon is a very sad day for me. This is because, procedurally, the precedent and practice of all parliaments is that once a matter has been decided, the option for us legislators is to see whether we can amend Article 115 of the Constitution. Article 115 is at the end of the legislative chapter of this Constitution. In fact, it is good to read Article 118.

I was very sad when my good friend, Hon. Chris Wamalwa made a very serious allegation. He said: "Let us use the two-thirds number of those who are inside here." That is very casual. The Constitution and the Standing Orders talk of two-thirds of 349. If it says a quarter, it will be a quarter of 349; that is the one for impeaching the President. You cannot make the shoes you wear. You will always go to the Bata Shoe Company Kenya Limited to ask them to make some for you.

I want to go on record on this. For the Legislature, the Judiciary and the Executive, this Constitution has provided checks and balances. It has denied all the arms of Government absolute powers; whether it is the Executive, the Legislature or the Judiciary. I have no doubt that this House has the powers on legislation, representation and oversight, under the Constitution. But, the same Constitution denies you absolute powers in the Bill of Rights. The Bill of Rights cannot just be open-ended. Your rights cannot injure those of the other person. So, there are checks and balances. That is why the Judiciary has been provided; in the unlikely event that Parliament over-steps its mandate. The media calls us "a rogue Parliament" for making draconian laws a number of times.

Where is the interest of the citizens if we make law today? The Judiciary has the constitutional mandate to annul the whole law or part of it. That is why my colleagues from the Coalition for Reforms and Democracy (CORD) and other Kenyans went to court when we passed the Security Laws (Amendment) Bill. A number of provisions in the Security Laws were removed. Those are the powers given to the Judiciary to check excessive authority of Parliament on legislation.

In the Referendum of 2010, Kenyans decided to give the President power as the head of the Executive; whether it is Uhuru Kenyatta today, Jakoyo Midiwo 20 years to come or Aden Duale in 15 years to come. Chances are that I will become the President before him. There is a five-year difference. It has been given to the President, and nobody can deny him to be the single Chief Executive Officer (CEO) of the people of Kenya. He is a person who has been elected by the majority of votes in order to protect the Constitution and the citizens. The framers of the Constitution under Article 115, through a referendum passed by the people of Kenya, have given it to Uhuru Kenyatta for now.

We have serious business. You have made a Communication. If you look at the HANSARD, what I said before 25<sup>th</sup> of June and what I am saying today is the same. If you are given an opportunity today, you will say the same. So, if you have a problem with Article 115 on referral and assent, or any Kenyan has a problem with it, you go the route which is very clear. How to amend the frame of the legislature is in the legislature. You can go and bring an amendment like my good friends Hon. Kaluma, David Ochieng and Mheshimiwa Lelelit, but it will collapse.

As we speak, let us make sure we speak to this Constitution. I am waiting for you to give a simple direction because you have made a determination of this matter. There is nothing new. We are dealing with four issues: the fruit juices, motorcycles, motor vehicles and cigarettes.



For the Bill that we brought to this House under my signature, we agreed with the Departmental Committee on Finance, Planning and Trade on a number of issues. We disagreed with the Executive. Now, it is not always that we must finally agree with Parliament. Where is it written? We can disagree with Parliament and agree with the President.

I rest my case. I urge my colleagues to let us move ahead.

*(Hon. Ichung 'wah stood up in his place)*

**Hon. Speaker:** Why are you standing? There is priority in speaking. Look at Article 108. These are simple Articles which I thought all of us can understand. Like now, when you see the Leader of the Majority Party has indicated the desire to speak, you should be freezing somewhere under there if you are seated anywhere near him.

*(Hon. Kaluma raised his hand)*

Like those behind him who are also raising hands. The Leader of the Minority Party has precedence in speaking.

**Hon. Nyenze:** Thank you for giving me this chance to contribute to this very important Motion. While you were away, we debated this Bill. The concern of most Members of the National Assembly is that out of the three functions of Members of the National Assembly which are to oversee the Executive, represent the people and legislate or make laws, the role of legislation is being eroded by the Executive.

There is the Committee on Finance, Planning and Trade headed by Hon. Benjamin Langat with 28 Members, who sat and came up with a very good Bill. The role of legislation belongs to the National Assembly. This Committee sat, conducted research and came up with a very good piece of legislation. Though we do not deny that the President has a role to play by assenting to the Bill, and he can bring the Bill with reservations, the feeling of the Members of the National Assembly is that our role of legislation has been ceded to the Executive.

As Members of the National Assembly, we should not allow the Executive to use the back door and take the role of legislation through Presidential assent. That is our concern. In the last one year, whenever the National Assembly passes laws and they are taken for Presidential assent, most of the times they are returned with reservations. Because it is very difficult to raise two-thirds majority, they are always lost. In this Bill, non-beverage drinks like sodas will become very expensive for the common person. We represent the people and, as Hon. Jimmy Angwenyi has said, the people who used to drink the hard drinks that were done away with have resulted to drinking sodas. We have to make their lives easier by making them affordable.

Hon. Speaker, whenever legislation is passed through Committees, a lot of work and time is devoted to consultations. We conduct public participation and a lot of energy is put in, in coming up with legislation. What should worry any Member of the National Assembly, irrespective of which side of the political divide they sit, is the loss of that power through the Executive sneaking these reservations knowing very well it is very difficult to raise the two-thirds majority. This is our concern. If it means changing the Standing Orders and the Constitution, it has to be done to protect our role to legislate. It is not the work of the Executive to legislate.

I do not agree with these reservations, but because the President has a role to play, there should be consideration that the National Assembly has a bigger role and it has put in a lot of time and energy to come up with this legislation. It is not fair for a few people to sit in the Executive and come up with amendments knowing very well that we will not reach the threshold of the two-thirds majority.

*(Loud consultations)*

Hon. Speaker, I want you to protect me because we never interrupted Hon. Duale when he was speaking. He should show some respect to us. We are making laws for Kenya today and for posterity. It is not fair to make laws and get your interest and lose Kenyans' interest. It will come to haunt you. Let us make laws that will protect you, *Wanjiku* and for posterity. We should not make laws for short-term gains. This will not be good.

Since this legislation is causing a lot of anxiety and conflict, although you gave a ruling and I do not wish that you give another ruling, in your wisdom, because you are a very gifted and intelligent Speaker, I just want to appeal to you to set it aside for further consultations. As the President said during the *Mashujaa* Day that we have to come up with good pieces of legislation, we sleep over it, consult the Committee on Finance, Planning and Trade and other stakeholders, so that we can eventually pass a good legislation that is accepted by all the Members. If we pass it as it is because of the tyranny of numbers, I am sure it will come to haunt us at some point.

With those few remarks, I support.

**Hon. Speaker:** Hon. Members, I think I better dispose of this matter. First of all, I want to tell the Leader of Minority Party that it is not a simple matter that a Speaker's ruling is set aside. This ruling was delivered here only on 28<sup>th</sup> July 2015 after the issues you are canvassing here were raised by Hon. Gumbo on 25<sup>th</sup> June 2015. If you care to look through this, there is extensive reference to other jurisdictions like the Philippines, the United States of America (USA), India and South Africa. Indeed, there is reference to Section 46 of the former Constitution that was repelled by the promulgation of the current one, on the practice set within the East African region. Therefore, to require me to set it aside is to require me to do the impossible at this point.

*(Hon. Kaluma gestured to the Speaker)*

Hon. Kaluma, do not show that kind of excitement. It is not up to you. By gesticulating here, it does not mean that I am going to change. I will not change by you gesticulating here. So, let us agree here that there are clear provisions in the Constitution and in our own Standing Orders. Do not ask me to set aside this ruling because I will not. So, let us deal with the matter at hand, but do not tell me to set it aside. Do not also say "while I was away". I was following the proceedings very keenly, including the atrocious remark and request by the Deputy Minority Whip that the issue of threshold is interpreted, that two-thirds be deemed to be two-thirds of the Members present, yet the Constitution is so clear.

Unless, Hon. Members, we are not addressing the issue at hand, that can only be a statement which is addressed to some other forum and not this one. We are dealing with a constitutional provision. What does it say? It provides for two-thirds of the Members of the National Assembly. How many are the Members of the National Assembly and how many times

have we actually exercised that, including very recently? Let us not have a rule today and another one tomorrow. Then, we will not be a House that is guided by its own precedents.

We can make pleas but also, it is fair to state the facts; that the Order Paper that was presented earlier contained an earlier version of the Report by the Committee on Finance, Planning and Trade which, in its wisdom, that same Committee decided to amend and propose specific amendments as contained in the Supplementary Order Paper. It is within the power of the Committee and the Speaker to allow that. There was no mistake which was done. I am saying this because both the Deputy Leader of the Minority Party and Member for Rongo alluded to the fact that there was no sufficient time but, the issue of the President's Memorandum was all along known that it was in the Order Paper today.

Indeed, if you listened on Thursday last week to the Statement by the Leader of the Majority Party about the business coming up this week, it was one of the businesses. You can say that you were not prepared. That is understandable because you have come from all manner of situations over the weekend. I can understand that. As you know, I always give allowances when people appear somehow incapacitated by what they have been doing over the weekend. Then, you should be appealing to me to exercise my powers under Standing Order No.1, but not to plead ignorance of the business that was coming before the House this afternoon.

Hon. Members, we should put this matter to rest. We should also appreciate, as the Legislature, we exercise some form of dual mandate because the Executive proposes nominees in exercise of its functions under Chapter 9 of the Constitution, which starts from Article 129 to Article 158. That is a function of the Executive. If you read Chapter 9 of the Constitution, it is on the Executive. If you read Chapter 8 from Article 93 to Article 128 of the Constitution, it is the Legislature but therein is the provision, among others, and it is fair--- I have always said this: Article 94 of the Constitution is very clear that no person or body has authority to make provision having the force of law in Kenya except Parliament. That is clear and it is within Chapter 8 of the Constitution. But that same Chapter provides the mechanism for enacting legislation and certain stages are provided for.

If for instance, we pass a Bill here and I deliver it to the President and he does not assent to the Bill within the specified period, under Article 115, if he does not refer it back like he has done with this one, the Bill would be deemed to have been assented to and it would become law automatically. Again, those are provisions within this same Constitution. But the same Constitution has given the President the powers to either assent or refer it back with a memorandum. I have explained in this ruling what that means, that it is recommendation with a reservation. I have explained in this one taking into account the provisions of all those other existing laws, the former Constitution, the current Constitution and the practice of other jurisdictions. So, it is not fair for us to say we exercise that right and it is exclusive to us. Then, if it was exclusive, there should be no provision about referral. It should be: The President shall assent failing which it becomes law.

Of course, the President is given powers also to make nominations of Cabinet Secretaries, Principal Secretaries and ambassadors but he will only appoint them after approval by this National Assembly, which is not in the Executive. So, in a sense, we participate in that Executive function of the appointment of those specific officers who are specified in the Constitution. It is for that reason that in Article 165, the Judiciary and specifically the High Court, is given the power to interpret the law which we pass and even declare any law in entirety, sections or portions of it to be null and void and unconstitutional. But because that function of the Judiciary

is not part of the Legislature, once they declare any portion or any law to be null and void or unconstitutional, they stop there. Their powers end there. They do not say: “Now this is going to be the law in place of what Parliament had passed.”

We must appreciate that we all play some complementary roles in certain respects within the Constitution. This is the House of Representatives. It is very clearly spelt out in Article 95 of the Constitution. The Constitution or the framers thereof appreciated the fact that these are the people’s representatives but, in the making of laws, the President is given some marginal role to play, which is to assent. If he does not, then he makes a referral. But since this is the House of representatives of the people, in the event that this House felt that they do not agree with the reservations of the President, the Constitution determines that since the President is elected by the same people - he is not elected to represent - in order to override his veto, we will require to raise a threshold of two-thirds. That is all we are required to do. I do not think this is a matter that should exercise our minds so much. I see as if there is a lot of concurrence from both sides. Sometimes, we need to also appreciate when a Bill has support across the board.

I heard Hon. Jimmy Angwenyi talk about certain froth that he takes. He made a very valid point about certain beverages that he takes. He is making a plea that we should not make these others too expensive. That was a reasonable plea.

So, Hon. Members, so that we do not spend too much time, I will use the provisions of both our Standing Order No.154 and No.1. I am aware that the point raised by the Leader of the Majority Party is a valid one. In terms of our Standing Order No.154, today was the last day for us to consider this Memorandum. In order to accommodate those of you who may have been fatigued and never made it to the House this afternoon--- It is fair because Members do their representative role in many ways. I can see Hon. Ken Obura, the Member for Kisumu Central nodding in appreciation that he has now come back. In order to accommodate those of you that, indeed, listened to the plea by Hon. Dalmas Otieno, I will direct that once I put this Question, if it is carried, then this business will have to be disposed of tomorrow in the afternoon by you, Members, coming in their droves and ensuring that they raise not less than 233 in support of the veto.

If we want to appreciate constitutionalism, if constitutionalism has to have meaning, we must live by it. So, Hon. Members, I am listening to the pleas of many of you. Hon. Nyenze, I am not going to set aside this ruling. It will remain because it is constitutional. I will give the Committee and the House that window of opportunity to try and raise two-thirds of Members of the National Assembly and not two-thirds of the Members as proposed by Hon. Wamalwa. That is 233 Members. Remember, in the last paragraph of my ruling, I stated that:-

“1. In submitting his reservations on a Bill to the House, the President is not prohibited from including his preferred text on the particular clause, section, subsection, and paragraph of the Bill.

2. Just like amendments to Bills, the text proposed by the President on a Bill need not be subjected to the other stages subjected to a Bill upon publication - that is publication, First Reading, Second Reading and Third Reading.

3. That any Committee or Member of the House is free to propose further amendment to the Presidential recommendations so long as such amendments have the effect of fully accommodating the President’s reservations. The voting threshold for the passage of such amendments or, indeed, the proposals made by the President is a simple majority as contemplated by Article 121 of the Constitution. Any other proposed amendment that does not

fully accommodate the reservations or, indeed, a total override of the President's reservations including his proposed text, would attract the two-thirds requirement.

4. That, pursuant to the provisions of Standing Order No.1(2), the determination of whether a proposed amendment by a Member or a Committee to the President's reservation would have the effect of fully accommodating those reservations shall be made by the Speaker on case by case basis.

5. That, in the absence of, at least, two-thirds majority at the time of putting the question, it does not in any way imply that the House is improperly constituted".

That means, therefore, that if you do not raise two-thirds by the time the business is called, then it will be deemed that your proposal, Hon. Langat, is defeated; if there are 233 Members, not supporting but seated inside. There could be the 233 Members with a few opposed, the effect of which would be still to defeat. To override, you need the 233 Members supporting, but for me to put the Question, there must be 233 Members present. That is now understood. Is that correct, Hon. Members?

**Hon. Members:** Yes.

**Hon. Speaker:** Can I then proceed to put the Question?

**Hon. Members:** Yes.

*(Question put and agreed to)*

## BILL

### *Second Reading*

#### THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

*(Hon. (Dr.) Shaban on 22.10.2015)*

*(Resumption of Debate interrupted on 22.10.2015)*

*(Hon. Members withdrew from the Chamber)*

**Hon. Speaker:** Hon. Members, this is the Petroleum (Exploration, Development and Production) Bill, (National Assembly Bill No.44 of 2015). It is one of those constitutional Bills. So, I do not think many Members should be walking out. This may have been the reason many of you came. Let me just remind ourselves those who have contributed: They are Hon. Naomi Shaban, as the Mover and seconded by Hon. Jackson Kiptanui, Hon. Nicholas Gumbo, Hon. Cyprian Iringo, Hon. Anna Nyokabi and Hon. John Nakara. So, only those may not contribute today.

Hon. Leader of the Majority Party, you want to contribute? Very well! But as the Member for Garissa Town.

**Hon. A.B. Duale:** Thank you, Hon. Speaker for bringing down the heat that we were subjected to for the last two hours. I wish Hon. Benjamin Langat would follow your directive and go and lobby people starting now.

Hon. Speaker, as you said, this Bill is part of the legislation to be enacted under the year-five constitutional implementation matrix. The great value of this Bill is that it provides a framework - for the first time in the history of Kenya - for the petroleum sector in terms of an exploration framework, contracting framework, development of petroleum products, the production of petroleum and cessation of upstream petroleum operations. This makes reference to relevant Articles of the Constitution in as far as how we operate is concerned. There is geological indication that Kenya is going to join the League of Nations that will produce and benefit from the resources that are found both upstream and downstream in the petroleum sector.

This Bill is in the House pursuant to Article 69 of the Constitution, which deals with the State obligation. What is the obligation, for example, of the national Government and the county government in respect of how to manage natural resources? Never before did we have a legislative framework on how to manage natural resources. So, this Bill repeals the current Petroleum Exploration and Production Act, Chapter 308 of the Laws of Kenya. It will harmonise and condense all pieces of legislation that concern that sector.

Clause 6 of the Bill proposes that the Cabinet Secretary in charge of petroleum will have the mandate to develop and publish an upstream petroleum strategic plan. We cannot go into that business in the event that Kenya becomes one of the nations that will produce that product. This is not *mitumba* business. The country must have a vision and a strategic plan on how to deal with Ngamia-1. That is why Kenya and other regions within the East Africa are building pipelines, oil terminals and the infrastructure that is required in making sure that, that sector develops. So, Clause 6 talks about a strategic plan that will serve as a guideline for the implementation of the petroleum operations and will also give regulations to guide the sector.

The Bill proposes that the national Government shall conduct upstream petroleum operations either through the National Oil Corporation of Kenya (NOCK) or contractors, in accordance with the petroleum agreements or as may be prescribed by the Act. Therefore, this is a very important section of the proposed law which will only deal with serious companies.

Hon. Speaker, you must have heard of the cancer issue that was raised in Marsabit County. There are companies that come to this country purporting to undertake oil exploration activities but when they get to the ground, they dump toxic materials. They get paid by multinational corporations to dump toxic materials in northern Kenya. Investigations should be carried out in Wajir, Garissa and Marsabit counties to establish why an oil company dug big holes, dumped some toxic materials and sealed those holes. Many years later, water and food in those areas got contaminated and there are traces of cancer. This law will protect the citizens and create a governance structure. It will commit oil companies to carry out their activities responsibly.

Clauses 10 and 11 give powers to the Cabinet Secretary to deal with contractors who fail to perform or comply with directions as provided by the law. Five years ago, a Canadian firm went to my county, in Hon. Shidiye's Constituency. We were told that they had been chased away from Rwanda and now, they have been chased away from Kenya. I am told that they want to sue the Government of Kenya. With the enactment of this law, the Cabinet Secretary will have the responsibility of dealing with matters of contractors who fail to perform the duties they are assigned.

The Bill provides for the establishment of the National Upstream Petroleum Advisory Committee. It will create regulatory authority. The functions and powers of the board and their terms of office are provided for in Clauses 15 to 18.

My deputy spoke a lot on the Bill, which was seconded by our able Vice-Chair of the Departmental Committee on Energy, Communication and Information. I can see that the Chairperson of the Departmental Committee, Hon. Jamleck and many of his Members are present. This is a very important Bill.

Contractors are obligated to pay all relevant fees and levies as may be prescribed in the petroleum agreement. This is an area where countries raise a lot of revenue. The resources belong to the people, but the royalties belong to the national Government. The levies will help in developing infrastructure of the respective regions from which oil exploration and production activities will take place. There is coal mining in Kitui County. By now, as I drive through that county, I should see the benefits of that activity. You cannot have resources in communities and still expect poverty to exist in those communities. We, first, want the resources to uplift the communities. I want to urge my colleagues that we must speak for our people. The Leader of the Minority Party is thanking me. He should go back to Kitui County, where he comes from, and make sure that the people there benefit from the coal mining. He is sitting with one of the Members of Parliament who have been agitating for the people, Hon. Mutambu. He is a serious guy.

In this Bill, we will create something called “sovereign wealth fund” that is supposed to provide endowment to support development for the benefit of future generations in the spirit of Article 69 of the Constitution. That is why the framers of the Constitution introduced Article 69 in the Constitution – so that the whole petroleum sector and its development and operations can be taken care of.

The Bill requires all contractors to comply with the environment, health, safety and maritime laws in upstream petroleum mining. I watched what happened in North Horr. Hon. Chachu left the Orange Democratic Movement (ODM) with me in 2009. He joined in the formation of the United Republican Party (URP). Just before the 2013 election, the Jubilee bus left him but I am now sure that the people of North Horr and Hon. Chachu are with the Jubilee Coalition.

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

**Hon. A.B. Duale:** Hon. Speaker, Hon. Chachu has to leave me alone. I am about to finish. That was on a light touch. I know that he is with me in spirit. He has been my biggest supporter. He was the Secretary of the Inter-Parties Parliamentary Group (IPPG).

This Bill deals with issues of environment and health safety. Issues of cancer and dumping of toxic waste will never happen. It also establishes a disaster preparedness system that includes a prevention and management unit under the Ministry of Mining in order to co-ordinate all accidents, disasters and emergencies with the relevant ministries and agencies. The sector we are dealing with is dangerous in terms of safety. Therefore, we must prepare our communities. It provides for the establishment of a trustee fund and a board of directors by the county governments to represent the citizens.

Finally, there is a war of words between Cabinet Secretary Matiang’i and the National Land Commission (NLC) Chairman. The moment a Bill comes to Parliament, the train has left the station. There is no way the NLC and Cabinet Secretary Matiang’i can discuss the Land Bills. It is the prerogative of Parliament - the National Assembly and the Senate - to change even the title of a Bill. This is where the representatives of the people are. This is where Bills can be amended, including their titles. New bills can come into force because Parliament and, more so, the National Assembly will seriously deliberate on them.

Hon. Speaker, now that my colleagues have gone to raise the two-thirds majority, you will allow me to go and have a cup of tea and come back later to transact other businesses.

With those many remarks, I support the Bill.

**Hon. Speaker:** Leader of the Minority Party, you may have the Floor.

**Hon. Nyenze:** Thank you Hon. Speaker, for giving me this chance to contribute to this very timely Bill.

This is a crucial Bill because Kenya is discovering hydro-carbons. Kenya has struck oil and natural gas in Turkana County. I want to remind the House that the Petroleum Act that we are operating on is 30 years old. It was introduced on 16<sup>th</sup> November 1984 by Hon. Biwott and has served us for this long period. It is good that the Committee has come up with very good legislation on this sector.

The Committee has sat and come up with very good suggestions on how to manage the natural resources that we are discovering, including the hydro-carbons, that is oil and gas, as well as coal in Kitui County, iron ore in Taita-Taveta County and other minerals.

Kenya is one of the most endowed countries in the mineral field and should be used, as the Leader of the Majority Party has said, to reduce poverty amongst its people. There are a few places where I feel the committee fell short of. For instance, it has given the Cabinet Secretary (CS) too much power to negotiate contracts for petroleum. That is very wrong. It is good for the Committee to look at the possibility of having a board. A board is wider and it can consult more and come up with better ideas, instead of having so much power vested in one CS. To drill one hole could cost Kshs10 billion and because we have to fight corruption and we have to have good management, let us make sure that not so much power is vested in one individual.

Clause 46 obligates the contractor to conserve the environment and promote local industries by buying from them and adopt best practices. We have seen in many places such as Nigeria - where the petroleum industry has not been properly regulated - oil spills. Land that was agriculturally productive has been made desolate because of careless extraction of oil. We do not want a repeat of that in Kenya. We want Clause 46 to be implemented so that those areas that can easily become wastelands and which are otherwise grasslands or farmlands can be restored. The local community should also participate so that it benefits.

I also want to say that the distribution of resources has been covered in Part VII on the payment and revenue allocation. Out of the profits, the national Government will be getting 75 per cent, the local government 25 per cent and the local community 5 per cent. In most cases where oil, iron core and those minerals are found, most of those communities are very poor. This 5 per cent could be raised to 20 per cent on a reducing scale so that those communities are rescued from poverty to lead decent lives. The Sovereign Wealth Fund which is mentioned is a good idea. Countries like Norway have sovereign wealth funds which are never touched unless Parliament approves. That is the best way to go. We have seen countries like Nigeria - and I am citing Nigeria because it is an African country - that struck hydro-carbons and forget all the other economic activities they were undertaking. They concentrated on the extraction industry and by the time oil ran out, agriculture and tourism had died and everything went to the dogs. By the time they realized, it was too late.

There has been renewed interest by international oil consumers to concentrate on East Africa and the Gulf of Guinea. In the Gulf and North Africa countries where oil used to be produced, there have been conflicts since the time of the Arab Spring and most of those countries' resources are running out. We have now struck oil. Uganda has struck oil; Tanzania



has struck gas while Kenya has struck oil and gas. We should not forget the other activities that we have used since Independence to generate revenue for this country. We should promote them as we also promote the extraction of hydro-carbons.

I have also noted that there are no institutions. The Committee did a good job but never came up with recommendations for training institutions on petroleum and hydro-carbon products. In this country, we have a potato research lab. The potato industry is very small while the petroleum industry is big. The Committee should look into that so that there is an institution that trains people on how to exploit the new minerals. The Committee, under the able leadership of Hon. Jamleck Kamau, has done a good job. I am sure some of these small omissions that we have pointed out will be taken care of. In the areas of Turkana where we have discovered oil--- I have looked at your report and I think this will come up. In the recent past, I have read in the newspapers that Uganda is also negotiating with the Tanzanian Government for an alternative pipeline. I think this should be fast-tracked so that we do not lose Uganda since they have more oil than we have. If the pipeline passes through Kenya, it will have positive effect on the development of the Lamu Port and it will open up the Northern Corridor. It should be something that should be fast-tracked so that we do not lose that important contract.

We know that there is a boom and robust cycle of oil. The price of oil has gone down because the Organization of the Petroleum Exporting Countries (OPEC) has not cut down production. The global economy has slowed down and consumption has decreased. Demand for oil is small. America has been flaking and other countries have been producing alternative energy sources. This has made the price of oil to come down. We know there will be cycles. There will be boom times when there will be a lot of money from oil and there will also be a cycle where oil will cost nearly nothing. It is good for this country. Through this very important Bill, the economy will be prepared for those cycles by diversifying into other activities.

Hon. Speaker, as I said earlier, the economy should not suffer what we call the “Dutch disease”, where you depend on one very reliable commodity to bring revenue. In that circle, when you have a very low price, you start suffering from the “Dutch disease” where that one commodity loses value and the economy crumbles. There are existing examples of economies such as those of Russia, Columbia, Nigeria, the Gulf States and all the oil producing countries. We do not want this kind of situation to happen here in country. The Bill is good except for a few areas I have pointed out; it should be supported. The new legislation has put in place governance structures that will protect and promote this sector.

With those few remarks, I support it.

**Hon. Speaker:** Hon. Barua Njogu.

**Hon. Barua:** Thank you, Hon. Speaker, for giving this opportunity to contribute to the Petroleum (Exploration, Development and Production) Bill. The presentation of this Bill to the House is timely as it will regulate the manufacture and processing of petroleum products, as well as regulate its business.

Hon. Speaker, I would like to specifically comment on two parts of this Bill: Part 6, which deals with the local content, and Part 8, which deals with environment, health and safety.

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

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

I would also like to touch on one or two issues regarding distribution of wealth, or income, generated from petroleum business and exploitation. I will as well as highlight on how the environment has been totally destroyed in other parts of the world.

I would like to comment on the local content. I am happy to note that the Bill recognises the issue of local content. Without local content, we cannot claim ownership of these products - what the Leader of the Minority Party called “hydrocarbons”. If local content is considered, Kenyans will benefit and participate fully in the production, manufacture and enjoying the benefits. In terms of local content, the Bill provides that contractors dealing with petroleum products in Kenya must comply with the local content requirement. This local content requirement includes employment opportunities for people to serve in these corporations, as well as using local commodities and services.

I am happy to note that the Bill gives priority to goods and services available locally, as long as they meet the acceptable standards such as those set by the Kenya Bureau of Standards (KBS).

There has been a trend of exporting capital where a majority of Kenyans contend with the use of imported products like timber or anything from other sectors to replace what can be manufactured locally. This Bill recognizes that if services are available locally, they are supposed to be used by the contractors. Locally available goods should be acceptable, be used and be given priority. As long these products and services meet the requirements and the standards of the KBS, or any other globally acceptable standards, they should be used. This means our local materials and services are going to be utilized both at low calibre level and also at the highest professional jobs.

It has been a trend over time that when investors invest in this country, we fight for the low end jobs. This Bill recognises that, if you have professionals who are capable of doing jobs that need expertise, they should be given priority. This means that our professionals will serve their own nation, to which they are patriotic and at the same time reduce the level of unemployment.

Hon. Deputy Speaker, the other issue is technology transfer. It is very important that when investors invest in this country, they should transfer some capacity to the local people. This will ensure that that capacity is used by the local people for future investment. The aspect of technology transfer will ensure that Kenyans get the skills from expatriates and use them to compete favourably and invest in this important sector.

I am happy to note that research and development is given priority in this Bill. I propose that this research should cover various areas, all the way from environment, technology, social, and otherwise.

If you look at Nigeria and some other countries that have been exploiting oil for some time--- Oil and petroleum in particular have proved to be like a curse. We have information and evidence that some time ago, Ken Saro-Wiwa was hanged in Nigeria for fighting for people’s rights, environmental protection, and trying to make corporations accountable to the people. This was in relation to Shell BP, which was polluting the environment in Nigeria.

It is my hope that when this centre for research is inaugurated, it, in collaborated with the other locally available research and academic institutions--- We will give priority to the research on environmental degradation caused by petroleum. This is because petroleum products are not biodegradable. When they enter into the water streams, they cause a lot of destruction. When

petroleum products get into soil, they cause irreversible pollution. It is, therefore, important that as a nation, we take cognizance of this and put emphasis on the issues of environmental pollution and conservation.

The Bill calls for investors in this sector to adhere to the health and safety requirement. It is my hope that the environmental and social impact assessment permits, and licences will be issued to various applicants as a formality. In-depth studies should be done and where environmental degradation is suspected, the proponents of these projects should give convincing mitigation strategies they intend to put in place in case of any possible degradation like oil spills. We know oil is a big threat to marine life. Therefore, we must protect surface and underground water sources with utmost ability, so that it does not get in contact with oil.

In terms of management, this Bill is good because it establishes an upstream production regulatory authority, which will regulate local content development as well as having a training fund into which contractors will contribute some money. This is a positive aspect.

This country has been developed over time by income from cash crops like coffee, tea, rice and other agro-products. It is my hope that the income generated from this important sector will be used to develop other areas of the nation in equal measure. Most parts of the country have been developed using incomes from crops I have mentioned. It is my hope that the non-oil-producing areas, like where I come from, will also benefit in terms of development from income from the petroleum sector.

With those few remarks, I fully support the Bill.

**Hon. Deputy Speaker:** Is Hon. Rashid Juma present? Can we get the Chairperson of the Departmental Committee on Energy, Information and Communications, Hon. Jamleck?

**Hon. Kamau:** Thank you very much, Hon. Deputy Speaker, for giving me this opportunity to support this Bill. The Bill seeks to provide a framework for contracting, exploration and development of petroleum products from petroleum discovered within licensed petroleum blocks in Kenya. The Bill also provides a framework for the safe cessation of upstream petroleum operations. In addition, the Bill proposes to repeal the Petroleum (Exploration and Production) Act (Cap. 308 of the Laws of Kenya). The Bill further seeks to give effect to the relevant Articles of the Constitution of Kenya in so far as they apply to upstream petroleum operations.

When we looked at this Bill, we called a few stakeholders who appeared before us, the key one being the Kenya Private Sector Alliance (KEPSA). We wanted to hear their views on the Bill, particularly on some clauses that appear a little bit controversial. It is important for me to brief the House on our deliberations with respect to the areas that are of serious concern to the stakeholders, so that as Members make their decision, perhaps, those views can be put into consideration.

One of the areas that have some contention is Clause 34(4) of the Bill. This clause provides that:

“Where it is suspected that an undertaking is being carried out contrary to any licence, permit or regulations issued under this Act, an officer, or agent, of the Authority may, in the course of his or her duty, lock up, seal, mark or otherwise secure—

- (a) any building, room, place, receptacle or item of plant;
- (b) any goods or materials in a factory; and
- (c) aircraft, vessels vehicles or containers.”

The stakeholders had quite a number of issues with this provision, especially the powers granted by this sub-clause. They argue that it has the potential to lead to farfetched consequences and it should only be executed on the specific basis of a court order which would determine the reasonableness of the suspicion. There was an argument that some of these facilities, if locked up, would attract very high costs. They gave an example of a driving reek that attracts a standby rate of about US\$20,000 to US\$40,000. If it is stopped for one day, you are talking about a loss of about US\$40,000. That needs to be taken into account as and when we contribute. Members can decide which side they want to support.

The other clause that had issues is Clause 34(1) which provides that:

“A committee, member, officer, employee or agent appointed under section 33 may, upon production of evidence of appointment to any person reasonably requiring it, for the purposes of this Act—

- (a) enter upon any premises at which any undertaking is carried out in relation to upstream petroleum operations or an offence under this Act is or is suspected to have been committed;
- (b) inspect and test any process, installation works or other operation in relation to upstream petroleum operations which are, or appear, likely to be carried out in those premises;
- (c) be accompanied by a police officer if there is a reason to believe that any serious obstruction may occur in relation to an inspection or inquiry under this section;
- (d) require from any person the production of any book, notice, record, list or other document which appears to the committee, officer, employee or agent to have relevance to the inspection or inquiry, which is in the possession or custody or under the control of that person or of any other person on that committee's or agent's behalf;
- (e) examine and copy any part of any book, notice, record, list or other document which appears to have relevance to the inspections or inquiry, and require any person to give an explanation of any entry therein, and take possession of any such book, notice, record, list or other document as he believes may afford evidence of an offence under this Act;
- (f) require information relevant to the committee, officer, employee or agents' inspection or inquiry from any person whom the committee, officer, employee or agent has reasonable grounds to believe is or has been employed at any such premises or to have in that person's possession or custody or under the person's control any article referred to in this subsection; or
- (g) exercise such other powers as may be necessary in connection with the inspection or inquiry and other powers of his appointment under section 33.”

The stakeholders were clear that the powers granted under paragraph (b) should not include testing. They say that if testing results into damage to equipment under installation, they were not sure who would bear the cost of the damage. They argue that for someone to go to their premises, they need a court order. They cited Article 31 of the Constitution which provides that:

“Every person has the right to privacy, which includes the right not to have—

- (a) their person, home or property searched;
- (b) their possessions seized;
- (c) information relating to their family or private affairs unnecessarily required or revealed; or,
- (d) the privacy of their communication infringed.”

Clause 44(1) talks about a petroleum agreement. It provides that:

“Where the national Government enters into a petroleum agreement, under this Act, it shall do so fairly, equitably, transparently, competitively and cost effectively:

Provided that the national Government shall enter into a petroleum agreement only with a contractor who shall have financial, technical and professional capacity necessary to fulfil the contractor’s obligations under the petroleum agreement.”

This is not a very big issue, but the stakeholders talked about the definition of “person”. They were saying that if we leave it the way it is then a contractor will mean that it is only those who were previously contracted and not new persons. The Committee will come up with the relevant amendments to deal with this matter.

The other provision that has serious ramifications, and which would form the basis of the decision of this House is Clause 58. This clause proposes that Parliament shall ratify the Field Development Plan (FDP) after declaration of commerciality by the contractor and adoption by the Cabinet Secretary (CS). Members may want to understand this provision in terms of what FDP is. It is a plan that is developed after the contractor has been able to verify that, indeed, there is some oil that has been discovered underneath. The FDP shows how the oil is going to be explored.

The stakeholders argued that the FDP is a highly technical document which Members of Parliament will find very laborious to deal with. They also argued that it will be a *fait accompli* because the understanding was that Article 71 of the Constitution, which says that Parliament must ratify any agreements which are made before exploration begins, will be rendered null and void. In essence, there are two sides of argument. On one side, the Ministry is saying that we should ratify the FDP, and on the other side the stakeholders say that it is a technical document and we should ratify the contract to be entered into between the Government and those who will be given the specific blocks. This is another area on which we will also give our views as a Committee when the time comes.

Hon. Deputy Speaker, we also heard some other stakeholders; the Kenya Civil Society Platform on Oil and Gas. They were more concerned with the cessation of operations. That is under Clause 10 which empowers the Cabinet Secretary (CS) to order cessation of any operations and withdrawal of all persons from any structure or building that is being used in connection with upstream petroleum operations. They wanted to suggest amendments to this section to limit its application only to instances of emergency or safety concerns to prevent arbitrary actions and decisions by the CS that may lead to litigation. Again, that is an area that, perhaps, Members will need to look into as and when they contribute before the House, so that when we go to the Committee of the whole House, we can come up with relevant amendments.

As I conclude, the other one is Clause 45(1) which gives authority to the CS to negotiate and award petroleum agreements in the prescribed form on behalf of the Government in the form of production sharing contract. Basically, this is also just like Clause 58. It talks about the duration.

I can see my time is running out---

**Hon. Deputy Speaker:** Being the Chairman of the Committee and you have interacted with this document more than all of us, I will give you more minutes. Let me give you another three or four minutes.

**Hon. Kamau:** Thank you, Hon. Deputy Speaker. I appreciate. Clause 45(1) leaves the CS with the decision on the maximum duration of an agreement. There were proposals that the maximum should be 20 years. Again, they argued that the Bill should set out the maximum duration for the petroleum agreements to avoid risks of collusion with cronies or business partners to grant them near perpetual petroleum agreements on advantageous terms. That is an area that we will have to look into seriously.

We met the Ministry and it concurred with quite a number of these proposals from the stakeholders, specifically the ones that relate to penalties. It is a common practice when you are talking about penalties that you do not set a minimum ceiling. This Bill talks about minimums and not maximums. For example, Clause 10(6) says that anybody who obstructs or hinders the CS or makes false or misleading statements will be liable and will be charged not less than Kshs10 million. The words “not less” mean it can be more. It can even be Kshs100 million. That is actually not a good provision. The CS agreed that we should revise that and make it say “not exceeding” the figures indicated. On that, we will come with relevant amendments so that we can deal with it.

The final issue touches on the sharing. When the Government enters into agreements with contractors, there is the sharing agreement on the ratio that the Government agrees with. This is done at the beginning of the agreement. That is the reason why we are insisting that Members should relook at that seriously. We think it is going to be a good idea. We do not want to have a situation where the Government enters into an agreement with contractors where the sharing ratios are so low as not to benefit this country and then they do not bring it here. We will see them at the FDP stage and there is nothing that this House will be able to do. That is the reason why we will propose those amendments when the Committee of whole House comes in, so that we can amend it and ensure that we, as the National Assembly and the Senate, because this Bill concerns both Houses, will have recourse even in determining the ratios that will benefit this Government.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Chachu Ganya.

**Hon. Ganya:** Thank you, Hon. Deputy Speaker, for giving me the opportunity to contribute to this Bill. At the outset, I support the Petroleum (Exploration, Development and Production) Bill 2015.

Oil and gas discoveries in Kenya are a reality. For sure we are emerging as one of the oil producing countries in the world today, and in Africa in particular. Gauging from what we have discovered in Turkana, that prospect is bright. It is not only limited to Turkana but I am very sure North Horr, Marsabit County in general and other counties in northern parts of Kenya as well as counties in Northern Kenya such as Wajir, Mandera and Garissa have the potential for such

discoveries in the near future. It is imperative for us as a county to have a sound legal and policy framework in place to enable us utilize this resource.

Article 69 of our Constitution provides for sustainable utilization of natural resources in respect of their sustainable exploitation, management, conservation as well as equitable sharing of their benefits, both with local communities as well as future generations.

I have looked at this Bill and I like Part VI. This is with regard to the local content. The Bill deliberately ensures that petroleum firms which are largely foreign companies add real value to the Kenyan economy when they come for exploration as well as during the exploitation phase. Doing that is ensuring systematic development of our national capabilities, capacities as well as real investment in this sector, by ensuring that Kenyans are trained at all phases of exploitation, exploration to the time of the actual production of oil resources in our country.

Clause 6 of the Bill is also very clear about the imperative to ensure that procurement is done within local communities using the available local workforce, services and supplies. In this regard, it will support the local economy and the economies of the communities in which they operate as well as ensuring that these benefits accrue to support future generations.

The clause also provides for establishment of a sovereign wealth fund. Most countries which have done very well have oil reserves in large quantities such as the Nordic countries. They have established a very good sovereign wealth fund, which does not only support infrastructural development in those countries at the moment but also a lot of reserves. In France, resources are put aside to support the development and growth of future generations. As we utilize resources that we have today, it is very critical for us to know that we have borrowed this space and resources from future generations. It is in this light that resources should be put aside through establishment of a sovereign wealth fund to ensure that future generations will continue to benefit from resources that were exploited by their forefathers.

This is a very good practice in many countries. I really hope that when we start this sovereign fund, we will look at examples, especially of the Norwegians, which, I think, is one of the best so far articulated whenever we go to most conferences dealing with sovereign funds.

Hon. Deputy Speaker, this Bill is very important because it provides for development and support towards future generations.

In addition, if we endorse the Fund and it is well saved it can be used in future to develop infrastructure in Kenya when these resources are gone. We will still have the revenues or the wealth we would have created by exploiting this resource.

The Bill is also biased towards ensuring that well endowed and resourced companies are the ones given licences to explore for, or exploit oil and gas reserves. The first month when I was elected many years ago, I remember there was a company that was exploring oil in my constituency. Within the last seven years, that company has changed names more than seven times. It kept on being bought by bigger companies until it lost meaning in terms of who was being dealt with. This was because more and more interest came into being when more prospects were realized, and they were bought by bigger companies. So, instead of starting with small companies which prospect and start selling their rights and licences to other bigger companies as soon as there are good prospects, we should start with companies that are well endowed and can undertake the entire process. This will save us the agony of small companies selling their rights and bringing a lot of confusion to the people who will be dealing with them both at the local and the national levels.

Hon. Deputy Speaker, Article 69 of our Constitution is very clear about sharing of benefits accrued from natural resources with small communities, future generations and all other parties concerned. It is important that we have a formula on how resources can be shared between the national Government, county governments as well as a host of local communities where these resources are mined or exploited.

In the Mining Bill, which is almost a law now, we ensured that there is a formula for the sharing of accrued benefits from that resource. We said that 70 per cent should go to the national Government, 20 per cent to the county government and ten per cent to local communities. I really hope that the formulae that will be used in sharing the accrued benefits when it comes to oil and gas reserves will ensure that a similar framework is used. This will ensure that the local communities as well as our county governments benefit.

The issue of safety and health is really important, even when it comes to this issue of oil and gas. While I do not have any conclusive or empirical evidence to support what I am saying, today there is a big cancer crisis in Northern Kenya, particularly in my Constituency of North Horr. We had major oil explorations done by M/s Amoco and other large companies in the 1980s. While we do not have any empirical evidence to attribute what is happening today to them, there is a lot of talk out there, with a lot of people suggesting that some hazardous, or chemical waste was stored in those areas during that exploration phase. Again, I cannot empirically verify what I am saying. But, these fears are there.

Hon. Deputy Speaker, we know that companies from Europe deposited so much hazardous waste in Somalia when it was a failed state. That is a well written fact. I came across this when I was a student of Environmental Science many years ago. It is really important that issues of safety and health are taken care of to ensure that there are no hazardous substances deposited in those areas when these big companies are exploring and discovering oil.

With those few remarks, I support the Bill.

**Hon. Deputy Speaker:** Hon. Patrick Musimba.

**Hon. Musimba:** Thank you, Hon. Deputy Speaker for this opportunity to contribute to this very important Bill; the Petroleum (Exploration, Development and Production) Bill (National Assembly Bill No. 44 of 2015).

As we pass, or seek to pass, this Bill, we are we find ourselves at very great time in this Republic. I wish the House does not get into what we call a “tunnel vision scenario”. We need to understand the quantum of what we are talking about.

Currently, Kenya has discovered 8 billion barrels of oil. At the current standing of USD50 a barrel, we are talking about in excess of USD400 billion which, when roughly translated into Kenya Shillings, it is in excess of Kshs40 trillion. That translates to 20 years of our current consumption; passing our budget at roughly Kshs2 trillion a year. It represents forty years of revenue collection.

When you look at this Bill in its current form, it vests all the negotiation powers in the Cabinet Secretary (CS). We see the challenges we are already grappling with as a nation, in simply passing, or dealing with, budgets of Kshs2 trillion. Therefore, it is important for this House to take its time and review the preamble of this Bill by asking “Are we going to put it under the people’s representatives, the Articles of our Constitution? Specifically Article 206 under which my hope is that the Sovereign Fund that is being talked about within the Bill will be founded?” More importantly, this Fund should operate under this House and not the Executive, because of overriding issues. We have a history and challenges of governance that concern this



sort of money. Kenya is richly blessed. Our big brother, Hon. Nyenze, Leader of the Minority Party, has pointed this out many times, that Kenya is, indeed, a blessed country. This is just a tip of the iceberg. We know that discovery of oil has heralded a lot of conflicts around the world. We need to have caution and not speed ourselves up. Are we putting the cart before the horse or the egg before the chicken?

We should establish the mechanisms of how we will treat this money prior to enacting this Bill. If we are talking about a sovereign fund as opposed to the Consolidated Fund, which is what is currently in existence in law, the Consolidated Fund can simply be expended on Budget proposals as we do every year through the Budget Policy Statement (BPS) and the Budget making process; many justifications will trigger the attrition over these monies. It is easy to come and think largesse and say we want first class railways and super highways and roads. But, then, we are not going to face the challenges of the future because that is not even known to us. All what is known at the moment is the importance of human capital development which is where we are at. We need to tackle this.

The Chairperson of the Committee alluded to Article 71 as a challenge. This Bill does not address itself to completion, makers and intentions of the Constitution in Article 71, which says that this House shall be the sole custodian of ratifying every agreement that is entered into within the natural resource frame. But, when you look at Clause 58, it is very loose. It just goes round in circles, that if Parliament does not pass it or sends its reservations back to the CS, the CS goes back to the Advisory Committee and then it is referred back to the House. Within 90 days, if the House does not pass that resolution, then, it is assumed that the agreement has passed.

We know that the programme of this House is heavy. As we know, from time to time we are frustrated waiting for reports. It takes time and even years. So, we cannot have these provisos that actually seek to override the provisions within the Constitution. We must be careful for investment purposes as we talk about the Dutch disease. We should look at our strategic sectors, which are well endowed.

For example, our livestock; how are we going to become a power house in livestock for our pastoralist communities? How do we get to 100 million herds of cattle and say we will become a beef producing country?

When you look at the Constituencies Development Fund, it comes with particular provisos and percentages that clearly mark the priorities of our people on the ground. This needs to be captured very well before we start expending on other areas. We are not saying that we are starting from the scratch, and we have not yet explored. We have explored. This Bill does not show us the transitional mechanism beyond the people who are already current block holders of these blocks of exploration. It does not state what happens. Does the Cabinet Secretary wake up the next day and say that everybody who had a block previously loses everything, all their investment and what they have done becomes nothing?

The governance issues as to the powers of the CS in appointing even members of the Advisory Committee is wrong, to say the least. There are people there, but the CS has overriding powers over them. They double up. The same people, if you look at the composition, other than the five nominated members by the CS, are the same people sitting in the Advisory Board. For example, the Commissioner-General of the Kenya Revenue Authority. They are not the technocrats within the petroleum sector and this has to be taken into account.

We need to specify who the five persons who are going to sit on the Board of the Upstream Regulatory Authority are going to be. You cannot just say it is an *ad-hoc* mechanism.

We should have representatives from the Institute of Certified Public Accountants of Kenya (ICPAK) and other professional organisations like the Petroleum Institute.

The Chair of the Committee on Energy, Communication and Information spoke about them having consultations with the Kenya Private Sector Alliance (KPSA). We need to specify, as a House, who exactly are the five persons and whether they are enough, so that we know we are getting the right thing when it comes down to having this Bill. It has monumental effects and could lead this country to war. We pray that Kenya remains a very peaceful State, but these things are dangerous.

Today, when you look at the provisions which talk about our boundaries of exploration, which are even the continental shelf--- As I speak Kenya is before the International Court of Justice and we cannot ignore that. Somalia has claimed our entire territorial waters because of the L3 and L4 blocks up in Lamu. They see it as a monumental thing and we do not see it that way. Today, Somalia is not stable. So, who are the multi-nationals who are pretending to sue Kenya on behalf of Somalia? These things cannot be taken lightly because the minute we enact this and then those conflicts occur--- We need to be clear.

When he talks about negotiations with the CS, these are powers which need to be taken away, frankly. You cannot talk about Kshs 40 trillion negotiations and do not expect anomalies. We have been told that we are going to come and discuss about a field report saying that it is too technical in nature for this House to understand it. Are the people saying that this House lacks the capacity to actually digest documents? We have enough staff and we can get technocrats to drive this process. That is why at the beginning I said that the Sovereign Wealth Fund and, indeed, all the extraordinary revenue ought to be under the representatives of the people of the Republic of Kenya, until such time that we will understand these operational issues.

The functions of NEMA and the KRA are replicated and even the Director of Public Prosecutions (DPP) is invited. Anything that goes contrary to this Bill should be viewed as an economic crime. The provisions are already there within the law. We have special courts to deal with it. We cannot have people who are arbitrary, as it is here; you can walk into somebody's investment and say "stop", and that you are going to conduct an inspection. We were told that it costs money. How do you attract the investment? Does it become a way of blackmailing people to give you more money? The basis of any contract is utmost good faith, but we must check that the utmost good faith resides in this House.

Hon. Deputy Speaker, in its current form, I truly oppose.

**Hon. Deputy Speaker:** Hon. Yusuf Chanzu! Then it is Hon. Daniel Maanzo

**Hon. Maanzo:** Thank you, Hon. Deputy Speaker for giving me an opportunity to contribute on this very important Bill. It touches on a very important matter of the country as far as wealth creation of the nation is concerned.

Hon. Deputy Speaker, without repeating what previous speakers have dwelt on, oil exploitation brings in serious monies into the country. If you look at what has happened with any other exploitation all over the world, you will find that the companies which tend to exploit or invest are international companies. Some are based in Europe and others in America. In the case of oil, it is the countries, or companies, which are familiar with this sort of trade.

There is the case of the diamonds in Botswana. You find that the company which has exploited diamonds there takes 50 per cent and the government of Botswana takes 50 per cent. That alone has improved the economy of that country. When you look at the case of oil, it is even much complicated because in many situations where big monies have been earned in the

country, corruption is enhanced at very high levels. After looking at this Bill, the buck stops with the Cabinet Secretary in charge of energy, but it is a matter in which they have to include the Cabinet Secretary for Foreign Affairs and International Trade, because this product will not be consumed locally. In some of the countries where they exploit oil, you find that the countries have shortage of oil and do not have enough reserves. This is not what we are looking for in Kenya.

There are serious environmental issues because petroleum products are potentially poisonous. They are not biodegradable or easy to destroy. That is why we find that the reserves exist even after millions of years in different areas. Kenya has a huge potential because most parts of the country are saline. Research shows that where water is saline, it is an indication of possible oil reserves out of chemical reactions on the structure of the earth. You will not find salinity in many other places and, therefore, there is no chance of oil discovery. This tells us that after we begin exploiting oil, we are likely to find much more oil reserves in Kenya than the ones which have been discovered.

I have looked at the Bill. I want to concentrate on some of the areas like issues of contracts and verification by Parliament, which at times can be very tricky because it depends on how the House has been whipped on certain matters. So, we certainly need very strong laws reconstructed when it comes to the country exploiting this very important resource.

As the previous speakers have said, some of the nations which have exploited oil have ended up in war and in disagreements on the formula of sharing the national oil proceeds. We expect that this particular income, estimated so far at 20 times the current Budget of the country, means that we will have enough monies for investment. We will have enough monies for water resources to do irrigation. This is what countries which have engaged in this sort of trade have been able to do. In investments in other areas, the country has been making them without including our own tourism. The security systems should be enhanced, so that the country is safe from external attacks because of this commodity.

When you look at the mechanism of handling dispute in the whole Bill, we need to do much more when it comes to the Committee of the whole House. We need to do a little bit more in research and figures. It is very casual when it comes to the manner of handling disputes arising under the proposed Section 109 of the Bill. These are matters which at times may not even be handled by our courts. You have seen that they have alternative dispute resolution mechanisms. There is involvement of a Cabinet Secretary and the Government. After all every stage, somebody may end up in court.

Even the local courts may not have the full capacity to handle some of the disputes. So, we need to relook at it and see how to deal with disputes arising out of this. When you disagree with a company, how do you deal with it? When you agree with a company on a certain formula of sharing and you find that even that international company is stealing from you, how do you deal with it? This company is said to be doing very badly financially and we need this law as soon as possible, so that we can begin to get investors in the country to exploit our oil reserves, which may take five to ten years. This will enable the country to reclaim its glory and have enough money to run its affairs.

Countries which have succeeded in this have no taxation, schools are free and members of the public in those countries get a lot of incentives when it comes to land allocation, construction and development. Such economies grow rapidly. This is the sort of Kenya we are looking for. I support this law, but with a lot of reservations; I want us to make it better. We are

not making this law for ourselves, but for future generations, so that they will find peace in the exploration of this very important resource, which we should be exploiting soon. Lastly, the method indicated here of land acquisition goes back to a lot of regimes of law and statutes. This law will not operate in isolation, but will work with many other statutes in the country in terms of land acquisition, the system of land registration and whether it is public, community or private land.

On that issue, there is a Latin maxim that says that “The owner of a title only owns the solum”, but what is above the solum or the soil and what is below the soil belongs to the State. That is why the airspace belongs to the State. What is beneath the soil, once discovered, reverts to the State. There are so many issues which need to be looked into. How can we sufficiently compensate a private owner or a community on whose land oil has been discovered and the whole nation is reaping benefit from it? We need to relook at how we can compensate them sufficiently, bearing in mind that the area will be disturbed. We will also benefit in terms of roads construction because we will not be importing bitumen. We can use this to develop our country.

I support and I urge Members to support with serious amendments, so that we can begin exploiting this resource and save our country from the current financial crisis.

**Hon. Deputy Speaker:** Hon. Maina Kamanda. Not here. Hon. Sunjeev Birdi. Not here. Can somebody switch off the microphones bearing the names of Members who are not here?

**Hon. (Ms.) Sunjeev:** Thank you, Madam Deputy Speaker, for giving me the chance to contribute to the Petroleum (Exploration, Development and Production) Bill.

From the outset, I would like to congratulate the team led by the Chairman, Hon. Kamau, for this attempt that they have made on the Petroleum (Exploration, Development and Production) Bill. When such Bills start appearing on the Floor of the House of any country, it is an indication that there is some activity going on in the economy.

Petroleum is a mineral that cannot go unnoticed. In Africa, many wars have been fought because of petroleum and other minerals. As a country, we are ready. We have started the process of laying the infrastructure, so that business can be conducted in this particular sector. I really appreciate what has been said before me by many of my able colleagues regarding this particular sector.

In as much as we are all concerned regarding how much is going to go back to the communities, we have to look at the main basic things such as water. We had people in the mining sector going to do exploration as far as Garissa and Marsabit. As Hon. Duale and Hon. Chachu have put it, the communities there were left with crumbs. I feel that is very unfair. I hope this Bill brings out the positive benefits that are supposed to be provided to the people on the ground.

While this Bill touches on the issues of blocks, licensing, policies, financial and technical obligations, let us take a look at what has been happening in the mining sector. We had companies from Canada, whose licences were revoked because they had not been performing. In effect, we will have policies that will guide so many people coming here to do business. Let us enforce the law on briefcase businessmen, who come here to hold our country to ransom and ignore the people’s entitlements and rights. I would like to see this Bill bringing out the best of what our country has to offer.

This Bill talks about valuation of crude oil and natural gases. It is very important to note that there will be instances where this particular segment will be looked into. However, this Bill

does not go into sufficient depth in as far as the valuation of crude oil and natural gases is concerned. When we consider the Bill during the Committee of the whole House, amendments will be proposed.

I really feel sad when we talk about people in Kitui---

**Hon. Deputy Speaker:** Hon. Onyura, I see you leaving yet you are the next one on my list. You were removed from the queue because of the confusion that was there. I do not know whether you no longer want to contribute.

**Hon. (Ms.) Sunjeev:** Hon. Deputy Speaker, I feel very sad when I look at local contractors who have been involved in the process from the beginning. For example, in Mwingi, the local contractors who have been investigating the prospects for coal mining in that area have been left far behind, simply because they do not have the resources and facilities. I feel very bad because these are the people who started the process but then here comes a giant investor. They have been left behind simply because they are not able to match the resources that are brought from abroad. I hope that once this Bill comes into being and things start to work, local contractors will also be considered genuinely and not just on paper. I am happy to say that this Bill considers the environment. I do not want to repeat most of what others have said.

The other thing is we are also looking at the revenue that will be earned, and that will be exchanged for dollars and other currencies that may be agreed on with the contractors.

There is also another issue that I would like to bring up. In the geothermal sub-sector, there are very many private individuals in our country, who have discovered geothermal energy and are not able to excavate it, or give an option to the Government, yet since they have discovered it in Government area, how else will they benefit. I hope that as we go along, people who discover oil in their private plots will be able to benefit from it, as well.

With those few remarks, I beg to support this Bill.

**Hon. Deputy Speaker:** Hon. Onyura

**Hon. Onyura:** Thank you very much, Hon. Deputy Speaker. I apologize. I do not know where the confusion came from. When I consulted the Clerk's desk, they indicated that I was number nine on the list. My quick arithmetic told me that I had no chance. I thank you.

I stand to support this Bill. It is a good law. It is one of those Bills that have constitutional implications - one of those that the Constitution expects Parliament to enact, so as to operationalize this sector. It has some timelines and I am happy that we keep ticking them as we move on, and reducing those that are still outstanding. I see this as another law that will help a lot in terms of regulating the contracts in oil exploration, development and also in the process of production.

Also as mentioned, this Bill gives effect to the relevant constitutional provisions that repeal some of the older laws. I support it. I have noted it because it provides policy, plans, obligations, and makes sure that it creates a conducive environment in which all the players are able to realize their various objectives, be they the contractors, the local community, or the Government.

I am happy that this thing is coming at this time but even happier that God was on our side and made sure that oil was discovered about this time when we are able to learn from the mistakes of others. It has been mentioned here by those who contributed earlier--- They referred to the so called the "oil curse" that has affected so many countries, particularly African countries. We are in a very blessed position to learn from other people's mistakes and avoid going the wrong route. The Bill gives details of functions, and establishes an advisory committee and a

board; it also gives detailed functions and powers of the various players such as the Government as exercised through the Cabinet Secretary (CS). The fact is that it provides for the powers and functions of the advisory committee; it also provides ways of regulating the powers of the regulatory committee.

Hon. Deputy Speaker, equally important is the issue on the rights of the community in whose area oil and petroleum is discovered, exploited and developed. The fact is that it mentions that all the structures should be put in place to ensure that such a resource is developed to benefit all Kenyans. This is important because these are resources that can be depleted. Therefore, any revenues accruing from them should be used most wisely.

I was happy to see that the Bill advocates for the establishment of a sovereign wealth fund, into revenues from these resources can be put and used to develop the country. It should be channelled to development areas that have great effect on the economy. This will be infrastructure, and in particular transport, roads, railways, water ways, and other infrastructural assets like power and water. We know these are exhaustible resources, and much of the revenue is channelled to long-term development ventures and those that can support the economy.

When it comes to revenues, the kind of money being talked about is enormous. It will require very clear structures of control, monitoring and auditing, so that we do not find ourselves in situations like that of the Eurobond. Everything is clear, properly controlled, accounted for and done in a transparent way.

The Bill addresses the issue of the right to information. This is very important; the nation should all the time be updated on what is happening. I remember just around the time we were told oil had been discovered in various parts of this country, we had a lot of information splashed all over on the television screens and newspapers. After some time, it sort of fizzled out. Nobody seemed to talk about it. Therefore, we do not know what is happening. Where there is lack of information, then you encourage speculation and rumour mongering. I do not think that is the sort of situation we want to find ourselves in.

Hon. Deputy Speaker, this Bill has addressed the issues of environment. It is very important particularly when it comes to mining of oil. We have seen what oil spills can do in terms of destruction of the environment. We are happy this area has been addressed; there is a provision on how to deal with accidents and disaster preparedness. More importantly, it contains the requirement that county governments be involved in these activities. With devolution, I expect that county governments will play a bigger role.

Finally, I note that the Bill has a very good and clear provision for dispute resolution. This is commendable; there is predictability, order and disputes can be resolved.

Thank you, Hon. Deputy Speaker. I support the Bill.

**Hon. Deputy Speaker:** Hon. (Eng.) Mahamud

**Hon. (Eng.) Mahamud:** Thank you, Hon. Deputy Speaker. In this country we have been exploring oil for a long time, but there has not been a proper framework to guide that exploration. That is why it is very important for us to enact this law. That is the very purpose why our Constitution emphasises that a law must be enacted to deal with petroleum exploration. This Bill is also coming at a time when this country has a lot of hope that there is going to be commercial quantities of oil or petroleum for development.

The Bill seeks to develop a framework for the contracting, exploration and development and production of petroleum. Up to date there have been *ad hoc* processes put in place by the

Ministry of Energy and Petroleum to deal with petroleum exploration. It is very encouraging that we are setting up a proper framework to guide petroleum exploration.

The Bill covers a lot of parts of this country. It is very important that we enact this Bill so that it properly takes the interests of this country as a whole. Petroleum exploration is the mandate of the national Government. Sometimes we get bogged down, or more concerned, with how we are going to benefit as communities rather than talking about what can benefit this country. If we have proper laws in place, the interests of this nation will be safeguarded.

The petroleum companies that explore oil spend a lot of money in exploration. Once oil is discovered, the production agreement must be fair to both the nation and the explorers. We must equitably share the revenue that is realised between the national Government, the county governments and the sub-counties of this country.

The Bill proposes to put in place a framework with an advisory committee, which exists today as an *ad hoc* committee. However, I am wondering why we have the National Oil Corporation of Kenya (NOCK) as part of that committee when it is one of the companies which are supposed to explore oil. Oil exploration must be done by NOCK and various contractors that are going to be concessioned by the nation. Whether it is prudent to have NOCK in the committee is something which this House needs to look at, and be able to amend the relevant provisions during the Committee of the whole House stage.

The Bill proposes to establish an Authority, which is very timely. However, the Authority must be given powers to negotiate on behalf of the Ministry. A lot of negotiating power is left with the Cabinet Secretary (CS). Yes, the CS represents an institution and not an individual, but it is important to remove this power from the CS and leave the CS to sign documents. The negotiations must be left to the Authority, which has the capacity and necessary personnel to do that.

This Bill also proposes to establish a Sovereign Wealth Fund. That is very timely. However, the management of the fund and how it will be established should be properly regulated. The Bill says regulations will be put in place.

The Bill, for the first time, has also provided a model contract agreement in one of its schedules. The complaint we often have in this country is that the current agreements between concessionaires and the Government are very secretive.

Nobody sees them apart from the Principal Secretary in the Ministry of Energy and Petroleum, who actually puts them in a safe. Now that we see a model agreement published here, it is important that it is subjected to scrutiny so to see whether it can protect the interests of everybody on board.

Hon. Deputy Speaker, petroleum exploration can cause environmental degradation. I am happy that the Bill has actually taken into account issues of the environment. The National Environmental Management Authority (NEMA) is part of the steering advisory committee on petroleum exploration.

This is a very important Bill, which comes at a time when this country has real potential. We have discovered petroleum in Turkana. There is likelihood of discovering it in various other blocks. Today, this country has been divided into many blocks, and there are many companies on the ground now. Having this law in place will give confidence to the people in the sector. Even the companies that will be contracted will have confidence that there is a law which governs the sector and not something *ad hoc*, which is dependent on the whims of officials in the Ministry of Energy and Petroleum. So, the sooner we enact this law, the better.

Let us support this Bill and also look at it critically. Hon. Jamleck Kamau, the Chair of the Departmental Committee on Energy, Communication and Information, gave us the Report. We should look at that Report, because they have handled the Bill for a long time, to see how we can amend the Bill and make it consistent with international practice, and also take into account the needs of this nation.

With those few remarks, I beg to support

**Hon. Deputy Speaker:** Hon. Thomas Mwadeghu

**Hon. Mwadeghu:** Asante, Mhe. Naibu Spika. Naomba nitoe mchango wangu kwa Mswada huu ambao umekuja wakati huu. Naunga mkono Mswada huu ijapokuwa kuna mapendekezo mengi muhimu ambayo yanahitajika katika Mswada huu ili unufaishe watu wa nchi hii.

Kama tunavyojua, mafuta yamepatikana katika pembe nyingi za nchi. Mara nyingi watu ambao wanaishi karibu na maeneo ambapo rasilimali kama hii zimepatikana ndio wanaokuwa hawana chochote na hawawezi kujimudu, huku mafuta yakitolewa na kusafirishwa. Wale ambao wanapata faida ya mafuta hayo sio wenyeji wanaoishi mahali pale. Wenyeji wa maeneo hayo utawakuta hawana namna ya kuishi. Mapendekezo yangu wakati tutakapokuwa tunatoa marekebisho ni angalau jambo hili lishughulikiwe ili Mswada huu uweze kuwatambua wenyeji ili nao wanufaike na ile rasilimali ambayo imepatikana.

Jambo lingine la kusikitisha ni mara nyingi utakuta nchi hii imegawanywa katika sehemu mbalimbali na watu wamezikimbilia wakazifunga na kusema ni zao. Unakuta Wizara inawapatia kibali kuwa waendeleo kushikilia sehemu hizo kama ni zao. Wao ndio wameshikilia mafuta au mawe mengine ya thamani na watu wengine ambao wanahitaji kupatiwa nafasi ya kuchimba chochote ambacho kiko chini ya ardhi wananyimwa kwa sababu mna watu wamepeleka maombi wakapatiwa eneo fulani. Utakuta watu wamezibana sehemu hizo na hawazitumii bali wamezishikilia wakiwa wanangoja wakati utakaofaa wapate kuziua. Ukweli wa mambo ni kwamba walikimbilia kwa Wizara, wakapatiwa na wakazishikilia.

Jambo lingine la kero sana ni mamlaka ambayo amepewa Waziri kushughulikia suala la kupeana vibali vya kuchimbua mafuta ama kuangalia rasilimali. Mamlaka haya ni mengi na wanaweza kuyatumia vibaya. Ni ombi langu kuwa wakati tutakapokuwa tumekaa hapa kama Wabunge tukiangalia vile tutakavyoleta marekebisho katika Mswada huu, jambo hili litazingatiwa ili mamlaka hayo yapunguzwe na tubuni kitengo ambacho kitashughulikia suala hili. Mara nyingi tumeona kwamba mamlaka haya yakiwa na mtu mmoja yanatumiwa vibaya na mara nyingi hayatumiwi kwa manufaa ya nchi.

Jambo lingine ambalo naomba liangaliwe ni utata mwingi ambao hutokea sana wakati rasilimali imepatikana. Watu huzozana na kugombana kwa sababu mipaka yao haijatambuliwa. Hivi sasa utaona nchi yetu ya Kenya iko na utata na Somalia. Hii ni kwa sababu ya rasilimali zilizoko pale nje. Hebu tujiulize, huu utata unaletwa na nini? Kila mtu anataka kujua mali iliyo pale chini ni ya nani.

Kama tunaweza kukumbuka, Tanzania iligundua gesi hivi juzi. Ilipogundua gesi, watu wa sehemu ya kusini mwa Tanzania walianza kukataa gesi hiyo isichimbwe kwa sababu walijua mara nyingi gesi ikichimbwa na kupelekwa nje ya jiji au kusambazwa nje, hawapati manufaa.

**Hon. Deputy Speaker:** Hon. Mwadeghu, you will have a balance of seven minutes when this debate comes next on the Order Paper.

**Hon. F.K. Wanyonyi:** He will donate some to me.



**Hon. Deputy Speaker:** If he will want to give them to Wanyonyi when the Bill comes up again, he will be allowed to do that.

### ADJOURNMENT

**Hon. Deputy Speaker:** Hon. Members, it is now 6.30 p.m. It is time for this House to adjourn until tomorrow, Wednesday, 28<sup>th</sup> October 2015 at 9.30 a.m.

The House rose at 6.30 p.m.