NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 28th August 2018

The House met at 2.30 p.m.

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

PRAYERS

ADMINISTRATION OF OATH

Hon. William Cheptumo (Baringo North, JP): Hon. Speaker, I wish to introduce to you the newly elected Member for Baringo South, Mr. Charles Kamuren.

The Oath of Allegiance was administered to the following Member:

Mr. Charles Kamuren.

(Applause)

Hon. Speaker: Hon. Members, you may now walk the Member in, and congratulate him.

(Loud consultations)

Order Members! Next Order.

(Hon. (Ms.) Beatrice Nyaga consulted loudly)

Hon. Speaker: Order, Members. The consultations are too loud. Member for Tharaka-Nithi, the consultations are too loud. The presence of a new Member does not mean that order in the House flies through the window.

(Hon. David ole Sankok consulted loudly)

Being 001, you cannot do what you are you are trying to do while seated where you are. Hon. Members, who are making your way in, please take your seats.

COMMUNICATION FROM THE CHAIR

DELEGATION FROM THE PARLIAMENT OF GHANA

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Hon. Members, I wish to introduce to you a delegation from the Parliament of Ghana. The delegation, seated in the Speaker's Row, comprises Members and staff of the Parliament of Ghana. They are:

1. Hon. Mathew Yidam – First Deputy Majority Whip & Leader of Delegation;
2. Hon. Ahmed Ibrahim – First Deputy Minority Whip;
3. Hon. Moses Anim – Second Deputy Majority Whip;
4. Hon. Kamfort Hon. Chairman Ganza – Second Deputy Minority Whip;
5. Mr. Gilbert A. Arma – Senior Usher; and,
6. Mr. Dennis Tetel – Senior Usher.

The delegation is in the country to meet and interact with their counterparts in matters relating to the whip system, party discipline and management of party funds, among others. On my own behalf and that of the House, I wish to welcome them to the National Assembly of the Republic of Kenya and wish them fruitful engagements during their stay in the country.

I thank you, Hon. Members.

DELEGATIONS FROM BATUK AND BARINGO SOUTH CONSTITUENCY

Hon. Members, let me also recognise the presence of members of the British Army Training Unit-Kenya (BATUK) seated in the Public Gallery and several constituents from Baringo South Constituency seated both in the Speaker's Gallery and Public Gallery. They are all welcome to observe the proceedings in the National Assembly this afternoon.

Next Order.

PAPERS LAID

Hon. Speaker: Deputy Leader of the Majority Party.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2017, and the certificates therein—

(a) Unclaimed Assets Trust Fund;
(b) Garissa University;
(c) Constituencies Development Fund Board; and,
(d) Kenya Revenue Authority.

Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30th June 2017, and the certificates therein—

(a) Matuga;
(b) Rabai;
(c) Turkana East;
(d) Turkana West;
(e) Kajiado West;
(f) Kajiado North;
(g) Yatta;
(h) Kangundo;
(i) Aldai;
(j) Tinderet;

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(k) Chesumei; and
(l) Kinango.

Thank you, Hon. Speaker.

(Several Members consulted the Speaker)

Hon. Speaker: Hon. Members, can I advise that, please allow me to pay attention to the proceedings in the House. These administrative consultations when I am in the Chair are not helpful. You want to consult me on too many things and the House is in session. It is not right. Some of those things can be brought to the office so that we can clear them. It is a lot easier.

Next Order! Sorry! You see now this is the problem. The Chairperson, Departmental Committee on Justice and Legal Affairs.

Hon. William Cheptumo (Baringo North, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Reports of the Departmental Committee on Justice and Legal Affairs on its consideration of—

(a) The Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 4 of 2018), Vols. I and II.
(b) The Constitution of Kenya (Amendment) (No. 2) Bill (National Assembly Bill No. 5 of 2018), Vols. I and II.

Thank you, Hon. Speaker.

Hon. Speaker: Chairperson, Departmental Committee on Defence and Foreign Relations.

Hon. Katoo ole Metito (Kajiado South, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Defence and Foreign Relations on the inspection visit to Kenya's diplomatic missions.

Thank you.

Hon. Speaker: Next Order.

NOTICE OF MOTION

Hon. Speaker: Hon. Katoo.

ADOPTION OF REPORT ON INSPECTION VISIT TO KENYA'S DIPLOMATIC MISSIONS

Hon. Katoo ole Metito (Kajiado South, JP): Hon. Speaker, I beg to give notice of the following Motion:

> THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on the inspection visit to Kenya's diplomatic missions, laid on the Table of the House today.

Hon. Speaker: Next Order.

STATEMENTS

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Hon. Speaker: Hon. Washiali.

CONGRATULATORY MESSAGE ON ELECTION OF
THE SPEAKER AS CHAIR OF CPA-AFRICA

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Speaker. On behalf of the people of Mumias East, who I represent in this House, and on behalf of Members of this Parliament, may I congratulate you on your well-deserved election as the Chair of the Executive Committee (EXCO) of the Commonwealth Parliamentary Association-Africa (CPA-Africa).

(Applause)

As the Speaker of this House, you have enforced uncompromised adherence to the Constitution and the Standing Orders in the management of the business of this House. The Constitution is just eight years and one day old. It was only yesterday that it was eight years old. I have no doubt that you will provide leadership and direction to the EXCO in the position that you have been elected to hold.

If you allow me to add, CPA has been the voice of parliamentary democracy across the Commonwealth for more than nine decades. It speaks for the rights of parliaments and parliamentarians in the development of their countries. We have old democracies like India, Australia and the mother, UK, where Commonwealth parliamentary practices have been practised for the nine decades that the Association has existed. The CPA enables legislators to reach beyond their own parliamentary houses so as to contribute, in a global setting, to the development of best parliamentary practices and the most effective policies.

Therefore, this position has put the Kenyan National Assembly on the world map since it will enable the exchange of information and experiences as well as enhance debate on policies. It will strengthen our Parliament as well as the entire Commonwealth community of nations. Therefore, I wish to congratulate you again. I am sure you will not let us down. Some of us have benefitted from Commonwealth Parliamentary Association (CPA) because we have visited some of those countries and learnt what has been happening. Now that you will be the Chair, especially for the African Chapter, I would want you to use the opportunity to enable those Members who have not had an opportunity to go out there and learn the Commonwealth parliamentary practices to access it because it will help them in the way they articulate their issues.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. I see there is an intervention from Hon. (Dr.) Otiende Amollo. Is it with regard to this particular issue?

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. It is with regard to Order No.11, but for which we had raised notice last week by way of a point of order in terms of its discussion.

Hon. Speaker: We are not yet there. We are now on Order No.8. I am aware, Hon. Otiende. You spoke to me. I also know your concerns about the impending travel. We will definitely give you an opportunity to raise the issue.

What is the issue, Hon. Junet?

Hon. Junet Nuh (Suna East, ODM): Hon. Speaker, I do not know why you are shying away from glory.

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(Laughter)

We want to glorify the international position that you occupied recently. We watched the event keenly within Parliament Buildings as it was being televised from Botswana. We wanted to know whether our delegation would come back with something or empty-handed. Now that you have come back with something for Parliament, we have to get every opportunity to celebrate for the next 10 minutes, before we move to the next business.

I want to take this opportunity and go on record to congratulate you for being elected the Chairman of CPA-Africa. That is not a mean achievement. We have had speakers since Independence. I have checked the history. None of them has become the Chair of CPA-Africa. It is over 200 Parliaments that you are now chairing, and we are no longer going to take it for granted as before. This is a serious matter.

I must also thank those other Members who have shown confidence in you and tell them that they have done the right thing. As Parliament, we are going to benefit so much by having you as the Chair, and by us being Members of the CPA. The CPA is an association we can engage in terms of learning from them parliamentary procedures and traditions. We will get to know how other CPA member parliaments conduct their business.

On behalf of the Leader of the Minority Party, I congratulate you and thank the Members who elected you.

Thank you so much.

Hon. Speaker: Let us have Nominated Member No.001.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Speaker, for giving me this opportunity. First of all, I congratulate you for being elected the Chairman of CPA. While you were away, we missed you. Hon. Cheboi did a good job, although he exhibited so much dictatorial tendencies. However, he tried as much as possible to ensure that business went on. The Swahili people say: "*Paka akiondoka, panya hutawala"* Hon. Cheboi did a great job.

We congratulate you because this is not a small job. You have a task ahead of you. As Members of Parliament, we now believe that we belong to the CPA.

Thank you and congratulations, Hon. Speaker.

Hon. Speaker: Member for Emuhaya.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Speaker. As a teacher and MP for Emuhaya, I must take this opportunity to congratulate you. As a teacher of History and Government, I understand the Commonwealth very well because it is the mother of all the parliamentary systems of the nations that were formerly colonised by Britain.

Having been one of them, Kenya is the bedrock of the principals of the parliamentary system that was able to also accommodate the Monarch. That is why the British parliamentary system still upholds the Monarch while all other countries, including France, do not. I take this opportunity to congratulate you for being appointed the Chair of CPA. This position should go a long way in helping us, new MPs, to also access the Commonwealth grounds and learn more about its undertakings.

Thank you, Hon. Speaker.

Hon. Speaker: Let us have the Member for Endebess. Hon. Members, you are putting so many requests.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker. I also join my colleagues in congratulating you. When I came this morning, I saw how you were moving

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around and inspecting the place where Members stay most of the time – the restaurant. When I inquired, I was told that the Hon. Speaker is now the Chair of CPA-Africa. I saw it coming with new responsibilities.

(Laughter)

Therefore, we expect a lot from you in your position as the Chair, CPA. As you are aware, the Prime Minister of Britain, Madam Theresa May, will also be undertaking an African visit. We hope that you will give her an opportunity to visit Parliament and address this House.

Thank you, Hon. Speaker

Hon. Speaker: Let us have the Member for Makueni. Hon. Junet suggested only 10 Hon. Members.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Speaker for giving me an opportunity to congratulate you. This is a very prestigious position. It brings Kenya to a very high level, just as our athletes do. I believe, through the many trips that you make together with hon. Members, you market Kenya as a tourist destination. Among other things, Kenya can shine forever. I congratulate you. May God bless you. You have been a blessing to many of us. Your leadership has gone beyond our country's borders.

Thank you.

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

Hon. Clement Kigano (Kangema, JP): Thank you, Hon. Speaker. I also join my colleagues in congratulating you. In the last few years, you have set up a fairly advanced jurisprudence in parliamentary practice.

I remember the last ruling you gave on a point of order raised by my colleague and learned friend, Hon. (Dr.) Otiende, was a very fairly balanced ruling and for beginners, it would be very tricky. I must confess I have been a beneficiary of that position because we bear the same name. You are Brown and I am Brown. It is only that I am slightly older. Mistakenly, people think it is the Speaker passing in social places. So, they always call me Mr. Speaker. This is because of the enhanced status of your position. Thank you very much.

Hon. Speaker: Member for Homa Bay.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Thank you, Hon. Speaker. I would also like to add my voice to congratulate you very much for this very prestigious position that you have now taken up. However, I would like to also note that it has not come easy. I noted, in the last Parliament, the amount of work you put in to ensure that CPA Africa stood to where it is currently. In fact, there was a time you even threatened that if the CPA World will not listen, Africa will pull out. So, it has not been an easy path but we as a Parliament of Kenya are very proud because CPA is actually one of the oldest organisations in the Commonwealth since 1911. For you to be the Chair is no mean fete. Congratulations, Hon. Speaker, and we know this Parliament of Kenya will now be on the world map as a serious Parliament that it is. *Asante sana*, Hon. Speaker.

Hon. Speaker: Hon. Members, I really appreciate but we must bring it to an end. Because the requests are so many, let us just do the other business. I appreciate and also thank the Member for Homa Bay for having brought to the attention of the House that the Association was started in 1911 as the Empire Parliamentary Association because, at that time, it looks like the British Empire was the only one that had an association. They changed the name only in 1948.

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Hon. Members, I really appreciate your congratulatory messages. Just to respond to some whisper that I heard; an election is an election. The Member for Kikuyu is a Member of Parliament having been elected the way he was elected. That should clear the air, Hon. Opondo Kaluma. The Member for Kikuyu was elected unopposed and he is, therefore, an elected Member. I heard somebody whisper something like that. I am trying to get the air cleared about that. I really appreciate and I hope that, as I saw the interest that was shown when we last called for the last CPA branch meeting here… Indeed, I thank our own members of the Executive who did a lot of work to try and convince the rest of the Continent about my suitability. I thank all of you, Hon. Members.

Let us move to the next Order.

PROCEDURAL MOTION

RESOLUTION TO HOLD A SITTING ON THURSDAY MORNING

Hon. Speaker: Who is moving Order No. 8? Is it Hon. Washiali or Hon. Jimmy Angwenyi? Let us have Hon. Washiali, the Whip of the Majority Party.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Speaker. On behalf of the Leader of the Majority Party and the House Business Committee (HBC), I beg to move the following Motion:

> THAT, pursuant to the provisions of Standing Order 30(3)(b), this House resolves to hold a Morning Sitting on Thursday, August 30 2018, commencing at 9.30 am for purposes of considering priority business ahead of the recess.

Hon. Speaker, this is a straight-forward Motion. As per the Calendar of this House which was approved in this House, the House is scheduled to proceed on a long recess commencing this Thursday, 30th August 2018. In this regard, the HBC agreed that the House should sit on Thursday morning to conclude all urgent pending business before it. The HBC is actually on record to only request for these extra sittings when there is very serious business. In this case, we have pending Bills like the Finance Bill which was just moved and seconded. I think there is only just one Member who debated. Therefore, it needs to go through the Second Reading and also the Third Reading since it has timelines.

Also, there is the Statute Law (Miscellaneous Amendments) Bill, which is meant to go to the Committee of the whole House. We also have regulations by the Select Committee on Delegated Legislation among others. It is important to note that the Finance Bill and the regulations have statutory timelines which ought to be met before we go on recess. The Sitting is scheduled to begin at 9.30 a.m. I, therefore, urge Members to keep time to avoid quorum hitches that become a challenge to such sittings.

Since this was agreed in the HBC, I beg to move and request the Leader of the Minority Party, Hon. Mbadi, to second. I thank you, Hon. Speaker.

Hon. Speaker: Hon. John Mbadi.

Hon. John Mbadi (Suba South, ODM): Hon. Speaker, I second this Motion and as I second, I just want to also reiterate that we are going on a one month long recess and we have some business that we must conclude. As the Whip of the Majority Party has just mentioned, the Finance Bill has to be concluded before the end of September. Therefore, we will be required to finalise that Bill. It is a very critical Bill. We are all aware as a House that the country has been debating this Bill a lot and this House requires time to look at it at the Committee of the whole

House so that, once we pass it, then we will not again hear Kenyans holding us into account for having passed a Bill that we did not properly consider, given that this is a Bill that is going to look at revenue-raising measures and it is going to impose additional taxes on Kenyans or lessen their burden. It would only be appropriate that we add more sittings so that we consider it plus any other matter that we would be required to transact before we proceed on recess on Thursday. I just hope that this House will agree with the House Business Committee (HBC) that we require one additional sitting.

I also want to tell Members that we have been having a challenge with morning sittings especially…

(Loud consultations)

Hon. Speaker: Order Members! The contribution being made is important.

Hon. John Mbadi (Suba South, ODM)**:** I am just informing Members that we have had issues with morning sittings, especially the Wednesday Morning Sitting. Given that we are adding another morning sitting on Thursday, I want to tell Members that I know we have a lot of other things to attend to, but let us sacrifice. If anything, we are proceeding on recess from Thursday, hopefully, if we do not change our calendar - and I hope we will not - so that we give value to the taxpayers who are paying us to be here.

I beg to second.

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: It seems to be the desire of the House that I put the Question.

(Question put and agreed to)

Hon. Speaker: Hon. Members, unfortunately, sometimes, Questions are put and the people who are present to pass resolutions are not necessarily the ones that were debating. Let us now bear in mind that we will have a Morning Sitting on Thursday at 9.30 a.m. It is not 9.45 a.m. It is at 9.30 a.m. Hon. John Mbadi has made an appeal that we make it at 9.30 a.m. It is just that one day and then, possibly, in the evening, at the rise of the House, you will proceed on recess.

Let us go to the next Order.

MOTION

ADOPTION OF REPORT ON PUBLIC FINANCE MANAGEMENT (TOURISM PROMOTION FUND) REGULATIONS, 2018

Hon. Speaker: Let us have the Chairperson of the Committee on Delegated Legislation.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Speaker, I beg to move:

> THAT, this House adopts the Report of the Committee on Delegated Legislation on the Public Finance Management (Tourism Promotion Fund) Regulations, 2018 laid on the Table of the House on Thursday, August 23, 2018 and, pursuant to the provisions of section 15(1) of the Statutory Instruments Act

and Standing Order 210 (4) (b), annuls in entirety the Public Finance Management (Tourism Promotion Fund) Regulations, 2018 via Legal Notice No.140/2018.

The Committee on Delegated Legislation is established pursuant to the provisions of Standing Order No.210 and has the power to scrutinise and certify all regulations that are tabled before this House to ensure that they are in conformity with the Constitution of Kenya and all Acts of Parliament.

Before I begin, let me join the others in congratulating you on your election as Chair of the Commonwealth Parliamentary Association (CPA). I noticed that when Hon. Junet requested that we congratulate you, you were blushing. Luckily, you have the same skin shade as me so that was safe.

Hon. Speaker, Section 24(4) of the Public Finance Management Act provides that the Cabinet Secretary may establish a national Government public fund with the approval of the National Assembly. In exercise of these powers, the Cabinet Secretary for the National Treasury and Planning published the Public Finance Management Act (Tourism Promotion Fund) Regulations, 2018 on 14th June via Legal Notice No.140/2018. Following the publication, the Regulations were tabled before this House on 5th July and were immediately committed to the Committee on Delegated Legislation. The Regulations establish a Tourism Promotion Fund with an initial capital of Kshs200 million appropriated by Parliament in the 2018/2019 Financial Year. This allocation has, however, not been traced by our very able Parliamentary Budget Office in the books.

The Regulations further provide for financing, development, promotion and branding all programmes and initiatives in relation to tourism and tourism facilities in Kenya. They also deal with any innovations and inventions relating to tourism intelligence and tourism data capture, among others.

In considering the Regulations conferred by the regulation-making authority, the Committee on Delegated Legislation had a Sitting with the National Treasury who were led by the Chief Administrative Secretary of the National Treasury, Mr. Nelson Gaichuhie.

The Committee recommends that Regulation 6 which provides that the Fund shall consist of proceeds realised under Section 3 of the Air Passenger Service Charge Act is a misrepresentation of that provision. That Section provides that the proceeds exclusively go to two institutions:

(a) The Kenya Airports Authority (KAA); and,
(b) The Kenya Civil Aviation Authority (KCAA).

It also provides that it should be used in such manner as the Cabinet Secretary may provide or specify in a gazette notice. This Act does not provide or even envisage a Tourism Promotion Fund. These Regulations published by the Cabinet Secretary, in apportioning this money to that Fund, do not exist and are not supported by law. This provision is not in accordance with the Air Passenger Service Charge Act which is the parent statute. Even if this were to happen, the Air Passenger Service Charge Act would have to be amended to allow the proposed Tourism Fund to draw from it. The amendment can only be done by an Act of Parliament and not by a resolution of the Committee on Delegated Legislation.

You may have noted that we tabled a Report of the Committee on Delegated Legislation last week on 23rd August proposing to annul the Air Passenger Service Charge Act Apportionment Order of 2018. The Cabinet Secretary is clearly causing confusion in presenting these Regulations. The Regulations that are yet to be debated in this House but have been tabled

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are purporting to create a Tourism Promotion Fund as an additional beneficiary of the Air Passenger Service Act. Apart from providing the amount to go to the KAA, it also proposes to give to the Tourism Promotion Fund 20 per cent of the resources collected from the charges that are levied on air passengers. It also purports to introduce an additional beneficiary through subsidiary legislation yet; this can only be done through substantive legislation, that is, an Act of Parliament.

The Cabinet Secretary (CS) made the assumption that we would approve the regulations that create the Tourism Promotion Fund before they come before the House. I must say that whichever convoluted order in which regulations are brought, they are doomed to fail. Even if we pass them, they would not survive the court challenge. They would remain an illegality. Furthermore, Regulation 15 provides for an Oversight Board that may be established by the CS relating to this Tourism Promotion Fund. It also gives that Oversight Board the power to impose such penalties, including the suspension of the funding. However, the Public Finance Management (PFM) Act does not give any such authority to the CS. This is clearly in contravention with Section 13 of the Statutory Instruments Act which provides that any imposition of a fine, imprisonment or other penalty cannot be done without the authority of the enabling parent statute.

Hon. Speaker, Regulation 17 proposes to establish an Oversight Board to supervise the Fund. However, this is also inconsistent with the parent Act because it does not provide for a Board to be established at all. Furthermore, the establishment of the Board can only be done by an Act of Parliament, but not through subsidiary legislation. Section 13 of the Statutory Instruments Act provides that if there is anything that is better placed being enacted under an Act of Parliament, it should not be in the regulation. For that second reason, these regulations must be annulled because they fail the test of the Constitution. Even if the Board were to be established, it would not be legitimate because it is contrary to corporate governance and principles as it proposes that the Principal Secretary (PS) will be both the policy-maker and the implementer. Even though this particular Fund has many positive initiatives that can help to promote the tourism industry in Kenya, it runs a risk of duplicating the fund that already exists with other sections of the tourism sector. Therefore, it is a wastage of public resources which is not encouraged.

Having considered the regulations pursuant to the provisions of the Constitution, PFM Act, the Statutory Instruments Act and the Interpretation and General Provisions Act, the Regulations do not pass the scrutiny and certification test. Therefore, pursuant to Standing Order No. 210(4) (b) and Section 15 of the Statutory Instruments Act, the Committee recommends that the Public Finance Management (Tourism Promotion Fund) Regulations 2018 be annulled in its entirety for the afore-mentioned reasons.

As I conclude, I wish to allay the fears of the House that the Committee on Delegated Legislation always annuls legislation which is brought before it. Those legislations that the Committee approves do not come before the House. For the record, since inception in December 2017, the Committee on Delegated Legislation has considered 60 pieces of legislation. It has approved 37 of them. It has also nullified in its entirety a total of 13 pieces of legislation. It has also annulled only one legislation in part. Two legislations became operational due to the lapse of time. Five of the wildlife regulations were recommended for revocation by the Ministry of Forestry and Wildlife because they gazetted them seven days after the required period. Two legislations are currently under consideration by the Committee.

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Section 16 of the Statutory Instrument Act allows the regulatory-making authorities which are the ministries and State organisations to consult with the Committee prior to publishing the regulations. Our Committee encourages ministries to do this when they are in doubt. This will go a long way in saving the Government and the public service resources and time. It will ensure that public programmes do not stall due to annulment of regulations. Alternatively, ministries should choose the legal counsel whom they should engage very carefully. I do not blame the ministries but the legal advisors. When you bring regulations that contravene the Constitution, parent statute and even go beyond powers that have been donated by law, it not only wastes the time of the Committee, but it also causes the Government lots of resources. I am sure the legal counsel who gives the wrong legal advice still gets paid, despite the annulment of the regulations by this Committee.

It is important for ministries to know that our Committee is lucky to have senior lawyers like Hon. Alice Wahome, who is one of the first in her time, Hon. Jennifer Shamalla, Hon. Njagagua, Hon. Murugara, Hon. Maanzo, Hon. Mariru and Hon. Wambugu. It also has very dedicated Members like Hon. Wangari, Hon. Mbui and Hon. Seroney, who are very keen about public participation. This is an aspect that was missing in this particular regulation. We also have the diligent and soft-spoken, Hon. Tim Wanyonyi, and Hon. Oundo, who have been very clear that they will not allow shoddy legislation to pass through our Committee.

I beg to move and kindly request my colleague who is a Member of the Committee and a formidable young woman, Hon. Martha Wangari, Member for Gilgil, to second this Motion. Thank you, Hon. Speaker.

Hon. Speaker: Hon. Wangari.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Speaker. I also thank the Chair of our Committee for ably presenting this Report. I rise to second it. The reasons have been thoroughly explained by our Chair.

We must look at the issue of the speculative nature of the Kshs200million which is proposed to be put in that Fund. There is no explanation whatsoever of how that amount was arrived at. It was not in the 2018/2019 Financial Year budgetary estimates. We find it speculative. These regulations are generally *ultra vires*. They have conflicted with four statutory laws, the Statutory Instruments Act, the PFM Act and the Air Service Charge Act. There is no better way to explain that they are *ultra vires*. Transparency, oversight and policy implementation are very critical in Government. The regulations propose that the PS in charge of tourism will be the administrator of the Fund. At the same time, Regulation No. 17 proposes the Oversight Board where the PS sits. The separation of these two must be very clear. If you are part of the implementation of a fund, you cannot oversee it.

There is also conflict with other established bodies. We have the Ministry of Tourism, the Kenya Tourism Board and Brand Kenya that does the work that the Fund is meant to do. The CS proposes that Government institutions can access the Fund through application and legal procedure. That does not make sense because it will add the budget of Kenyans and the wage budgets that are in those bodies. We had a Committee that was set up in the past to rationalise how we can limit the number of parastatals in the Government. This is already an extra one which does not make sense.

The establishment of a Board is treated very casually. It shows that you can introduce it through mischief and regulations. It must come here as a proper Act of Parliament. They must not take a shortcut to establish a Board because it is a major issue. This is not an issue that can

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come through a subsidiary legislation. Therefore, I support what the Chair has said. There are enough compelling reasons for us to reject these Regulations.

Finally, on the issue of public participation, Articles 10 and 118 of the Constitution provide for inclusiveness. The fact that these Regulations were not accompanied by a memorandum to explain them, there is no way we can verify that there was enough consultations. If we adopt these Regulations in the way they are, we would be taking the word of the Cabinet Secretary (CS) with no proper explanation or documentation.

With those many remarks, I beg to second.

(Several Hon. Members stood on the gangways)

Hon. Speaker: Hon. Members, take your seats. Earlier on, we discussed the Commonwealth Parliamentary Association (CPA). For those of you who may not know the history of this Committee, it is borrowed from a CPA Conference organised in Sydney in 2002, where your Speaker and the late Hon. George Moseti Anyona were sponsored to attend. The idea of this Committee was borrowed from that conference for the benefit of CPA.

(Question proposed)

Hon. Members: Put the Question!

Hon. Speaker: It seems to be the desire of the House that I put the Question. I agree with the Chair. Let us not just say that the Committee is happy to annul the Regulations. The law was passed for a purpose. Regulation-making bodies and/or authorities or ministries must adhere to the law.

(Question put and agreed to)

Hon. Speaker: Hon. Members, before we go to the next Order, which I believe many of you are keen to contribute to, I have been informed that there was an issue that was raised by Hon. Otiende Amollo. He approached me earlier in the day and indicated that he wanted to pursue his point of order. The Deputy Speaker had indicated that the matter would be canvassed today. Therefore, before we move to the next Order, I want to allow Hon. Otiende Amollo to raise his point.

Hon. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. My point of order is in relation to the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.12 of 2018), for which I had given due notice.

There are two points I want to raise on this issue. The first point is that, at the point when there was consideration that the House would move to a Committee of the whole House to discuss it, I indicated that I would raise a point of order on its constitutionality. As you have ruled before, Hon. Speaker, there would be no point in proceeding if there is a grave transgression of the Constitution because we will be discussing in vain.

The Statute Law (Miscellaneous Amendments) Bill seeks to amend 60 pieces of legislations. On its face, on Page 373, it states that it is an amendment to various wide-ranging amendments. The High Court of Kenya has ruled not once, not twice but, at least, three times, the last of which is a decision that was rendered on 23rd February 2018 in Petition No.120 of

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2017. The High Court ruled that you cannot introduce a miscellaneous amendment that affects substantive provisions in the Constitution. Specifically, I invite Members to turn to pages 9 and 11. In that particular decision, the Court states that if a statute law miscellaneous amendment purport ….

Hon. Speaker: Sorry, Member for Rarieda! There is a point of order from Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker. The matter that Hon. Otiende Amollo is putting across is, indeed, very important. But as amatter of procedure, we know very well that such a matter arises when the next Order is on the Statute Law (Miscellaneous Amendments) Bill. However, according to the Order Paper, we are supposed to be looking at the Finance Bill. The Statute Law (Miscellaneous Amendments) Bill comes afterwards. So, I humbly request you to intervene so that if we finalise on the Finance Bill, then he can raise his matter when the time is due for us to discuss the Statute Law (Miscellaneous Amendments) Bill.

Thank you.

Hon. Speaker: Hon. Otiende Amollo had given an indication, and I am aware from the Clerk's Office; that he is due to travel out of the country in the next few hours. He could give an indication when he will be back. This matter was raised when I was out of the country. Fortunately, I got the proceedings.

(Hon. Omboko Milemba spoke off record)

Order! You cannot do that when I am speaking. I am prepared to give a procedural guide on how to go about the issues he intends to raise. If I knew when he will be back, I was going to allow him to raise it tomorrow. Even now, there have been requests from a number of Members that the Order be stood down because several Members have proposed more amendments to various laws proposed to be amended by the Statute Law (Miscellaneous Amendments) Bill.

(Hon. Omboko Milemba spoke off record)

Hon. Omboko Milemba, you cannot say you are going to challenge it. It is unlikely that you will succeed.

I was prepared to give a guide. I wish Hon. Otiende Amollo could tell us when he will be back. You had indicated to me that, if you are not able to raise your point of order today, you could request somebody to do it on your behalf.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Hon. Speaker, I am due to travel on the business of the House. I have barely 20 minutes to go. So, my proposal was to raise the point of order. Even if the discussion is done in my absence, because I will not be back until next week, at least, I would have laid the foundation on it. I stand guided.

Indeed, I was only going to take not more than five or four minutes. Shall I continue?

Hon. Speaker: Hon. Amollo, what was your issue?

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): There are two issues; indeed, three; but, I will drop one. The first issue which is what I was prosecuting is that the entire Bill as presented is unconstitutional. It should not require any further discussion or even moving to a Committee of the whole House as we were bound to do.

Hon. Speaker: On what basis?

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Hon. (Dr.) Otiende Amollo (Rarieda, ODM): It is on the basis of the decisions of the High Court which I was referring to you. The fundamental basis is that it introduces substantive amendments; very far reaching amendments to 60 different pieces of legislation in an omnibus manner, which is not allowed in law and which is also offensive to the Constitution.

The second point which I also gave notice to is that, having come to this House and severally seen the Leader of the Majority Party sign and move Bills and introduce them to this House, I have carefully looked at the Constitution and the Standing Orders. I do not find any basis on which that practice is founded. Indeed, the converse should be that such Bills should come through the various Committees and be moved by the respective chairpersons.

(Applause)

Those are the two points I wished to raise. I stand guided.

Hon. Speaker: Very well. Hon. Members, I know many of you might want to debate those two issues. On the basis of constitutionality, that is a matter on which I was already prepared. I had already been alerted. So, it is something over which I have a procedural guide. There is nothing unconstitutional about this Bill. The term omnibus does not refer to minor or trivial amendments. In fact, you could be talking about making minor amendments to existing law. But, you may just insert one word; where it talks of “10 per cent” and make it 50 per cent. That could be monumental. So, it is not the volume of the text that should be the issue to be considered. On this, the courts must also allow Parliament to do its legislative work. Let them deal with the interpretation of the constitutionality or otherwise of Bills that have been passed by the House. We cannot be held hostage by courts saying: “We think this is an omnibus law or, there are too many amendment Bills”. A Finance Bill, for instance, is an omnibus Bill. It amends several laws to deal with revenue-raising measures or even repeals in entirety certain taxation provisions in law. Some of them have such great import that if one was to say the issue of substantive *vis-a-vis* the text, the two would not go hand in hand. My view is that, since the issue of “omnibus law” is as old as the year 1850, go and check when the issue of abolition of slave trade after 1807, the laws did not come into place until 1850 in the United States of America. They came through what we call “omnibus”. In Australia, Canada and the UK, go check and you will see it is in around 1888. So, the issue of “omnibus” is not one that offends the practice anywhere in the jurisdictions we compare ourselves with. We have traditions and customs. Our Constitution has not disallowed miscellaneous amendment Bills. I do not think whether we could say it is “un-procedural”. My guide would be that we consider the Bills. Our requirement is under Article 10, among others; Articles 10(2)(a) and 118, which are on public participation. So, when a Bill is published, whether it contains proposals to amendment two Acts of Parliament or 10 or 15, what our Constitution requires is that the public is involved. That is why we publicise those Bills. It is so that stakeholders and any other person are able to appear before the committees of the House. That is the requirement – to appear and give their views. Indeed, even Committees can decide that proposed amendments on a particular law be rejected in entirety. What would be wrong with that? A committee can come and say it does not agree with a proposal and reject it after taking the views of Kenyans.

So, I think it is within the power of the House to legislate in terms of Article 94 and 95. When we are legislating, we should not look over our shoulders save to consider what the letter and spirit of the Constitution and its substance are. In my view, Hon. Hon. (Dr.) Otiende Amollo, I would really want to direct and say that we proceed. It is within the legislative power and

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authority of this House to reject the entire Bill if it so finds or, indeed, reject any of the proposed amendments. In particular, with regard to this Bill, you will recall that several Committees have had occasion to look at the specific Acts proposed to be amended and did public participation. They all filed reports. The only requirement being, for the one of order, that those reports were amalgamated and tabled by the Chair of the Departmental Committee on Justice and Legal Affairs. But they came from various other departmental committees. If there is any challenge, it is one that goes to whether the public of Kenya has participated as required under the Constitution. Let us not tie ourselves with those other considerations. If anybody thinks that the Bills as passed are having anything unconstitutional, it should be their business to go and do that interpretation. The House will be guided. Let us not try to arm-string ourselves with thinking that, maybe, there is any precedent that has been set merely because in interpreting a law which may have been passed, some finding may have been made regarding constitutionality or otherwise of any of the provisions. There has never been a precedent that says: “Do not use miscellaneous amendment processes”.

But I know that, as we had agreed with Hon. (Dr.) Otiende Amollo, maybe, the other issue can be raised at some other time. It is because I can see there are several Members who had wanted to contribute to this. It is the one as to whether the Leader of the Majority Party should be the one signing all Bills. It is a matter which belongs to this House. Perhaps, it is not me to determine. This House has been given powers to make Standing Orders under Article 124. It is up to you people, Members of this House, to make provision in the Standing Orders as you find befitting.

Hon. John Mbadi, this will ensure that it is not the Speaker to decide that the Bills will be signed by the chair of a committee. Those of you who can remember, the very first post-election workshop in the 11th Parliament was held in the South Coast. Hon. Kajwang’ was there. Some of the experts we had invited from jurisdictions that have presidential systems indicated that Bills emanating from the Executive are published in the name of any Member on request. But, of course, you are at liberty to make adjustments as you find appropriate. I should not be the one to make the determination. I know Hon. Otiende Amollo has been very passionate about that particular subject. Remember you have Procedure and House Rules Committee which you could suggest amendments to. At the end of the day, it is for the entire House to apply its mind and see how best to address that issue.

(Hon. (Dr.) Otiende Amollo spoke off record)

Hon. Speaker: He is travelling on House Business. Nevertheless, Hon. Otiende Amollo the point you have made is well received and noted.

Hon. Members: *(Off record)*

Hon. Speaker: There is an issue of Members wanting to stop you from proceeding because we are not yet at that business. Let the House be accordingly guided but, because of the many requests for further amendments, Order No. 11 will be taken out of the Order Paper to allow as many of you that have proposed amendments to place them before the Clerk for processing. I am aware that there are several of you who have further amendments and it is only fair that they be put in the Order Paper for convenience of other Members and the House.

(Loud consultations)

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Hon. Speaker: There is no point for guidance. Member for Suba North. The screen shows your name as Hon. Odhiambo Akoth. Hon. Odhiambo Akoth, you can use the Dispatch Box. I am told the system has "hang" again.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Speaker. May I also take this opportunity to congratulate you on your appointment as the Chair of CPA-Africa. I have been reminded by the Member of Suba South that it is your election and not appointment. Having said so, I want to say that I respect your ruling on this matter even though I would have wished that you had ruled otherwise. However, having said so and taking us forward, I would want to request that the House do consider… I will give this Bill as an example. We are talking of about 60 pieces of legislations which I have looked at and brought amendments in almost each of the pieces of legislation. In terms of the work, I was in the House and I raised substantially the same issues that Hon. Otiende has raised. Some of the issues are problematic. The day we were discussing this, debate ended early, yet some of us did not have enough time because we wanted to talk to 60 pieces of legislation for ten minutes. This takes away my effective role as a legislator. One of the things I want to agree with you is: It may not necessarily be an issue of how many articles are being amended. I could give you an example of one Article that looks very harmless and yet, it has a very huge impact that sometimes the people in the Ministry may not understand. So, I am suggesting that we either amend our Standing Orders or bring a substantive Bill to help us when we are dealing with 60 pieces of legislation in one. Some of us feel frustrated. When I am doing the amendments, I do not know whether in my amendment I will say... I pity the people who are doing the technical work. I do my amendments alone but on this one, I will just say delete all parts. I will not go section by section because I will take like two months just doing the Statute Law (Miscellaneous Amendment) Bill alone. If we have one piece of legislation, I will take about two hours to deal with one. In terms of doing effective legislation, it is very frustrating for Members of Parliament. I wish to seek guidance from your office that the numbers be reduced, so that even if they will bring 50 (miscellaneous amendments), we will reduce them to only ten so that we are not overwhelmed as Members of Parliament.

Thank you, Hon. Speaker.

Hon. Speaker: Even my microphone has "hanged". I have to re-jog my memory and mind from Hon. Odhiambo-Mabona to Hon. Odhiambo Akoth. Hon. Odhiambo Akoth, that is a good observation but it speaks to the latter part of what I said, about the House being the one that should make that determination in the Standing Orders. The point is noted but I think since you are a seasoned legislator, the House should benefit from your suggestion to limit the number of Acts or Statutes to be amended through a (Miscellaneous Amendment) Bill, taking into account that, sometimes, especially when it is the Finance Bill, the Cabinet Secretary in the National Treasury could have proposals affecting quite a number of other statutes. Procedure and House Rules Committee is amenable to receiving suggestions.

Let us now move to the next Order.

BILL

Second Reading

FINANCE BILL

(Hon. Joseph Limo on 23.8.2018)

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(Resumption of Debate interrupted on 23.8.2018)

Hon. Speaker: Hon. Member for Dagoretti South was on the Floor and has a balance of five minutes. Hon. Chris Wamalwa, I know you are the first one on the screen but the Member who was on the Floor continues. I thought Hon Wamalwa…

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Speaker. I want to join my colleagues in congratulating you on your election as a Chairman of CPA. I had my time to prosecute one of the issues that I wanted to bring up and I had weighed in on my two cents worth on issues to do with Proposal No.58. The long and the short of it is that I was against the repealing of the interest rate capping. Today, I would want to focus my attention on a proposal captured on Clause 31 where it says that the First Schedule of the Excise Duty Act 2015 is amended. Of particular interest to me is paragraph 5 which proposes that Excise Duty on fees charged for money transfer services by banks, money transfer agencies and other financial service providers shall be ten per cent of the excisable value.

I would like to request Members to support an amendment that I want to bring to the House that has been approved, where I argue that this excise duty cannot be all loaded to Wanjiku. As we speak, the amount of money moved on mobile money transfer platforms is in excess of Kshs3.7 trillion. To put it in perspective, that is close to over half of Kenya's GDP which is around Kshs7 trillion. I would like to let this House know that even the CBK Governor is on record as saying that mobile money transfer has become the tail that wags the dog. This has come with very handsome profits. As we all know, one of the operators, who is currently enjoying close to 80 per cent dominance in the money transfer business, is declaring massive profits. As of March 2018, we all know that Safaricom declared profits in excess of Kshs55 billion.

My argument is that the mobile network operators can afford to carry the burden of this Excise Duty instead of loading it on Wanjiku who is a struggling Kenyan. If you look at the trends of how credit has been sold to Wanjiku in Kenya; you remember that credit used to be in denominations of Kshs1,000. It came down to Kshs500, Kshs250, all the way down to Kshs10 and even a *Bamba Tano*, meaning that Wanjiku herself is struggling. My proposal is that if we are going to put excise duty on mobile money transfer, then it should be shared at 70 per cent by the mobile network operator or the mobile money transfer platform and 30 per cent by Wanjiku. The proposal here is that Excise Duty on fees charged for money transfer services by banks, money transfer agencies and other financial service providers shall be 10 per cent of excisable duty hence my proposal that out of this 10 per cent, Wanjiku should carry only 30 per cent, which would add up to around 3 per cent of the excise duty proposed here, and 7 per cent should be carried by the mobile platform.

Given that I do not have much time to prosecute this, I would like to end by saying that the mobile network operators in Kenya make profits out of Wanjiku's pockets. As such, the mobile network providers should not find it hard to share the burden of these duties that we are adding here with Wanjiku. We would not want to preside over a situation where we have entities that make obscene profits in a country where most people live below the poverty line; living on under a dollar a day. Gandhi once spoke about the seven deadly sins of human beings and one of them was commerce without morality. We would not want to be in a situation where we have corporations operating to just get profits out of Kenyans, while conducting commerce without morality.

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Hon. Speaker, I thank you for giving me this opportunity. I do ask Members to support my proposal that the Excise Duty be shared 70 to 30 per cent between mobile network operators and Wanjiku.

Hon. Speaker: The Member for Kiminini. He is the first on the list.

Hon. (Dr.) Chris Wamalwa (Kiminini, FORD-K): Thank you, Hon. Speaker for giving me this opportunity. First and foremost, I want to bring greetings and blessings from the Holy Seat of Vatican. Last week, we led a delegation of Catholic Members of Parliament and we had an opportunity to meet the Holy Father, Pope Francis. He is praying for this country to have peace, development and tranquility. I bring his greetings and blessings.

Secondly, I want to congratulate you on the position that you have acquired. Indeed, it is going to put this country on the world record.

I want to address the substance of this Bill. The Finance Bill is very critical as far as the success of any country is concerned. It is an element of budget. The budget has two components which are mutually inclusive. First, we talk of expenditure, which was highlighted here by the CS for the National Treasury. It highlights the Big Four Agenda of development: affordable housing, universal healthcare and manufacturing. For us to achieve the Big Four agenda, there is the component of revenue. The key objective of the Finance Bill is to put measures in place on how the Government is going to raise money to be used to spur development and to implement the Big Four Agenda.

I will speak only on three critical issues because of time. I have gone through the Report of the Departmental Committee on Finance, Planning and Trade and I want to salute the Committee under the chairmanship of Hon. Limo. Indeed, they did some good work. There are critical issues that I want to highlight.

On the issue of the Banking Act and the issue of interest rate capping, I want to salute Hon. Jude Njomo. When he brought an amendment on the Floor of this House, which I seconded, it was to put interest capping in the banking industry because banks were making abnormal profits. Under the law of demand, when the price of a commodity is reduced, obviously the demand is supposed to go up. In this case, the interest rate charged by banks was reduced, the demand was high but the banks did not advance the money to the common mwananchi. This was blackmail that CBK is supposed to have dealt with in its regulation role.

When I look at this Bill, I am happy about the issue of the upper limit. We cannot amend the capping of rates. Banks have been making abnormal profits. If you want to spur economic development in this country, it is important that loans must be affordable. In many other countries, interest rates are very low. In this country, interest rates have been very high. We have told the CBK Governor that his work is to regulate and not to legislate. He must be listening to me. I am saying this to the banks because they have colluded; it is a conspiracy. They are not advancing loans to consumers so that they can blackmail legislators to allow market rates. That cannot happen.

On the issue of self-regulation, an opportunity was given to the industry but unfortunately the banks never self-regulated themselves. That is why as a House we are saying capping of interest rates has to remain. When it comes to the lower case, it is okay. If somebody wants to put their savings in the bank, they can go and negotiate and agree on the interest rate to be paid. But when it comes to the upper limit, we are going to oppose because we want this policy to spur economic development in this country.

My second point is about the Robin Hood tax. In many jurisdictions, this is where the people who are endowed in terms of income are normally taxed so that there is revenue to fund

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low income earners. I have looked at the proposal. It is proposing that 0.05 per cent must be charged on every Kshs 500,000 for the sake of funding universal healthcare. I oppose. You cannot say that someone with Kshs500,000 is endowed. That is little money. We will have to amend when it comes to the Committee of the whole House to increase the amount to possibly Kshs1 million. When it comes to Real Time Gross Settlement (RTGS) transactions, it is capped at Kshs1 million. At least, Kshs1 million is reasonable.

When I look at the National Government Development Constituencies Fund (NG-CDF), if one would use to it to pay money for university students as bursary, in most cases it has been in excess of Kshs500,000. Now, if you put a levy of 0.05 per cent, who will incur that cost? It is a good observation, but we will amend it when it comes to the Committee of the whole House. That way, we increase the threshold from Kshs500,000, if possible, to Kshs1 or Kshs2 million. Otherwise, that tax of 0.05 per cent will be prohibitive. In many cases, when you transfer money, you might be transferring it to your daughter or son who is still in school for purposes of school fees. Therefore, when you want to charge 0.05 per cent, it will be very expensive and prohibitive measure and we want to reject it.

If we went down the memory lane; a good government is known by spurring economic development. President Kibaki took over power when the Gross Domestic Product (GDP) of this country was at the negative. He came up with the Economic Recovery Strategy (ERS) and then the Vision 2030. The GDP of this country grew to 78 per cent.

On taxation, I want to remember the slogan during President Kibaki's time: *"Kulipa Ushuru ni Kujitegemea."* We want to call upon the Kenya Revenue Authority (KRA) because they are the ones responsible when it comes to issues of tax collection. A lot of corruption has been happening there. We are aware that a lot of money has been lost in the KRA. This is the time for KRA to wake up because they are responsible for collecting taxes.

If we collect taxes, we are going to "*jitegemea"* as the slogan went during the Kibaki Government. President Kibaki will go into history as one of the Presidents who was very key when it came to economic development. The borrowing that we are experiencing now was not overwhelming during President Kibaki's time. When you borrow, you have to pay and so, it is important that KRA must pull up its socks and collect revenues. We are told that the KRA will be given powers to dismiss or suspend licences of any organisation that shall bring counterfeit goods. This is the time that it will provide some room for corruption.

Another issue I would like to talk about is the National Housing Development Fund (NHDF). This is a wonderful idea. It has happened in many jurisdictions. In Singapore, when Lee Kuan Yew took over, one of the critical things he dealt with was housing where people were contributing. The proposal for this fund should not give room for corruption. This is my worry and unless there is a clear framework… We have been told in one of the proposals that when you put your money there, you will be paid back, if at all you do not get a house. When it comes to allocation of houses, it will be done through random sampling. We have known random sampling in this country. It is being purposive. It is high time we supported this, but there must be a clear framework on how this fund will work because it worked very well in Singapore.

I wish you would give me one minute, Hon. Speaker because there is something very critical that I want to mention in my notes.

Hon. Speaker: Hon. Members, whatever rules or regulations that will be made in support of those proposals, obviously, they have to come through here. Remember the requirements of the Statutory Instruments Act - what we have been discussing - and what Hon. Shollei moved a while ago. Just to inform the House that there are proposals that have come from Hon. Jude

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Njomo and Hon. Kimani Ichung'wah. I have just received communication now. So that you do not spend a lot of time on those areas, the National Treasury has indicated concurrence with some of your proposals.

Let us have the Member for Kikuyu.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I appreciate the concurrence from the National Treasury. As I rise to support the Finance Bill, I have reservations and I hope Hon. Jude Njomo will speak to some of the reservations again that the National Treasury has expressed, especially on the proposed amendments on the Banking and Capping Law, in relation to the provision that 10 per cent of all monies be set aside for lending to Small and Medium-sized Enterprises (SMEs). I have had occasion to read the reservation by the National Treasury. It does not make sense to me because we, as a House, are not saying that 10 per cent must be lent to particular SMEs. The proposal by Hon. Jude Njomo is to set aside that 10 per cent and leave it to the banking sector to decide amongst the pool of SMEs, who qualifies to be lent that money.

Hon. Speaker, I do not think even the National Treasury should curtail it. I also take this opportunity, besides congratulating you on your election as Chairman of the CPA… I was wondering when Members were congratulating you whether we should now be referring to you as Your Majesty, now that the patron is a Queen who we refer to as Her Majesty.

In the earlier debate, before I get to matters of the Finance Bill, on the question that had been raised by Hon. Otiende Amollo; I think your considered guidance on that matter is very important. This House should not be guided by other forces out there. Maybe Hon. Otiende Amollo is still living in his past where he lived in the court rooms and elsewhere. It is rather shameful and very embarrassing that a Member of Parliament (MP) can purport to bring proposals to this House to curtail our own powers to legislate. The Judiciary makes decisions and judgement based on what is brought before the courts and they make their decisions without reference to any other considerations out there.

Therefore, I would encourage Hon. Otiende Amollo to also legislate and work as an MP without reference to other busybodies out there. On matters of interest on capping…

Hon. Jared Okelo (Nyando, ODM): On a point of order.

Hon. Speaker: There is a point of order here.

Hon. Jared Okelo (Nyando, ODM): Thank you, Hon. Speaker. I do not think it is in order for the Member, who is of a ranking membership here, to refer to a Member who is not in the House currently - who has been in the House and has since left – adversely. Is it in order that he refers to such a Member so adversely and yet that Member has got no podium to reply?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker…

Hon. Speaker: The problem is that Hon. Jared Okello does not know that he rose on a point of order and so you have to remain seated there until I rule on that.

Hon. Jared Okelo (Nyando, ODM): Hon. Speaker, it is connected.

Hon. Speaker: It does not matter. This is not Nyando. It is the Chamber of the National Assembly. It does not matter how connected it may be.

Hon. Kimani Ichung'wah, to the extent that you referred to Hon. Otiende Amollo as behaving in a shameful way, that is out of order and you should withdraw.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, I was not referring to a particular Member. I only said that it would be shameful even for me, as a Member of Parliament, to purport to curtail the powers of the House in terms of matters of legislation.

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I now move on the issue of the interest rate capping. This is a matter that came up in this House through a Bill that was introduced by Hon. Jude Njomo; who happens to hail from my county, Kiambu.

As the Chairman of the Budget and Appropriations Committee, I have had occasion to interact with the representatives of the International Monetary Fund (IMF) and the World Bank on the matter. I have also conversed with the Governor of the Central Bank of Kenya (CBK) as well as with various stakeholders in the banking industry. I can tell you that all the issues that have been brought to us and conversed in the public, are based on data and information that is very skewed. It is data and information that has been coming from the industry. I find it compounding because I have had very biased information, as Hon. Chris Wamalwa says.

I have had occasion to look at proposals that came from the Institute of Certified Public Accountants of Kenya (ICPAK), which Hon. Amos Kimunya once chaired. It is an institute I have affiliation to, being an accountant. The ICPAK is indeed in support of the status quo in the interest rates capping. Their support is based on data they have collected from various sources, including the CBK on monetary policy statement that was released earlier this year, based on the 2017 Report. If you read some of the articles, you will realise that they attribute to the reduced credit and a slowdown in economic growth. During the 2017 electioneering period, unlike what players in the banking industry is telling us – the reduction in credit to SMEs has been occasioned by the interest rate capping law that came into being in 2016.

It is common sense to anybody in this country, and anywhere in the world; that what happened in this country in 2017 occasioned a slowdown in economic growth. Therefore, people did not borrow more. Indeed, all the data coming from independent sources, other than the banking sector which shows that the reduction in lending to SMEs has been very marginal and in line with the slowdown in economic growth, as a result of the activities of the 2017 electioneering period. The affected sectors included agriculture.

Hon. Members will recall that towards the end of 2016, when this law came into effect, the agricultural sector was badly hit by drought. Therefore, players in the agricultural sector were not able to borrow from banks. The data that is available speaks to this fact. Therefore, what the banking sector and some people within CBK have been able to tell us that, the bank interest rate capping law has curtailed lending to SMEs is, indeed, not true.

I ask Members to ensure that this law remains as it is in the worst-case-scenario. I have said this before. I am on record elsewhere that I am amiable to a situation where we reduce the lower cap. That will make a little bit of sense because the CBK, through its monetary policy, will have some flexibility. That way, borrowers will benefit when the inflation rate goes down. The CBK will reduce its base lending rate. We also run a risk when we over-control the lower cap. Even when inflation reduces, the CBK may not be able to manipulate its basic lending rate as it would wish. I have had occasion to speak to the Chair of the Departmental Committee on Finance and Planning. I proposed that even when we review the lower cap, we should never leave the banking industry to intimidate this House and Kenyans by reviewing the upper cap. This is because they will simply take this country back to the era when bank interest rates were as high as 24 to 28 per cent. What reason would any bank give a Kenyan borrowing for charging such interest rates?

I can give an example of the Cooperative Bank of Kenya, which had an average lending rate of 17 per cent at the time of capping. Without naming any institution, some banks were, during the same period, lending at between 26 and 29 per cent, yet they were operating in the same market with Cooperative Bank. That is why I also support the proposal that Hon. Jude

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Njomo has brought to increase the capitalisation of commercial banks by 2021 to ensure that we have sufficiently capitalised banks that can give affordable credit to Kenyans. I, therefore, request Members to support this proposal.

The other issue I want to raise is one that Kenyans have probably been looking upon this House to save them from that. That is the issue of charging Value Added Tax (VAT) on petroleum fuel. Maybe, it is lost on Kenyans that this matter is not in this Finance Bill. Therefore, we may not deal with it within the provisions of this Finance Bill. However, it is a matter that, again, as Hon. Chris Wamalwa said, in 2013 or 2014, when we passed that VAT Act to introduce VAT on fuel, it was envisaged that four or five years down the line, this country would have gone into commercial production of oil. Therefore, the base price of fuel would be lower, even if we charged VAT.

However, that is not the case today. Mine would be to ask the National Treasury to, probably, reconsider that provision or defer implementation of that particular provision to allow us to go into commercial production of oil. When the base prices come down, we can charge VAT on petroleum fuel. As a House, we may not have occasion to deal with the particular Bill in order to save Kenyans in this case.

With regard to the Kenya Revenue Authority (KRA), we must be clear that if its officers fail this country in terms of collection of revenues, KRA is to blame. Talking about fighting corruption, I wish we had taken the lifestyle audit exercise beyond procurement and finance officers to include revenue collection officers within KRA. The people who are building and buying apartments all over town are very junior KRA officers. That is the root of all corruption in the Government.

I can see I only have a minute remaining. I would have moved on to issues of betting. I intend to bring amendments to the law on betting. Betting is an evil that this country must deal with. All advertisements in the print media, digital platforms and other media are about fake winners and winners that…

Hon. Speaker: I will give you one minute.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker.

Hon. Speaker: There is an issue which was raised by Hon. Millie Odhiambo earlier on. Just to encourage my colleagues who take the Chair, sometimes there is no harm in extending more time to a Member. It is within the power of the person on the Chair to exercise that discretion. So, you will be given one more minute, as you requested.

Hon. Kimani Ichung'wah (Kikuyu, JP): Thank you, Hon. Speaker. I was saying that the myriad of media advertisements encouraging Kenyans to go into non-productive activities, like betting, is an issue we need to deal with. I will be bringing amendments that will also make it very punitive to advertise when we deal with the substantive Bill on betting so that we can ascertain that a person who is purported to be a winner on television is actually a winner. This is because there are advertisements of fake winners encouraging young people to embrace the betting vice.

Finally, I will speak on the National Housing Fund. In principle, I support it. However, I would also want to encourage that we have a very robust and clear framework on how this money will be utilised. I had occasion to meet with the Principal Secretary (PS) for Housing. I am happy to see some of the proposed amendments covering issues to do with recouping this money in a number of years, if you are not able to get into what they call 'affordable housing or even being able to transfer what you have saved. It will also be a very good way to transfer what you have saved to a beneficiary like your child or someone who qualifies for the affordable

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housing scheme. It also helps to mop up savings in the country. Therefore, I will be supporting the proposals, especially the amendment of 1.5 per cent to enable one draw that money at the end of one's saving plan, be it after eight or 10 years. All of us should be forced to contribute towards a housing scheme we will not benefit from it. Some of us bought or built our own houses very many years ago. Therefore, we should not be paying for others, unless we will be able to use it as an avenue for mopping up our savings for future investment in housing and other areas.

With those remarks, I beg to support.

Hon. Speaker: The issue you spoke about is one that the letter from the National Treasury agrees with you on.

Before I give a chance to the next speaker, allow me to recognise the presence, in the Speaker's Gallery, of students from St. Joseph's School Rapogi from Uriri Constituency in Migori County. They are welcome to observe proceedings.

Let us have the Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM – K): Thank you, Hon. Speaker for giving me the opportunity to add my voice to this debate. I thank the Committee for the good job done in terms of analysing this Finance Bill. I must agree that this Bill is quite complicated and it must have taken them a lot of time to analyse. This Bill is expected to raise about Kshs27.2 billion in terms of revenue. The proposals in this Bill are just to make sure that we get that money.

Even as we think about raising revenue, it is important that we consider effective measures so that we do not also destabilise the economy. Looking at the Bill, I will very quickly mention some of the good things that will help the economy and then quickly look at things which will need more time to think through.

Looking at Clause 10, there is the issue of collection from winnings which should be put into the Sports, Arts and Social Development Fund. That is good for purposes of developing our sports facilities because we are having challenges in that area.

The other area which is important is a situation where there are conflicts in terms of tax issues. Clause 21 proposes use of alternative dispute resolution mechanisms and also goes ahead and says that it is important that we think about out-of-court settlements. Another important case is Clause 27 where the Commissioner is given mandate or authority to actually cancel licenses where owners of those licenses are engaging in fraud or counterfeit excise terms. This is important because those are some of the areas where we have not been able to collect revenue because of those loopholes.

There are about three or four areas where as a House, we need to make sure that we have our voice heard. The first item is the issue of the National Housing Development Fund which is captured in Clause 68. There are very many unanswered questions with regard to this Clause. The first one is: If I contribute to this particular Fund as an employee and I have my own house and so I do not need the house, how will I benefit from that Fund? The second question is: How will those who are in the informal sector and who are the neediest in terms of housing benefit in this area? The third question is: Is it better to have a Fund which people contribute to and then money is used to benefit needy Kenyans without caring about the person contributing? If so, should it not be applicable to all Kenyans rather than singling out the employees? This is discrimination where we want to get money from only those people who are employed because it easier to collect money through salaries.

The other important point is that when this Fund is introduced, people should think through the framework so that it does not cause confusion. This is a very bad Clause for those

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people who represent workers in this country. We need to oppose it in the strongest terms possible. It is discriminatory and will not help our people.

The other issue is that of the 0.05 per cent charged when transferring more than Kshs500,000. This is another area where I support what the Committee has said. It is a grey area. There are a lot of gaps if we are to go ahead and effect this recommendation. It is clear that it will harm Kenyans. For example, if I have Kshs500,000 in account A which is a current account and I want to move that money to account B which is a savings account, it will be very unfair for me to be charged that fee. I am just transferring my own money.

The other point is that in a case where I am paying taxes, I am sending money from my account to pay taxes to the Kenya Revenue Authority (KRA) collecting account. It will also be very unfair if we charge such an expense. There is also the issue of paying money in terms of international obligations as a country. There is also the National Government - Constituencies Development Fund (NG-CDF). We transfer money to Project Management Committees (PMC) accounts. If this transfer fee is charged, it will increase the cost of projects that we are implementing for needy Kenyans. This is another area where as a Committee and a House, we need to take time and make sure we think through the framework so that it does not punish Kenyans and instead of increasing revenue collection, it destabilises the economy so that it cannot grow.

The other area is with regard to Clauses 2 and 5 which talk about demurrage charges. I want to talk about demurrage charges. This is a charge for inefficiency. It is the amount of money you are charged for the period of time your goods overstay at the port. You are charged for storage. Do we want to reward inefficiency? When the KRA has taken time to assess my imported goods and then they overstay at the port, I am supposed to pay more. There are cases where the Kenya Bureau of Standards (KBS) is not able to assess the quality of the goods and they take their own sweet time then you pay more because the goods have overstayed or where the port inefficiency in terms of handling the cargo takes time and you pay. Do we want to pay? In a case where there are inefficiencies, do we want to charge Kenyans for that? We need to look at this charge so that we come up with very clear timelines in terms of how long the KRA should take to clear goods so that if they take more than that time, they do not blame the customer but take the responsibility for that delay. In that case, if there are any charges, they should be to the KRA and not the customer. It is the same with the Kenya Ports Authority (KPA). If there is mishandling or delayed handling of goods, KPA should be charged and should pay.

We are part of an international community. Kenya is a member of the East African Community (EAC). We are also members of the international community. In a situation where we make our own local environment more expensive in terms of cost of production and business transaction, we allow competition in the neighbourhood. I will not be surprised that you can get goods coming from Uganda to Kenya because they are cheaper to produce and the tax rates are lower. Even as we think through some of these charges, it is important that the Departmental Committee on Finance and Planning and the House considers what is happening in the neighbourhood. Tanzania and Uganda have their own tax regimes. Where our tax regime seems to be more unfair to our people, you allow room for those people to import goods to Kenya.

Interest capping is a very controversial issue. I remember we passed it but generally, what I would call the best practice - and this is from an economics perspective – is that competition is allowed. I agree that in a situation where banks take advantage of that competition and engage in monopolistic practices, this House must save Kenyans from that kind of practice.

Looking at the data being presented, I agree with my Chairman of the Budget and Appropriations Committee when he says that to some extent, the data seems to be skewed. Time has come in this country where the Government should stop competing with Kenyans in terms of borrowing from banks. With the Government, the risk of default is very low because when you lend to the Government you are sure to be paid. Banks are running away from lending to Kenyans and lending to the Government because the Government is borrowing domestically.

Hon. Speaker, as a policy matter, the Government should stop competing with Kenyans when it comes to borrowing from our local banks. So long as that happens, money will not be lent to small scale firms and individuals because of the risk profile of the borrower. The Government will keep on taking all the money. The banks will kick out the private sector and allow the Government to take most of the money. The Bill is good. However, as a House, we need to help Kenyans to get it right in these areas we have mentioned.

Hon. Speaker: Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Speaker. I rise to support the Finance Bill and to commend the Departmental Committee on Finance and National Planning for a job well done. I have gone through its Report. I also had an occasion to interact with the Committee. I am happy because some of the issues that Hon. Mulu has raised have already been considered by the Committee.

Firstly, I want to recognise that the Cabinet Secretary (CS) for the National Treasury came before this House to read the Budget Speech and then we discussed it. There are some elements of that Speech that became very unpopular. We discussed them in this House. I want to draw the attention of this House to the power we have when we discuss some of those proposals. Because some of those proposals were debated in this House and in the public, they are not in the Finance Bill. For example, one of the proposals that were in the Budget Speech was that there would be taxation of imported wood. This contradicts the Big Four Agenda where you want to construct so many houses that will involve wood, and you also want to preserve our forest cover. There is no way we can say that we want to protect forests and increase housing, but we will charge people who bring wood from outside a certain duty. I am glad because that did not see the light of the day. It is not in the Finance Bill. I believe that is the kind of the spirit that we should have of the things that are prescribed in the policy and their intentions. So long as there is some debate in this House and outside, it will force some re-thinking. I am happy because some of those things are not in the Finance Bill. It has brought issues that were not controversial but some of them have become controversial. We hope that it will be changed.

I concur with the Members who have contributed. I am an advocate of free markets interventions and letting the markets decide on what happens. However, that market can only operate where there is a conducive environment for a mature market. We need to look at the Kenyan market and financial sector. As much as we are one of the most advanced countries within Africa, do we have a free market economy? We only have a couple of banks which control the entire banking system. That is not the definition of a free market economy. On that basis, market failure then determines that some interventions are necessary. We did it in the petroleum sector with capping oil prices because the oil cartels always used to do that. They never minded the fluctuations in the oil industry at the international level.

I am glad because Hon. Jude Njomo managed to cap the banks interest rates. The mistake that happened was capping both ways and straight jacketing the entire financial sector. We said that you cannot charge more than this and you cannot pay the borrowers less than this. That narrowed the space that the banks operate in. As a result, we have seen the crowding out of some

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of the borrowers. Some of us have been agitating for the removal of the lower capping. I am glad because some of the amendments that have been proposed to come at the Committee of the whole House have taken care of that. If we remove that, we will operate from zero or negative because you can also envisage a situation where banks will charge you to keep their money which is a negative interest. There is a lot of leeway, in terms of how much spread the banks have. There is no excuse to say that they cannot price the risks properly and not allow for example, Hon. Mbadi who is an outstanding accountant to borrow at 10 per cent while Hon. Junet borrows at 13 per cent. It is not a bad risk. Given any two people, they should differentiate between a good credit risk and the other one. I want to support that. We should leave that and see whether there will be growth in the sector.

There is one thing which I would like some studies to be done on it. People think that the shrinking of credit in the Small and Medium-Sized Enterprises (SMEs) is because of the capping of the interest rates. The SMEs fear to go to the banks because you can only borrow money when you have something to do with it that will give you a return which is higher than what you are paying. Most of them are suffering because of the money which they borrowed. You have seen all these young chaps who took the Youth Enterprise Development Fund and then supplied goods to the county governments. They were not paid and banks are foreclosing on them. The shrinking of credit is not necessarily because of the capping of the interest rates. There are so many other micro economic variables that may come into play.

Let me talk about Clause 45. I want the Members of the House to support the Committee in this. It increases the penalty for late payment of any tax to 20 per cent. It means, therefore, that if your constituency office manager fails to remit the Pay as You Earn (PAYE) of your staff on the due day and takes it the next day, you will be charge automatically 20 per cent of the tax of all the salaries of your staff. That money is not provided by the Parliamentary Service Commission (PSC). Therefore, it will have to come from somewhere. You cannot penalise some of those mistakes, especially because Kenya Revenue Authority (KRA) does not refund money overpayment to people. I concur with Hon. Mulu. We cannot make money from inefficiency or penalties. We should encourage people to comply rather than put punitive interest rates on them. Eventually, they will all become defaulters. I am happy because the Committee has taken note of that. I wish to have that reduced or to be time-based. The KRA can charge a certain amount per month, so that the longer you stay, the more you pay. If you delay to pay by one day, you should not be penalised a whole 20 per cent because there was a technical error in the office and the cheque was not written to the KRA or the system was not working, and the i tax could not accept the money.

There is also Housing Development Fund. This is something that will revolutionise the housing development in this country. We should work towards getting more money. I am glad because there are some proposals to increase it from 0.5 per cent to 1.5 per cent, so long as that money is available to the contributor. Initially, it came here as a levy. However, between the publishing of the Bill, and the Committee meeting and most of the interactions that have been taking place, the National Treasury and the Ministry of Transport, Infrastructure, Housing and Urban Development have seen it fit to convert it from a levy into a Fund. You can access whatever you contribute or even assign it to your relative. For some of us who may not intend to buy affordable housing or are not eligible, we are happy to contribute to a pool of money that will be used to develop houses for Kenyans.

However, when I need my money back, I should access it with a return on that investment. There is a social responsibility for all those who can afford and are working to

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contribute to that pool of money to construct housing for everyone. None of us will lose his or her money because we will all get it back. It worked very well in Singapore, Hong Kong and South Africa. I believe that it will work very well in Kenya because there is a lot of money which is floating around, including people putting it under the mattresses because they do not know what to do with it. This will not only help to develop the housing sector but also spur the construction industry which we know that it has very big knock-on effect on the Growth Domestic Product (GDP) growth in a country.

I wanted to speak on those things and also thank the Committee. By the time we come to the Committee of the whole House, we will be happy to look at all these issues again. We would be happy to look at all these amendments just to make sure that we do not reverse the gains that we have secured so far through some amendments.

Hon. Speaker, with those remarks, I beg to support.

Hon. Speaker: Hon. John Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker, for giving me this chance.

Hon. Speaker: Obviously, Members understand. I saw some Members raise some eyebrows, but it is clear or understood.

Hon. John Mbadi (Suba South, ODM): Let them make reference to Article 108 of the Constitution.

Thank you for giving me this opportunity to make my contribution to the Finance Bill. Every year we have the Finance Bill, as we all know. It is supposed to spell out the tax enhancing measures and possibly tax administration measures that the Government is taking to raise additional resources to finance the Budget.

This year's Finance Bill is not very encouraging; let me say that from the outset. I know the Government is struggling to plug the budget deficit. For those who have forgotten, we have projected a budget deficit to the tune of Kshs562 billion this year and this can only be financed through debt. Besides that, the additional tax measures and tax administration measures we are taking are going to result in an additional Kshs27.6 billion. That is what we are looking for. For any engagement regarding amendments and possible reduction of proposals in the Financial Bill, we should keep at the back of our mind that what the Government wants to raise is Kshs27 billion more. The question we need to ask ourselves is whether as a country if we shoot down or defeat some of these proposals, can we live with Kshs27 billion. My answer is we can so long as it is for the benefit of the people of this country.

Tax measures whose projected impact tends to distort the economy or existing business activities must be reviewed. I am happy after looking at the Report of the Committee to note that it has addressed some of the issues regarding the tax measures that were likely to impact negatively on the existing business and which would have unduly burdened the taxpayers even further or would have distorted the economy. As Parliament, as people's representative and as people who have the single mandate to pass or reject proposed amendments to various statutes touching on extra revenue for this country, we have a duty and responsibility to make sure that that does not happen and that the people of Kenya are not affected adversely.

First, allow me to talk about two or three positives of this Bill. The first one is on the definition of dividends which has been expanded to include profits or gains which will be taxed where dividends are distributed without paying tax. Most corporations nowadays have realised that they can pay shareholders or owners of businesses through the backdoor without attracting taxation. Sometimes arrangements are made to transfer benefits to shareholders in form of debt

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waivers, transfer of some profits and waivers of obligations among others. This is now going to be included in the definition of dividends so that the mischief companies have been applying of trying to reduce taxable income through the backdoor is going to a thing of the past.

I also agree to the proposal to replace the turnover tax which is currently at 3 per cent in gross receipts with presumptive tax at 15 per cent of the amount payable under the business permit or trade license which are issued. I remember in 2007, the turnover tax was introduced targeting the informal sector for those whose annual turnover was less than Kshs5 million. However to administer it is a challenge. One of the principles of taxation is ease of collection and ease of administration. If you are going to spend more money to collect tax than the tax you are collecting, then that is not prudent application of principles of taxation.

I also want to support the initiative which introduces allowable deduction of 30 per cent of electricity bill to the manufacturers from their corporate profit so as to give incentive to the sector. Now, besides expending from profit and loss of electricity bill, in addition, 30 per cent of the amount they incur in paying electricity to do business will be excluded from taxation. It will be allowable for tax purposes.

I want the Committee to propose amendments on the VAT Act. Any amendment that removes commodities or items from zero rating to exemption should be rejected especially when it touches on any essential commodities. The moment you exempt it means the person dealing in that item will not be allowed to claim input tax and that would have a net effect of increasing prices of those commodities.

On Excise Duty, again, there is a proposal to increase the Excise Duty on illuminating kerosene from Kshs7.2 per litre to Kshs10.3 per litre. This is an increase of about 43 per cent. I know the National Treasury is trying to stop adulteration of petrol using kerosene. You may employ an initiative that has a positive result but there may be another negative effect of the same that could be even more disastrous to the taxpayers than what you intend to achieve. We all know that the majority of Kenyans still use kerosene. The moment you increase the price of kerosene, you affect the ordinary person, Kenyans who are poor and struggling to make ends meet. I know there is an initiative to help these poor citizens to get liquefied petroleum gas. But before that is achieved, we still have to maintain and reduce the cost of kerosene for these poor Kenyans. By the way, even the sustainability of liquefied petroleum gas is still in doubt.

On increasing Excise Duty on mobile money transfer from 10 per cent to 12 per cent, again, we must decide on that as a country. I know we want to raise Kshs1.56 billion out of this but, we must ask ourselves: when we continue taxing Kenyans who transfer money through mobile phones, are these really rich Kenyans? Nowadays, the majority of people who use mobile money transfer are actually very poor Kenyans. So, let us not discourage, through excessive taxation, transfer of money among Kenyans. Instead, we should encourage it so that the volume is higher and we net more tax through volume rather than by overtaxing individual transfers.

A lot has been said about the Robin Hood tax. I listened to Hon. Makali Mulu and I could not agree any more. When you make money transfer from one account to another, it does not automatically result into wealth creation. We are supposed to tax wealth created and not transfer of money from one account to another. I should not pay tax if I transfer money to a fixed deposit account or if tomorrow I decide to pay Kshs600,000 fees for my child who is studying medicine at the University of Nairobi (UoN). Why am I required to pay tax for paying school fees for my son? These are things which are not justifiable. People at the National Treasury are not creative enough.

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Another effect of this proposal is that it seems to target the core of the banking liquidity management operations. It could have negative effects on liquidity distribution. It is not good to interfere with liquidity. An economy survives on liquidity operations. The moment you target the liquidity operations of the banking sector you stall the country's economic growth. You can interfere with it in a big way. My proposal is that the Committee should introduce amendments immediately to remove that proposal from the Finance Bill so that the Bill becomes good.

I also want to talk to the proposed amendments to the Banking Act or repeal of the interest rate cap. That is what used to be called "the Jude Njomo Bill". I do not know whether to continue and call it "the Jude Njomo Act". The practice has been that the moment a law is passed in Parliament, it ceases to be an individual's legislation; it becomes a national legislation. As a professional, I will not shy away from saying the truth; that, probably, the interest rate cap has not realised its intended objective. The reason is not because that law is in place. The reason is simple: The Government has appetite for borrowing. If the Government has appetite for borrowing, the banks and other financial institutions have alternative people to give money to. That is why they cannot give money to the small business people wanted to encourage to borrow money at cheaper rates. They rely on the argument that these are high risk businesses. Even when the interest rate is high, the businesses become high risk businesses. I know the interest rate is supposed to compensate for high risk, it sometimes do not just make sense. Most of these businesses repay their loans. They used to repay the loans even at very high interest rates. Now that the interest rates have come down, why can they not service their loans? Because banks have found an alternative to borrow, namely the Government, they are deliberately denying Small and Medium size Enterprises (SMEs) money to scandalise the interest rate capping law.

This Act had very good intentions. We are to blame, as Parliament. We need to reign in the National Treasury. We must insist that we will not allow the Government to borrow in a manner that distorts the economy and push out the private sector from the economy. Instead of repealing the interest rates cap, the National Treasury needs to put its act in order to ensure that they do not borrow much so that the small and medium size businesses, which we intended to help through this law, get that capacity.

I have two more issues to quickly address. The first one is on the issue of the Employment Act. I was sharing with Hon. Omboko Milemba. We are asking employees to compulsorily contribute 0.5 of their gross pay. The practice is that people contribute money based on their basic because that is the salary. Gross salaries are usually not predictable. They are monies that can be taken away at will. We are requiring people to pay 0.5 per cent of their gross pay per month to this Fund. Why force people to contribute to a Fund that is supposed to buy houses for them or whatever it is? What happens if I do not want to buy a house? Are you forcing me to contribute? Because of the effect it is causing to employers is that they will reduce some of the benefits they give to workers so that they pay this money.

Finally, I am happy that the Whip of the Minority Party is already working on an amendment on VAT charged on petroleum products. If you allow me just one minute to talk about it, I would say I have heard many people talk about VAT on petroleum products as if it is in this Finance Bill. The truth is that we passed that amendment and put petroleum products to the VAT bracket in 2013. It is only that the CS has been extending the effective date of this provision.

Hon. Speaker: You have an extra minute. What did you say?

Hon. John Mbadi (Suba South, ODM): One minute is sufficient, Hon. Speaker.

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I encourage this House to, instead of lamenting, support the proposed amendment that Hon. Junet will bring so that we completely remove petroleum products from the VAT bracket. Let IMF say what it wants. We are not working for the IMF. We are employed by the people of Kenya. If the people of Kenya think they are suffering, we will respond to their suffering. The effect of VAT is to increase the prices of almost every commodity in this country. It is something we should not allow.

Thank you, Hon. Speaker.

Hon. Speaker: Member for Kiharu.

Hon. Ndindi Nyoro (Kiharu, JP): Thank you very much, Hon. Speaker. I start by congratulating you for being elected the Chair of the Commonwealth Parliamentary Association (CPA).

I have been here listening to my colleagues. I also want to concur that the Budget was read but we, most of the time, just handle the expenditure part of it. As we debate this Bill today, we are handling the income part of Government; the part of raising money so that we can expend in the various projects.

Even when we were in school, we used to be taught that taxation is just one of the many ways through which the Government can raise money. We have seen the Government over-relying on taxation to raise revenue. As we speak, we are exploring ways of digging deeper into the pockets of poor Kenyans. The Government of Kenya has over 240 corporations, companies and parastatals put together. We will be raising some of the monies through the many ways indicated in the Finance Bill. The money will be going towards supporting some of the entities that have been misplaced. We have many entities that are owned by the Government. Instead of these entities contributing to the revenue basket, they contribute to the huge expenditure that the Government incurs. Even as we debate this Bill, it is our responsibility to continue agitating for a lean Government and telling it not to continue being in the business of competing with businesses in the private sector. My worry is that we may raise all the taxes from money transfers and other sources only for it to be sank into some public companies that hold no strategic value for the Government other than draining Government coffers.

A lot has been said about the VAT Bill of 2013. As we debate the many issues regarding the Finance Bill, even before I go there, I would want to put my voice on the issue of the Fuel Levy Fund and VAT. Some economies in Africa, Kenya included, are especially captured by people we are indebted to or some of the financial institutions that have lent money to our Government.

Thank you, Hon. Speaker. This is my Maiden Speech at this point.

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

Hon. Ndindi Nyoro (Kiharu, JP): I have never spoken from this point Hon. Member for Ruaraka. I was trying to make a point in relation to charging VAT on all products. This was passed in 2013, but the Cabinet Secretary in charge of National Treasury, has been deferring this issue of taxing or incorporating 16 per cent on all products. There was a reason for this deferment. As you know, in this country we are endowed with minerals and oil. But we were to start charging 16 per cent VAT when our country reaches a point where we can commercialise or have production of oil in commercial capacity. Since we are not yet there, we cannot afford to put more burden on the Kenyan people especially by putting VAT on oil products given that the

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effect of this, runs down to even the *ugali* that we take. Every single thing in this country is run by oil, diesel or petrol.

On the Banking Act amendment, as an economist, it sounds very well and sophisticated for us to come here and speak of competitive markets. We have given many spheres of our economy the arena to compete by promoting free trade. We have been captured by cartels. We came from oil and tried to have these entities and especially promoters of oil products compete fairly. One of the conditions for a free market is one that is devoid of cartels. Even as we talk about all industries and finance industry we are not talking about an industry or an economy or a sector that can compete well. As we speak, over 70 per cent of our banking industry is run by about four banks. Therefore, for us to protect our SMEs and business people of this country, we cannot afford to have the repeal of the capping.

On the Capping and the Banking Act amendment, we have to voice the fact that our Government is competing vigorously with the people who should be supported by the capping of interest rates. This has led to crowding out of the people and especially the SMEs and business people who should be benefiting from the low interest rates. It is common knowledge that we have so many debts but more importantly, we have a lot of internal debts. These internal debts are of course given to GoK by our commercial banks. This is a scandal because the owner of money in this country is CBK who lends to our commercial banks. We cannot have a situation where our own CBK lends to our commercial banks at the current rate of 9.5 per cent and then the same commercial banks lends to the same Government at about 13.5 per cent. Our Cabinet Secretary in charge of National Treasury needs to be creative and look for money in areas where there are not crowding out the business people especially SMEs.

The amendment proposed in the Finance Bill, in so far as the proceeds of Crime and Anti- Money Laundering Law is concerned, is good. This is so that we continue tightening the ropes and the nuts in so far as fighting corruption is concerned; especially on money that is passing through our financial institutions. Money is just one of the assets that are used as proceeds of corruption. It is only money as a liquid asset that passes through our commercial banks. We need to extend this net because most of the people who benefit from money laundering and corruption never put their money in the banks. We need to tighten the rules by even doing assets audit. Some of these tall buildings in Nairobi and in the places we live are owned by junior officers within the Government departments and it never moves through any financial institution. After we are done with lifestyle audit, it is time we go to the assets audit so that we know who owns what in this country, so that even as we try to tighten within the banking sector, we also tighten in the other sectors.

As I wind up, I want to talk about Robin Hood tax. Maybe it will interest the Members to know the originality of the Robin Hood taxes. It came from a place called Nottinghamshire about 1700 years ago where this gentleman used to rob from the rich and give to the poor. We cannot build our economy by punishing people who are working hard and those we think have money by redistributing to the others. Even as we uplift people at the bottom of the pyramid, we also need to protect those people...

Thank you, Hon. Speaker.

Hon. Speaker: Member for Tongaren, you can approach the Dispatch Box.

Hon. (Dr.) Eseli Simiyu (Tongaren, Ford Kenya): Thank you Hon. Speaker for giving me this chance to also contribute to this Finance Bill.

First I would like to congratulate you on your election as the Chairman of the CPA. Without wasting time, I want to say that this Finance Bill is not right. It is very interesting that

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with a budget deficit of over Kshs500 billion, we are creating a Finance Bill to try and extract Kshs28 billion from Kenyans.

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

[The Temporary Deputy Speaker
(Hon. (Ms.) Soipan Tuya) took the Chair]

You cannot plug a hole of Kshs 500 billion with a Finance Bill of 30 billion. This is an example of an extractive administration. It is an administration that extracts the last blood from its people. I would recommend to people to read the book *Why Nations Fail* by Daron Acemoglu and James A. Robinson, because we have reached a point where we are extracting the last drop of blood from Kenyans to plug a hole that we possibly cannot plug. Then a few of us are misled in visiting retired President Moi instead of visiting retired President Kibaki who built this economy.

Look at the Robin Hood tax. Even what it is supposed to be used for is questionable. That it will be used for universal healthcare (UHC) yet we know very well that we are facing a problem in the health sector in the sense that GAVI is going to withdraw its support to vaccinations. There is going to be withdrawal of support to ARVs in this country. If there is going to be anything about Robin Hood tax, it should be directed to those specific areas, not an amorphous thing like UHC through the NHIF.

On the issue of interest rate caps, many people are uncomfortable with it, but the reasons the banks want it removed are not genuine. The problem, as many have said, is because we as a Government are borrowing so much money from the domestic market and the banks prefer to lend to the Government rather than to the mwananchi. The SMEs are therefore defaulting on their loans because the same Government that is borrowing from the domestic market is not paying its contractors and is not giving the county governments money on time, so the county governments are also not paying their contractors. That is how you get increased non-performing loans in banks. It is a vicious cycle that we have created. We have borrowed so much money, and I am surprised we are actually borrowing some more to extend the SGR from Naivasha to Kisumu. We are still fighting on how to pay what we have borrowed. I dare say if we do not watch out, very soon we will be so mortgaged to China that they will just come and take over the country, like they have done with some port somewhere in Sri Lanka and they have done to Djibouti.

This mad craze of borrowing and saying that we will be able to pay yet we know the pain we are inflicting on Kenyans by way of taxing and taxing and taxing and increasing costs is bad. Take the housing levy. It is an idea I would call communist-socialist idea that we are trying to implement in a capitalist State. It cannot work. Not in a capitalist State. There is no way you are going to force somebody to pay money for a house that he might never own. What interest rates are they going to be paid when they retire and they want to get back their money or they want to transfer it to their children?

I think what we face here is a situation where we are in panic. We have borrowed too much and we do not know what to do. Therefore, we are running in one spot. So we come up with this Finance Bill because we are sadists and we like inflicting pain on Kenyans by taxing

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them a little bit more. This Bill will raise chicken feed; it will raise very little money. Compared to the deficit we are running, this Bill cannot possibly cover for it.

It is interesting that we tend to think that more taxes are what we require. In fact, when we increase taxes, we shrink the economy—in the sense that the investors are going to take their money elsewhere when taxes are so high. So, as we talk about improving manufacturing and all that, I do not think the attitude of this Finance Bill will be able to enhance manufacturing. If investors know that they will have to pay so many levies, including a housing levy, for what reason would they bring their money here? Why not take it elsewhere where they will be able to make a profit without those many levies? In other words, we are actually shooting ourselves in the foot. I do not think it was a well thought out Bill. I would suggest that the Committee, which has done a good job, should do a thorough comb of this and not fear to remove some of the proposals, because Kshs27 billion is not going to do anything to the over Kshs500 billion deficit that we have. The Committee should be brave enough to remove some of these levies that are totally uncalled for. If we do not do that, then this Bill will be the last nail on the coffin of the Kenyan economy.

As I finish, I would advise that the people who came up with this Bill, instead of visiting retired Mzee Moi who left the economy on its knees, they should visit retired Mzee Kibaki who left the economy robust and on the jog. Then we will get the equation right in this country.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, we have a technical hitch and so, the list is jumbled up several times. Please bear with the situation. You can re-log in. I have eight requests and I know they should be more.

(Hon. Jude Njomo spoke off record)

Yes, Hon. Njomo you were on top. You are right. Let us have Hon. Njomo. You can log in again if the gadget is not responding on your side. Just a moment, Hon. Njomo. I have Hon. Oundo, Hon. Osotsi, Hon. Tonui Kiprotich, Hon. Kilonzo Mutavi, Hon. Gikaria David, Hon. Nyikal Wambura, Hon. Milemba Omboko, Hon. Atandi Onunga, Hon. Oyoo Onyango, and Hon. Thuku Kwenya. Those are the Members I have on the list. If you name is missing, kindly re-log in and bear with the situation. Hon. TJ is also on the list.

Let us have Hon. Njomo.

Hon. Jude Njomo (Kiambu, JP): Thank you, Hon. Temporary Deputy Speaker. First, I would like to congratulate the Finance Committee for a job well done. They have come up with a very good report. I will restrict myself to the proposal to delete the interest rate capping section of the Banking Act. If you remember very well, when this capping was done in 2016, the banks refused to come and give their views to the committee which was working on that review then. It was only after writing to them that they organised to come and give their views. They said that once the capping has been put in place, there would be shortage of credit especially to SMEs. To me, that was a threat that they made and they have actually executed it. They have made sure that small and upcoming business people and the youth who are out of college and starting employment are not able to access any credit.

The main reason for them doing that is to ensure that they arm-twist the Government to, in turn, push this House to remove the caps. We should not fall into their trap. They have been complaining of reduced business and that they are not making any profit out of the business they are doing. Fortunately, two weeks ago, half-year results of several banks were released. If I

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remember well, KCB made Kshs12.1 billion. That was 18 per cent increment from what they made the previous year. Equity Bank made Kshs11.1 billion, up from Kshs9.4 billion the previous year. Co-operative Bank made Kshs9.98 billion, which marked 7.6 per cent increment from what they had last year. Very few businesses in Kenya are able to make this kind of profits in a half year.

Therefore, we should not listen to the crocodile tears that the banks are making to cheat us. I was very shocked when the finance committee had initially given its report and said that they were going to give back the mandate of regulating interest rates to the monetary committee of CBK. I was shocked because the same committee is the one which came up with KBBR, a rate which is not functional today. They had completely failed to regulate interest rates from 2012. I am very happy that the Departmental Committee on Finance and National Planning saw it wise to remove that amendment that they wanted to bring. It would not be smart of us to give the Central Bank of Kenya (CBK) back this work, which they had failed to do.

I have with me a report from the National Treasury on the proposed amendments to this Bill. The National Treasury has never supported the capping of interest rates. It has always felt that it is better for us to have a free market by banks. However, we have always argued that the market will never be free because our banks have formed cartels and our interest rates are not determined by the market forces. They are determined by other spirits. But we, as a House, will be guided by only one spirit, namely, the Spirit of the people of Kenya. We want them to do business, access credit and be in free and fair business. So, when our banks come together and engage in cartel like activities, we have a responsibility to rescue the citizenry. The National Treasury has several points of argument against the capping of interest rates. If I can mention some of the points, it says that the capping has caused a sharp decline in bank credit to Small and Medium-sized Enterprises (SMEs). It talks of disappropriate hitch to the lending activities and profitability of banks, something which we have already argued here that that is not the position. They also say that there is reduced monitory policy effectiveness. I do not know why we should have an effective policy when it is oppressing our people. It goes ahead to say that the portion of new borrowers has fallen by more than half. I have another report by the Institute of Certified Public Accountants of Kenya (ICPAK) which says the exact opposite of what the National Treasury is saying.

According to the National Treasury, the solution they want to provide is to work jointly with the private sector and development partners to introduce the National Credit Guarantee Scheme (NCGS). I have nothing against that, but let us first introduce it and when we see it is working, we can remove the capping. Rather than remove it now, subject our people to high interest rates and we do not know whether this solution is going to work. So, it is a good proposal, but let us first put it in place and then we can look at that.

They also suggest the establishment of the Kenya Development Bank by merging the Industrial and Commercial Development Corporation (ICDC), the Industrial Development Bank (IDB) and the Tourist Finance. Those are good proposals, but let them first execute them. The other proposal is that the Cabinet has approved the formation of Biashara Kenya Fund, which is merging the Uwezo Fund, Youth Fund and the Women Enterprise Fund (WEF) to form a bank. Indeed, those are good proposals, but as it is right now, they are proposals and are not offering any solution. In the same breath, the ICPAK has said that the period under review is too short to make a fair conclusion that it is the capping of interest rates that has reduced the amount of credit that borrowers are getting. They argue that it is too short to show that it has affected our economy because there have been other factors.

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We had an election in 2017, which affected business. We also had drought. That is part of what ICPAK is saying. On banking profitability, they say, in previous years' analyses, show exponential growth in the banking sector. Kenyans top ten banks registered a 10.8 per cent growth in net earnings of Kshs93.8 billion. So, the banks cannot claim that they are not making any profit. I have talked about credit to the private sector. There has been a lot of survey showing that we cannot blame the capping to the low economic activities. I am proposing several amendments to this. I may be running short of time, but I kindly ask you to allow me five more minutes so that I can execute this.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Five minutes might be too long, Hon. Njomo. Try and summarise because we have many Members waiting to contribute.

Hon. Jude Njomo (Kiambu, JP): The first amendment that I am proposing is to ask the banks whenever a customer is opening a new account; he should indicate who the next of kin is. This is because very many people are losing their money when they die. The banks do not bother to look for the next of kin and they remain with the money for exceedingly a long period of time.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Njomo, because of the interest that you are having on this issue and the contributions you have made previously, I will give you another four minutes, but quickly summarise.

Hon. Jude Njomo (Kiambu, JP): The second amendment is on lending to our SMEs. The banks have decided to strangle our young business people. What we are asking is that every bank should lend at least ten per cent of its loan portfolio to SMEs and small business persons. I do not think that is too much to ask. We are not telling them to lend to Otieno or Kamau. There are many SMEs who qualify for loans and you must give them, at least, ten per cent of your loan portfolio.

The other amendment apart from the issue of next of kin and ten per cent to SMEs is on the core capital for banks. In 2012, there was an amendment that was brought in this House and it was passed. Banks were supposed to increase their core capital from Kshs2 billion to Kshs5 billion in a period of five years, but banks requested the National Treasury to be given a time extension. That time extension has now ended. In the meantime, two banks have collapsed, namely, the Imperial Bank and the Chase Bank. So, we have a responsibility to protect our depositors' money by increasing the core capital so that we have strong banks with money and that are willing to lend money to our people.

Apart from banks, the International Monetary Fund (IMF) has been putting a lot of pressure on our Government to remove these caps. They do this because most of foreign banks in this country are domiciled in Europe and elsewhere. We know that the interest of the IMF is not the people of Kenya, but the people they represent. So, we have a responsibility to protect our people also from the IMF. I would like somebody to show me a country that developed out of borrowing money from the IMF. We must encourage our Government to also think of different alternatives. I would challenge the Cabinet Secretary, Mr. Rotich, to think out of the box and look for money elsewhere apart from the IMF. The conditions that the IMF imposes upon the country remind me of President Moi's time when he was complaining about shifting goal posts. He was told to do this-and-that. He would do it and still, he would be asked to do other things and he would not be loaned money. So, we shall remain slaves of the IMF unless we become smart. So, we have a responsibility, as a House, to rescue our Government from the claws of the IMF and the World Bank. We must do that by doing what we think is right for our people and not for the IMF. If we had gone with the IMF requirement, our National Bank would be closed by now because they had recommended for it to be closed. They messed up with copper mining

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in Zambia because they did not want the Government's involvement in mining. They messed many other economies. We have a responsibility to protect our Government from the IMF.

Thank you, Hon. Temporary Deputy Speaker. I really appreciate the extra minutes that you have given me.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Njomo, I am sure you know the due process for your amendments. You will have more time on the Bill in the next stage.

Let us have Hon. Oundo Ojiambo, Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. My colleagues are complaining, but it is written in the Bible. It is very clear.

I stand here as a matter of procedure to support the Finance Bill. In supporting the Finance Bill, there are a few key observations that we need to make. Probably, when we get to the Committee stage or the appropriate time, we will pass some amendments. We must start by stating that the purpose of the Finance Bill is to raise revenue to match the expenditure. Going through the Finance Bill, I am afraid it does not give confidence that we have been innovative enough in crafting measures that will allow us to raise revenue to bridge the ballooning deficit in our budget. However, we wish the National Treasury the best of luck. We hope as they go along, they will see more innovative ways of raising funds.

I just want to start by commenting on the issue of Presumptive Tax. The Presumptive Tax is a very noble idea. It is meant to basically remove the rigors and the complexity associated with the other form of taxation for smaller businesses in filing tax returns at the end of each financial year. However, the assumption that any incorporated company is not a small business is unreasonable and not correlated to reality on the ground. So, I really request the Departmental Committee on Finance and National Planning to reconsider and clearly indicate that any person, either incorporated or not, with a turnover of less than Kshs5 million, should automatically be subjected to Presumptive Tax and remove the exemption put under Section 12C(5)(c) of the Finance Bill. This then means that for purposes of business, even if you do a small business and it is incorporated, you are not allowed to benefit from the Presumptive Tax.

The second point of concern is the issue of Excise Duty on money transfer. They want the 0.05 or the Robin Hood Tax as it has been called by the tax experts. There is a point of concern here. Indeed, we are criminalising the electronic fund transfer. They want to take us back to the old days when we would deal in cash to avoid detection by the banking system. I would recommend the Departmental Committee on Finance and National Planning to make reasonable exceptions. For example, if I transferred funds from my salary account to my loan account, I should not be subjected to a tax because I am paying a liability and I am simply transferring from the right hand to the left hand or from the left to the right hand. So, I would request that among the exceptions that the Departmental Committee on Finance and National Planning has made in its Report, they need to extend the same exemptions and, for purposes of clarity, to avoid the question of loan accounts being subjected to the same taxation.

On the same account, there is a question of electronic money transfer popularly known as Mpesa, Airtel Money and the rest. I note that one of my colleagues earlier in the day was very categorical. He made a request that Safaricom, even though it is common practice to make profit in business, in a scenario of difficult economic situation, some profits are immoral and unnecessarily abnormal. They should basically share with the common *mwananchi* the burden of paying that Excise Tax even though we appreciate it is an indirect tax that is borne by the consumer. However, we can craft, without sticking to typical arrangements, a system whereby part of the tax is paid by the money dealers like Safaricom and the rest is taken up by the *mwananchi*.

On the question of the National Housing Fund, again, we seem not to basically understand the definition of housing. It seems to be this unreasonable obsession by the mandarins at the Treasury and other policy makers that you only own a house when it is owner occupied. It is believed that if you live in a rental house, you do not own a house. So, there seems to be a push to ensure that every person owns a house. It is not necessarily correct. Staying in a rented house is by choice and staying in an owner-occupied house is also a choice. It is a pure business decision. It is sometimes cheaper to stay in a rented house than to stay in an owner-occupied house. Therefore, to force a young person who has simply been employed to pay the National Social Security Fund (NSSF), the National Hospital Insurance Fund (NHIF), Pay As You Earn (PAYE) and on the net income, pay VAT, the Fuel Levy and an endless list of taxes and burdening him with another figure is just being unreasonable considering that that money will never be enough. He/she might never access that money during his working life because of the large number of people expected to benefit from that Fund. That is generally punishing that particular person.

Therefore, we request the Departmental Committee on Finance and National Planning to rethink it. We are doing fairly elaborate discussions. We will move amendments to literally scrap that particular Bill because there are other ways of raising funds for housing instead of setting up a National Housing Fund that is going to be looted like other funds that have been looted before. We have seen how massively the NSSF has been looted and how a lot of funds for the NSSF have been misused.

Lastly, there is the elephant in the house. This is the most emotive issue in this country, namely, the repeal of the interest rate caps. I must commend Hon. Jude Njomo for having had the courage to bring and push amendments to the Baking Act. Hon. Joe Donde tried, but it was killed at the Executive level. I must commend the President for having been courageous enough and assent to the Bill. Any attempt to repeal that particular section is completely unpopular with the ordinary Kenyans on the ground that they have been fleeced by banks all along. In any case, Kenya has had one of the highest interest rates in the world. An average of 15 to 18 per cent against an average of 6.6 per cent in the world is out of question. It is not true that generally the interest rate cap has squeezed credit to the SMEs and other sectors. The flow of funds from the banking sector to these two particular sectors has been declining since the year 2015 because they have been pitted against a Government, and generally, banks view the Government as risk-free.

Therefore, we must retain the interest rate capping. We could only consider removal of the interest capping if we change the structure of the banking sector. Recent reports indicate that there more than 40 banks. About 52 per cent of the banking business is controlled by about six banks. So, this is not a perfect market. It is oligopoly and in an oligopolistic situation, the players dictate the pricing and the terms of supply and demand. So, they cannot argue on the basis that we need to apply free market situation. If the market cannot set an acceptable equilibrium price, the State and the Government has a right to intervene and remove market distortion. This is what this particular Bill is proposing.

We need to tighten it much further because the Central Bank base rate is dependent on very many factors. There is even fear that since this is an unpopular decision by the Central Bank; they could collude with commercial banks to increase the Central Bank base rate to the detriment of Kenyans.

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I oppose any proposal to change the status quo. We should retain the rate.

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

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. T.J., you are out of order. Let us have Hon. Tonui Kiprotich.

Hon. Ronald Tonui (Bomet Central, JP): Thank you, Hon. Temporary Deputy Speaker for this opportunity to contribute to this Bill. I support some parts of the Bill and oppose others. I want to start with those parts of the Bill which should not be captured.

The first one is on the housing scheme. Being part of Jubilee, I normally read in the media that we have four agendas. Even though we are Members of Parliament from Jubilee, we have never sat down to endorse it. With regard to the issue of the housing scheme, the Bill proposes that employees should have Kshs5,000 deducted from their salaries, which is the maximum or 0.5 per cent of their salaries. The Committee proposes to adjust it to 1.5 per cent. Kenyan workers are already overtaxed and do not need more taxes. In fact, they need salary adjustments because of inflation, which has affected their income.

The issue of housing can be done in a different way. The best way to achieve that agenda of better housing for this country could be by ensuring that there are cheaper building materials and reducing the cost of building materials. Every person can go to any place and purchase materials and build their own affordable houses, rather than creating a Housing Fund. The Housing Fund will be very risky and may be run the way the National Youth Service (NYS) is being run. It will create opportunities for looting. I do not know if those who came up with this idea considered the possibility of looting in terms of the Housing Fund. I completely oppose this suggestion. I do not support it.

That idea presumes that all the workers will be stationed in one place and that they will never be transferred. It also presumes that they will stay where they work and need those houses to stay in. There is also no assurance that once you contribute this 1.5 per cent, you will be given a house. Even business people who are not contributing to this Fund will also purchase the same houses. I wonder if we are assuming that the Government can build cheaper houses. I do not think so. I believe people who are constructing houses commercially may do it better than the Government. In the Government, no one is directly answerable. Everyone thinks of earning something small. The way this issue of housing under the Government is being approached is not the best. It will lead to looting and very expensive houses. I completely oppose it.

In Clause 58, there is a proposal to amend the Banking Act. I also oppose it because it wants to adjust interest rates to ensure that we go back to the interest rates of 26 per cent and 30 per cent, which were very exploitative to the members of the public. I congratulate Hon. Jude Njomo for proposing that amendment, which capped the interest rates and I support it. By repealing this part of the law, we are exposing the members of the public to exploitation by banks. They will be exploited in terms of what they are borrowing with regard to interest rates. Also, we want to open the lower side, so that when they deposit their money, they are not paid peanuts in return. We are not taking good care of them.

Currently, banks are making excessive profits, which is not right. In an economy that is shrinking, where most people do not earn anything in terms of their investments, banks are making profits to the tune of Kshs20 billion. This is an abnormal scenario that needs to be taken care of. The current law takes care of that situation. It does not need to be repealed.

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We also need to encourage the Government to borrow internationally and not within the country. Competing with members of the public makes the cost of borrowing very high as it raises the bank interest rates. If the Government borrows externally, just like it did through the Eurobonds, it will take care of the cost of borrowing in this country. That is one of the amendments that I oppose.

There is also the issue of allocating funds to the Tourism Promotion Fund, which does not even exist. The Tourism Promotion Fund was intended to be created through the regulations. The same regulations have been rejected by the Committee on Delegated Legislation and annulled in this House. In this Bill, we propose to allocate some funds to the Tourism Promotion Fund, which does not exist and which the Committee on Delegated Legislation proposed to be created through an Act of Parliament and not through regulations through the back door. That does not exist. It is well-captured here. We will pass it as a Bill and how it operates will not be awkward because already that one is taken care of.

I have heard so many Members congratulate the Departmental Committee on Finance and National Planning for the good work they have done. I have seen in the Report that they propose to make an amendment to adjust the basis for that capping, so that instead of the CBR, we will base it on the Kenya Bankers Reference Rate, which I understand does not even exist. The players in that sector have not made it operational. If we accept the amendment by the Committee, we will be dealing with what does not exist. I wish they withdraw this amendment and leave the banking law as it is.

I am happy with the proposal to adjust the Excise Duty. The issue of school buses has been exempted. In the last Parliament, I proposed an amendment to exclude public-school buses. I am happy the amendment in this law specifically excluded public-school buses from the new taxation. I support it 100 per cent.

On the issue of retirement benefits, there are some penalties which are being proposed at a rate of 5 per cent for companies which do not remit whatever they deduct from employees' salaries to the respective retirement benefits institutions. I support the amendment to ensure that we safeguard the benefits of retirees, so that they can earn something which can sustain them.

With those remarks, I fully support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Osotsi, are you still interested in contributing? We erroneously took him out of the list. So, he is the next one to contribute.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this very important Bill. I want to tell Hon. Atandi that I am an Information and Communications Technology (ICT) expert. I also have a background in accounts because I did Certified Public Accountant (CPA) examination up to the last stage.

When I read through this Finance Bill, one thing that comes to mind is that this Government is desperate to raise money. They have taxed almost every basic commodity, including water. Why is this happening? It is happening because we have a Kshs5 trillion debt as a country. This has almost doubled since 2014 when the Jubilee Government took over. So, we have a serious problem. If you look at the composition of this debt, Kshs2.6 trillion of it is foreign. It is largely a bilateral debt with a country like China and others. Instead of going for multilateral debt, which is cheaper and less risky, the piling of bilateral debt is on the increase. This is a serious problem, which we need to address as Parliament. This country will be unable to handle debt obligations very soon.

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Let me discuss this Bill. There is Excise Duty on bottled water. This is not right because water is an essential commodity. People buy bottled water because only 55 per cent of available water is safe for drinking. The Government is unable to provide safe drinking water to its people. So, people have reverted to bottled water. The same Government, which is unable to provide safe drinking water, has decided to put Excise Duty on bottled water. I am concerned because with the importation challenges that we have in this country, we will import water from Brazil or Uganda soon. This is a very serious concern. I oppose the Excise Duty that has been imposed on bottled water.

The second aspect is the 0.5 tax for the National Housing Development Fund. This is a strain to employees and employers. It will increase the cost of employment and create layoffs. It should be made optional. Employees should choose whether they want to participate in this programme or not. Putting a mandatory tax of 0.5 on every employee is unacceptable. They have also put Excise Duty on kerosene on the basis that they are trying to manage adulteration of fuel. Why are they punishing poor people? It is not the responsibility of the poor people to manage the quality of fuel they get. It is the responsibility of the Energy Regulatory Commission (ERC), which is sleeping on the job. The ERC, under the Energy Act, has the mandate to carry out surveillance of the quality of fuel in the market. However, they are not doing that. I want to say without any fear of contradiction that one of the most inefficient and ineffective Government body is the ERC. The Chair of the Departmental Committee on Energy is here. The ERC is supposed to regulate the energy sector, but nothing much has been done. They have created more inefficiency in the sector. We cannot punish Kenyans for the inefficiency of a Government institution that is supposed to take care of poor quality fuel in the market.

There is also the issue of payment of Excise Duty on money transfers. This is illogical. The provision should have provided guidelines on how it will be implemented. For example, if I want to make payment of tax to the Government, why should I be taxed again? If I want to pay salaries of members of staff, why should I be taxed? If I want to pay dividends, why should I be taxed? This provision is so punitive. It is not enforceable without proper guidelines on how some of these transfers will be handled, especially Government transfers. I know of a big organisation like the Kenya Airways, which can make so many transfers in a month. Will they be charged this tax? This amounts to double taxation. I do not support this provision.

We have just annulled regulations on the Tourism Promotion Fund this afternoon. However, it is still there in Clause 56 of this Bill. This will make the cost of people visiting Kenya very expensive and will not promote tourism. Do we also need this Fund when we have other initiatives that promote tourism in the country? This is duplication of responsibilities in the area of tourism management.

I also want to talk about the Value Added Tax (VAT) on business rent. This is punitive. We cannot charge businesses 30 per cent Corporation Tax and then charge them 16 per cent VAT on business rent. This is another form of double taxation. On a positive note, this Bill proposes that proceeds from betting, lotteries and gaming will be deposited into the Sports, Arts and Social Development Fund. This is progressive. We know that there this provision in the Sports Act, but it has not been implemented. The Government gets money from betting, lotteries and gaming, but the money does not end up to sporting associations. If we will have a Fund where all this money will be deposited into, this will enhance the level of sports in this country.

Hon. Temporary Deputy Speaker, because of time, I beg to support. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. David Gikaria.

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Hon. David Gikaria (Nakuru Town East, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to comment on the Finance Bill.

From the outset, Hon. Ichung'wah called the Speaker of the National Assembly, His Majesty the Speaker, by virtue of the patron being the queen. The Speaker made some very pertinent observations last week. As parliamentarians, we need to take our work seriously.

At the end of the day, when you will be putting the Question, it is not the people who contributed who will be present. It is important for us to be always present to make our contributions and to vote when the Question is put.

Secondly, I echo the words of the Mover of the Bill that if we have to enhance revenue collection, it should not be at the expense of the economy and the general welfare of the citizens. That is critical. As we look for ways of raising funds, we should also take into consideration businesses, economy and *wananchi.* It is important for the focus on revenue enhancement to be on untapped areas. I used to be a councillor of a municipality and most of the time when we wanted to raise money, we would increase fees and charges. I thank the former director of the Kenya Wildlife Service (KWS) who advised us to look at other areas, which we had not considered. Those are the words the Mover said that we need to look at new areas where we can collect more revenue from without punishing the *mwananchi.*

As Hon. Makali Mulu said, it is true that this is a very complex Bill. Members need to be a little bit keen. We were brought iPads in this House and I wish they would have all the Acts that we are amending or repealing. It would be very easy for us when repealing the Acts which are on the iPads. The ICT Department needs to do something with the iPads so that they are useful to us when we are making our contributions. They will help in tracking the Acts that are being repealed.

The Finance Bill is meant to raise almost Kshs28 billion to address the Big Four Agenda, which is critical. Hon. Dr. Eseli had indicated earlier that we cannot raise only about Kshs28 billion to try and offset a deficit of Kshs572 billion. When the Budget Estimates were read, Kshs572 billion was to be catered for through borrowing. It is important for the Government to have money for the Big Four Agenda. Much as we are talking about the Big Four Agenda, do we have enough funds in our budget to effectively achieve the objectives of the Big Four Agenda? That will go a long way in addressing the Big Four Agenda, which is very critical.

On tax waivers on sugar, the Report of the Committee has indicated that we lost almost Kshs30 billion. It is high time we review some of the waivers that are currently in place. The Departmental Committee on Finance and National Planning needs to look at that. If there are any existing waivers, we should not wait until something happens. If there are any existing waivers, the Departmental Committee on Finance and National Planning needs to summon the Cabinet Secretary for the National Treasury and advise him. It is prudent for the Committee to do that.

The other issue is whether the tax waivers should be subjected to public participation or not. It is only the CS who decides whether to do that or not given the powers in the Public Finance Management Act. It is good to subject some of these to public participation or the National Assembly should be privy to this kind of information. That way, we can address some of these waivers which are meant to address some shortcomings, but should not be exploited to benefit a few individuals.

The Value Added Tax on fuel is a critical matter. The ERC was before our Committee last week and they said that if the Minister does not extend the waiver, they will have no choice but to implement it. I hope the CS for the National Treasury will be kind enough to give a further extension of two years. We met the Chair of the Departmental Committee on Finance and

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National Planning and urged him to try to talk with the CS for the National Treasury because VAT on petroleum products is going to have a huge impact on the cost of living on the common *mwananchi.* Already, they are burdened by many taxes. It is only fair we have the implementation of VAT on petroleum products extended by two years.

On crude oil transportation, we thank the Members of Parliament from Turkana County who sat down with the Government and agreed the resumption of transportation of crude oil from Turkana to Mombasa. In future, if we have commercial oil production, we will talk about it. Currently, if we add 16 per cent VAT on petroleum products, we can be sure that the price of almost 90 per cent of all other essential commodities will go up.

Hon. Osotsi mentioned the 43 per cent increase in the price of kerosene. I totally agree with him. The cost of kerosene in our neighbouring country is almost the same as diesel. They have addressed the issue of fuel adulteration. How much have we lost because of adulteration? It is so much. The Government is supposed to look at and not the common *mwananchi* to be punished. We have lost much to our inland neighbours who use our country to transport their fuel. Fuel adulteration is killing the petroleum industry in this country. Even fuel for export is interfered with. So, we need to address that. To solve that, the Government started the Mwananchi Gas, which would have addressed that issue.

There are many other issues which have been addressed like betting, lotteries and gaming, which are important. I am an official in the Football Federation of Kenya and we have lost much since we increased taxes on lotteries and gaming. Our sports, particularly football, are crumbling. It is important for us to look at what was being charged in the past and restore it. Sporting is an industry that we need to continue promoting. Betting companies had come in handy in supporting Gor Mahia and the AFC Leopards. They were getting around Kshs300 million, which went a long way in promoting sports.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. T. J.

Hon. Omboko Milemba (Emuhaya, ANC): I was ahead of T.J. in your original list, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Sorry, the thing is jumbled up. I do not know what was in the original list. Sorry, Hon. Gikaria. Hon. T.J., I cannot add you any more minutes because there are many Members waiting to contribute. Please, try and summarise.

Hon. T. J. Kajwang' (Ruaraka, ODM): I will do it in a shorter time so that I can save time for my colleague. He should know there are ranking Members. He should know people in this Assembly.

(Laughter)

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): You cannot rub that in, Hon. T.J.

Hon. T.J. Kajwang' (Ruaraka, ODM): I am so pleased that you have allowed me to speak to this subject. Today, I thought I would have spoken earlier. I do not regret speaking at this hour because I have benefitted a lot from professionals. This is the first time I have learnt that I can also be an unlearned friend. Listening to great people like Oundo, who is the Member for the great people of Funyula, you get the impression that you are in an economics class. I have learnt a lot of concepts that I last dealt with when I was a sixth former.

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The reason I have been holding onto my seat is to speak to my people. As you know, in Article 94, we deal with issues that concern our people. In Clause 31(b)(iii), the National Treasury intended to levy excise tax of Kshs20 per kilo on confectioneries and all sugars for chocolate and blocks that go into making those confectioneries. I am sure you know so much about chocolates like I because I use them a lot. What they do not know is that where all these…

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): What do you do with chocolates, Hon. T.J?

Hon. T.J. Kajwang' (Ruaraka, ODM): I do them. I use a lot of chocolates. Members of the National Assembly do not know where all these things are manufactured. These things are manufactured in Ruaraka Constituency. The great people of Ruaraka Constituency make these things. It is the reason people in estates that surround those places like Kariadudu and Kasabuni survive on employment by those factories. To raise Excise Duty to Kshs20 per kilo would have literally meant job cuts for all my people. Nearly everybody in the constituency I lead is unemployed. Then, you want to send the few that are employed to utter oblivion. It would have meant that my people would have been literally on the streets if Excise Duty was put on chocolate that is their mainstay. I am pleased with the Committee that I have seen a proposal to amend that clause so as to delete it. I had an amendment. I was going to delete it. I am so pleased now that I see the Committee has looked at it. I hope they are not going to drop it on the Floor the way they do sometimes. If they do, I will have my amendment on the Order Paper on which I will propose that. These are local manufacturers. They manufacture for export business. If they had to be taxed, it would mean that local manufacturers who already pay duty on inputs and find it expensive to raise capital would then be discouraged from local production yet they do final processing and value addition then go for export.

The whole of East Africa including Rwanda, Tanzania and the latest being Uganda have abolished Excise Duty on confectioneries. In fact, it is Uganda which is our competitor in terms of confectionery. What happens to Kenyan manufactures being exposed to very cruel market circumstances where other people in the same economic block are not taxed yet they are going to be taxed, not only by their people, but also on those export areas? If I was sitting on this, I would have asked the Committee to think of taxing imported confectioneries and imported sweets. If you, for example, take the Cadbury and the brown chocolate which are wholly imported, they should be taxed. You are only killing our people if you tax Tam Tam, which is used and produced here.

You should also know that the largest consumer of chocolates, Hon. Temporary Deputy Speaker, I am sure you will support me in this, of sweets, are children. Now, you are just taxing children. These are the people you want to pay these taxes. So, these are some of the things which make me wonder about the thoughts or kind of people who sit at the National Treasury to propose such legislation. So, I have risen to support the fact that the Committee has decided to withdraw that very bad taxation.

The last thing, as I sit down, has to do with employment. I listened to my colleague, Hon. Atandi, who is a Member of the Committee. How will Kibera grow? How will the people in Kibera have housing? How will Mathare or Korogocho people have housing? As I sat, I thought this thing was very good for my people. But having listened to debates by my colleagues, I think this is the worst thing that will ever come. I am speaking for the people who live in the slums. The idea is very good. Good ideas in this country are sometimes started for people who want to reap big. This is the same NYS thinking. If you look at Clause 68, I want to persuade my friend, Hon. Atandi that this idea is very good, but it can be brought in a better way. It refers to the

Employment Act. It is targeting employees under the Employment Act. First of all, who are employees and who are employers? If it is employers under the Employment Act, how about thousands of people who are in the informal sector? How are we going to rake them into this business?

Two, working on a quick calculation, these guys are going to rake in Kshs1 billion a month. This is Kshs1 billion per month, which is going to be put in a Fund. If it is that important, Hon. Atandi, it should come in a stand-alone legislation in which we will appreciate who is going to manage these funds. Which are the structures? Where are the safety valves for anticorruption? What are the offences that will come around this thing?

(Applause)

The way we have done this is the same way we did on the Statute Law Miscellaneous (Amendments) Bill. You use a Finance Bill and slip in very important things and push them there yet what you do is just to create that money and it is drawn for corruption. Nothing in Clause 68 says that this money will be used to house my people in Mathare. Nothing says so. The KRA is going to pick that Kshs1 billion and finance other things. If it was in a stand-alone legislation, that money would not go anywhere else except to build houses for the people in Kibera, Mathare and Korogocho. What happens is that people use our names and pitiful states to make money. They come and take pictures from the slums, go to their benefactors and say "we are going to make money out of this." We are tired of people who laugh at us; people who use our sorry situation to make money and then this money is just a '*ninii'* for corruption. By the way, '*ninii'* is also English.

Thank you so much. My time is up. I oppose those pieces of legislation which have the effect of creating monumental monster corruption in this country instead of fixing the economic rights enshrined in Article 43 of the Constitution.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Member for Molo.

Hon. Kuria Kimani (Molo, JP): Thank you, Hon. Temporary Deputy Speaker, for this chance. I wish to make my contributions on the Finance Bill and note that we thank Members for realising that the Departmental Committee on Finance and National Planning, in which I serve as a Member, did a good job in deliberating this.

I start with Clause 69, which talks about accountants. For this, I will relate it with the recent fight by the President against corruption where all State officers, especially people in finance, accounts and procurement, were sent on compulsory leave waiting for lifestyle audits. Auditing some of these officers, you will realise that most of them are not even qualified accountants. This piece of legislation hopes to ensure that for one to operate as an accountant, you need to be registered. This amendment also takes care of students who are taking CPA exams.

By the time most people in the accounting profession are going to seek for employment, they are required to have ten years of good standing with the institute of Certified Public Accountants (CPA), which is not possible to have by the time they are clearing CPA. This piece of legislation recognises a group of people we are calling trainee accountants. But one should make sure that once they register themselves to sit for accounting exams, they become members of the institute and they end up gaining both experience and qualification in accounting.

Clause 68 addresses the issue of the Big Four Agenda, specifically affordable housing. I would like to urge the Members who are opposed to this levy to support it so that we can

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contribute towards affordable housing. Some of us can afford a decent roof for ourselves and for our families, but there are many people out there, especially the youth, who cannot afford a roof over their heads. The reasoning that this contribution is lost does not come to play. It is actually a savings to the people who do not qualify for affordable housing. A survey that was done in 2015 shows that our gross national savings only comprises of 12.7 per cent of our GDP, which is way less than the average in the continent. Kenyans, especially young people, are not saving. Apart from the statutory deduction of he NSSF, most people go into retirement without having any other savings for themselves. This piece of legislation ensures that even if you do not qualify for this affordable housing or you do not want it, that fund is still available for you and it will be paid to you at retirement at the rate of return of the Fund. With that, I support this amendment and I urge the Members to support it.

On the issue of the Robin Hood Tax on transfer of over Kshs500,000, Adam Smith, when writing about canons of taxation talked about equity, where the rich should be taxed more than the poor. Anyone who is transacting more than Kshs500,000 is certainly a person of means. If you can tax an employee who gets a salary of Kshs13,000, since it is the minimum ceiling for PAYE, and even subject that person further to VAT on even food products that they buy, I do not see why we should not support the Robin Hood Tax on transactions of over Kshs500,000. This Fund is going towards the universal health care. We have people who are dying in this country because they cannot access affordable health care. It would be a good course for us as Hon. Members of this House to pass such a piece of legislation where somebody who has made a transfer of over Kshs500,000 is taxed. Some of us have the privilege of having medical insurance that probably can pay for us in millions of shillings when we get sick. But Kenyans in Molo and in other constituencies cannot afford this. I support this.

On the issue of interest rates, we have heard of banks exorbitantly charging interest rates that sometimes even exceed the loan amount. People have been auctioned when the interest rates have gone higher than the principal amount. The capping of interest rates is the best baby that this House has produced and we should do everything to protect it. However, if we are legislating on the interest rates that banks are going to charge by telling them that we cannot charge up to a particular percentage, we must also tell the Government, ministries and county governments to also honour their obligations on time. The PFM Act is clear that before you embark to pay any bills in a financial year, the first charge should be on the pending bills of the previous years. We have heard cases where county governments, ministries and parastatals do not look at the pending bills. Pending bills are go into billions and contractors are being auctioned. The biggest sufferers of this are the young people. If you take a loan to do a job you have been given by a county government, it will take a whole three years to get paid. Even as we legislate on these issues, we should ask our Government and the county governments to be accountable and ensure that bills for works done for them are honoured on time.

With that, I beg to support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The Member for Yatta.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Temporary Deputy Speaker. I intend to be very brief. I am of the view that this House should not accept any clause in this Bill whose impact would be increased taxes. We all need not forget history. Revolutions are caused by cost of living. Where we are moving with the Big Four Agenda is as if the Government wants to do everything within a span of four years. That is not possible. So, this House should have a position that any provision in law, which is going to increase the cost of living, should not be accepted. The French revolution was caused by simple things like the cost

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of living, namely, the cost of bread and grain. Look at the laws we want to pass. We have introduced VAT on everything, including agricultural inputs and fuel. If this House is not very careful, we are going to be held accountable. The problem with revolutions is that the biggest casualty is the leadership of the nation.

Another reason we should not support any clause suggesting we need increased taxes is the problem of corruption. The more money we collect, the more money is being stolen. So, why should this House accept any increase in taxation? This House should take a position that before we pass any clause to increase taxes, we need to get proof that the Government has been able to contain the problem of corruption.

I want to talk about interest rates. We have banks that because of greed - I do not have a better word to describe them and I do not have any kind words for them - behave as if they come from Mars. All they want is profit after profit. When interest capping was introduced, it was received well by Kenyans. This House represents Kenyans. Our interest should be for the common people and not for the banks. It is unfortunate that the CBK has betrayed Kenyans. And we need to revisit it. I remember when the current Governor was being vetted, certain issues were asked. If you are not a family man, are you really in touch with the lives of Kenyans? The CBK has betrayed Kenyans and we shall revisit it. But on interest rates, for banks to say that it is the cause of reduced growth in the private sector is misleading Kenyans. There are other factors. Prolonged election is a very good example. Elections took too long, especially the presidential election. There was the issue of drought and many other factors. It is a fact that banks made a lot of money since interest capping was introduced. They have been making more money and their profits have been increasing. The period under review since interest capping was introduced is only two years. Why are the banks making noise? They should say this review should be done after five years and then we can know whether it works.

As I conclude, this Government should be very careful with a body called the IMF. Those of you, who were around during the Kenya National African Union (KANU) era, can remember that we used to have a KANU slogan, '*Kanu juu juu juu'* then life became very expensive. Then we had a dream team which came in. People were recruited from the World Bank purporting that they knew everything. When they ran this country for two years, everything went to a standstill. We are making the same mistake listening to the same Bretton Woods institutions. We need to free ourselves from them. If we do not, we are going to go back. My appeal to the President is, please, do not try to do everything within four years. Do what you can do, but on these taxes, the House must take a position. Any provision under this Bill, be it on VAT or Excise Duty, which is going to impact negatively on the cost of living should not be supported.

With those remarks, I wish to oppose.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have the Member for Seme.

Hon (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. However, we realise that this Bill is being discussed in an economic environment where we have a large budget of Kshs2.5 trillion, a big development agenda of the Big Four Agenda and a huge deficit of over Kshs500 billion and we are trying, through this, to raise Kshs27 billion. At the same time, we have a large debt portfolio. In all these, Kenyans are probably the most highly taxed people. Take the people in this House and even those that earn less, they pay over 30 per cent as PAYE, then 16 per cent VAT and virtually everything we use is VAT. If you consider that, taxes take definitely over 40 per cent of your income. We have others such as the Fuel Levy.

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We must look at our economy and ensure that as much as we want to develop, we must protect our people from tax. Heavy taxation is negative. So, if you look at all the measures that have been taken, they are all double-edged. Clause 2 has taxation on dividends that come in kind or dividends that is paid before tax. If you look at that, it is people trying to evade tax. I support that we should find them and tax them as they are supposed to be taxed. We must look at what people's behaviour is saying to us.

There is the proposal to replace the Turnover Tax with Presumptive Tax. I support this, but if you look at it, for people who have turnover of just over Kshs5 million, sometimes these people do not pay tax, but there will be a Presumptive Tax of 15 per cent from a single business. So, you are already taxing them even before they start business. These are people who have employees and are trying to make statutory deductions. It is easy to collect money logistically, but it may hurt people who are not doing well in their small businesses.

I support Clause 7 where they are making deductions of 30 per cent of electricity as a tax reduction to manufacturers. That is going to reduce the cost of our manufactured goods. That is okay. I support the proposal that proceeds of betting will go to a fund that will facilitate sports and arts development. Our artists and sports men and women do not do very well yet we have great capacity. The teams in Europe are black and there has been this joke that when France won, Africa won. We could get these people here in our country and support them. That is a good tax that one can support.

There are attempts that bring some flexibility in tax returns. They say it is not fixed and you can apply to file your taxes late. They say that they are giving amnesty from 30th June 2018 to 30th June 2019, but at the same time, there is an increase of 1 per cent on the interest in late return. So, you are giving and taking.

So, you give and then you take back. For deductions, if you delay, according to Clause 45, you will be going up by 20 per cent. I can see the Chair here. I think this is an area that we have to look at so that when we give, we give. We should not give and take. I support Clause 38. When we say that the tax commissioner can ask where the money came from, I think that is a good step in trying to fight corruption.

On capping, I think the lower cap can be discussed, but the upper cap is a no-go zone. I do not believe in the reason that has been given that the Government is competing with peasants to borrow money. I think banks are becoming a cartel. By proposing that we use the Kenya Bankers Reference Rate, you cannot use people who charge high interest rates! That will not work. We should not accept that one.

On the Robin Hood Tax, normally, we have seen, particularly in the health sector, the issue of the sin tax. The difference between the two is that in the Robin Hood Tax, people do not transfer money for leisure. They are forced. Sometimes it is for paying debts or school fees and yet on that transfer, you are taxed. With regard to the sin tax, which is slapped on cigarettes and alcohol, these are things that people can choose. One can decide to stop a particular habit and if one insists, then one must pay the tax. Again, they are on areas that are injurious to health. I know there are exemptions that have been put. The exemptions, to a large extent, just support Government bodies like the KRA when transferring money to them, but we should look at where individuals are affected in things that they have to transfer. It is important that we look at that.

Let me end on the issue of waiver. The Chairman yesterday said that the waiver on VAT on petroleum products has been given to the Minister by an Act that was passed several years ago. I think that is a pretext. They know very well that if this goes on, money will be raised and it will affect our people. That should be a prerequisite and a condition that if they want us to look

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at this Bill properly, that waiver should be re-introduced and the Minister should go on with the waiver of VAT on petroleum products. Otherwise, it will be terrible if we put 16 per cent VAT on petroleum products. The prices of everything will go up.

Finally, on kerosene, I think it is desirable that we control adulteration. Increasing the cost of kerosene is actually a practical way, but we should try to develop the use of renewable energy. That is where we should go. Solar will give a lot of lighting. In any case, kerosene for lighting and use in homes is unhealthy. People are running away from it because it causes respiratory problems. I think we should turn to solar lighting and eventually increase the cost of kerosene. This will kill adulteration that has done us a lot of harm as a country.

With that, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Member for Emuhaya, Hon. Milemba.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker. Looking at the Finance Bill, like one of the Members said, it was a desperate measure to raise funds through taxes. The rider should be that these taxes must not be raised in a way that will completely kill the *mwanachi* or the peasant. The biggest role of Parliament is to protect the weak local *mwananchi.* I convince and appeal to my fellow Members of Parliament that as we contribute on this, this is our core business. Being our core business, we should protect the worker, the proletariat and the *mwananchi* who is being taxed on kerosene and who is now facing increased VAT on petroleum products. That aside, let me concentrate on the key issues that I want to address.

I want to address Clause 68, which talks about the Employment Act being amended. The provision proposes that employers will contribute up to a maximum of Kshs5,000 for the housing scheme and the employees will contribute 0.5 per cent from their salaries. The Committee went ahead and amended that 0.5 per cent to 1.5 per cent. The Committee should notice that its work is to protect the proletariats of this country who are the workers. They have increased the deduction from 0.5 per cent to 1.5 per cent. That would be detrimental to the workers of this country because they are already paying other taxes at all levels.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): I can see an intervention from the Member for Alego-Usonga, Hon. Atandi.

Hon. Omboko Milemba (Emuhaya, ANC): I will be patient.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Temporary Deputy Speaker. Because I have read the mood of the House and the Members have properly canvassed on this issue, I would like to request that you to call upon the Mover to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Members. Unfortunately, I have to put the Question on this one before proceeding.

(Loud consultations)

Order, Member for Emuhaya!

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

Let us have the Mover.

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Hon. Joseph Limo (Kipkelion East, JP): Thank you, Hon. Temporary Deputy Speaker. As I move to reply, I would like to donate two minutes to…

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Limo, I wish to appeal that you give a minute to the Member for Emuhaya as you donate your time.

Hon. Joseph Limo (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I would like to donate two minutes to Hon. Milemba, two minutes to Hon. Oyoo and two minutes to Hon. Atandi. I only have eight minutes. That means I will reduce those two minutes to one minute each for the Members who I have mentioned and Hon. Tong'i. You will each have one minute.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Deputy Speaker. I will do with the two minutes, but this is how we make bad laws.

The 1.5 per cent being deducted is not taking into account the fact that we are giving this money to build houses. We have very many poor people in our villages in Emuhaya, Siaya and countrywide, who also need houses. A law has not been made on how to address this particular housing scheme that will affect our people. Already, the amendment in this clause is discriminatory because it is not dealing with housing for all Kenyans. It is identifying the slums of Kenya while the majority of Kenyans do not live in Nairobi, Ruaraka or Mathare. I propose, sincerely and humbly, that the Committee deletes this amendment so that we do not overtax the workers of Kenya.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Member for Emuhaya, you will still have a lot of time in the next stage of the Bill.

Hon. Onyango Oyoo (Muhoroni, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I will be very brief in the interest of time.

I am glued to my Chair here because my main interest in this Bill today is to encourage the Government and alert them that good taxation must commensurate with service provision. I represent the interest of the sugarcane farmers and millers who were doing very well and paying their taxes. However, this changed the other day when the Jubilee Government brought sugarcane importers who masqueraded as millers in Asian skins. Sugarcane farmers and millers do not have roads and social amenities that should come with the tax that they pay to their good Government. Paying taxes is our right; *kulipa ushuru ni haki yetu*. We want those who are concerned to ensure that in future, those who pay taxes are rewarded with good projects that they deserve. They should not be tilted with political considerations and tax brackets. There are people who pay high taxes, but as long as they are perceived in bad political light, they do not get services. There are a lot of things that I had enumerated, which I wanted to talk about, but in the interest of time, I want to say that we will float our amendments during the Committee of the whole House.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Tong'i.

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute. I wish I had enough time to contribute to this Bill.

Hon. Samuel Atandi (Alego-Usonga, ODM): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Atandi, you cannot speak again after you have called upon the Mover to reply. Do not sneak in. Hon. Tong'i, go ahead.

Hon. Richard Tong'i (Nyaribari Chache, JP): Hon. Temporary Deputy Speaker, kindly factor in the minutes you have taken.

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This Bill has very good and useful components. We will be very unfair to the country and the Government if we threw it away because we are unhappy with one section that we can amend in the fullness of time. The Retirement Benefits Act is a very timely Bill that we need to work on. If you look at developed countries, what is equivalent to the NSSF in their countries has been used to build embassies in foreign countries. The money that we pay in rents is used to pay the workers' benefits. This is what we need to encourage our Government to do. This can only be possible if the people who are deducting the benefits or the retirement money are forced to remit the money in the fullness of time.

The bank interest rates today are hurting more than they are helping. We cannot have it both ways in terms of controlling the upper and lower ceiling.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): You are on borrowed time, Hon. Tong'i. So, I will give you another minute.

Hon. Richard Tong'i (Nyaribari Chache, JP): Hon. Temporary Deputy Speaker, if you look at the interest rates, we cannot have it both ways. We are controlling the upper and the lower ceiling. The capping of bank interest rates was to protect the naive and ignorant borrowers, but it is hurting the economy more than it is helping. The numbers of shylocks in the country today are more because we have closed the window for SMEs to borrow money from banks. My proposal on this is that we have to maintain the upper ceiling and remove the lower ceiling, so that banks can have a leeway to play around with the risk management of banks. As a banker, I will tell you that banks are constrained. We cannot control it that way because we are hurting the people instead of achieving the intention we had of serving Kenyans.

I agree with the Bill on betting because we cannot run a country on gambling.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): It is the time for the Mover to reply.

Hon. Joseph Limo (Kipkelion East, JP): I know quite a number of Members would have liked to be given at least some donation of time, but I do not have more minutes. So, let me take this opportunity to thank the Members who have contributed to this particular Bill. I want to thank the Departmental Committee on Finance and National Planning and the offices of the Speaker and the Clerk for the tremendous support that we received. I also want to thank all the stakeholders who appeared before our Committee during public participation. I also want to thank the National Treasury for all the input they have put into this Bill. I will not add more than what has been put across by the Members.

I beg to reply, Hon. Temporary Deputy Speaker.

Hon. Zachary Thuku (Kinangop, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): I can see Hon. Thuku Kwenya has pressed the intervention button. The Mover has replied. I do not know what your intervention is about.

Hon. Zachary Thuku (Kinangop, JP): Thank you Hon. Temporary Deputy Speaker. I request that you defer putting the Question to a later date as per Standing Order 53(3). Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): That is in order, Hon. Kwenya. On that basis, I order we defer the putting of the Question on this particular Bill until such a time the House Business Committee will slot it on the Order Paper for business.

(Putting of the Question deferred)

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ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, there being no other business, and the time being 7.00 p.m., this House stands adjourned until Wednesday, 29th August 2018, at 9.30 a.m.

The House rose at 7.00 p.m.

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