

# PARLIAMENT OF KENYA

## THE NATIONAL ASSEMBLY

### THE HANSARD

Wednesday, 22<sup>nd</sup> April 2020

The House met at 2.30 p.m.

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

### PRAYERS

**Hon. Speaker:** Those who are making their way in please, come in but in an organised way. Sergeant-at-Arms indicate to every Member their allocated seats.

Hon. Members, just find out where your allocated seat is. We can begin.

**Hon. John Mbadi** (Suba South, ODM): *Off record*

**Hon. Speaker:** Hon. Mbadi, I noticed that even in the House of Commons. I can see Hon. Millie Odhiambo here in the online communication. She belongs to what is referred to as night-shift. The other day she suggested that I belong there. Not exactly.

*(Laughter)*

But at 4.00 a.m., I was observing the proceedings in the House of Commons and I noticed something similar to this. We can continue while Members are being shown where their seats are.

Hon. Members, I have a short communication to make.

### COMMUNICATIONS FROM THE CHAIR

#### COVID-19 RESPONSE MEASURES BY THE NATIONAL ASSEMBLY

Hon. Members, as you are aware, the country continues to grapple with the challenges of the COVID-19 pandemic, and the Government of Kenya has taken various measures to curb the spread of the pandemic. In furtherance of the initiatives by the Government, the National Assembly continues to implement response measures and targeted interventions to mitigate the spread of the virus, and prevent transmission of the disease within the precincts of Parliament. The said measures are in line with guidance and advice by the Ministry of Health and the World Health Organization (WHO). Towards this end, I, as your Speaker, have issued several guidelines and undertaken to continue reviewing the guidelines to incorporate any new measures, as necessary, including review of the manner of conducting House and Committee business. Hon. Members will recall that part of our early response measures included encouraging all

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Members of Parliament and members of staff to undergo voluntary COVID-19 testing and that a voluntary testing exercise for Members and staff was carried out between 2<sup>nd</sup> and 4<sup>th</sup> April, 2020 within the precincts.

In this regard, I wish to confirm that for all the individuals who tested, including all Members of Parliament from both Houses and members of staff, there were, quite thankfully, no confirmed COVID-19 cases as was formerly communicated to me by the firm that carried out the exercise, namely, Lancet Kenya Medical Laboratory. However, Hon. Members, let me sound a word of caution. We should not relent and must continue to uphold the sanitation measures including wearing of face masks at all times, hand washing or use of hand sanitisers and observing strict social distancing amongst other measures.

In this regard, Hon. Members, the Parliamentary Service Commission (PSC) is in the process of organising another testing exercise. This exercise which will be voluntary, and as the first one, is targeted at all MPs that had not volunteered so far and staff. Further, contracted cleaning companies working in Parliament will also be required to be tested. This is necessary because the contracted companies keep changing the staff and we would want those who come to work within Parliament to be those that have undergone the testing.

Hon. Members, I encourage all of you and all members of staff to take advantage of the opportunity to take the test that the PSC and the Ministry of Health are providing free of charge. The dates when the exercise will be undertaken will be communicated as soon as practicable.

The House is accordingly guided.

I thank you.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Yes, what is your point of order?

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Speaker. You have made a very important Communication on the Members and staff who went through the voluntary testing. The Ministry of Health and the company that did the test have confirmed that all Members of Parliament and staff from both Houses who underwent the test none of them was positive. I hope for fairness, the media will correct that position because it has affected those of us who were tested and found negative. It sometimes made us to post the results to clean our names. I think the media is under obligation going forward, and this letter should be given to them. So, the rest of us who have not undergone the voluntary testing can have the courage to do it.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Mishra, this is not business, but maybe because the...

**Hon. Swarup Mishra** (Kesses, JP): Thank you, Hon. Speaker. The practise of medicine has to be followed with a lot of ethics and morals. Today, this global crisis unfortunately has united the world to fight two battles, namely, the battle with the virus and the economy.

My honest request of this august House, through you, to the Government of Kenya, is that we have to be very careful and stop those people who are spreading rumours. The rumours through social media or any media platform as far as this matter is concerned has to be taken very seriously, so that they do not misguide the noble work which our Ministry and the Government are doing tirelessly and end up causing a lot of trouble. Hon. Speaker, we have to take serious action against those who are spreading rumours because medicine is our health and health is life.

Thank you, Hon. Speaker.

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**Hon. Speaker:** You have said people who are doing what?

**Hon. Swarup Mishra** (Kesses, JP): Spreading rumours. Sorry for my accent.

**Hon. Speaker:** I thought you are addressing the issue of masks. The best thing we can do is to make that kind of clarification. So that unless people are otherwise motivated, they have no reason to continue peddling rumours. Hon. Mbadi, you also want to speak.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, sometimes I assume that the media comes up with stories because it wants to sell their newspapers. That is why I did not bother reading the list of Members who were tested and purportedly found positive since I was also tested.

The reason I did not want to come out was to reduce the stigmatisation of this disease. If I came out to explain I was negative, which I was, I was giving credence to that narrative which was being peddled in the newspapers that if you are found positive, something is wrong. We need to understand that it is possible to contract this disease and you need to be careful. It is infectious and those who contract it are not criminals.

The reason I have risen to speak is because I think one media house, *The Star*, if it wants to retain some credence, should go out and say that the narrative they brought out of 17 Members testing positive was fake news. Sometimes it is decent and makes sense to accept where you went wrong. That was alarmist and to me, they were selling panic to the people of Kenya. It was completely unnecessary.

I want to encourage those who have not been tested to get tested. In fact, you should allow those who took the test to take another one because 4<sup>th</sup> April was a while ago. I would want to be retested. Possibly, if we had the capacity, we would do this test weekly because you can contract this disease anytime.

So, the media needs to correct that narrative because it was selling panic and discouraging Kenyans from taking the test which should be the standard. It is only that as a country we are lacking the capacity to do mass testing. Everybody in this country should go for this test. That is the only way we can know we are safe as a country.

**Hon. Speaker:** I can also see Hon. Otiende Amollo.

**Hon. Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Speaker. I will not take time on this because I fully support the intervention by the Leader of the Majority Party. I only want to suggest how it should be done. They alleged in the headlines, and this was not only done by *The Star* newspaper, but also by *The Standard* newspaper. They even published the numbers. In the social media, they put names. This was grossly irresponsible.

Under the Defamation Act, the proper thing to do is to issue a correction and apology. That correction should be done in both newspapers and also by way of a letter to you which you can read to the Members. This is important because I have noticed a very dangerous trend. We are all frustrated. Kenyans and the world are frustrated. People necessarily want to vent their anger on someone or something. For some strange reason, all the anger of most Kenyans is directed to this House.

This House has been called the House of traitors without evidence. It has been alleged to fail to pass laws and there is no law that has been presented to us which we have failed to pass. A signal of responsibility even as we fight this common virus and pandemic, let us not unnecessarily shift blame game.

Thank you, Hon. Speaker.

**Hon. Speaker:** Is that the Member for Gem? It is not business.

**Hon. Elisha Odhiambo** (Gem, ODM): Thank you very much, Hon. Speaker. As we all know, we are in unprecedented times. I thank you for taking a pragmatic step and providing leadership for the National Assembly to ensure that most of us are able to get tested and that when we come to Parliament, we feel the comfort that most Members who are in went for the test. On the same breath, I encourage colleagues in Parliament that we should make it mandatory for all of us to be tested. I went for the test and did not see anything bad like Hon. Mbadi has mentioned.

So, we should encourage all of us and make it mandatory for Members of Parliament to go for the test. That should form the basis of coming to this House.

Thank you, Hon. Speaker.

**Hon. Speaker:** That is one view. I can see the Member for Nyeri Town also wants to raise the same.

**Hon. Ngunjiri Wambugu** (Nyeri Town, JP): Thank you very much, Hon. Speaker. I want to comment on the issue of the tests. One of the most dangerous things that we are facing as a country at this moment is the stigmatisation of people who are infected. When a newspaper runs a headline like they tried to do and tried to look like they are demonising leaders, and it is unsubstantiated, the message we are sending to the public is a message of fear. Even as we talk about headlines, I think it is also important for us to start figuring out how we are going to speak to the Executive. We must be very careful as we deal with people who are infected or those who are in quarantine not to make it look like COVID-19 is first and foremost a crime.

Secondly, I got a message from some people in my constituency where it is starting to look like quarantine is becoming a punishment. The problem about that is that we are facing a very real threat of people who have symptoms refusing to go for treatment because of the stigma of COVID-19. As a House, it is our responsibility to help the country deal with this disease in terms of social management. The kind of dangerous headlines that the media has run and even the actions that have been taken by people out of ignorance are also making the whole idea of management of this disease complicated. As long as you make it look like getting the disease is going to remove you from your family and get thrown into a place that you are not comfortable, people who would normally go to hospital will not go because they are scared that in case they are found infected, they will be taken to a place where it looks like a punishment and being taken with people who are being punished because they are late on curfew or because they broke a law.

So, as a House, we also need to engage on the issue of how the management of infected persons and quarantined people is being done, so that we can remove the stigma of this disease. It is not a sexually transmitted disease. If somebody says you have it, you start feeling guilty. People are looking at you like “*wewe ulikuwa wapi?*” We need to de-stigmatise this disease and we are the House which can do it.

Thank you very much, Hon. Speaker.

**Hon. Speaker:** Hon. Members, you know there is a Motion to deal with this matter. This was merely to communicate and to inform the whole world and, indeed, even those who had been peddling stories, that we got certificates... This is not debate. There is nothing to debate. What is your point of order, Hon. Millie?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker, for indulging me. I do understand that there is a Motion coming. However, you know we have not been here for a long time and Parliament feels very strange because we are very few. We are dressed like there is war. Indeed, there is a war. It is just that there is a war against an invisible

army. I do not normally agree with the President of Uganda, but he has penned a piece about this as a war, which I agree with.

I also wanted to agree with the Member for Nyeri that we are making this look like it is a sexually transmitted disease and, therefore, creating stigma. Even if it was sexually transmitted, sex is not a crime unless it is committed forcefully or with an underage person. So, really, even if it is sexually transmitted, what is the problem? However, it is not. I want to say for myself that in my own family, I have family members who have tested positive for COVID-19, who are out of the country. So, it is actually a real thing. I have friends who have tested positive. One of them was covered in the media in the UK. I have another one in the UK. My own niece who is out of the country has tested positive. My other friend in the US has tested positive. I have people who on a daily basis are living out of fear because of COVID-19. I can report some of them have recovered, but if we treat it casually, it is really going to affect us badly.

I know a case was reported in Homa Bay and because, of course, of the nature of this Parliament, I know even if we will have that, I just wanted to say that as much as people were talking about the discrepancies in information, for me, this is a new thing that people may not know how to deal with. It just showed that we need to beef up especially on issues of protocol. When we allow people to go and burry at home, do we then quarantine them at home or how do we deal with it? Nairobi to Homa Bay now looks like one country to another and not county to county. Therefore, if you are coming from Nairobi to my upcountry, do we quarantine you? Yesterday I was being told of a case of people from Ukambani who suddenly appeared in Mfangano Island. They have been quarantined. So, how do we deal with such cases? I do not know how they reached there. I am yet to get the full information, but we must know how to deal with that.

Finally, again, Hon. Jared has said how everybody must be tested. Let it be voluntary so that every Member goes. We encourage every Member, including myself because I did not do the first round. The reason I did not do the first round is because I was on my way when I saw in *The Star* that every Member of Parliament is positive. Who am I to come here to be infected? I went back to my house. So, let us stop doing things which create fear even amongst us. We are Members of Parliament, but we are human beings. I am not coming here to be a hero. When you will be eulogising me saying that I was a good person and others will be cheering when I am dead, I will be dead and nobody will resurrect me. I will take care of myself so that I stay alive.

Finally, as a Christian and a leader, we are called on at this time to stand in the gap for Kenyans and the world. With your permission, I am whispering a prayer that in the name of Jesus, we stand in the gap for this country and pray that things will change and this Coronavirus will be history. We pray for recovery for those who are sick. In Jesus name, I pray.

Thank you.

**Hon. Speaker:** Now Members, we are likely to go into another... Member for Migori, I give you one minute.

**Hon. (Ms.) Pamela Ochieng** (Migori CWR, ODM): Thank you very much, Hon. Speaker. On Hon. Millie's prayer, I say a big Amen. Just on the note that we are concluding, I just wanted to seek a clarification. Members of this House have a responsibility to their constituents. The way the media report came out, it made it look like the disease is only carried by Members of Parliament. With the restrictions of movement, some of the reports and interventions that Members may want to make are on the ground. I wanted a clarification. How do Members access their constituencies because some of the information we get are very

alarming and serious? As I stand here, in Nyatike, Kabuto and Nyora in my county, people are moving out of their homes because of water. It is not clear where they are exactly and how the conditions there are.

Hon. Speaker, I just wanted to add my voice to the fact that the media needs to treat Members of this House with some decorum. They should give them hope and bridge the gap between our constituents and us. On the same point, now that we are in Nairobi, how free are we in terms of going to assess the situation on the ground for ourselves and see whatever interventions we may recommend?

Thank you, Hon. Speaker.

**Hon. Speaker:** Members of Parliament have not been stopped from performing their duties. If you are doing your legislative work here, representation requires that you must visit every part of the jurisdiction that you represent. All you have to do is keep social distance. That is all you must remember even as you do that job. Otherwise, we must continue doing the rest of the job of a Member of Parliament. We have a duty to the country; a constitutional duty.

Let us move to the next Order.

#### APPROVAL OF NOMINEES TO TSC

**Hon. Speaker:** Hon. Members, you may recall that earlier today, the House rejected a Motion under Order No.10 on the Order Paper for today's Morning Sitting. The Motion, which was moved by the Departmental Committee on Education and Research, was asking the House to reject the appointment of Mr. Mbage Njuguna Ng'ang'a and Ms. Leila Abdi Ali as members of the Teachers Service Commission (TSC).

Hon. Members, the question now before the Speaker is, "What is the implication of the House rejecting the Special Motion, which is coached in the negative?" Sadly, it cannot be that the House has approved the nominees because a decision of the House to that effect ought to be unequivocal. In the same vein, it cannot be that the House has rejected the appointment of the said nominees. This is not the first time the House is confronted with a scenario of the nature presented by the four stated questions.

In answering the question, I am, therefore, informed by my predecessor in the 10<sup>th</sup> Parliament whereupon a Motion asking the House to reject proposed appointment of one Mr. Mumo Matemu, as the Chairperson of the Ethics and Anti-Corruption Commission (EACC), was rejected by the House. At that time, in 2011, my predecessor, Hon. Ken Marende, did observe that in such circumstances, the nominees stand, implying that the nominees still remained before the House considering that the nominee had neither been approved by the House nor rejected. The then Speaker did add that it was incumbent on the Mover of the business in question or any Member of the House to determine whether or not to move a positive Motion for the approval of the nominee by the House.

Hon. Members, I stand to state that I am not about to deviate from that precedent set by my predecessor. In fact, I agree with him that an approval of the appointment as contemplated by the Constitution and statutes is an affirmative and unequivocal approval by the House and cannot be deduced from the rejection of a committee report. In such circumstances, the onus is on the relevant Committee or any other Member of this House to give notice of a Motion to that effect, phrased in positive terms.

Hon. Members, I wish to inform the House that I have already received and approved a Notice of Motion from the Leader of the Majority party, Hon. Aden Duale, asking the House to approve the appointment of Mr. Mbage Njuguna Ng'ang'a and Ms. Leila Abdi Ali as members of the TSC. Should that Motion be carried, then the decision of the House will be construed unequivocally. Similarly, should the positive Motion be negated by the House, the decision of the House will have been, again, made unequivocally. I, therefore, guide the House accordingly.

Leader of the Majority, do you have any papers to lay?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I have no P papers to lay.

**Hon. Speaker:** Hon. Katoo ole Metito, do you have a paper? None.

There is a Report on Mediation. Was it tabled in the morning? I think the Table Office did not get it correct.

Next Order!

### NOTICES OF MOTIONS

#### ADOPTION OF REPORT OF MEDIATION COMMITTEE ON COUNTY GOVERNMENT (AMENDMENT) BILLS

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to give notice of the following Motions:

- (i) THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the County Government (Amendment) Bill No.2 (Senate Bill No.7 of 2017), laid on the Table of the House on Wednesday 22<sup>nd</sup> April 2020 and approves the mediation version of the County Government (Amendment) No.2 (Senate Bill No.7).
- (ii) THAT, pursuant to the provisions of Article 113 (2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on the County Government (Amendment) Bill (Senate Bill No.11 of 2017), laid on the Table of the House on Wednesday, 22<sup>nd</sup> April 2020 and approves the mediated version of the County Government Amendment Bill (Senate Bill No.11 of 2017).

#### APPROVAL OF NOMINEES TO TSC

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to give notice of the following Motion:

THAT, taking into consideration the resolution of the House made in the Morning Sitting of Wednesday, 22<sup>nd</sup> April 2020 rejecting a Special Motion proposing the rejection of the nominee for appointment to the TSC; cognisant of the provisions of Article 250(2b) and Article 259(11) of the Constitution, and pursuant to the provisions of Section 8 of the Teachers Service Commission Act 2012, this House now approves the appointment of the following persons as members of the TSC -

- (i) Mr. Mbage Njuguna Ng'ang'a; and,
- (ii) Ms. Leila Abdi Ali.

**Hon. Speaker:** Next Order.

**Hon. Mark Nyamita** (Uriri, ODM): On a point of order, Hon. Speaker.

**Hon. Speaker:** The Member for Uriri, what is your point of order?

**Hon. Mark Nyamita** (Uriri, ODM): Thank you, Hon. Speaker. I need a clarification on the papers the Leader of the Majority Party has tabled, including the notice of submitting a secondary Motion which is based on your guidance. We are operating under difficult circumstances. Access to this House is based on a Short Message Service (SMS) platform on a first-come, first-served basis. In other fora, Members of Parliament, including those who would want to be in the House to debate this important matter might not get opportunity to come. We only have a limited number of Members who can access the Chamber. Can you give guidance that a Motion of this magnitude be deferred until such a time that Members can be here, so that a proper debate around that matter can happen?

I realise that a decision might be taken and Members might not feel fully satisfied because admissibility into this House is based on a first-come, first-served basis. Every Member has a right to be here to do this. Alternatively, the House might consider setting up mechanisms of Members to vote online, when they are not within the House on a serious issue like this one.

Thank you, Hon. Speaker.

**Hon. Speaker:** On the last point which you have just raised, I want to tell you that it is an outright no. When Members are told to register, they say they have done it, but they have not been put in the list. How about if you were to vote? We have taken comparisons with all other jurisdictions. We can debate virtually. I just gave an example of the House of Commons. It is a House of 654 Members. However, only 50 are sitting in the Chamber physically and 120 are participating in debates. That is just one example.

In all other jurisdictions, voting cannot be done online. We cannot even agree on simple things about SMS. You can imagine voting. Members make statements here and they immediately deny them, until we have to go and check in the *Hansard*. You are in the habit of saying and denying things. I am not saying that is what Hon. Nyamita does. Because we have that experience and difficulty as Kenyans, not only the Members of Parliament, we are in the process of exploring other ways to see how best we can deal with the issue. If a matter is one that the House thinks that everybody should express himself or herself, although it does not happen... Even when we require two-thirds of Members, we hardly ever get them. We give Members more than two weeks to go and prepare that on a particular day, they will be required to come here in their droves and we still do not get two-thirds. So, the only way to address that issue is by every Member desiring to participate to indicate. Currently, that is the only method we have. I want to discourage Members from making remarks that discourage the staff. The members of staff are asking me the other methods we can use to know that a Member intends to be in the House.

I want to give an example right now. Members indicated that they would participate this afternoon. We still have about six or five seats which are unoccupied and it is almost 45 minutes since the House sat. I cannot see all the seats. Some of those corners are a bit dark. We can only use that method where you indicate that you want to come to the House. We passed a Motion which said that we will be sitting on Wednesday every week, in the morning and afternoon. So, by Friday 1.00 p.m, the notice will go on, so that you can register. We will also try to look for a way of creating some balance. If you have been in the Chamber too often and others have indicated their desire to come, only that they are a bit slow in logging in, we will allow them on occasions to come and participate, if they desire to do it. Otherwise, we have no other way, Hon. Nyamita. I hear you. Many people have come up with all manner of solutions, but none



addresses voting. We do not want a Member to say that he knew that Hon. Nyamita was not in his house at the time to vote. So, we must look for something that allows Parliament to operate as Parliament.

For the time being, Hon. Members, let us try to grapple with this and make adjustments where necessary. I am always available for improvements. The staff members are more than willing to get solutions. In fact, there is something which has been referred to the Departmental Committee on Communication, Information and Innovation through Hon. Osotsi and other Members of that Committee to try and look at some of the proposals which have been developed and suggested and advise not only the Parliamentary Service Commission, but also the House. We may need to have some robust debate and agree because some of those things can be very tricky. Some will tell you to use Zoom and others Skype. All those things are prone to abuse, especially with regard to the work that Parliament does where we require things to be done positively.

The Leader of the Majority Party has given Notice of a Motion. That business will be put on the Order Paper on Wednesday. Please, on Friday at 1.00 p.m, the staff will indicate to Members to log in to indicate desire to attend. Since you are doing social distancing, you are unlikely to be distracted by anybody near you. For the time being, I plead with you to carry on with what we have.

There is a request for a Statement.

*(Hon. Speaker consulted the Clerk-at-the Table)*

Hon. Members, because of social distancing, things are not flowing smoothly as they normally do. Hon. Esther Passaris, do you have a request for a Statement?

## REQUESTS FOR STATEMENTS

### DISTRIBUTION OF SANITARY TOWELS TO SCHOOLS DURING THE COVID-19 PANDEMIC

**Hon. (Ms.) Esther Passaris** (Nairobi (CWR), ODM): Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding the distribution of sanitary towels to students while schools are temporarily closed during the period of COVID-19 pandemic.

Hon. Speaker, the sanitary towels programme was established to increase access of teenage girls to sexual reproductive health products so that we can increase their retention in school, transition to higher levels of learning and enhance their academic performance.

The COVID-19 pandemic has led to closure of schools to curb the spread of the virus. This, therefore, means that all beneficiaries of the sanitary towels programme are at home. I would like to bring to your attention that since the closure of schools, sanitary towels that were to be distributed have been stocked. I believe the provision of sanitary towels is key to improving menstrual health of young girls in Kenya, noting that most of them cannot afford to purchase sanitary towels during the COVID-19 pandemic owing to financial constraints.

It is on account of this concern that I seek a Statement from the Chairperson of the Departmental Committee on Education and Research on the following:

- (a) How many girls are still benefiting from the sanitary towels program while schools are closed?
- (b) What measures are in place to ensure that the sanitary towels programme continues to cater for girls registered in public schools by the Ministry of Education?
- (c) What mechanisms are being employed in the distribution of the sanitary towels to all girls at their places of residence?

Thank you Hon. Speaker.

**Hon. Speaker:** Is Hon. Melly in the Chamber? Was he meant to be in the Chamber? The Statement will be transmitted to the Chairman through the Leader of the Majority Party for a response on Wednesday, next week.

There is another request by Hon. Gichimu Githinji, the Member for Gichugu. Even as he walks in, I want to know the Members who are standing because of Statements and Questions. I can see many empty spaces. We said that 30 minutes after we have commenced, Members who had indicated that they will come and are not here, their seats will be allocated to other Members who are keener to attend the Chamber.

#### PROVISION OF FOOD TO RESIDENTS IN INFORMAL SETTLEMENTS BY THE GOVERNMENT

**Hon. Gichimu Githinji** (Gichugu, JP): Thank you Hon. Speaker. I beg to request for a Statement regarding the provision of food and other stuff by the Government under the feeding programmes in the informal settlements across the country.

Hon. Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the provision of food and other foodstuffs under the Government feeding programme in informal settlements across the country during the COVID-19 pandemic period.

Many Kenyans rely on daily wages for survival and majority of such people live in informal settlements both in the major cities and towns as well as in the rural areas, for example, in Mwambao, Gatugura, Rukenya, Kimunye, Kianjiru, Mbiri and Kamugunda in Gichugu Constituency among many others in other constituencies across the country. It is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

- (a) What measures has the Government put in place to cushion and ensure that no lives will be lost as a result of hunger or lack of food during the COVID-19 pandemic period?
- (b) What criteria is the Ministry using to identify the very needy and vulnerable Kenyans that will benefit from the Government relief food during this period?
- (c) What measures has the Ministry put in place to ensure the smooth delivery and distribution of the relief food without discrimination, favoritism, wastage and theft and in a manner that will not compromise the laid down procedures on social distancing?
- (d) When is the Ministry intending to start the said relief programme across the country?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Chairman of the Committee, Hon. Koinange, is not in the Chamber. Or is he in? Hon. Ngunjiri, do you want to suggest that you take over or become an agent of necessity? You may proceed.

**Hon. Gichimu Githinji** (Gichugu, JP): Hon. Speaker, may I earn a seat in the Chamber?

**Hon. Speaker:** Actually, that could earn you a seat. Yes, please.

*(Hon. Gichimu Githinji was offered a seat in the Chamber)*

I can see that these seats are empty, but let me read out the ones that are empty. Serjeant-at-Arms, make sure that these seats are occupied. If you indicate that you want to be here in the afternoon Sitting, even those of you who use what is known as ‘*mulika mwizi*’, please, get a way of accessing that information.

Now, Serjeant-at-Arms, we need people to occupy those seats. As the Serjeant-at-Arms addresses the issue of Members who wish to come in, Hon. Ngunjiri, you may proceed.

**Hon. Ngunjiri Wambugu** (Nyeri Town, JP): Thank you, Hon. Speaker. I want to seek for a clarification. I am a Member of the Departmental Committee on Administration and National Security that you are directing that Statement by Hon. Gichimu to. When the Government announced that it is going to distribute food, it was the Ministry of Agriculture and Irrigation that did so. It was the Principal Secretary for Agriculture that was put in charge of logistics. I know the Ministry of Interior and Coordination of National Government is creating the structure. However, if the request for the Statement is going to be directed to our Committee alone, we might not handle it with the depth that is required.

The people who have the food, which is the substance of distribution, is the Ministry of Agriculture and Irrigation. The Ministry of Interior and Coordination of National Government is just creating infrastructure to distribute the food. This is part of the problem I am foreseeing with the COVID-19 pandemic. A request for a Statement that is multifaceted is directed to one committee, but it affects various committees. I would like to get direction on that.

**Hon. Speaker :** Hon. Members, there is nothing that says that the Departmental Committee on Administration and National Security cannot summon the Cabinet Secretary (CS) from any other Ministry. So Hon. Gichimu is right to direct the request for a Statement to your Committee even as I see your Chairman walk in. These are all requests for Statements.

Hon. Peris Tobiko, what is it?

**Hon. (Ms.) Peris Tobiko** (Kajiado East, JP): Thank you, Hon. Speaker. I just needed to add weight to that.

**Hon. Speaker:** No, you cannot. Which procedure are you following? You are doing your second term yet you are telling me that you need to add weight! You already have enough weight! Why would you want to add weight?

*(Laughter)*

**Hon. (Ms.) Peris Tobiko** (Kajiado East, JP): I want to support, Hon. Speaker.

**Hon. Speaker:** When you say that you want to add weight, somebody looking at you will fear.

**Hon. (Ms.) Peris Tobiko** (Kajiado East, JP): Hon. Speaker, I want to support.

**Hon. Speaker:** What do you want to support? How do you support a request for a Statement?

**Hon. (Ms.) Peris Tobiko** (Kajiado East, JP): Because it is very important in the entire country.

**Hon. Speaker:** Not at all. Certainly not when I am presiding. That is not the procedure known to this House. Please, do not add weight!

*(Laughter)*

The request for the Statement is directed to the Departmental Committee on Administration and National Security to deal with.

The next request is from the Member for Dagoretti South, Hon. Kiarie, KJ. If you did not have a seat in the Chamber, you could also earn one. In the thing I follow, which Hon. Millie Odhiambo says she belongs to, I think he has been dedicated as the captain in the night shift. I hope all of you must have observed the proceedings in the House of Commons which were being relayed today at 4.00 a.m. At least, I was awake. Proceed, Hon. Kiarie.

**Hon. John Kiarie** (Dagoretti South, JP): Hon. Speaker, it is an honour to find myself some space in the Chamber of Muthaiga and not in the ghettos the night shifters find themselves.

#### DEATH OF PETER GACHAGO GACHERU

Hon. Speaker, I would like to seek a Statement. Pursuant to Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the death of one Mr Peter Gachago Gacheru.

Hon. Speaker, the late Peter Gachago Gacheru was a well-known hawker in Kawangware, Riruta area. On the night of 3<sup>rd</sup> April 2020, Mr Gachago was mysteriously dropped at a medical centre in Riruta. On the morning of 4<sup>th</sup> April 2020, the family visited the hospital and found that Mr Gacheru had passed on. The doctor at the facility falsely informed the family that Peter had been brought to the hospital in a critical condition and the doctor allegedly claimed that Peter fell down while drunk and sustained serious head injuries that caused his death.

However, Peter was, in fact, brought to the health facility in an ambulance escorted by police officers. In addition, eye witnesses informed the family that Peter had been accosted by the police while he was rushing to store his merchandise at a nearby bar to beat the curfew and the police officers mercilessly beat him up until he lost consciousness. The said officers on realising the seriousness of his condition rushed him to the specific nearby clinic.

In view of the above, I seek the following from the Chairperson of the Departmental Committee on Administration and National Security:

1. State the actual cause of the death of the deceased and whether the death was as a result of the use of excessive force by police officers.

2. Whether there is any ongoing probe to the death of Mr. Peter Gachago Gacheru.
3. What steps has the Government taken to establish who the real killers of Mr. Gachago are?
4. What measures has the Government taken to ensure that the family of the deceased is compensated noting that the deceased was the family's sole breadwinner?
5. What measures has the Government put in place to ensure that no more lives are lost through brutality as a result of excessive use of force by security officers especially with the prevailing curfew situation?

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Koinange is in the Chamber. When do you think you can give a response to that?

**Hon. Paul Koinange** (Kiambaa, JP): Hon. Speaker, we will address the two issues, namely, the one on food and the one of Mr. Gachagu and give a Statement by Wednesday, next week.

**Hon. John Kiarie** (Dagoretti South, JP): Hon. Speaker, that is agreeable.

**Hon. Speaker:** Hon. Members, I wish to make further announcement that if a Member is leaving the Chamber and has no desire to come back, please, indicate to the Serjeant-at-Arms, so that another Member who may be out there and is desirous to come and participate in the Chamber can then come in. Do not just walk away because you will cause confusion. If you are not coming back, the place can be sanitised.

There is a response to a request for a Statement by the Chair of Health, Hon. Sabina Chege. She had responded to most of the requests, but there is one issue raised by Hon. Caleb Amisi, the Member for Saboti.

I also want to guide you that when you know that you are going to make a response, press the intervention.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): My station is not working. I tried to log in, but I could not.

**Hon. Speaker:** At some point, I saw your name here. Proceed.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Speaker. As you are aware, during the House plenary sitting on Tuesday, 14<sup>th</sup> April 2020, and pursuant to the provisions of Standing Order No.44(2)(c), the following Members requested for Statements: Hon. David Ochieng' and Hon. Kago. We responded to that today in the morning. However, there was one remaining Statement from Hon. Caleb Amisi, MP, Saboti Constituency. From the morning discussion, some issues also came up. Once I finish responding to his question, I would like to give a brief Statement as the Chair of the Departmental Committee on Health.

**Hon. Speaker:** How long will be the Statement?

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): It will be three minutes long.

**Hon. Speaker:** Be brief. I would like to inform, not only Hon. Peris Tobiko, but the entire membership, that I know some of the issues Hon. Peris Tobiko raised would be very well addressed in the Motion discussing the general issues about COVID-19. During that time, you can support, including by adding and subtracting weight!

(Laughter)

So, Hon. Peris, you are not without opportunity to make that Statement.

Another general announcement, Hon. Members, and I hope even those Members not in the Chamber will get it through the Clerk, according to our Standing Orders, there are certain Statements which are supposed to be made on Tuesday afternoon before 3.00 p.m. and others on Thursday afternoons. Given the circumstances we are in, and the fact that you passed a Motion that we shall only be sitting on Wednesday morning and afternoon for purposes of allowing the Chamber to be fumigated, I have suspended the operation of those two Standing Orders so that everything can be requested on Wednesdays. We will look for a way of having some requests come in the mornings and others in the afternoons.

Proceed, Hon. (Ms.) Sabina Chege.

#### MEASURES TAKEN TO ENSURE SAFETY OF HEALTH WRKERS DURING THE COVID-19 PANDEMIC

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Speaker. Hon. Caleb Amisi sought a Statement regarding the safety of healthcare workers while fighting COVID-19. He sought to know about training being offered to our nurses in the fight against COVID-19.

As I respond on the training being offered to our nurses in the fight against COVID-19, in order to increase the capacity of health workers on COVID-19, the national Government has developed guidelines, standards and treatment protocols - 18 in total - and the proper materials required. Training of trainers (TOTs) has been scaled up in all the 47 counties. Currently, we have 1,097 trainers based at the county level. The county trainers have trained frontline healthcare workers across all the counties on case management, containment measures and in particular infection, prevention and control (IPC). Currently, more than 100,000 healthcare workers have been trained online. However, 30,000 health workers have undergone intense conference based training. These trainings are ongoing and will ensure all health workers are trained and re-sensitised across all counties.

On the status of the distribution of personal protective equipment (PPEs), needs depend on the number of cases. In the worse scenario that by the end of April we have 10,000 cases, the Kenya Medical Supplies Authority (KEMSA) has made the requisite arrangement through running contracts for a total quantity of 35,072 kits contracted to different contractors. Further, plans are underway for additional 180,000 loose body suits. So far, 3,682 have been delivered and distributed. The county governments have received stocks from KEMSA. There is an annex on distribution of stocks.

Counties are also purchasing locally manufactured PPEs to mitigate the shortage. The local Small and Medium-sized Enterprises (SMEs) in the counties are producing an average of 300,000 pieces of face masks per day. The Ministry of Health has customised WHO guidelines to ensure that healthcare workers are prioritised in the distribution of PPEs. Distribution of PPEs has been made based on a running list that is reviewed weekly and on need basis. Currently, in the country, the following are the categories of personnel that require PPEs Rapid Response Teams at the national and counties levels, laboratory experts in COVID-19 designated labs,

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health workers in isolation and treatment sites and quarantine facilities at national and county levels and morgue attendants.

On transportation of suspected cases to isolation facilities, suspected cases in Kenya are defined epidemiologically and clinically. Exposure history that includes travelling from an area that has confirmed active transmission of COVID-19, close contact with someone from an area recording active transmission of COVID-19, contact with a probable or confirmed COVID-19 cases, and cleaning a COVID-19 patient's room or items.

Once the sub-county response team or any citizen calls the call centre 719 to notify of a suspected case, the Emergency Operation Centre (PHEOC) informs the county level champions to take action. This information initiates the response team to visit the suspect and assess whether the person meets the epidemiological/ clinical definition. Mainly, they are looking at fever above 38°C and history of fever or acute respiratory infection, forexample, cough, shortness of breath and sore throat. If the person meets the case definition, the patient is automatically evacuated to the isolation facility for laboratory testing, observation and treatment. Those that do not meet the criteria but are probable cases, a swab is taken and the patient is put under close monitoring by the county or the sub-county rapid response team. The person is also advised on self-quarantine until the results are out and the decision to isolate her/him is made. The transfer of confirmed or suspected case is done by well-equipped ambulance system with all the necessary PPEs. After this, proper disinfection is undertaken on the vehicle.

If the risk allowance equals the risk being undertaken, as a point of clarification, no amount of compensation can pay for the risk that our frontline workers, doctors and nurses put their lives to every single day to ensure that we defeat the pandemic. This is largely a professional calling and commitment undertaken by our staff as part of their professional sacrifice. However, the Government has reviewed the special circumstances and has come up with a draft comprehensive proposal, which includes strategies to address the motivation and welfare of health workers, who are at an increased risk of infection and psychological effects, including the dual burden of caring for their families while offering service in this context. The incentives under proposal include provision of comprehensive medical, disability and life insurance, risk allowance and tax relief as well as facilitation of meals and accommodation as part of the duty stations of officers working in isolation and critical care facilities serving COVID-19 patients.

These proposals were developed in collaboration with Ministry of Public Service and Gender and are under consideration. Other measures include provision of dedicated transportation facilities to healthcare workers in the COVID-19 management, establishment of dedicated COVID-19 isolation and quarantine centres and ensuring containment as well continuity of routine healthcare services in other centres.

In addition, the Ministry will evaluate the inclusion of all allowances that are payable to healthcare workers across all counties and ensure that they are compensated to meet the current and future challenges as per the advisory from the Salaries and Remuneration Commission (SRC).

Hon. Speaker, as highlighted above, the Ministry of Health has designated facilities for isolation and treatment of health workers who may be infected with COVID-19 at the Kenyatta National Hospital, supported by the Rockefeller Foundation.

As the Departmental Committee on Health, we have requested the Budget and Appropriations Committee to ensure that in the Supplementary Budget, they allocate funds to

complete that facility where all our healthcare workers will be taken care of in case they test positive for COVID-19.

**An Hon. Member:** Where is that facility?

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): It is at the Kenyatta National Hospital. It is a day care centre where all our healthcare workers will be taken care of in case they test positive for COVID-19.

**An Hon. Member:** Take them to a hotel!

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Speaker. I will also table guidelines on the use of masks because we had that discussion in the morning. I request Members to go through them. The proper use of a mask is that it must cover your nose all the way to the chin. Those Members who have a mask with a metal at the top, press it so that it covers your nose to ensure that the mask does not keep coming down. The guidelines are here so that Members can learn the proper use of masks.

**Hon. Speaker:** Where is Hon. Caleb Amisi?

**Hon. Junet Nuh** (Suna East, ODM): I am holding brief for him.

**Hon. Speaker:** You are a candidate for punishment for coming into the Chamber one hour, 11 minutes after the commencement of business. That should tell you that I took note of the time Hon. Junet walked in. Hon. David Ochieng'.

**Hon. David Ochieng'** (Ugenya, MDG): Thank you, Hon. Speaker. I rise under Standing Order No.1 and Article 21 of the Constitution and this is based on an answer given in the morning by the Chairperson of the Departmental Committee on Health, and it relates to the implementation of the rights of persons in the country. I had thought of seeking a Statement, but I came in late as the answer was communicated towards the afternoon, and I was not able to get to your office on time.

If you will allow me, in the morning, it was communicated that the Ministry of Health had said that the guidelines for handling dead bodies were not followed in the case of Ugenya. This is not just about Ugenya, but ensuring that the rights of Kenyan citizens are upheld and respected during the period of fighting COVID-19.

If you will allow me, I want to proceed to request that, through your guidance, as the Departmental Committee on Administration and National Security sits, they should check on possible violation of human rights during this period. Could they check on possible violations of human rights during this period, especially how we treat patients or suspected patients, how we treat those we quarantine, how we treat the families of the people and how the police behave when they arrest such people? You have seen on television how the police arrest people. They never put on masks. They put 10 people in a single van. They have no tools with which to protect themselves. These are issues I wanted to raise so that we can ensure that they are taken care of. Under Article 21 of the Constitution, and on the rights of citizens under Article 28, including things like dignity, these are arbitrarily violated by security personnel. People's cultures must be respected. We have not suspended the Constitution.

**Hon. Speaker:** Hon. Ochieng, how do I allow you to seek a Statement which I have not even approved?

**Hon. David Ochieng** (Ugenya, MDG): Hon. Speaker, I am guided. That is as much as I wanted to raise those issues based on an answer that was given in the morning. I could not meet the timelines for your approval. I actually submitted a request for Statement, but it got to your place late.



**Hon. Speaker:** It has not even reached me. I can assure you that anything coming from any Member is given priority. I will not leave the office when there is something pending that a Member has raised, unless it is something which requires considered ruling. This is a Statement and I am the one who has said that Statements can be raised on Wednesdays. So, unfortunately, it has not come.

**Hon. David Ochieng** (Ugenya, MDG): Hon. Speaker, I am guided. This is a very urgent matter. I do not know if there is a way through which it can be looked at, so that it can be tackled when we next come. This is the big problem that I am having.

**Hon. Speaker:** We cannot bend rules. Will we have Hon. ole Metito? No, there was a Statement request by Hon. Mwashako.

STATUS OF CASH TRANSFER INUA JAMII PROGRAMME  
DURING THE COVID-19 PANDEMIC

**Hon. Danson Mwashako** (Wundanyi, WDM-K): Thank you, Hon. Speaker. I rise to request for a Statement regarding the Cash Transfer Inua Jamii Programme to older persons.

Pursuant to Standing Order No.44(2)(c), I request for a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare regarding the Cash Transfer Inua Jamii Programme to older persons and other vulnerable groups, especially during this period of Covid-19 pandemic.

Our Government has an obligation to take care of older citizens of this country. The Ministry of Labour and Social Protection has been running the Older Persons Cash Transfer Programme targeting older persons and other vulnerable groups. A sum of Ksh8.7 billion has just been released towards these groups. I wish to bring this to your attention that we have a big population of persons who are not registered yet they are above 70 years old. I wish to also bring to your attention the fact that some older citizens who registered in 2017 and received the funds until 2019, and after that they were informed that their names were missing on the payment system due to reasons such as incorrect ID numbers, details not captured correctly, inability to access money from banks due to fingerprint changing or not matching.

It is against this backdrop and on account of these concerns that I seek a Statement from the Chairperson of the Departmental Committee on Labour and Social Welfare on the following:

(i) What measures are being put in place to have all the vulnerable persons, most particularly the elderly persons aged above 70 years, included in the Cash Transfer Inua Jamii Programme?

(ii) How many of these older persons are not registered in the programme and when is this registration expected to start?

(iii) What mechanisms are being employed in the cash transfer programme to make sure there is minimal contact and congregation at pay points, particularly to restore the dignity of our older citizens and avoid exposing them to Covid-19, among other communicable diseases?

(iii) How many of the senior citizens used to receive the benefits but have thereafter been omitted and others denied for various reasons and what caused these unfortunate occurrences?

Thank you, Hon. Speaker.

**Hon. Speaker:** To which Committee is it referred?

**Hon. Danson Mwashako** (Wundanyi, WDM-K): It is to the Departmental Committee on Labour and Social Welfare.

**Hon. Speaker:** That Committee is chaired by Hon. Ali Wario. Your request for a Statement will be forwarded to the relevant Committee, through the Office of the Leader of the Majority Party.

Hon. Metito, you have the Floor.

## STATEMENT

### WELFARE OF KENYANS IN DIASPORA DURING COVID-9 PANDEMIC

**Hon. Katoo ole Metito** (Kajiado South, JP): Hon. Speaker, because of time and being aware of the businesses ahead of us - Order Nos.8, 9 and 10 - I will try to be brief. I rise to issue a Statement to the House on the welfare of Kenyans abroad faced with various challenges around the world occasioned by the COVID-19 pandemic. I am aware that during the Morning Sitting, the Leader of the Minority Party, Hon. John Mbadi, raised this issue. It is also good to note that on the Committee's own Motion, we met the Principal Secretary for Foreign Affairs on Thursday. We were actually ready to brief or apprise the House on what is happening.

First of all, let me thank your office and the office of the Clerk for facilitating that meeting at a very short notice. It was carried live on Citizen TV. I also want to thank the Ministry of Foreign Affairs for making themselves available within a very short notice of one day. This is just a follow-up of another meeting we held with the Ministry of Foreign Affairs on 27<sup>th</sup> January 2020, still on the same matter. We issued a Statement to the House on 3<sup>rd</sup> March 2020. Last week, one of the issues the Committee of Defence and Foreign Relations wanted clarified was whether all the money earmarked for the upkeep of Kenyans in China had been disbursed to them in full. This was money for students, not every Kenyan in China. It was for 91 students and nine acrobats.

The second issue we wanted clarified was whether the country had explored the possibility of facilitating exit of Kenyans from the affected regions now that the situation seemed to have stabilised in China. The third issue was on reports of mistreatment of Kenyans and other foreigners of African descent in China. The fourth one was the status of Kenyans in foreign countries other than China, with regard to infection, treatment, general welfare and recorded deaths and any other matter that the Ministry may deem relevant for the Committee to know.

The Government of Kenya had channelled about Kshs9,766,572 to the Kenyan Embassy in Beijing. So far, the Embassy had disbursed Kshs4,956,645. A balance of Kshs4,809,927 was in the process of being disbursed. The eligible Kenyans were 91 students and nine acrobats who were documented with the Embassy. Each received Kshs15,000 per batch. It was done in three batches. By the end of the disbursement, each of the 91 Kenyan students should have received Kshs45,000. This is on top of their usual scholarship stipends. This money was also supplemented by some food donations from the Chinese embassy here in Nairobi and the Kenyan Mission in Beijing.

On the second issue of lockdown, in Wuhan City, where the virus originated, there was a lockdown which was lifted on 8<sup>th</sup> April 2020. The situation still remains fluid and unpredictable. Therefore, students are still locked down with their respective universities. However, they are all

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in good health. It is good to note that a case was reported of two Kenyan students elsewhere in China, but they had received treatment and are okay. The Ministry reported that no student had requested to return to Kenya.

The third one is that the Embassy had requested the Chinese authorities to allow the remaining unregistered Kenyans - about 3,000 - some of whom had expired visas, to regularise their documents after the pandemic. I can confirm that that has been agreed on. So, there will be no harassing of Kenyans because of invalid documents. It was agreed between the two Governments of Kenya and China, through the Ministry of Foreign Affairs, that Kenyans whose passports or visas have expired will have their documents regularised after this pandemic. About 40 Kenyans had expressed their willingness to return, the Government is ready to facilitate those Kenyans who want to come back just the way other governments did to their nationals who were in Kenya. They facilitated their nationals to go back. Facilitation is different from evacuation. For evacuation, it is the Government that pays the costs of everything, but facilitation is at the cost of an individual. That is what was done by foreign countries which facilitated their nationals to go back. In the case of Kenya, because of the lockdown, the Kenyan Government wanted to use a Dreamliner plane for facilitation of the Kenyans in Guangzhou in China. Its carrying capacity is 211 passengers. However, Kenyans who had expressed willingness of coming back were about 40. That made the flight commercially unviable for the flight operators.

The big problem is in India. This is where I want Members to listen carefully. In India, we have about 750 Kenyans. About 250 out of the 750 comprise businessmen and patients who are seeking medical treatment. They are willing to return. In fact, they have return tickets because they went for short visits such that after getting medication or doing business, they were to return. The problem they are facing now is not of their own making. They even have return tickets to come home. India is under a lockdown like many other countries. It is so vast. Kenya Airways (KQ) flies to Mumbai, but most of the Kenyans are in other States far from where our national carrier flies to. However, the Ministry is ready and is working on that facilitation by talking to the authorities to allow their movement from one State to the other. Kenya Airways is ready to fly to New Delhi where most of them can congregate to be picked. The Government said that by the end of next week, they will be ready for that facilitation.

Lastly, generally, there are approximately three million Kenyans abroad and the situation worldwide is dire. Due to high infection rates in Asia, USA and Europe, facilitation to bring these people to Kenya will complicate a lot of efforts within borders since they will require to be picked from various scattered cities all over the world that are already under lockdown. It is also good to say that - because this is a Statement - the number of Kenyans who have died abroad from COVID-19. We have five deaths in the USA and two others in other countries. In the USA, one of them was a staff of the mission, but they have not come out clear on whether the death is related to COVID-19. Overall, seven Kenyans were reported dead at the time of our meeting.

Hon. Speaker, because of time, I want to table the Statement. It is also good to note that the Ministry of Foreign Affairs, in the Supplementary Budget, has lost a lot of money. They need about Kshs4.5 billion to realise the facilitation efforts.

**An Hon. Member:** How much?

**Hon. Katoo ole Metito** (Kajiado South, JP): In terms of the Exchequer, they have not received their fourth quarter. So, they are having a lot of problems there. When we move to the next Order on the Supplementary Budget, we will discuss that. So, I want to table the Statement.

*(Hon Katoo ole Metito laid the Document on the Table)*

**Hon. Speaker:** Hon. Members, let the Statement be tabled. I am not going to allow debate. Take the Statement and go through it. As you go through what is in that Statement, take note of what you have to say when we get to this Motion. A lot of these things are related to this Motion. Almost every other day you do not want to read, but fortunately, for the information of Members, today you are free to leave this place as late as 9.00 p.m.

*(Applause)*

But, please, exercise social distancing. Because all of you have got police bodyguards and your parliamentary vehicle stickers, tonight and the days we will be here, you can drive yourself - even the staff of Parliament are at liberty to join us - to be leaving this place at 9.00 p.m. If you wish, you can extend the sitting up to that time because a lot of these things that you want us to discuss without necessarily entering into some resolution will be best at rest when we get to this Motion, so that we have a resolution. I have been following most of the comments on our social media platforms and that is why you hear me regularly talking about Hon. Millie Odhiambo. Right now she is not in her shift, but she will begin making those contributions.

Hon. Members, it is only that the country does not know, but you have made such great contributions and I think, if only you can allow we get to this Motion, the country will know that you have actually done a lot of work. I have been following. I know Hon. Passaris and Hon. Otiende Amollo are Members. Hon Makali Mulu is and of course the administrator, Hon Ngunjiri, Hon Ichung'wah, occasionally, Hon. Kimunya, Hon. Didmus Barasa and Hon. Caleb Amisi stand out with those I have mentioned. Those ones do not sleep. Hon. Florence Mutua, Hon. Beatrice Nkatha and Hon. Halima Mucheke. Hon. Kaluma is obviously indefatigable as you know. So, I know almost all of you have made some contributions to that. Until we get to this Motion, the country may not know what it is that you guys have been working on. You have done a great job.

So, let Hon. Katoo table his Statement. It can be photocopied and circulated. We have a lot of business to transact. On occasion, I have to weigh between the need for you to speak and the need for you to transact the rest of the business. For now, let us move on to the next business.

## MOTION

### CONSIDERATION OF SENATE AMENDMENTS TO THE DIVISION OF REVENUE BILL

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I beg to move that the Senate amendments to the Division of Revenue Bill (National Assembly Bill No.3 of 2020) be now considered.

You remember we passed this Bill just before we went on short recess earlier in the year. It was relayed to the other House, and they did amend what we had passed. Having considered the amendments made by the Senate, we have resolved to concur with them. The main point of departure between our proposals and those of the Senate is how to treat the shareable revenue

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that was to go to Nairobi City County for the four functions that had been transferred to the national Government.

In considering the Division of Revenue Bill, the Senate was in concurrence with the National Assembly with respect to the amount of shareable revenue. You remember there was concurrence even within the Intergovernmental Budget and Economic Council (IBEC) and the Commission on Revenue Allocation (CRA) on Ksh316.5 billion to county governments. The Senate proposed amendments to delete Clause 4(2) and (3). Specifically, the Senate deleted the original provision made by the National Assembly making provision for...

**Hon. Speaker:** Hon. Ichung'wah, my attention has been drawn to the fact that you have no face mask.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, I had a mask, but when everybody moved away from me I considered that I was all alone in this region. I am at liberty to put it back. Of course, having gone to Alliance, I have a 3M mask that is N-95.

*(Laughter)*

I can see the Leader of the Minority Party complaining that Parliament has facilitated him with a surgical mask that is three ply. They are equally good. But the N-95, with a cartridge, is much better than what you are wearing, Hon. Mbadi.

Back to business, I was saying the Senate deleted the original provision of the National Assembly that was making provision for setting aside the equitable share amount that was due to the Nairobi City County, which we had said shall be retained in the Consolidated Fund to meet part of the cost of functions transferred to the national Government. This was in line with provisions of Article 187(2) of the Constitution, which states that:

If a function or power is transferred from a government at one level to a government at the other level—

- (a) arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred; and
- (b) constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.

You will appreciate that the functions that are being transferred are largely assigned to the county government. There is also need to appreciate that there is a Deed of Transfer that was signed between the County Government of Nairobi and the national Government. There is a particular clause in the Deed that specifically states that money for these functions would come from the county revenue fund. Therefore, we find ourselves between a rock and a hard place and we have to recommend some measures. The major point of departure between the national Government and the Senate was how to effect the transfer of resources needed to fully fund the transferred functions.

We are recommending that an administrative or legal mechanism be worked out to ensure that all resources needed for the transferred functions are made available to the national

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Government to be able to perform these tasks, to avoid a protracted mediation process that may well go into the better part of the year. You remember last year but one we had a mediated version of the Division of Revenue Bill and it took us close to November to even agree on the final figures of the shareable revenue.

In the present case, the National Assembly wanted the requisite resources needed to fund the transferred functions to be explicitly retained in the Consolidated Fund to satisfy the provisions of Article 187. Alternatively, the Senate wants funds to be transferred to Nairobi City County as usual, but does not address the sticky issue of how the resources will be transferred from the Nairobi County Revenue Fund to the national Government. It is in view of this that the Committee recommends that required funds transfer arrangement can expeditiously be sought administratively or legally to ensure that all resources needed for the transferred functions from the Nairobi City County to the national Government are indeed available. The Committee recommends that this House concurs with the amendments by the Senate and, therefore, accept revision of the Schedule as well as the substitution therefore the new Schedule as proposed.

I beg to move, but also note that at the time the National Assembly was initiating and approving the Division of Revenue Bill for FY 2020/2021, even the Nairobi Metropolitan Services (NMS) had not been established. Even in our engagements as a Committee with the National Treasury and other stakeholders, it was still not clear at that time how the transferred functions would be catered for. Therefore, we acted based on what is provided for by the Constitution in Article 187. We have acted in the best interest of the county governments, and to ensure that the people of Nairobi continue receiving services, especially at this time of crisis. You remember some of those functions relate to healthcare, water provision and infrastructure development. To ensure that there is seamless flow of resources back to the national Government, I want to encourage both the national Government and the Nairobi City County Government to engage meaningfully and get an administrative or legal way within which they may transfer resources. It is just a question of sitting down and agreeing on what needs to be done and what amount of resources ought to come back to the national Government to allow the people of the great City of Nairobi to benefit from the same this year.

Finally, we must appreciate that at the time we passed this Division of Revenue Bill, the first case of COVID-19 had not been reported in this country. We are now dealing with very extraordinary times. Were it possible at this time, I would even have pleaded that we further amend the Schedule to reduce the shareable revenue that is due to the county governments. But again in the interest of avoiding protracted battles with the Senate, that can wait. I would like to appeal to all our county governments: I have seen very few of them initiating Supplementary Appropriations Bills on the revenue they have been allocated in the FY 2019/2020, to ensure that more resources go to water for cleaning hands and towards provision of PPEs for healthcare workers in the counties. The county governments should dedicate more resources to healthcare and water departments.

However, I would like to appeal to all our county governments. I have seen very few of them initiating Supplementary Appropriations Bills on the revenues they have been given for the Financial Year 2019/2020 to ensure that more resources go towards water for cleaning our hands, and provision of PPEs for healthcare workers in the counties. They, therefore, need to

dedicate more resources to healthcare and the departments dealing with water. I want to encourage county governments to look, not just at this financial year's Budget, but also to reconsider the Budget that they had proposed for the next financial year and institute posterity measures that will bring savings. This is because the impact on our revenues will not just be at the national, but also at the county level.

With those remarks, I beg to move. I request the Leader of the Minority Party, Hon. John Mbadi to second.

**Hon. Speaker:** Hon. John Mbadi, the Floor is yours.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. As I support, I just want to make this matter clear. First, it should be understood that we only disagree with the Senate when there is a reason to. It should come out clearly that this House is not at war with the Senate. When the Senate comes up with a matter that makes sense or reasonable, we consider it.

However, for Members to understand what exactly happened, I want to remind them that after some key functions of the County Government of Nairobi were transferred to the national Government, the costs for those functions were calculated and the National Treasury made a proposal that the amounts relating to those functions should be retained at the national Government level. The national Government revenue to be given to the Nairobi Metropolitan Committee that has been formed is to be spent on these functions. It made a lot of sense, and this House passed it. The Senate has, however, brought an amendment. The reason given by the Senate is that that amount earmarked for those functions shall be spent by this body that has been created. The amount of money must, however, first go to the County Revenue Fund before being given to this particular body. That is where the problem is as the reasoning of the Senate is, however, backed by law to some extent.

One, if you read Article 219 of the Constitution, it is clear that a county's share of revenue raised by the national Government shall be transferred to the county without undue delay and without deduction. However, one may reason that that only relates to the amount of money that has explicitly been appropriated to the county. That is if the Division of Revenue Bill is amended by Parliament and the money is taken off the county, then you cannot apply that Article. I agree with that, and it is at that point that I disagree with the Senate's position. What is supporting the Senate's position, however, are two things:

One, in the Deed, there is the transfer of functions from the county to the national Government organ. Those who prepared the Deed gave the responsibility of funding these functions to the county government. Therefore, when it reached that, we looked at it as the Budget and Appropriations Committee, and we were between a rock and a hard place. The Constitution, to a large extent - and that is where I want to stop... However, that also makes a provision, which if you read, clearly and keenly gives the responsibility.

I want to read Article 187(2)(a) which says that arrangements shall be put in place to ensure that the resources necessary for the performance of the function or exercise of the power are transferred. However, Article 187(2)(b) says that the constitutional responsibility for the performance of the functions or the exercise of that power shall remain with the Government, which is assigned by the Fourth Schedule. These functions which were transferred from the County Government of Nairobi to the national Government are listed in the Fourth Schedule as functions of the county.

Therefore, the provision of this Article gives the responsibility of ensuring that these functions are performed to the county. One would, therefore, interpret that to mean it is the

county to make sure that resources are available. There is, however, still a problem. This is still a problem that the Senate and the Executive must deal with. In fact, the Deed should have been clearer if you allow the county to be deciding on how the Nairobi Metropolitan Committee will be funded. Let us not run away from it.

Indeed, it is a problem and especially with a Governor called “Mr. Mike Mbuvi Sonko”. He is the one who is going to be providing money to this organ. This is something that even if we pass it as the Senate is suggesting, still, a discussion on how the smooth funding of these functions needs to be done. I fault the Executive on that. They were not diligent in preparing the transfer Deed. They, therefore, brought the problem to this House. Let the Executive team which prepared the Deed look at it and correct this mess. Otherwise, we are going to have functions transferred to a body headed by a competent Kenyan called Mr. Mbadi, yet he may not have resources.

Look at what happened the other day, the Governor refused to assent to a Supplementary Budget to get this body money to perform its functions. As I second, I foresee that still there is a problem which the Executive must fix. The President has the powers to even reject what we have suggested to help him. You know this Constitution is very nice. It gives the President power even to return the Division of Revenue Bill, actually to legislate with a veto. For us to get two-thirds to overrule him and the Senate, may not be easy. It is a tip to the Executive on what they can do.

Thank you, Hon. Speaker. I second.

**Hon. Speaker:** Hon. Millie Odhiambo, your time has not yet come. The time is coming when we get to the next Order. I am happy that today you are not going to complain that you are in Korogocho. Last week, I saw you seated somewhere which you described as Korogocho Ghetto. Hon. Members, that was just on a light touch. It is just to acknowledge that I followed what she said.

*(Question proposed)*

Leader of the Majority Party, the Floor is yours.

**Hon. A.B. Duale** (Garissa Township, JP): Thank you, Hon. Speaker. This Senate (Amendment) Bill which is before us has made me wonder. Hon. Mbadi, for the first time, has gone on record that when the President returns the Bill with a Memo, he used to say the President is legislating. On this matter, however, he is confirming that the President must legislate. That is the only route out. I slept over this matter.

There are fundamental issues in this Division of Revenue Bill this year. Even the Ksh316 billion given to the counties is unrealistic and I said it. In fact, the Senate should have given the counties the 15 per cent allowed in the Constitution, which is about Ksh270 billion. So, where are they going to get the Ksh316 billion given to them? Where will the National Treasury get it from? It is something I do not understand. It becomes law the moment we pass it. Article 219 comes to effect. You can reduce the budget of the national Government, the Judiciary, the Legislature, Commissions and Independent Offices, but you will never touch what you allocate to the counties within the reading of Article 219. The Budget and Appropriations Committee is very honest. The people who failed are those who prepared the Transfer Deed.

If you read Section 5(2) of the Deed of Transfer, then you look at the report of the Senate, you will find that Section 5(2) is very specific that the money will go to the County Revenue



Account. So, as we pass this, the National Government has two options: One, is to review the “deed plan”, which they can do. They can call the county governments...

**Hon. Speaker:** I think you said the “deed plan”.

**Hon. Aden Duale** (Garissa Township, JP): I did not say the “deed plan”; I said the “Deed of Transfer”. They need...

**Hon. Speaker:** It is the Member for Kikuyu who is trying to impute that you said the “deed plan”.

**Hon. Aden Duale** (Garissa Township, JP): You know it is because he is thinking about land throughout. As he sits here, his spirit is in the Ministry of Lands and the Commission on Lands. Where I come from, there is plenty of land. He cannot even give me half an acre. So, the President and the team from the National Treasury and the county governments, can review the Deed of Transfer and rectify Section 5(2).

The other option is for the President to exercise Article 115 because I think the thing has now become very murky. Resources follow functions. So, if you transfer functions you must also transfer resources to the person who is going to perform those functions. That is the pure reading of the Constitution and the Public Finance Management (PFM) Act. In fact, most of us, Hon. Junet and myself wanted to reject this and go to mediation. However, we realized that sometimes if the Senate found something in law, we have no reason to fight them. So, we have no choice but to support the Committee's recommendations and then the National Executive, the County of Nairobi, the Senate and ourselves. We can sit again and see how we can deal with this matter, but the bottom line is transfer of resources must follow transfer of functions. Moreover, we must make sure those resources are available.

I support, Hon. Speaker. Thank you.

**Hon. Speaker:** It is your chance the Member for Rarieda

**Hon. (Dr.) Otiende Amollo (Rarieda, ODM):** I do not wish to speak on this Hon. Speaker because I agree with those who have spoken.

**Hon. Speaker:** You know you are right on top. I am sure you may have wanted to contribute to something else. The Member for Nambale, Hon Sakwa Bunyasi, you have the Floor.

**Hon. Sakwa Bunyasi** (Nambale, ANC): I support the proposal as it stands. It is time that we tested how the systems should work. When laws are made they are not made with the persons who will hold the office in mind, but it is a system that needs to work. It is time the Governor for Nairobi - I am even surprised that he is still a Governor - learns to operate in accordance to the law but also to do what is in the interest of the public. Therefore, I support the position of the Senate if there will be any subsequent issues I am sure there are - apart from the proposals that have been made by the speakers about the options that the Executive has got - other options that were not exercised in terms of deciding whether or not the Governor should continue to exercise executive powers on this... It is a matter that the National Assembly should let go and let the Senate follow through and maybe there may be options, not only around the Executive, but also around the right and the powers of the Governor for Nairobi County and how he exercises those functions.

I support.

**Hon. Speaker:** Let us now hear Hon. Mutua Barasa.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Speaker. I rise to support. I just want to add my voice on what the Leader of Minority has said here that, yes indeed, we agree

that money must follow functions and that the role of Members of County Assemblies of allocating that money cannot be wished away. We can give it a blind eye in the COVID-19 pandemic, but going forward the assembly must discharge their role of appropriating those finances. It is after they have approved the budget of the Nairobi County that those amounts of money will now be taken to where those functions are. That said and done, I support, and by looking at the mood of the House, you can put the question.

*(Laughter)*

**Hon. Speaker:** Hon. Didmus Barasa, it is against our rules to contribute and then ask that the question be put. Hon. Makali Mulu, you have the Floor.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I also rise to support this Senate amendment. I think my colleagues, the Mover, the Seconder and Hon. Duale have already done a good job in terms of what the law requires. Moreover, this is what I want to say. The Division of Revenue Bill discusses the issue of practical allocation of resources. In this case, we are not having issues in terms of what the national Government gets and what county governments get. The issue is at the lower levels where we are asking: "How much does this particular county get in terms of allocation?" That is what we call the horizontal allocation of resources. Moreover, that is a matter of County Allocation of Revenue Act 2017. Therefore, if you look at the Constitution, the Senate has been set up to take care of the interests of the counties and this being a matter at the county level, as a House, it is important that we approve what the Senate has proposed so that those other administrative issues could be discussed later.

At the same time, if you look at what we went through last year through the 2019/2020 Division of Revenue, that is something we should avoid as a House. Even as I support I say, let us support the Senate in this matter and then those other issues can be followed up.

I support.

**Hon. Speaker:** Let us hear the Member for Tigania West.

**Hon. John Mutunga** (Tigania West, JP): Thank you, Hon. Speaker. I also rise to support the adoption of the Report. The Senate has looked at this Report, and as a Member of the Committee on Budget and Appropriations, and in our opinion we were grappling with the issues of how the resources are going to be utilized; whether the work plans of budgets of counties especially Nairobi County will be adopted and followed. Moreover, the role of Nairobi County Assembly in the management and oversight... There is a shift in terms of the governance of Nairobi County.

Hon. Speaker, I support.

**Hon. Speaker:** Hon. (Dr.) Wamalwa.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD-K): Thank you, Hon. Speaker. As I rise to support this amendment by the Senate, I want to emphasize something; that Governor Sonko will remain the Governor of Nairobi County whether we like it or not.

*(Applause)*

As the Governor, he has executive powers and was actually voted for by the people of Nairobi. We have come up with a new amorphous body, the Nairobi Metropolitan, which we do not even understand its framework of operation. It becomes very dangerous to just transfer the funds without a proper framework. As we support the Senate and as outlines under article 219 - which Hon. Mbadi has already mentioned - if the money has already gone to counties, we should not interfere. It should go to the county fund then from there, let them have a memorandum in terms of administrative functions, so that it can be transferred to Nairobi Metropolitan. This is for purposes of accountability.

I am here to support the Senate and as it goes back, let it look at that agreement between the national Government and the county. We were told last time that public participation was done after. We know very well public participation must be done on a matter when it is pre, but in this case it was done post. Let us not set a wrong precedent. I have seen in the social media Governor Sonko lamenting he signed under duress. He did not have time to read. We are asking: Where were his lawyers? Maybe it is high time we revisit the matter, re-examine it and correct where it went wrong.

**Hon. Speaker:** Is everybody supporting?

**Hon. Junet Nuh** (Suna East, ODM): Hon. Speaker, I oppose the amendment by the Senate. Let us interrogate the matter wholesomely. It is a fact that the Constitution provides an avenue for the transfer of functions from one level of government to the other. That was done constitutionally. So, it is a fact that certain functions for Nairobi County Government were transferred to the national Government. The logical thing is that resources must follow functions. For example, we have the functions of legislation and oversight. If the resources for those functions were to be domiciled in the Executive, how would we operate? In the case of Nairobi County, the functions were transferred to the National Government in broad daylight. Some of us watched the function on TV. The transfer took place in the presence of attorneys. Nobody was coerced.

Hon. Speaker, my understanding is that when they talked about county revenues, they did so symbolically that monies belonging to the county can be given to the National Government for operations of the functions that have been transferred. Even if you look at this Division of Revenue Bill, it has conditional grants from the national Government. Even though those grants are provided for in the Division of Revenue Bill, they are monies that are going to specific functions in the counties. Therefore, let us not split hairs. The Governor agreed on his own terms to transfer certain functions to the national Government. He said he did not have the required manpower and capacity to carry out those functions. He is on record.

Hon. Speaker, you cannot have your cake and eat it. If you agreed willingly to transfer your functions, you cannot, again, say you want to have the money for those functions so that you can do the work. You must decide either way – you remain with the functions and keep the money or you transfer the functions as well as the money. We are not going to play police here. I totally disagree with the Senate. This is the normal shenanigans with the Senate. They keep on saying that they are protecting the counties and yet our counties are not functioning.

The Senate has been in existence for the last seven years. There is no single county governor who has been indicted for misuse of funds and yet the Public Investments Committee (PIC) sits almost daily. You see them on TV grilling governors and that is it. So, the protection of devolution does not mean that you close your eyes to what is happening in the county. We also come from counties. There are lots of problems in the counties.

With those few remarks, I oppose. The Bill must remain as it was.

**Hon. Speaker:** Let us have the Member for Mathare.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Speaker. At the outset, I oppose this Bill. Under Article 95 of the Constitution, the National Assembly exist to resolve issues that affect the people. As an interested person coming from Nairobi City, the Senate has presented to us a dilemma in which we either agree with them or if we do not, we are considered to have been the ones who have created the problem. This problem did not emanate from the National Assembly. There are more issues than this one. My position has always been very clear with regard to Article 141 of the Constitution. Passing over this problem to the Executive only for it to be referred to us by the President is abdication of our responsibility, as a House.

Secondly, there are more issues relating to this matter. I agree with the Members who have contributed to the matter of public participation having been done after the pact. Looking at Article 187 of the Constitution, as read together with the Inter-Governmental Relations Act, there arises the question of who the county government is, as an entity executing the functions transfer deed viz-a-viz the National Executive. The county Governor, who is Mike Mbuvi Sonko, cannot purport to have been the person constituting the Nairobi County Government, which is clearly defined in the Constitution under Article 260, to the total exclusion of the Speaker, the County Assembly and all the other entities. The Governor of Nairobi County created this problem. He cannot now hold back the monies meant for the transferred functions. This Assembly must do only one thing – disagree with the Senate and let the other part take its natural cause.

I disagree, Hon. Speaker.

**Hon. Speaker:** Let us hear the Member for Limuru.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker, I oppose the Division of Revenue Bill that has come from the Senate. I know that the law might be speaking to what the Senate has done but we are boxing ourselves in that the moment we release this money under Article 219, we will have no say over it. So, we are saying we are either trashing the Nairobi Metropolitan Services, which was created by the Executive and, therefore, telling them that they are going to be answerable to the Nairobi Governor and Members of the County Assembly (MCAs) or, because we are the ones who are appropriating the money, we ensure that we do not create other crises upon the COVID-19 crisis that we already have.

Nairobi is our capital city. We already have issues of dealing with cases of COVID-19 in Nairobi. I am sure that the Nairobi Metropolitan Services has a role to play in trying to ameliorate issues of COVID-19. If the Kshs16 billion that is supposed to be taken to the Nairobi Metropolitan Services from Nairobi County is not given to them, it means that we will have crippled the Nairobi Metropolitan Services.

Hon. Speaker, it is in the public domain that the Governor of Nairobi is currently attempting to initiate a reversal of the Ded of Transfer that was executed. If that is done, it will mean that this money will go to the county government and he will do whatever else he wants to do with it. He may not have to necessarily appropriate it to the Nairobi Metropolitan Services. After all, he refused to sign the County Supplementary Appropriations Bill just because he felt that he has ower. Therefore, let us not create a crisis in the country. We are already fighting OVID-9 and many other issues that arose out of it.

I oppose

**Hon. Speaker:** Let me hear another Member from Nairobi; Hon. Passaris. There is another one who is wearing a red mask similar to the colour of the seats. He looks like the seats. Is it Hon. Gakuya?

**Hon. (Ms.) Esther Passaris** (Nairobi CWR, ODM): Thank you, Hon. Speaker. I oppose. I am sure that many of other elected leaders in Nairobi will agree with me that we have had total confusion with the way the City is being managed. As we all agree, this is the Capital City. When the Governor went and signed an agreement with the Executive to transfer some functions of the county government to the national Government, it was because he had reached a point where he accepted he could not manage Nairobi County affairs effectively. The county was bleeding and requiring leadership. He transferred various functions to the national Government, and now we have the Nairobi Metropolitan Services Improvement Project.

The leadership of Nairobi met with Maj-Gen. Badi discuss how we can move ahead so that we can, as elected leaders of Nairobi, work together in ensuring that service delivery does not suffer. You cannot transfer functions without money. We cannot expect those functions to be done without money. Money is absolutely necessary for the county to perform its standard functions. Right now, Nairobi is an epicentre and we can see governors without issues. For example, we can see what the governor of Mombasa Joho is doing.

Right now, Nairobi is at a standstill. We are not seeing leadership, but a tug of war. I believe that when the governor was transferring these functions, he had reached the point where he realised he needed help. What better place for him to go than to the Executive? The Executive said it was fine with this and took over those functions. He remained the governor, but the functions were transferred.

Now, Nairobi is being held to ransom. To be honest the office is bigger than the individual. An individual cannot hold this county to ransom. He may be elected by the majority and the people who elected him witnessed as he handed over the functions to the Executive.

Many countries in the world the Executive runs major cities, for instance, Paris. Right now, we have the office of Maj-Gen. Badi and the county assembly. The county assembly was not considered when the governor transferred the various functions to the Nairobi Metropolitan Services through the Executive.

I believe what the Senate is trying to do is wrong. We should allow what has already happened to take shape so that Nairobi can start seeing some leadership. As Nairobi MPs, we feel we have been left out in the running of Nairobi. This is because we cannot answer questions raised by various constituents as to why somethings are not happening. We have no answers and that is why we need to ensure sanity in the leadership of Nairobi.

Therefore, I oppose the Senate amendments because Nairobi Metropolitan Services should have money to perform functions which the governor himself gave to the Executive.

**Hon. Speaker:** Hon. Members, very soon I will be calling upon you to make a decision on this Bill. Let us have Hon. Gakuya.

**Hon. James Gakuya** (Embakasi North, JP): Thank you, Hon. Speaker for giving me this opportunity. I rise to oppose this Bill. Taking into consideration we have witnessed a lot of leadership drama in Nairobi County. In fact, the Governor of Nairobi County was not at gunpoint when he signed this Ded. I believe he did so willingly.

It is true that there was enough time for the Governor to converge his team and take position. I believe when he took that position he was driven by the will of the majority of his management. As we stand, it will be very unfortunate to start thinking that money meant for

transferred functions will be disbursed directly to the county government. This is because it might be difficult for the Governor to transfer this money for the needs of Nairobi Metropolitan Services.

In this case, if we cannot make a decision on how these monies will be directed, we cannot leave this issue without ensuring that this House takes a position and ensures these monies are protected. We do not want to have drama after disbursement. So, for purposes of discharge of services in Nairobi, I believe the right direction is to ensure we get a formula on how these monies will go directly to Nairobi Metropolitan Services without necessarily seeing the light of day through Nairobi County.

I believe this is the only way through which Nairobians will receive the services they need. When Sonko decided to surrender these services, it is true he must have evaluated himself and found he was a failure to tackle the problems of Nairobi. That is why he took a direction of handing over these particular functions. At this particular time and moment, we cannot allow the same Governor to be a road block towards the same functions he surrendered.

Therefore, I stand to oppose and ask Parliament to take a stand on the way forward.

**Hon. Speaker:** Let us hear the Member for Wajir North.

**Hon. Ibrahim Ahmed** (Wajir North, ODM): Thank you, Hon. Speaker. I also rise to oppose this Amendment Bill. The fact is that, whenever you transfer functions, you must transfer resources commensurate to those functions. We are in a very difficult period. This is an extraordinary time that requires extraordinary actions from legislators.

The functions were transferred to the National Government and Nairobi Metropolitan Services does not fall under the county assembly in terms of oversight. It falls under the National Government and our Departmental Committee. Since the transfer of functions was done, I wonder why we are discussing that resources should be taken to the county government. A county government which we are already cognisant of how it is doing in terms of performance.

Notwithstanding that the deal was not signed under duress; we all watched and it was done with a lot of celebrations from both parties and free negotiations made. We cannot afford to hold any resources during this difficult period. Resources must be transferred to Nairobi Metropolitan Services so they can execute their functions diligently to the satisfaction of the people of Nairobi County. All of us live in Nairobi County and we do not want to be in a state of mess.

We strongly disagree with the Senate and agree with the fact that these monies must be channelled to Nairobi Metropolitan Services with or without mediation. So, that they can execute their functions diligently to the satisfaction of Kenyans.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Mbarire I can see you have put a request.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): No, Hon. Speaker. I want to speak to the next Order.

**Hon. Speaker:** Hon. Lessonet, I can see you are next.

**Hon. Moses Lessonet** (Eldama Ravine, JP): Thank you, Hon. Speaker. As the Budget and Appropriations Committee, we went through the sentiments given by Members. I want to inform Members as I support this Motion, that this is the Division of Revenue Bill which shares monies between the two levels of Government.

At this stage of this Bill we do not know how much money is for the Nairobi County Government. This is because the Division of Revenue Bill shares monies between the two levels

of Government. Once this Bill is assented to, it will come up with the County Allocation of Revenue Bill. This Bill will determine how much money will go to Nairobi County Government from which the county assembly will determine the resources to go to the functions transferred to the Nairobi Metropolitan Services.

It is not our mandate, and if you read Article 187(2)(b) of the Constitution it states:

(b) “Constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule”.

This tells you that despite these functions having been transferred to Nairobi Metropolitan Services it is a mess. It is still the responsibility of Nairobi County Government to oversee the utilisation of these funds.

I just want to beseech Members that let us agree with the Senate so that we do not go through a very protracted process that may even take us to court. You never know. When matters go to court, this NMS will remain dysfunctional as long as somebody is in court. So, the position which I have seen Members agreeing with or opposing is where we were as the Budget and Appropriations Committee. That was our original position. We originated that at the beginning. We have gone through those motions and as a Committee, we have found it fit that let us agree with the Senate that this money first goes to the Nairobi County Assembly from where they will appropriate and decide how much is for the functions which have been transferred to NMS.

I support. Thank you, Hon. Speaker.

**Hon. Speaker:** Let us hear Hon. Ochanda.

**Hon. Gideon Ochanda** (Bondo, ODM): Thank you, Hon. Speaker. I think it is a second week in a row that this House is going on record in terms of passing a law or legislation and also extending a very serious caution. Last week, this House extended a very serious caution on the VAT amendment. We passed it and the caution was there. We did with a caveat and it passed. This time round, our Leader of the Minority Party is also indicating to us very clearly that the law has been followed. The Senate has really followed in terms of what was supposed to happen, but I think some of the Members are discussing the caution that he was placing. There is a caution that as we pass this as Parliament, the Executive needs to know that there is likely to be a problem. That problem is, for example, a governor who had agreed may turn against what he had agreed on. That is the caution that Hon. Mbadi is trying to bring around.

Therefore, for purposes of passing this legislation, we are in order. In my view, we need to support what the Senate has brought but we need to be live to two things. Number one is exactly what Hon. Lessonet is bringing that time will come that, out of the Kshs361 billion that we are taking to the counties, a portion will go to Nairobi. If it will go to Nairobi, what portion of the functions that have been removed from Nairobi will be taken to that other body that is supposed to perform the functions of Nairobi? I think that is at another stage. It is not at this stage. I want to believe that if you guide the House properly, we need to pass this such that we allow the Senate to go on with this and we support what has been brought in.

Thank you.

**Hon. Speaker:** Leader of the Majority Party, what is your point of order?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, either way, we have to make a decision, but now let me make it very clear. The Division of Revenue Bill is a Bill of this House. It is us who originated it and we have put the Ksh15 billion to go direct to the national Government. That is what we did. However, the Senate amended it. The reason they amended is

because the Transfer of Deed was faulty in Section 5(2) subject to interpretation. I agree with Hon. Junet. I have a very long opinion from the State Law Office which I read and I am convinced. He wrote it to the Senate. The Senate did not agree with the interpretation. As lawyers, they have different interpretations.

For Nairobi Members of Parliament and all those who spoke, we have not reached where we should fund somewhere. Here we only have two routes. We reject the Senate amendment, which is fine. We form a Mediation Committee. The Senate will still use Section 5(2). If in the process of the mediation the national Government and the Nairobi County Government led by Hon. Sonko goes back and review Section 5(2) of that Transfer Deed and corrects it, then we will be home and dry. The money will go to...

**Hon. Speaker:** Leader of the Majority Party, you claimed to rise on a point of order. Now you are contributing.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, if you allow me because I have realised there are only two routes remaining for us because we have to put the Question. Either we go to mediation...

**Hon. Speaker:** Can we call the Mover to reply?

**Hon. Aden Duale** (Garissa Township, JP): If we reject, we go to mediation. If we agree with the Senate, then we can have time and agree if the President can call the same meeting or even use his powers under Article 115 of the Constitution. Either way, those are the only two routes. The Mover should be called to reply because I have heavy business to attend to.

**Hon. Speaker:** Hon. Millie, is it not possible that we can... Let me hear you last because you belong to the night shift. Somebody else who came late also belongs to that one. Hon. (Dr.) Tuitoek must be. I always see his posts late.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Speaker. I think technology is very unfriendly to me because I wanted to read Article 187 of the Constitution. Article 187(2) that the Members are referring to says:

“If a function or power is transferred from a government at one level to a government at the other level-

- (a) arrangements shall be put in place to ensure that resources necessary for the performance of the function or exercise of the power are transferred.”

My understanding is, if we do not transfer, we are not actually following (a). If we follow the Senate route we are not obliging (a). On the other hand, we have (b) that says:

“constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule.”

Depending on whether I am a lawyer for Sonko or for President Uhuru... Let me presume that I am the lawyer for President Uhuru for now. I would interpret this to mean that the constitutional responsibility that they are referring to here in the schedule basically means that you are not taking away, for instance, the right for counties to do ECD. We are not amending the Constitution. That right remains a constitutional right. Nonetheless, the powers have been transferred temporarily. Because they are transferred temporarily, it means the resources ought to follow the functions according to (a).

However, I understand Hon. Duale and Hon. Mbadi that the statement they are saying here is not just like me who says things in black and white. I have been listening to them very



carefully. What they are basically saying is that, let us be smart and outsmart Senate. That is what they are telling you here. They are telling you that, if we actually reject it, then this will go back to mediation and we are actually supporting Sonko. That is what you are telling me. If I was following legally as the lawyer for President Uhuru Kenyatta, I would rather go by rejecting what the Senate has sent, but going as the lawyer and the politician, I would rather support the Senate and support what everybody has done, which I do not agree with constitutionally that the President should use his veto power sparingly.

As his advisor, I would now urge the President to use his veto power. This is the sparing moment that he needs to use because the governor has completely failed to exercise his functions. If you go round this city, slums are sprouting in the middle of suburbs. You are no longer safe. Rubbish is all over the place and then we are saying that we want to leave this again for another round of politics. Let us be serious. We can only deal with one problem at a time. We cannot deal with COVID-19 as a problem and Sonko as another problem or President Uhuru Kenyatta. I want to support the Senate. Exercise that veto power that I do not normally support you on.

Thank you.

**Hon. Speaker:** Leader of the Majority Party, be in the House. Hon. Members, this, I will do without being moved because I can see that you still have a lot more work ahead of you.

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

Mover, you have the Floor.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. I want to thank all the Members who have contributed — those in support and those opposing — all for a good reason. All we need to understand is this; even for those that oppose the Motion for agreement with the Senate, what you want to achieve will be easier achieved through agreement and not by opposing. If you oppose, as the Leader of the Majority, the Leader of the Minority and Hon. Odhiambo-Mabona eloquently explained, you will be taking this into a very protracted process and you will be punishing the people of Nairobi.

Therefore, I beg to reply and urge the House to support the agreement with the Senate for us to avail resources to the people of Nairobi in the quickest manner and the shortest time possible. Under different circumstances, a decision would have been otherwise, but under the current circumstances, this is the best decision and the most expedite way to ensure that the people of Nairobi benefit from the resources in the next financial year.

With that Hon. Speaker, I beg to reply.

*(Question put and agreed to)*

## PROCEDURAL MOTION

### EXTENSION OF SITTING TIME

**Hon. Speaker:** Leader of the Majority, move the Motion.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move the following Procedural Motion :

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That pursuant to Standing Order 30(3)(a), this House resolves to extend its sitting today until conclusion of business appearing as Order Nos. 9 and 10.

Hon. Speaker, we sit once a week. The next time we will sit will be on Wednesday. I need to urge my colleagues to understand that these two items are very important, that is the Tax Laws and the Supplementary Report of the Budget and Appropriations Committee. On Wednesday, next week when we come back, we will only deal with the Motion in the morning, then the Supplementary Appropriation Bill and the Teachers Service Commission Motion. We will move very first. So, let us finish those two items.

I beg to move and ask Hon. John Mbadi to second.

**Hon. John Mbadi** (Suba South, ODM): Nothing much to add, Hon. Speaker.

I second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Speaker:** Hon. Members, for those who are out and who may not have heard my Communication earlier, I am sure the Leader of the Majority and the Leader of the Minority — both of whom were with me in the House Business Committee meeting — can attest to it that it has been resolved that Members of Parliament and parliamentary staff will transact business irrespective of the hour the curfew commences.

Hon. Members, as you are aware, the Departmental Committee on Finance and National Planning has been conducting public hearings on the Tax Laws (Amendment) Bill, (National Assembly) Bill (No.8 of 2020) in accordance with the provisions of Article 118 of the Constitution and Standing Order No.127. As you will recall, the Tax Laws (Amendment) Bill amends several tax related laws in order to implement various measures meant to cushion Kenyans from the adverse economic effects with COVID-19 pandemic.

The Committee Chairperson, Hon. Joseph Limo, has informed me that during public participation, the Committee received various views and submissions from the public, stakeholders and even Hon. Members of this House, on how the Bill could be improved. Indeed, Hon. Limo did disclose to the House while moving the Bill for second reading this morning. The submissions covers a wide range of issues, some of which may not be contained in the Bill as published, but would greatly improve the mitigation measures.

To this end, Hon. Members, given the need to act in the best interest of the public during the unfamiliar times in which we find ourselves in, I am inclined to allow the consideration by the House of amendments, incorporating the useful proposals from the public and other stakeholders as well as Members as contemplated under Article 119(1)(b) of the Constitution, regarding public participation and involvement of the public in legislative business of the House.

Consequently, in order to enable the House to consider the various proposals made by the public, I do hereby exempt the following proposed amendments as listed in today's Order Paper from the provisions of Standing Order 133(5):

- (1) The proposed amendments to the Retirement Benefits Act of 1997
- (2) The proposed amendment to the Law of Contract Act Cap 23
- (3) The proposed amendments to the Banking Act Cap 488
- (4) The proposed amendments to the Employment Act No.11 of 2007

Hon. Members, the above-mentioned amendments will be moved by the Leader of the Majority Party and the Chairperson of the Departmental Committee on Finance and National

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Planning respectively. The said amendments will be considered at the Committee of the whole House together with the rest of the amendments when the House enters into Order No.9.

Hon. Members, there were two other proposed amendments which were brought to me at 1:30 p.m. — one by the Hon. Peter Kaluma and another by Hon. Anthony Oluoch — clearly outside the provisions of the Standing Orders and also in a big way, not availing themselves to the process of public participation, which would have also involved taking the views of the Cabinet Secretary for National Treasury.

I accordingly rejected those two proposed amendments for the reasons that they were going to violate Article 114 of the Constitution.

The House is accordingly guided. I thank you. Next order!

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

### SENATE AMENDMENTS TO THE DIVISION OF REVENUE BILL

**Hon. Chairman:** Hon. Members, we will start with the Committee of the whole House on the Senate Amendments to the Division of Revenue Bill. Members, we will be very fast because you understand the extraordinary times. So, we will move pretty fast. Be keen.

#### *Clause 4*

THAT, Clause 4 of the Bill be amended by-

- (a) deleting sub-clause (2); and
- (b) deleting sub-clause (3)

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Clause 4 as amended agreed to)*

#### *Schedule*

The Schedule to the Bill was deleted and substituted with the following new Schedule-

**SCHEDULE II****ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2020/21**

| Type/level of allocation  | Amount in Ksh.           | Percentage (%) of 2016/17 audited and approved revenue i.e. Ksh.1,357,698 Million |
|---|--------------------------|---|
| <b>A. Total Sharable Revenue</b>  | <b>1,856,700,000,000</b> |   |
| <b>B. National Government*</b>  | <b>1,533,411,510,000</b> |   |
| <b>Of which:</b>  |                          |   |
| 1. <i>Leasing of Medical Equipment</i>  | 6,205,000,000            |   |
| 2. <i>Compensation for user fees forgone</i>                                    | 900,000,000              |   |
| 3. <i>Level 5 hospitals</i>   | 4,326,000,000            |   |
| 4. <i>Supplement for construction of county headquarters</i>                    | 300,000,000              |   |
| 5. <i>Rehabilitation of Youth Polytechnics</i>                                  | 2,000,000,000            |   |
| <b>C. Equalization Fund</b>   | <b>6,788,490,000</b>     | <b>0.50%</b>  |
|   |                          |   |
| <b>D. County equitable share</b>  | <b>316,500,000,000</b>   | <b>23.31%</b>   |
| Of Which Nairobi City County Equitable Share to cater for transferred functions | 15,951,600,000**         |   |
| County Equitable share (excluding Nairobi City County)                          | 300,548,400,000          |   |

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| Type/level of allocation   | Amount in Ksh.         | Percentage (%) of 2016/17 audited and approved revenue i.e. Ksh.1,357,698 Million |
|--|------------------------|---|
| <b>Memo items</b>  |                        |   |
| <b>1. County equitable share</b>   | <b>316,500,000,000</b> |   |
| <b>2. Additional conditional allocations(National Government share of Revenue) of which;</b> | <b>13,731,000,000</b>  |   |
| 2.1. Leasing of Medical Equipment  | 6,205,000,000          |   |
| 2.2 Compensation for user fees forgone   | 900,000,000            |   |
| 2.3 Level 5 hospitals  | 4,326,000,000          |   |
| 2.4 Supplement for construction of county headquarters                                       | 300,000,000            |   |
| 2.5 Rehabilitation of Youth Polytechnics   | 2,000,000,000          |   |
|  |                        |   |
| <b>3. Allocation from Fuel Levy Fund (15%)</b>   | <b>9,433,265,625</b>   |   |
| <b>4. Conditional allocations (Loans &amp; grants) of which:</b>                             | <b>30,204,347,510</b>  |   |
| 4.1 IDA-Kenya Devolution Support Program (KDSP) (Level 1)                                    | 2,115,000,000          |   |
| 4.2 IDA-Transforming Health Systems for Universal Care Project                               | 4,345,375,741          |   |
| 4.3 DANIDA-Universal Healthcare For Devolved   |                        |   |

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| <b>Type/level of allocation</b>   | <b>Amount in Ksh.</b>  | <b>Percentage (%) of 2016/17 audited and approved revenue i.e. Ksh.1,357,698 Million</b> |
|---|------------------------|--|
| <i>System Program</i>   | 900,000,000            |  |
| <i>4.4 IDA-National Agriculture &amp; Rural Inclusive Growth Project (NARIGP)</i>                     | 4,261,646,438          |  |
| <i>4.5 EU-Instruments for Devolution Advice and Support (IDEAS)</i>                                   | 216,014,391            |  |
| <i>4.6 IDA (World Bank) - Kenya Climate Smart Agriculture Project (KCSAP)</i>                         | 7,119,726,782          |  |
| <i>4.7 World Bank- Kenya Urban Support Program(KUSP)- UDG</i>   | 6,366,000,000          |  |
| <i>4.8 IDA- Water and Sanitation Development Project (WSDP)</i>                                       | 3,400,000,000          |  |
| <i>4.9 Sweden Agriculture Sector Development Programme II ( ASDP II)</i>                              | 652,584,158            |  |
| <i>4.10 EU- Water Tower Protection and Climate Change Mitigation and Adaptation Programme (Water)</i> | 528,000,000            |  |
| <i>4.11 Drought Resilience Programme in Northern Kenya</i>  | 300,000,000            |  |
| <b>Total County Allocations= (1+2+3+4)</b>  | <b>369,868,613,135</b> | <b>27.24%</b>  |

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof)*

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*be inserted, put and agreed to)*

*(Schedule as amended agreed to)*

Let me call the Mover to move reporting. We are now finalising the Senate Amendments to the Division of Revenue Bill.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Chairman, I beg to move that the Committee reports to the House its consideration of the Senate Amendments to the Division of Revenue Bill (National Assembly Bill No. 3 of 2020) and its approval thereof without amendments.

**Hon. Chairman:** We are through with that particular Bill, Hon. Members. So, we will move to the next one which is the Tax Laws (Amendment) Bill (National Assembly Bill No. 8 of 2020).

#### THE TAX LAWS (AMENDMENT) BILL

##### *Schedule*

##### *Provisions Relating to the Income Tax (Cap.470)*

*(Sections 2 and 10(1) agreed to)*

##### *Section 12C (1)*

**Hon. Chairman:** Let us have the Mover, Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(i) deleting the words “five hundred thousand shillings” appearing in the proposed new section 12C (1) and substituting therefor the words “one million shillings”;

The justification for this is that the proposed amendment was to start the threshold from Ksh500,000. The Members of the Committee feel that Ksh500,000 threshold is low. So, we are proposing to move it to Ksh1million and above for turnover tax.

*(Question of the amendment proposed)*

**Hon. Chairman:** I do not see interest to contribute to the amendment. So, I will put the Question.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Section 12C (1) as amended agreed to)*

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*(Section 15(2)(ab) agreed to)*

*Sections 15(2)(h)(s)(ss)(u)(v) and (x)*

**Hon. Chairman:** We have amendments there. So, we will have the Mover. Proceed, Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, the section has been proposed as a long list. However, it has several issues. So, I will move one by one.

Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(ii) deleting the proposed amendment to Section 15(2)(h);

The purpose of this particular amendment is to continue exempting professional bodies from taxation to promote professionalism.

Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(iii) deleting the proposed amendments to Section 15(2)(s);

This amendment seeks to exempt legal cost incurred in investment in shares and similar securities from being taxed to encourage investment in Nairobi Securities Exchange (NSE).

Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(iii) deleting the proposed amendments to Section 15(2)(ss);

**Hon. Chairman:** Hon. Limo, I want you to deal with all the amendments and then we make a decision. You can give reasons for all those small changes and then we make a decision.

**Hon. Joseph Limo** (Kipkelion East, JP): Al right. I move to the next proposed amendment to Section 15(2)(ss). This amendment is still on securities. Therefore, it is the same as what I had explained - to promote investment.

The amendment in Section 15(2)(u) is on expenditure of social responsibility. If you build a school for a community, it used to attract some exemptions in taxation. However, it was brought back. We propose it to remain, so that it can promote social responsibility.

I am not sure whether you had called up to Section 15(2)(v).

**Hon. Chairman:** I had done it.

**Hon. Joseph Limo** (Kipkelion East, JP): This is to save employers from being taxed on subscriptions that they pay on behalf of their employees. In most cases, it is part of the contracts they have entered in their appointment letters.

**Hon. Chairman:** Okay, are you through Hon. Limo? Proceed Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Was it including Section 15(2)(x)?

**Hon. Chairman:** All of them. The ones we are dealing with are Section 15(2)(h), (s), (ss), (u), (v) and (x).



**Hon. Joseph Limo** (Kipkelion East, JP): Section 15(2)(x) is what I had explained earlier on expenditure on construction of public utilities like schools, hospitals and social infrastructure.

**Hon. Chairman:** Very well.

*(Question of the amendment proposed)*

Proceed, Hon. Mbadi, and two other speakers to follow.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Chairman. I support although there are certain provisions there that could have agreed with the National Treasury. Maybe going forward, for example, the subscriptions paid by employers on behalf of employees for being members of clubs are luxuries which should be taxed. Going forward, I urge the Committee that they should reconsider some of these things. These are luxuries which over the years have been left untaxed but they should be taxed.

However, Hon. Chairman, because of what we want to achieve, I support.

**The Chairman:** Very well. Hon. Member for Makueni, you are in a completely unfamiliar territory.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Chair. I want to support the amendments. This is part of the structure that will make sure that businesses are cushioned during this difficult time of COVID-19. It is also a good platform for businesses to normalise after COVID-19.

I support.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Proposed amendments to Sections 15(2)(h), 15(2)(s), 15(2)(ss), 15(2)(u), 15(2)(v) and 15(2)(x)  
deleted)*

### *Section 22C*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chair, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(viii) deleting the proposed amendment to section 22C;

This is on the registered home ownership scheme which was introduced last year to promote saving by Kenyans to own homes, in line with the Big Four Agenda.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Proposed amendment to Section 22C deleted)*

*Section 34 (2)(o)*

**Hon. Chairman:** Order Members. You are distracting the Chair from having a clear view.

**Hon. Joseph Limo** (Kipkelion East, JP): Indeed Hon. Chair, it is like there is a catwalk in front of me.

**Hon. Chairman:** No. Hon. Limo you are out of order. It is not for you to make the decisions of whether it is a dog or what other walk it is.

*(Laughter)*

What is it Leader of Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chair, well the other view was better.

**Hon. Chairman:** Well, I am not sure because I am currently not in that position. Currently, I am blind to every other, I am viewing Hon. Limo directly.

**Hon. Joseph Limo** (Kipkelion East, JP): Majority Leader, you were right because all the eyes were directed in that direction.

I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(ix) deleting the word “aircraft” appearing in the proposed amendment to section 34(2)(o) and substituting therefor the words “aviation insurance”;

The justification for this is that there was a proposal to encourage all insurance in the airline business to be acquired in Kenya. The players proposed that instead of us talking about aircraft, we should talk about aviation insurance so that it covers all issues surrounding the insurance industry including aircraft. This helps widen the scope.

*(Question of the amendment proposed)*

*(Question, that the word to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put  
and agreed to)*

*(Section 34(2)(o) as amended agreed to)*

*(Section 34(2)(p) and 35(1) agreed to)*

*Section 133*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(x) deleting the expression “30th August, 2020” appearing in the proposed new section 133(6) and substituting therefor the expression “31st December, 2021”;

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Capital deductions have been amended in one way or the other. The purpose of this amendment is to save those who are already in the programme so that it is not implemented immediately but give them some time before implementation. This is because some of them even started in January this year.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Section 133as amended agreed to)*

*(Paragraphs 4, 7, 9 and 18 of the First Schedule agreed to)*

*Paragraph 22 of the First Schedule*

**Hon. Chairman :** Let us have the Mover.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:  
THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(xi) deleting the proposed amendment to paragraph 22 of the First Schedule;

The amendment which was being moved was not very clear whether it was referring to the Kenya Government officers or the defunct East African Community employees. Therefore, we decided to remove it for further consultations. It was talking about *per diem* which is an allowance given to an employee to perform a function. It is not an income as such. Therefore, we opted to delete so that we find out what it was referring to. It was a risky amendment.

**Hon. Chairman:** So, the proposal by the Mover, for information of Members, is a deletion.

*(Question of the amendment proposed)*

There is no major interest in this. I will go ahead and put the Question.

*(Question, that the words to be left  
out be left out, put and agreed to)*

*(Proposed amendments to Paragraph 22 of the First Schedule deleted)*

*(Paragraphs 25, 28, 29, 30, 31, 32, 33 and 34 agreed to)*

*Paragraph 35 of the First Schedule*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

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THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(xii) deleting the proposed amendment to paragraph 35 of the First Schedule;

The reason for the amendment is that it was to introduce tax on Post Bank Savings Account. We considered that this saving account is a very old account which does not even attract any other charges. Even Post Bank itself does not offer loans. So, taxing it would make it very difficult for Post Bank to operate. We, therefore, propose to delete it.

**Hon. Chairman:** Hon. Members, the proposal by the Chairman is a deletion.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Proposed amendments to Paragraph 35 of the First Schedule deleted)*

*Paragraph 36 of the First Schedule*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(xiii) deleting the proposed amendment to paragraph 36 of the First

Schedule and substituting therefor the following new amendment —

Paragraph 36

Delete sub-paragraphs (a), (b) and (e).

This was an introduction of tax on sale or transfer of family house or land.

**Hon. Chairman:** Please concentrate.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, our view is that when you sell a personal house, it is not business. Maybe you are selling so that you can buy a better one or you are selling and then get an alternative asset. Therefore, it is not business. So, we said it is not good to tax it.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Proposed amendments to Paragraph 36 of the First Schedule deleted)*

**Hon. Chairman:** I am sorry for those Members who did not catch my eye. Is that Hon. Oundo? Who is the Member who wanted to contribute on this one? It is overtaken by events but contribute to the next amendments, please.

*(Paragraphs 40 and 41 of the First Schedule agreed to)*

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*Paragraphs 44 and 45 of the First Schedule*

**Hon. Chairman:** Who is this Member seated close here? Proceed, Mover.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470) by—

(xiv) deleting the proposed amendment to paragraph 44 of the First Schedule;

(xv) deleting the proposed amendment to paragraph 45 of the First Schedule;

Hon. Chairman, Paragraph 44 is on registered home ownership savings plan, which would help individuals to save for the purpose of investing in the housing sector.

Paragraph 45 is on National Social Security Fund (NSSF). These two were being brought into the taxation bracket. If you bring NSSF into taxation, the savings by members will be negatively impacted. Therefore, we propose to delete them.

*(Question of the amendment proposed)*

**Hon. Chairman:** Please, let me see the interest of Members. Who is that Member at the farthest end? It is difficult for me to pick him from here. There is also a Member standing. It is your chance, Hon. Member, if you want to speak.

*(Question, that the words to be left out be left out, put and agreed to)*

*(Proposed amendments to Paragraphs 44 and 45 of the First Schedule deleted)*

*(Paragraphs 46 and 47 of the First Schedule agreed to)*

*Paragraphs 50, 51 and 53 of the First Schedule*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470) by—

(xvi) deleting the proposed amendment to paragraph 50 of the First Schedule;

(xvii) deleting the proposed amendment to paragraph 51 of the First Schedule;

(xviii) deleting the proposed amendment to paragraph 53 of the First Schedule

Hon. Chairman, Paragraph 50 is on retirement savings plans. If we tax them, it is going to negatively impact on retirees' savings and discourage the culture of saving.

Paragraph 51 is on listed bonds and securities. If we tax this, it will make Kenya unattractive to investors.

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Paragraph 53 is on income from employment paid in form of bonuses, overtime and retirement. This one also will reduce payout to retirees if it is brought on board the taxation bracket.

*(Question of the amendments proposed)*

**Hon. Chairman:** Hon. Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Hon. Chairman, these are listed bonds. Bonds are actually investments on which people make interest. Why are we exempting them from tax? I agree with the others, but not the one on paragraph 51; it should not be exempted.

Hon. Bunyasi.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, let me give information. These bonds are for the good of the Government.

**Hon. Chairman:** Hon. Limo, I have not given you the Floor yet. I am with Hon. Bunyasi here, who is a Member of your Committee.

*(Hon. Joseph Limo spoke off record)*

Do not worry about that. Let us have Hon. Bunyasi. Should we need any clarification, we will call upon you to clarify, Hon. Limo. We know you can do it very well.

Hon. Bunyasi.

**Hon. Sakwa Bunyasi** (Nambale, ANC): We will be creating a very big loophole. All income earned other than that you are exempting directly from taxation should eventually be taxable. We have just exempted savings in respect of retirement schemes. However, even in respect of such savings, whenever you eventually draw the money, it should be taxed. States even tax retirement proceeds of deceased people. I think we are setting big loopholes as we rush through this thing. We need to think through it.

**Hon. Chairman:** So, are you supporting or opposing?

**Hon. Sakwa Bunyasi** (Nambale, ANC): I oppose.

**Hon. Chairman:** Hon. Limo, see if you can make it clear and convince the Members.

**Hon. Joseph Limo** (Kipkelion East, JP): I want to bring to the attention of hon. Members that these particular bonds include securities used to raise funds for infrastructure. This is, therefore, in the interest of the Government. If you are not attractive, then no one will buy your bonds.

**Hon. Chairman:** I can see there are issues here. Let us have Hon. Mbadi and he could probably be the last one.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Chairman. Just two quick things: It is true that retirement benefits are taxed but they should be taxed at the point of retirement. If you bring it to taxation at this point, you will be double taxing the same individual.

Secondly, on the issue of bonds, we must make them as cheap as possible. The moment you start taxing bonds, for people to accept to buy them, the Government has to increase or give higher rates of return, which in effect will impact on the taxpayers you want to protect. No one will accept to shed off part of their earnings without compensation. The more you tax the returns on bonds, the more costly the bonds will be. I agree with the Committee that we cushion these bonds from taxation to protect our revenue from going into settling public debts.

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**Hon. Chairman:** Hon. Members, make your decision. You have heard arguments from both sides.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Proposed amendments to Paragraphs 50, 51, and 53 of the First Schedule deleted)*

*(Paragraphs 52,55 and 56 of the First Schedule agreed to)*

*Paragraph 60 of the First Schedule*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(xix) deleting the proposed amendment to paragraph 60 of the First Schedule;

This is on green bonds. These are infrastructural bonds that are raised for the purpose of investing in green projects. This was introduced in the Finance Bill, 2019. We are proposing that it be given more time to run before a decision can be made to impose tax.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Proposed amendments to Paragraph 60 of the First Schedule deleted)*

*(Part II of the First Schedule agreed to)*

*(Second Schedule agreed to)*

*(Third Schedule Head A agreed to)*

*Paragraph 2(a) of Head B of the Third Schedule*

**Hon. Chairman:** Mover.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(a) in the proposed amendments to the Income Tax Act (Cap. 470), by—

(xx) deleting the proposed new item (viii) of paragraph 2(a) of Head B (Rates of Tax) of the Third Schedule and substituting therefor the following new item—

(viii) For the year of income 2020  
and each subsequent year of 5.00  
income.

The purpose of this amendment is to introduce number 5 because the current Bill had omitted it. It was a reduction of income tax from the current 30 per cent to 25 per cent. This is just to correct an error in the Bill.

*(Question of the amendment proposed)*

*(Question, that the words be left out be left out,  
put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Paragraph 2(a) of Head B of the Third Schedule as amended agreed to)*

*(Paragraphs 2(c), 2(d), 2(e), (g)(i), (k), and (l)  
of Head B of the Third Schedule agreed to)*

*New Paragraph 2m of Head B of the Third Schedule*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move...

**Hon. Chairman:** Hon. Limo, you do not have an amendment on that one.

**Hon. Joseph Limo** (Kipkelion East, JP): Which one is that?

**Hon. Chairman:** We are dealing with Paragraph 2m which has a series of those other ones.

*(New 2m of Head B of the Third Schedule agreed to)*

*Paragraph 3 of Head B of the Third Schedule*

**Hon. Chairman:** Hon. Members, just a minute. Let me consult on this one.

*(Hon. Chairman consulted with the Clerk-at-the-Table)*

Let us have the Mover. We are now dealing with Paragraph 3. There is a small mix up in the list.

Hon. Chair of the Committee, I am sure you are able to pick it – Paragraph 3.

**Hon. Joseph Limo** (Kipkelion East, JP): I beg to move:

THAT, the Schedule be amended—

- (a) in the proposed amendments to the Income Tax Act (Cap. 470), by—
  - (xxi) Inserting the following proviso to the new paragraph (q) in the proposed amendment to paragraph 3 of the Third Schedule –
  - Provided that with regard to transportation of goods, the rate shall not be applicable to East African Community citizens.



This is to introduce a proviso to the amendment which was being done in the Bill so that it could recognise the East African Protocol to exclude East African Community citizens when it comes to transportation of goods.

*(Question of the amendment proposed)*

*(Question, that the words to be inserted  
be inserted, put and agreed to)*

*(Paragraph 3 of Head B of the Third Schedule as amended agreed to)*

*(Paragraphs 3(d), 3(p), 5(d)(i),(d)(ii),(d)(iii) and 9 of the Third Schedule agreed to)*

**Hon. Chairman:** What is your point of order, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): From my recollection as the Mover, what is remaining under the Income Tax (Amendment) Bill are areas which have no amendments.

**Hon. Chairman:** We have finished. I am now putting the omnibus Question.

**Hon. Aden Duale** (Garissa Township, JP): Okay. Then, we will go to the Value Added Tax (Amendment) Bill.

*(Provisions relating to the Income Tax Act Cap 470 as amended agreed to)*

*Provisions relating to the Value Added Tax Act (No. 35 of 2013)*

**Hon. Chairman:** Hon. Members, before I even give the Mover a chance to move, you should understand that we have just completed the Income Tax Act, Cap. 470 and we are now doing the Value Added Tax Act (No. 35 of 2013). Mover, I see you have a proposed amendment to Section 2. I need to propose the Question before I give you an opportunity to move.

*Section 2*

**Hon. Joseph Limo** (Kipkelion East, JP): I beg to move:

THAT, the Schedule be amended—

(b) in the proposed amendments to the Value Added Tax Act, 2013, by—

(i) deleting the proposed amendment to Section 2;

The purpose of this amendment is to delete the definition of “bread” because the amendments touching on bread were not supported in the Bill. Therefore, there is no need of defining what ordinary bread means.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Proposed amendment to Section 2 deleted)*

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*Section 5(2)*

**Hon. Joseph Limo** (Kipkelion East, JP): I beg to move:

THAT, the Schedule be amended—

(b) in the proposed amendments to the Value Added Tax Act, 2013, by—

(ii) deleting the proposed amendment to Section 5 and substituting therefor the following new amendment—

s.5 (2) Delete the proviso to paragraph (aa).

This is a clean-up. We are deleting a proviso which had been provided earlier and is not necessary as it is now.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Section 5 as amended agreed to)*

*(Sections 16(1), 31(1) and 43(1) agreed to)*

*First Schedule, Section A, Part 1, Paragraphs 21A and 26*

**Hon. Joseph Limo** (Kipkelion East, JP): I beg to move:

THAT, the Schedule be amended—

(b) in the proposed amendments to the Value Added Tax Act, 2013, by—

(iii) deleting the proposed amendment to the following paragraph of Part I of Section A of the First Schedule—

(a) paragraph 21A;

This is to restore milk to the same position, at zero rating. Any action other than that will make it expensive and it is not good at this time when people are really suffering and need milk.

*(Question of the amendment proposed)*

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Chairman. I support Chair of finance. Even as we do so, it is unfortunate that the Government could at this time be thinking about increasing the prices of basic requirements like milk. That is why we were saying earlier that in some of these amendments, let us not confuse the Finance Bill which is coming next week with what we are doing today.

I really support and thank the Chair for stopping that kind of amendment.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Paragraph 21A as amended agreed to)*

**Hon. Joseph Limo** (Kipkelion East, JP): I beg to move:

THAT, the Schedule be amended—

(b) in the proposed amendments to the Value Added Tax Act, 2013, by—

(iii) deleting the proposed amendment to the following paragraph of Part I of Section A of the First Schedule—

(b) paragraph 26;

The justification is that the Bill was amending this paragraph so that fertiliser attracts Value Added Tax. It was going to increase the price of fertiliser at this time of planting. Therefore, we are doing this amendment to save farmers. It is to ensure that the price is still stable given that farmers lost subsidy last year. There was no subsidy. They are buying at market price. If we increase the price of fertiliser, it is going to cost the country dearly in terms of the cost of production of food.

*(Question of the amendment proposed)*

**Hon. Chairman:** Yes. That must be the Member for Wundanyi?

**Hon. Danson Mwashako** (Wundanyi, WDM-K): Yes, it is Wundanyi. Thank you, Hon. Chairman.

I just want to agree with the Chair of the Departmental Committee on Finance and National Planning and say that even as the Government thinks around fighting the COVID-19 pandemic, we need also to put fertiliser as part of fighting it. We need to provide farmers with more subsidised fertiliser. In the next three months or so, it will be time for harvesting and we will need more food. I agree with the Chair and we need to do more for farmers in this country.

Thank you.

**Hon. Chairman:** Very well.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Paragraph 26 as amended agreed to)*

*(Paragraphs 27, 29, 30 and 30A agreed to)*

*First Schedule, Section A, Part 1, Paragraph 39(3)*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(b) in the proposed amendments to the Value Added Tax, 2013, by—

(iii) deleting the proposed amendments to the following paragraphs of Part I of Section A of the First Schedule—

(c) in paragraph 39 (3) the following proposed amendments —

Delete the following items and their corresponding descriptions—

8802.11.00 Helicopters of an unladen weight not exceeding 2,000 kg.

8802.12.00 Helicopters of an unladen weight exceeding 2,000 kg.

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- 8802.20.00 Aeroplanes and other aircraft, of unladen weight not exceeding 2,000 kg.
- 8803.30.00 Other parts of aeroplanes helicopters.
- 8805.21.00 Air combat simulators and parts thereof.
- 8805.10.00 Aircraft launching gear and parts thereof; deck-arrestor or similar gear and parts thereof.
- 8805.29.00 Other ground flying trainers and parts thereof.

As I had said earlier, aviation is one of the industries which have been killed. Currently, all the airports are full with parked planes. So, the purpose of this is to reinstate the deletion which was done on this paragraph 39 (3) so that the airlines still get benefit post COVID-19 because they will be doing a lot of repairs. Any action to make these parts more expensive is going to kill them further.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Paragraph 39(3) as amended agreed to)*

*Paragraphs 40,41,43,45,47,48 and 50*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(b) in the proposed amendments to the Value Added Tax, 2013, by—

(iii) deleting the proposed amendments to the following paragraphs of Part

I of Section A of the First Schedule—

- (d) paragraph 40;
- (e) paragraph 41;
- (f) paragraph 43;
- (g) paragraph 45;
- (h) paragraph 47;
- (i) paragraph 48;
- (j) paragraph 50;

On paragraph 40, this was taxation on fishing nets that was to encourage fishing at this time; fish is a staple food in some parts of the country. Paragraph 41 was on taxation on mosquito nets; malaria is still a problem and therefore COVID-19 cannot introduce other problems elsewhere. Paragraph 43 is on animal feeds; if we make eggs, milk and other products from animals expensive, the timing will be wrong. So, we should not make them expensive. Paragraph 45 is on clean energy which is on generation of solar and wind energy, which is clean energy and that is where the world is moving. Paragraph 47 is on agriculture; it was going to make operation of tractors more expensive. Paragraph 48 is on manufacture of solar equipment which is still on clean energy. Finally, paragraph 50 is on aviation industry, it is going to impact negatively on the aviation which is temporarily dead.

*(Question of the amendment proposed)*

**Hon. Chairman:** Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Chairman. I stand to support the Committee's proposed amendments, especially on the taxation on fishing nets. I come from a fishing community. The other day the Government changed the fishing gear. People are grappling with acquiring the new fishing gear. Therefore, introducing taxation was going to be a killer blow. Do not punish us for Corona virus, we did not bring it to the country.

Thank you.

**Hon. Chairman:** Hon. Atandi.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Thank you, Hon. Chairman. I noted that the person who is introducing this tax on fishing nets must have been working for the Chinese. In this country, we consume more Chinese fish than the fish from the lake. Therefore, I want to speak to the governors from the lake region, they must think outside the box and see fishing as a serious economic activity where they need to invest their resources. We need to see counties investing in fishing cages in the lake, so that we are able to feed the entire country. We do not need to eat Chinese fish in this county.

Thank you.

**Hon. Chairman:** Hon. Washiali then I will give the last Member at the very end.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Chairman. I rise to support the Chair of the Committee and thank him for being hawk eyed. Who would have imagined that there will be proposed increase of taxation on fishing nets, mosquito nets, animal feeds, clean energy and tractors at this time? It is important that we amend this proposal. I support.

**Hon. Chairman:** That Member please take the Floor. I am not able to recognise you. He will be the last one. The owner of it will take a vote today. We have a problem of tracing you there. By the way, who is that Member?

**Hon. Silas Tiren** (Moiben, JP): Thank you, Hon. Chairman. I want to thank the Chair of the Committee and congratulate him for looking at these proposals seriously. That is the direction that we ought to be taking considering that these will motivate farmers not only on the area of fertilizers and animal feeds, but also on the agricultural machinery where it would have been very expensive. With the issue of COVID-19, we need to look at food security. I applaud what the committee has done.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Proposed amendments to Paragraphs 40, 41, 43, 45, 47, 48 and 50 deleted)*

*(Paragraphs 52, 52A, 52B, 53 and 55 agreed to)*

*Paragraph 56*

**Hon. Chairman:** Let us have the mover. Hon. Limo, you have an amendment to paragraph 56. What is your point of order, Leader of the Majority Party?

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**Hon. Aden Duale** (Garissa Township, JP): Chair, just like you did on the other ones, why can we not deal with paragraph 56 alongside others?

**Hon. Chairman:** I would actually have taken that direction, Hon. Duale, but there are other two sections coming up.

Proceed, Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended—

(b) in the proposed amendments to the Value Added Tax, 2013, by—

(iii) deleting the proposed amendments to the following paragraphs of Part

I of Section A of the First Schedule—

(k) Paragraph 56

This section deals with agricultural machinery and, therefore, it is going to still increase the cost of production in the agricultural sector.

*(Question of the amendment proposed)*

**Hon. Chairman:** Yes, Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Hon. Chairman, you remember in 2013 the Treasury came up with all these amendments, and I brought another amendment which I am happy Hon. Duale and his team supported. These are the same items that we removed from the tax bracket. Now, the Treasury is trying to bring them back, including my handmade fishing nets. So, I am happy and I want to thank this Committee. You were diligent. You were spot on. You have stood for the people of Kenya. We support you and we support this amendment.

**Hon. Chairman:** The Member for Kandara.

**Hon. (Ms.) Alice Wahome** (Kandara, JP): Hon. Chairman, I really want to commend the Chair of finance for seeing this mischief by some people at the Treasury. I think we need to send a message that although COVID-19 is here with us and that we may be working one day in a week, as the Treasury brings proposals they should not think that we are asleep.

**Hon. Chairman:** What is your point of order, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, with a lot of respect to Hon. Wahome—and she can sit down because parliamentary procedure requires that when one Member is on his or her feet, you have to sit.

**Hon. Chairman:** Let us hear you, Hon. Duale, please.

**Hon. Aden Duale** (Garissa Township, JP): I am saying Bills come to this House; I am the originator. You have the right to oppose or support. You do not call it mischief. These proposals are before the House. Constitutionally, it is the House to decide. So, I want the Member to withdraw the word “mischief”. Nobody is engaged in mischief.

**Hon. (Ms.) Alice Wahome** (Kandara, JP): Thank you. Hon. Chairman, I do not think I need to respond. Maybe I could wait for your ruling.

**Hon. Chairman:** No, I am not going to rule. I wanted to hear what you have to say yourself.

**Hon. (Ms.) Alice Wahome** (Kandara, JP): Maybe the Leader of the Majority Party is not aware of the meaning of mischief. I used that word because of the comment Hon. John Mbadi, the Leader of the Minority Party, made. That this had been brought to the House at another time.

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For it to come back, I think somebody was thinking that this House is not alert or is not working. So, I want to commend the Committee and the Chair.

Thank you.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Proposed amendments to Paragraph 56 deleted)*

*(Paragraphs 60 and 61 agreed to)*

*Paragraphs 62, 65, 66 and 67*

**Hon. Chairman:** Let us have the mover. You are combining paragraphs 62, 65, 66 and 67.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chair, I beg to move:

THAT, the Schedule be amended—

(b) in the proposed amendments to the Value Added Tax, 2013, by—

(iii) deleting the proposed amendments to the following paragraphs of Part

I of Section A of the First Schedule—

(l) Paragraph 62;

(m) Paragraph 65;

(n) Paragraph 66;

(o) Paragraph 67;

Paragraph 62 deals with the tourism industry, which is already in trouble and needs to be assisted. Paragraph 65 is on use of clean energy, especially stoves which save energy to conserve the environment. Likewise to paragraphs 66 and 67 which are still on clean cooking stoves both to encourage conservation of the environment and to prevent Kenyans from being attacked by smoke-related diseases including COVID-19. COVID-19 is a disease to do with respiratory issues. If we do not take care of our lungs, they will be weak. And it will be difficult for Kenyans to fight such pandemics like coronavirus.

*(Question of the amendment proposed)*

**Hon. Chairman:** I will give opportunity to the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Chair, this is very clear. What are the symptoms of COVID-19? It is about breathing problems. So, for us to solve that, the Chairman is advocating use of clean energy in cooking to conserve the environment and reduce contraction of respiratory diseases as a result of inhaling smoke. That is what he is doing in paragraphs 62, 65, 66 and 67.

**Hon. Chairman:** This seems to generate a lot of interest. I will give opportunity to Hon. Makali Mulu and two other Members on this side and then I will come back to the Member for North Horr.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Chairman. I also want to support this amendment. We are not going to tire in saying thank you to the Chair of the Finance

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Committee for this kind of amendments, where you are deleting some of the proposals. My heart goes out to the tourism sector. We all know what has happened. When I see the sector being considered, I feel happy. As a House, moving forward we might have to think about a special fund to support this sector.

I support.

**Hon. Chairman:** Hon. Chepkut.

**Hon. William Chepkut** (Ainabkoi, Independent): Hon. Chairman, my heartfelt congratulations go to Hon. Limo, the Finance and Planning Committee Chair. He has done us proud. Congratulations to you, the entire Committee and Parliament as a whole. Today we have saved this nation, particularly, the entire population of Kenya. Farmers from Uasin Gishu and the North Rift are the breadbasket of this Republic. I sincerely thank you. Last year, there was no subsidy. Now, there is no taxation for doctors, farm machinery and fertilizers. Congratulations. Thank you again for the fish which is now tax free. I want to tell the Luo and many others to rear fish. I ask Kenyans to stop importing them.

*(Applause)*

**Hon. Chairman:** Member for North Horr, the Floor is yours.

**Hon. Chachu Ganya** (North Horr, FAP): Thank you, Hon. Chairman. I want to commend the Finance Committee for these two good amendments.

The one on the hotel and tourism industry is really helping at the moment. This amendment will really go far in enabling this ailing industry. Secondly, in terms of environmental conservation, once cooking stoves get tax breaks, we will go a long way in conserving our environment. It will enable us to save our trees.

I support.

**Hon. Chairman:** Hon. Cecily is telling me that she has a problem in the way I am picking Members of the other gender only. Kindly, have the Floor.

**Hon. Mark Nyamita** (Uriri, ODM): Point of order!

**Hon. Chairman:** Let us hear Hon. Nyamita. Is it something to do with the mode of dressing of Hon. Mbarire or something? I did not want us to take more time on that. I think we are taking too much time. I do not see Hon. Nyamita here. I am trying to trace you.

**Hon. Mark Nyamita** (Uriri, ODM): Thank you, Hon. Chairman. My card is on. Just for the safety of Members, I have seen Hon. Chepkut speak there, but I do not think they have sanitised that microphone properly. It might endanger the next Speaker. You might want to just tell them to do it properly.

*(Laughter)*

**Hon. Chairman:** Hon. Nyamita, it was done.

**Hon. Mark Nyamita** (Uriri, ODM): He shouted completely into it. You might want to have a look at it.

*(Laughter)*



**Hon. Chairman:** Hon. Nyamita, the problem with you is that you probably concentrated on something else. It was actually done properly. I saw it myself. So, Hon. Mbarire, have the Floor and, please, be brief.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): I also want to add my voice in congratulating the Finance Committee, through the Chair, for the great job that they have done, and especially for cushioning the common *mwananchi* or the person who needs to be cushioned at this time when we are facing COVID-19. I am particularly very impressed by the fact that they thought about clean energy and in particular, cooking energy. This is because when it comes to matters cooking, the biggest casualties are women and children. So, we will be saving the many women and children of this country from respiratory diseases. I have used cooking fuel and firewood, and I know what it does to the chest. So, thank you for being sensitive to these matters because they are important matters.

Finally, having been a former Assistant Minister for Tourism, I really want to thank them like the way Hon. Makali has said. Tourism remains a very key pillar of our economy and we need to support them. I will be supporting any move towards ensuring that we establish a fund to support the tourism sector, going forward.

*(Question of amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Proposed amendments to Paragraphs 62, 65, 66 and 67 of the First Schedule deleted)*

*(First Schedule, Section A, Part 1, Paragraph 88 agreed to)*

*First Schedule, Section A, Part 1, Paragraph 90*

**Hon. Chairman:** Mover, this is Paragraph 90.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Deputy Chairman, I beg to move:

THAT, the Schedule be amended –

(b) in the proposed amendments to the Value Added Tax Act, 2013 by-

(iii) deleting the proposed amendments to paragraphs 90 of Part I of Section A of the First Schedule.

(p) paragraph 90

This is on inputs for manufacture of pesticides which are used in agriculture. We were, therefore, deleting this because it is going to cost us a lot, especially now when we are fighting locusts. We cannot make pesticides more expensive when we are already facing COVID-19 together with locusts.

**Hon. Chairman:** That is a fairly straightforward amendment.

*(Proposed amendment to Paragrah 90 deleted)*

*(Paragraphs 93, 94, 97 and 102 agreed to)*

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*First Schedule, Section A, Part 1, Paragraphs 104 and 107)*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended-

(b) in the proposed amendments to the Value Added Tax Act, 2013 by -

(iii) deleting the proposed amendments to paragraphs 104 and 107 of Part I of Section A of the First Schedule.

(q) paragraph 104

(r) paragraph 107

This is actually taxation on motor vehicles for public officers who are returning from Kenyan missions abroad. We are still saying that vehicles of public officers returning from Kenya missions abroad should not be taxed. We are saying that when such officers come back to the country they should be allowed to be in the same position as they were while they were abroad.

*(Question of amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Proposed amendments to Paragraphs 104 and 107 deleted)*

*First Schedule, Section A Part 1, New Paragraph 96A*

**Hon. Chairman:** Leader of the Majority Party, I think you have a proposal there. We are in New Paragraph 96 A. You move the Second Reading. We are doing Paragraph 96A and it is a new Paragraph.

**Hon. A.B. Duale** (Garissa Township, JP): Hon. Chairman, I beg to move that New 96(A) be read a Second Time.

These are items on personal protective equipment, including facemasks, for use by our medical personnel in registered hospitals, clinics and by members of the public in case of a pandemic like what we have now or any other disease.

It is very sad that as we sit here, masks which every Kenyan must have access to have an Import Duty of 25 per cent and VAT of 18 per cent. So, my proposed amendment is intended to provide for an exemption from VAT on personal protective equipment, including face masks. The amendment also extends to exemption of protective gear for use by members of the public. So, for Kenyans to wear masks, they must be affordable and they must be very cheap. You cannot tell Kenyans to buy masks at Ksh100. Therefore, by removing the 25% duty and the 14% Value Added Tax (VAT), we expect the price of masks to come back to less than Ksh20 or Ksh25.

So, Hon. Chairman, I felt this and the National Treasury has agreed with me and therefore I beg to move.

**Hon. Chairman:** Okay.

*(Question of the new section proposed)*

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*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

*(Hon. Members consulted loudly)*

**Hon. Chairman:** I am trying to see the Members I have not given an opportunity. Member for Mogotio.

**Hon. Daniel Tuitoek** (Mogotio, JP): *(Off-record)*.

**Hon. Chairman:** No! Do not speak as you go. Just speak to the mic.

**Hon. Daniel Tuitoek** (Mogotio, JP): Thank you, Hon. Chairman. I think the only thing I agree to some extent with the Leader of the Majority Party is as far as importing protective gear is concerned. I think we should encourage more manufacturing internally and, therefore, this issue of importing even basic things like masks should stop. It can be done by our factories which can manufacture them better. Already Kitui Textile Centre (KICOTEC) is doing something and so are others. Even the Kenya Bureau of Standards (KEBS) is already approving several institutions to produce these masks. So, I think we should actually keep the taxation high so that we encourage internal production. Thank you.

*(Loud consultations)*

**Hon. Chairman:** That particular Member in a brown suit and that will be the end. Is that Hon. (Dr.) Mutunga?

**Hon John Mutunga** (Tigania West, JP): Yes, Hon. Chairman.

**Hon. Chairman:** It is now about guesswork. So, Hon. (Dr.) Mutunga, proceed. I cannot see 137 here. You have it now.

**Hon John Mutunga** (Tigania West, JP): Thank you very much, Hon. Chairman. I also would like to join my colleagues in congratulating and thanking the Committee for the good Report and for being so detailed and for paying a lot of attention to the common Kenyan. I would like to very briefly to touch on what Dr. Tuitoek has said. We need to encourage local manufacturing and to do this we need to reduce taxation on raw material imports, the ones that we do not have. This is because we may not have some of the raw materials right now and in line with the manufacturing pillar of the Big Four Agenda, I think it is time we looked at what we can produce locally so that we do not only reduce on the costs but we also increase the job opportunities.

**Hon. Chairman:** Very well. Thank you.

*(Question, that the new section be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to)*

*the Bill, put and agreed to)*

*(First Schedule, Section A, Part II, Paragraph 10 agreed to)*

*First Schedule, Section A, Part II, Paragraph 18*

**Hon. Chairman:** Mover, you have an amendment on this one?

**Hon. Joseph Limo** (Kipkelion East, JP): Yes, Hon. Chairman. I beg to move:  
THAT, the Schedule be amended –

(b) in the proposed amendments to the Value Added Tax, 2013, by—

(iv) deleting the proposed amendments to the following paragraphs of Part II of Section A of the First Schedule-

(a) Paragraph 18.

This amendment was about taxation on the aviation industry and, therefore, we were saying that it is the wrong time to tax. Therefore, we are proposing to delete it.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Proposed amendments to Paragraph 18 deleted)*

*(First Schedule, Section A, Part II Paragraph 22 agreed to)*

*First Schedule, Section A, Part II, Paragraphs 24, 25, and 26*

**Hon. Chairman:** Mover, do you have a proposal there?

**Hon. Joseph Limo** (Kipkelion East, JP): Yes, Hon. Chair. I beg to move:  
THAT, the Schedule be amended-

(b) in the proposed amendments to the Value Added Tax, 2013, by—

(iv) deleting the proposed amendments to the following paragraphs of Part II of Section A of the First Schedule –

(b) Paragraph 24

(c) Paragraph 25 and,

(d) Paragraph 26.

Hon. Chairman, all the three paragraphs relate to the tourism industry which has been adversely affected by COVID-19 and we are saying that any taxation on it is going to worsen the situation and, therefore, we are proposing to delete.

*(Question of the amendments proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Proposed amendments to Paragraphs 24, 25 and 26 deleted)*

*(Paragraphs 28, 30 and 31 agreed to)*

*Second Schedule, Part A, Paragraphs 13, 13A, 15, 16, 18 and 19A*

**Hon. Chairman:** We have an amendment on this one. So, please Mover

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended –

(b) in the proposed amendments to the Value Added Tax, 2013, by—

(v) deleting the proposed amendments to the following paragraphs of Part A of the Second Schedule –

(a) paragraph 13;

(b) paragraph 13 A;

(c) paragraph 15;

(d) paragraph 16;

(e) paragraph 18;

(f) paragraph 19

Paragraph 13 is on cooking gas. Therefore, we are saying that one should not be touched because it will negatively impact on the people, especially now. Everybody is locked in the house. There is a lot of consumption of gas and this will really negatively impact on people's lives. Paragraph 13A is on supply of ordinary bread which we had covered and that is why we were deleting the definition because we are also proposing here that bread should not be touched so that it is affordable. Paragraph 15 is on milk and cream which are very essential items and we are proposing to delete. Paragraph 16 is on all imports and raw materials used in the manufacture of pest control products which are products used in agricultural sector and we are proposing to retain them in the same position where they are now. Paragraph 18 is done in 2019 to make the batteries locally manufactured cheaper which was actually supporting both local manufacturers and clean energy. Paragraph 19 is still on agriculture-based control products which we have already said will increase the cost of production of food in the country.

I thank you, Hon. Chairman.

*(Question of the amendment proposed)*

**Hon. Chairman:** Let us have Hon. (Dr.) Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Chairman, I support the Committee's amendment, especially on the LPG gas. We are moving away from local fuel and so we need to embrace the LPG gas in order to save our forests. As you can see the erosion of forest cover and floods are devastating many parts of this country. I support.

**Hon. Chairman:** Who is that Member?

**Hon. Japheth Mutai** (Bureti, JP): Thank you, Hon. Chairman. Let us commend the Chairman, Departmental Committee for Finance and National Planning. It is good that he is talking about pest control. The incoming of COVID-19 did not take away the locusts; they are still a menace to our farmers for they are ravaging most parts of our country. On that Chairman I commend him. The issue of the LPG gas is good because some of us are environmentalists and

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are keen on conserving the environment. It is good that you are making this concession on the LPG gas so that we can make it available.

*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Proposed amendments to Paragraph 13, 13A, 15, 16, 18 and 19 deleted)*

*(Second Schedule, Part C agreed to)*

*[The Chairman (Hon. Moses Cheboi) left the Chair]*

*[The Temporary Deputy Chairman  
(Hon. Patrick Mariru) resumed the Chair]*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Okay. We shall proceed.

*Provisions Relating to Excise Duty Act (No. 23 of 2015)*

*First Schedule, Part 1, Paragraph 1*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Mover, you are proposing a deletion, are you not? Hon. Limo. What number is that? Please, use the microphone so that we save some time.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I beg to move:

THAT, the Schedule be amended –

(c) in the proposed amendments to the Excise Duty Act, 2015, by -

- (i) deleting the proposed amendments to paragraph 1 of Part 1 of the First Schedule;

This is to safeguard the amendment that was done in the Finance Act, 2019 which was promoting local manufacture, and in line with the thinking of the Government to encourage local manufacturing. We need to safeguard the policy so that we give time for implementation.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have Hon. T.J.

**Hon. T. J. Kajwang'** (Ruaraka, ODM): Allow us to congratulate the venerable Chairman because he has come through for the people of Kariadudu, Riverside and Kasabuni in Babadogo.

Last year, there was hue and cry when the price of sugar in consumable confectionery was increased. Now that it is going to be zero-rated, my people can go and work in the industries and do not have to be at home. It is that confectionery factory that is keeping more than 15,000 people in Kariadudu. I support.

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*(Question, that the words to be left out be left out,  
put and agreed to)*

*(Proposed amendment to First Schedule, Part I, Paragraph I deleted)*

*(First Schedule, Part III agreed to)*

*(Second Schedule, Part A, Paragraph 13 agreed to)*

*Second Schedule, Part A, Paragraph 14*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by the Chair, Finance and National Planning. Hon. Limo, you have a deletion on Page 247 of the Order Paper. Please, consult yourself.

**Hon. Joseph Limo** (Kipkelion East, JP): Actually, that was captured wrongly and should be dropped because we supported that amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): So, there are no amendments to that. We are on page 247 of the Order Paper.

**Hon. Joseph Limo** (Kipkelion East, JP): We supported because it was extending the issue of officers returning from missions in other countries. Their vehicles were not taxed but this one was extending the same to the spouse. Therefore, we supported the National Treasury that it this should not be extended.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. That is dropped.

*(Proposed amendment by Hon. Joseph Limo withdrawn)*

*(Second Schedule, Part A, Paragraph 14 agreed to)*

*Provisions relating to the Tax Procedures Act (No.29 of 2015)*

*Section 65 (3)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chair, there is an amendment to Section 65(3).

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order?

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman. Why are you jumping Section 39B?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Section 39B is a new section. So, we will get there at the end. Hon. Limo you have the Floor.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule be amended—

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- (d) in the proposed amendments to the Tax Procedures Act, 2015, by—
- (ii) deleting the proposed amendment to section 65(3) and substituting therefor the following new amendment—
- s.65(3) Delete the words “forty five” appearing before the word “days” and substitute therefor the word “sixty”.

This is on issues to do with personal appeal. When appealing to Kenya Revenue Authority the requirement was that they should respond to you within 45 days. However, there was an attempt to delete this so that it can be open. But the stakeholders responded by saying to be in agreement with the wishes of the two parties, it be amended to 60 days. So, it can give KRA at least 15 extra days to work on personal appeals which we have proposed to amend to 60 days instead of 45 days.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Otiende I will give you a chance. First, allow me to propose.

*(Question of the amendment proposed)*

Hon. Otiende.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): On a point of order, Hon. Temporary Deputy Chairman. I think the Clerks need to assist you so that we can save time. I am not opposing but I need to understand it better. The idea of moving the period from 45 days to 60 days should be instructed by something that is justified for these kinds of quasi-judicial matters. In fact, the ordinary period is usually 14 days.

So, by giving 45 days I would assume that is reasonable. When you extend it to 60 days there ought to be a better justification than somebody wanting 15 more days. You must remember that this is a dispute which is denying Government of either revenue it is entitled to or putting somebody at risk.

I think the Chairman should explain this a little more than the way he has done it. Otherwise, I will not be comfortable supporting it.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): A fair request, let us have Hon. Oundo then we go back to the Chair so that we can make movement on this.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Chairman, in respect of this amendment to the Tax Procedures Act, probably the matter is in court and I need your guidance. Look at the Keroche matter. The longer it takes the more you punish either party because imagine your accounts have been frozen and you are literally unable to operate. Giving such a long period of time not being able to operate for two consecutive months, you are literally actually grounded and you might even contravene quite a number of contractual obligations you have more so say salary payments. Probably the Chair needs to explain a little further and if possible, we make a further amendment to cushion all the parties involved. Thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have Hon. Limo. Speak to those two issues raised by the Members.

**Hon. Joseph Limo** (Kipkelion East, JP): This particular amendment actually is on a matter which a taxpayer applies to the commissioner for a private ruling. So, what the



commissioner was saying is that this is purely advisory role. Therefore, putting a timeline is punitive. However, the stakeholders in their response to the advert said that even if maybe the commissioner is saying that these 45 days – because it is a private application by a taxpayer – it is a short time according to commissioner. Most of the stakeholders suggested that extension of time say by 15 days, will actually cure the dispute about timelines.

So, Hon. Members, this is not going to affect the private applicant. At the same time, it is not going to really pressurise the commissioner to give within 45 days. So, 45 days and 60 days is more less the same. Let us support.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we must make movement on this. Let us have the last one. Hon. Maanzo.

**Hon. Daniel Maanzo** (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Chairman. I would like to support the Chair of the Committee and say that public participation is very key. It is constitutional and a lot of times we insist and stress on public participation so that every party feels that they have been taken care of. Most important, this is a private negotiation. I support.

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Section 65(3) as amended agreed to)*

*(Sections 69 and 83(1) agreed to)*

### *Section 39B*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): It is not a new section. It is an amendment.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule be amended—

(d) in the proposed amendments to the Tax Procedures Act, 2015, by—

(i) deleting the proposed new section 39B;

It is an amendment. However, it was a new section being introduced to the Act. It is in the Bill. What we are doing here is to delete it. It has been proposed to be taken to the Kenya Revenue Act which will now cover all the collection of taxes. This is because this one will exclude customs. So, the proposal, which we have, is to delete it from here. However, we will find it shortly at the Kenya Revenue Act, which will cover all the taxes including Customs, which are not covered under the Tax Procedures Act.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well.

*(Question of amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(New Section 39B deleted)*

We are done with the Tax Procedures Act; we will go to the next one.

PROVISIONS RELATING TO THE MISCELLANEOUS FEES AND LEVIES ACT (NO. 29 OF 2016)

*(Section 7 (2A)(a) agreed to)*

*New Section 8(3)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by the Departmental Committee on Finance and National Planning.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Chairman, I beg to move:

THAT, the Schedule be amended –

(e) in the proposed amendments to the Miscellaneous Fees and Levies Act, 2016,

by -

(i) inserting the following new amendment in its proper numerical sequence –

S. 8(3)            Insert the words “and operation” immediately after the  
word “construction”.

This amendment is to allow the corporation to use the Railway Development Levy to ensure smooth operation of the Standard Gauge Railway (SGR) network. That is the purpose of the amendment.

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be  
read a Second Time, proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Chairman. With all due respect to the Chairperson of the Departmental Committee on Finance and National Planning, the issue of Railway Development Levy needs further consultation; more so, with the Departmental Committee on Transport, Public Works and Housing. It will not be fair to bring it at this level, through this kind of a Bill.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us hear the Leader of the Majority. We can have one or two Members and then we will make progress.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I agree but this matter is very crucial. Under the COVID-19 pandemic, the operation has stopped. It is

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only the cargo which is going on, of about 50 per cent. The operations must continue; they must be paid. So, the Railway Development Levy will now be used for construction. We are only adding operations. The Cabinet Secretary came and made a serious justification. Otherwise, how do you pay for the operations of this railway?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Let us go to that very far end. Honestly, I cannot tell who it is.

Is it Hon. (Dr.) Patrick Musimba?

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Hon. Temporary Deputy Chairman, I am very concerned because we discussed this same amendment less than three weeks ago and defeated it on the Floor of the House. It is now being reintroduced for the same nefarious things. We defeated the amendment and said very clearly that we cannot give public funds to a private company to run operations. The Railway Development Levy was set up specifically to pay off the loans. As regards SGR operations, we were very clear. So, I completely oppose this particular amendment by the Committee.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us take one minute each so that we can get two other Members to speak. Let us have the Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairman, first, I plead with my former classmate Hon. Musimba, that I was one person who led the onslaught against the usage of this Fund to manage operations.

Hon. Temporary Deputy Chairman, we must accept that then we were of the opinion that the running of the railway was normal and that there was importation of goods coming through Mombasa which could be transported by this railway and with efficiency, it could pay itself. However, it is not possible right now. If you want that railway to pay itself, how will it do it if it cannot operate? We must admit and accept that we are operating under difficult situations. Therefore, there is no need of keeping that money in a Fund and not use it and yet the railway is not operational.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Hon. Sheriff. I will give you an opportunity, Leader of the Majority Party. Let us have Hon. Sheriff.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you, Hon. Temporary Deputy Chairman. As Hon. Musimba and my brother, Hon. Makali, have rightfully put it, this particular Railway Levy Fund was there to ensure that this country does not get burdened by its debt. I would have appreciated that if this had come with an auspice that thereafter, the railway will return the money back to the Railway Levy Fund. We are simply using COVID-19 to say that we now need to run that railway line. The reason we are saying that is because there is an amount of money that has to be paid to a certain company every single month. So, we need to be careful in how we word laws in this country.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): It is good for the Chairman of the Departmental Committee on Transport, Public Works and Housing to talk. Hon. Nassir, you need to declare your interest.

*(Hon. Abdullswamad Nassir spoke off-record)*

**Hon. Aden Duale** (Garissa Township, JP): Let me finish.

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**Hon. Abdullswamad Nassir** (Mvita, ODM): No.

**Hon. Aden Duale** (Garissa Township, JP): I am on my feet.

*(Hon. Abdullswamad Nassir spoke off-record)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order! You are off-record, Hon. Sheriff.

**Hon. Aden Duale** (Garissa Township, JP): He should learn from ranking Members. I was just about to serve in this House with his father.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Leader of the Majority Party. Please go to the point. If Hon. Musimba is here, I agree with him. However, I am sure the Chairman of the Departmental Committee on Transport, Public Works and Housing will speak. This is just a temporary measure. The money is there. The operations cannot pay for themselves under this condition of COVID-19. It is also good you hear from the Chair of the Departmental Committee on Transport, Public Works and Housing. This is just a temporary measure. We have the money that pays the loan. The money for the loan is different. This was for construction. During this period when the volume of containers has reduced and there are no passengers, where will the operational cost come from?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Chair of the Departmental Committee on Transport, Public Works and Housing will only speak when he has interest to do it. He has registered interest to speak. Can we have one Member who has not spoken on this matter? Hon. Junet, take one minute to contribute, please, so that we can have two other Members and then the House will make a decision.

**Hon. Junet Nuh** (Suna East, ODM): Hon. Temporary Deputy Chairman, I am inclined to support the Members who have said that this Fund was special purpose Fund for some work. When you say that the operations, capacity or work has gone down, we need to be given figures. We should know what the railway is doing, what it did last month and what it is doing this month. This Fund was set up for certain issues. It is even better to use the money to pay the loan than use it for operations. Once you take this money to the operations, you open the gates for eating it.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Hon. Rasso.

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Contribute for one minute.

**Hon. Ali Rasso** (Saku, JP): Hon. Temporary Deputy Chairman, I want to support...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You have one minute.

**Hon. Ali Rasso** (Saku, JP): I want to support that proposition. We are Kenyans and we know the reality of what is going on in this country. Many sectors are going to collapse. Therefore, if we are not going to put measures in place, we might not have a country at the end.

I thank you.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. I cannot tell clearly who it is. Let us have the Member of Seat No. 197.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Chairman. I just want to bring to the attention of the House a comparative industry to what we have with Kenya Railways. Within the sugar industry, there used to be what we called the Sugar Development Levy. One of the things that has led to the collapse of the sugar industry is when

this SDL was given to private firms. When we get a report in this House that the levy from the Standard Gauge Railway (SGR) needs to be given back to these people to operate, it does not make sense.

I want to join my colleague Hon. Nassir who stated that this levy cannot, without substantive data provided to this House on how their operations have been hampered over this period... Let us not just use this COVID-19 as an excuse for the Government to use money haywire.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Members, we must make progress on this one. I will have to put the Question on this so that we make progress.

*(Question, that the new section be read  
a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to  
the Bill, put and agreed to)*

*(Second Schedule, Part A, Paragraph (viii) agreed to)*

*(Second Schedule, Part A, Paragraph (ix) agreed to)*

*Second Schedule, Part A, Paragraph (xv)*

**Hon. Joseph Limo** (Kipkelion East, JP): The Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule be amended—

(e) in the proposed amendments to the Miscellaneous Fees and Levies Act, 2016, by –

(ii) deleting the following proposed amendments in Part A of the Second Schedule -

(a) paragraph (xv);

This one is on the import declaration fee on the aviation industry which we are already saying is not doing well. We propose that it be deleted so that they are not charged now. It should remain as it is now.

*(Question of the amendment proposed)*

*(Question, that the words to be left out  
be left out, put and agreed to)*

*(Proposed amendments to Paragraph (xv) deleted)*

*(Second Schedule, Part A, Paragraphs (xxi) and (xxia) agreed to)*

*Second Schedule, Part A, Paragraph (xxii)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairman.

*(Hon. Kimani Ichung'wah consulted loudly)*

Order, Chairman of the Budget and Appropriations Committee. You must not block the Chair. The negotiations will happen later. Hon. Chair, you have an amendment to Paragraph 22.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule be amended—

(e) in the proposed amendments to the Miscellaneous Fees and Levies Act, 2016, by—

(ii) deleting the following proposed amendments in Part A of the Second Schedule—

(b) paragraph (xxii);

This paragraph was giving the Cabinet Secretary discretionary power to approve certain items. We are saying that discretion is not necessary because it is subject to misuse in the future. Therefore, we recommend it be deleted.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Proposed amendments to Paragraph (xxii) Part A of the Second Schedule deleted)*

*(Paragraphs (v) and (va) of Part A of the Second Schedule agreed to)*

*Second Schedule, Part B, Paragraph (vi)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Chair of the Departmental Committee on Finance and National Planning has an amendment.

**Hon. Joseph Limo** (Kipkelion East, JP): I want to be sure.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Consult your papers.

**Hon. Joseph Limo** (Kipkelion East, JP): Let me consult the papers. I should be very sure. Actually, it is talking about Part B. It is not Part A.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Part B, as it is in the Order Paper. Proceed, Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule be amended—

(e) in the proposed amendments to the Miscellaneous Fees and Levies Act, 2016, by—

(iii) deleting paragraph (vi) of Part B of the Second Schedule

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For this, it is still the same reason I had given earlier. It was giving discretion to the Cabinet Secretary. We are saying that it is better not to allow that discretion.

*(Question of the amendment proposed)*

*(Question, that the words to be left out be left out, put and agreed to)*

*(Proposed amendments to Paragraph (vi) deleted)*

*(Second Schedule Part B, Paragraph (vii) agreed to)*

*Provisions relating to the Kenya Revenue Act (No.2 of 1995)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we are now in a new Act.

*Section 5A(2)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairman, you have an amendment to Section 5A (2).

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Schedule be amended—

(f) in the proposed amendments to the Kenya Revenue Act, 1995, by—

(i) deleting the proposed amendment to Section 5A (2) and substituting therefor the following new amendment—

s. 5A (2) Delete the words “two million” appearing in paragraph (b) and substitute therefor the words “five million”;

This amendment proposes to enhance the reward to people who give information to the Kenya Revenue Authority. That reward has been there for a very long time until it has been overtaken by events. To enhance it, we are proposing this amendment.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Sheikh.

**Hon. Junet Nuh** (Suna East, ODM): Hon. Temporary Deputy Chairman, I oppose that amendment. *Hiyo ni kusetiana.*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Junet.

**Hon. Junet Nuh** (Suna East, ODM): This is not the right way to do it. That issue should not be put in law.

**Hon. Aden Duale** (Garissa Township, JP): It is already there.

**Hon. Junet Nuh** (Suna East, ODM): It is already there. They want to increase the amount. Do not legalise rumours. I oppose.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have the Chairman of the Budget and Appropriations Committee.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Chairman, I support this amendment. It is about giving people incentives to make information available. I know Hon. Junet and his business in Eastleigh is not a very good taxpayer. He should allow those who pay taxes to have an opportunity that if your neighbour knows you are in business and you are not paying taxes...

*(Loud consultations)*

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman.

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

**Hon. Aden Duale** (Garissa Township, JP): Hon. Ichung'wah must withdraw that statement. If we go that route, the biggest tax evaders are people from his community.

*(Loud consultations)*

**Hon. Junet Nuh** (Suna East, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Leader of the Majority Party. Your point of order is noted but part of your statement is out of order. You cannot do a compound of the whole community.

Hon. Ichung'wah, you cannot relate to a specific Member, who is Hon. Sheikh. Did you say that he evades or does not pay tax?

Hon. Sheikh, half-a-minute.

**Hon. Junet Nuh** (Suna East, ODM): Hon. Ichung'wah must withdraw and apologise. Eastleigh is one of the biggest business hubs in this town but when he maligns their names that they do not pay taxes, when I know that he is running butcheries, *tangatanga* money and William Ruto's accounts...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): You are not being helpful. Hon. Ichung'wah, please withdraw so that we can proceed.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Chair, I am very careful with the language and the words I use. There is nothing illegal. There is avoiding and evading tax. I never mentioned any community in Eastleigh. I do business in Eastleigh.

**Hon. Junet Nuh** (Suna East, ODM): Which business?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): I supply meat.

*(Laughter)*

I said Hon. Junet is good at avoiding payment of taxes in Eastleigh. Some avoidance of tax, to an extent, maybe evasion...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Ichung'wah. Please let us make progress on this issue. I will not entertain debate on that.

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**Hon. Kimani Ichung'wah** (Kikuyu, JP): I said it is about offering higher incentives to people who will provide information about people who are either evading tax or avoiding in an ingenious way that may be construed as evading. This country is confronted by a very serious problem of revenues going down. We must encourage people to provide information to Kenya Revenue Authority. I will be offering information about Hon. Junet.

**Hon. Junet Nuh** (Suna East, ODM): Including the church donations.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Chairman, the law already exists – an incentive of Kshs2 million. It is the KRA which suggests this. It is based on the intelligence and the surveillance that there are many tax evaders in the country. For us to get these people, we need people like the whistle blowers. Let us make it Kshs5 million, from Kshs2 million. That is the whole thing. What is Kshs5 million if you can bring information that that can help the KRA get Kshs200 million?

So, I support.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us get to the Member at the far end.

**Hon. Daniel Maanzo** (Makueni, WDM-K): I strongly oppose. As much as it is important to provide incentives and motivate these people to bring information, increasing the amount from Kshs2 million to Kshs5 million is not good. Where are we providing for that Kshs5 million as we speak? A sum of Kshs2 million is sufficient.

I strongly oppose.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chege, one minute so that we hear others.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Temporary Deputy Chairman. I stand to oppose.

As we report or become whistle blowers on people who have evaded tax, what if the tax you are reporting is less than Kshs5 million? As we encourage reporting, it would make sense if they said a percentage of the amount reported. When you say the incentive will be Kshs5 million and I am reporting a tax evasion of Kshs2 million, where will the Government get the balance from?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us hear Hon. Ochieng.

*(Hon. Joseph Limo protested)*

Hon. Chairman, I will finally give you a chance next.

**Hon. David Ochieng** (Ugenya, MDG): Thank you so much, Hon. Temporary Deputy Chairman. This thing has been there for a while. If the Chairman...

*(Hon. Joseph Limo protested)*

Come on, Chair of Departmental Committee of Finance and National Planning. *Hii sio mursik. Haya ni mambo ya pesa.*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Ochieng! You are out of order.

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**Hon. David Ochieng** (Ugenya, MDG): I am sorry, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Proceed.

My point is, it would make sense if we had data showing the much we got because of this provision being there for a while. Then, we would be doing it to encourage this happening. You are basically going to be giving little monies to collude.

I oppose very strongly.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Limo, explain this so that the Members can understand. Let us give the Chair a minute. You have the Floor, Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): I just want to ask the Members to listen. This incentive is maximum. However, the way the law is, one is given a percentage of what is reported and collected. It is one per cent, to a certain maximum. It is actually 5 per cent, to a maximum of Kshs2 million. That is so that even if you report a tax in which the KRA collects Kshs300 million, you are still going to be given, upon recovery of the evaded tax. You know, there is no money being used from the Government. When the KRA finally collects, it gives 5 per cent of what is collected. However, it is to a maximum of Kshs2 million. What has happened now, when someone reports a huge amount of money and it is collected, once that person realises that he will get Kshs2 million only, he shies away from reporting because he feels that the amount is little. Currently, the KRA has been collecting Kshs10 billion out of that. They only pay out of what is collected. They use that collection to pay. So, there is no tax outlay out of this.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Let us get to one Member who has not spoken. Yes, what is out of order Hon. Otiende?

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Temporary Deputy Chairman, while it is good to get various sides, I do not think it is right for the Chairman to misstate the law as it reads now. I reserve my comments on its viability but the section says that in case of information leading to recovery of un-assessed duties or taxes, it is 5 per centum of the taxes or duties so recovered or Kshs2 million. So, it is in the alternative, whichever is less. The point is, it is not that it is a percentage. You look at either the percentage or the Kshs2 million, whichever is less. That means the spirit of the law is to save money. So, why are we increasing it to Kshs5 million?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us hear Hon. Osotsi, he has not spoken. I will come to you, Hon. Leader of the Minority Party.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Let us have Hon. Osotsi. I will come to you Minority Leader. Let us have Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Temporary Chairman, I stand to oppose this amendment. The whole idea around this amendment is to enhance tax collection, but I doubt if that is going to be achieved because what this amendment is trying to do is to promote the operation of cartels at KRA. What the staff at KRA will simply do is that they will stop doing their job, look for agents and give them leads on which areas to look for tax then get their commission. So, I oppose this amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Hon. Members, can we make progress on this Bill? Let us put the Question so that we make progress. Hon. Minority Leader, we have been on this proposal for quite some time. Hon. Members let us make progress on this. Hon. Leader Minority Party, we are trying to balance so that we do not linger on. So, please do it in half a minute.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Temporary Chairman. This is legalised bribery but we should be moderate in bribing citizens by giving information. By the way, as Hon. Otiende said, the Chair should be very clear. If you report, say only 10 million, 5 per cent of 10 million is such a small amount. The law puts it as either 5 per cent or 2 million. If you extend it to 5 million, you will report only 10 million and you want 5 million back, it does not make sense. In fact, the Committee should have recommended a deletion to remove that 2 million, so that you leave it probably as a percentage. I oppose.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I understand the Chairman has a new development. What is the development Hon. Chair?

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Chairman, what is in my mind and what is in the amendment and what the Members have understood is different. It is something good. However, I want to withdraw for further consultations.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Hon. Members in light of that, that proposal is withdrawn.

*(Proposed amendment by Hon. Joseph Limo withdrawn)*

Order Members! There were a lot of consultations. Let me tell you the import of this vote. The amendment by the Chair had been withdrawn. So, what we are dealing with is now that section which is not amended to be part of the Bill. So, I will put the Question. Please consult in low tones.

*(Section 5A (2) agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, there are new sections. Hon. Chair, you will take one after the other. Section 16(1) is a new section. We are still under the Kenya Revenue Authority Act, 1995. Hon. Chair, Second Reading of Section 16(1).

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Chairman, is it Section 16 or Section 15?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is Section 16(1) and 15A. You may actually start with 15A, but do 16(1) as the Clerk has read.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Chairman, I will start with Section 15A.

*New Section 15A*

**Hon. Joseph Limo** (Kipkelion East, JP): I beg to move:

THAT, the Schedule be amended—

(f) in the proposed amendments to the Kenya Revenue Act, 1995, by –

(ii) inserting the following new amendments in their proper numerical sequence-

New                      Insert the following new section immediately after section 15 -

Appointment of Agents.

15A. (1) The Commissioner may appoint a person registered under the Banking Act to act as an agent for revenue banking services through an agreement.

(2) Any person appointed under this section shall be required to transfer the funds to the designated Central Bank accounts within two days following the date of collection.

(3) A person who fails to transfer the funds in accordance with the provisions of sub-section (2) shall be liable to a penalty equivalent to two per cent of the revenue collections not transferred and shall be compounded for every other day on the amount of revenue that is not transferred.

(4) The penalty under sub-section (3) shall be treated as a tax debt due to the government and the enforcement measures for collection and recovery of tax shall apply.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Proceed Chair. It is Second Reading.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, I beg to move that the new Section 15A be now read a Second Time.

The purpose of this provision is to empower KRA to appoint agents. The proposal was actually in the Tax Procedures Bill. You remember I had proposed to delete it from the Tax Procedures Act and take it to the KRA Act because it is going to cover all the taxes. The first proposal in the Bill was to put it in the Tax Procedures Act, which was going to exclude collection of customs. So, we proposed that we bring it here so that it covers all the taxes including customs. That is the objective of this particular section.

*Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

*Question, that the new section be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

*(Question, that the new section be added to the Bill, put and agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order, Hon. TJ Kajwang’?

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**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Temporary Deputy Chairman, is it in order for the Committee Chair and members of that Committee, in the report that they have given us, to present us with items which have nothing to do with COVID-19? It seems we are going to handle tax laws outside budgeting and appropriations procedure. The underlying principle was that we came here to pass proposals that will make COVID-19 manageable. Is it in order that we should entertain proposals which have nothing to do with COVID-19? I request for a ruling.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, with a lot of respect to Hon. T.J. Kajwang', this Bill is not called COVID-19 in the first place. This Bill is called Tax Laws (Amendment) Bill. Apart from the issues of COVID-19, if there are any other pending issues, even concerning the people of Ruaraka, we will not wait for COVID-19 to go away. So, there are other issues. Our business is to legislate. And this Bill is not called COVID-19. This Bill is called Tax Laws (Amendment) Bill. The Finance Bill will come next week and you will find other issues related to COVID-19 in it. So, can we proceed?

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is it, Leader of the Minority Party then I give direction?

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairman, I am persuaded to agree with Hon. T.J. Kajwang'. Remember we are receiving the Finance Bill next week and we have up to 30<sup>th</sup> June to deal with it. We have sufficient time, about two months. This Tax Laws (Amendments) Bill was an emergency law. I do not see why the Committee is struggling to introduce new issues to this law, which did not even come from the Executive and have no serious connection to the matter at hand. I am asking that these things be deferred so that we deal with them constructively another time when we have enough time, even to engage the public in public participation. I, therefore, agree fully with Hon. T.J. Kajwang'.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will certainly give direction.

**Hon. John Mbadi** (Suba South, ODM): Treat my comment as opposing.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Minority Party, you seem to have spoken to the global question raised by Hon. T.J. Kajwang'. You have also made your vote known on this particular section.

Hon. Katoo, the Floor is yours.

**Hon. Katoo ole Metitio** (Kajiado South, JP): I was actually telling my good friend, Hon. T.J. that the issue he is raising may be valid but it is too late. We are just at the tail end of this Tax Laws (Amendment) Bill. Actually, having sat here up to now - it is getting to 8.00 p.m. - discussing this Motion, I see no reason to defer. We are left with about five minutes only to finish it. So, please, allow the Chair of the Committee to continue and then we finish. We are just left with five minutes then we go to the next agenda.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, let me speak to this so that we make progress. Hon. T.J. Kajwang' has raised a fundamental issue. However, please, on the Floor we have the Tax Laws (Amendment) Bill, (National Assembly) Bill (No.8 of 2020). That Tax Laws (Amendment) Bill amends several laws one of which is the Kenya Revenue Authority Act. I say that because when this Bill was being crafted, the spirit

around it was to speak to what is happening in our country now. However, we have a law before us that we have dealt with and we are coming to the tail end of it. Members have the liberty to vote on the new sections that are being introduced. They have the liberty to vote whichever way. If they feel that it can wait, they can vote as they wish. We are dealing with each section. Members, including Hon. T.J. Kajwang', will have the liberty, based on their persuasion and their understanding of the fundamentals of this law, to vote either way. So, we must proceed.

Hon. Limo, you are speaking to Second Reading of Section 16(1).

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Members, in as much as we are impatient, it is also good that we listen. This is because, all along we have had very good proposals. When we, however, do not agree, do not appear to be harassing us. So, allow me to prosecute the job.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): No one is harassing you. You will not be harassed.

*New Section 16(1)*

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, on this Section 16(1), I have been informed that there is new information and so we should drop this one so that it allows for further consultation. I, therefore, drop it.

*(Proposed New Section 16(1) by Hon. Limo dropped)*

*(Loud consultations)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Leader of the Majority Party, that has been dropped. It no longer exists. What would you be speaking to?

**Hon. A.B. Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, we really need to support the Chair. I want to table a document from the Executive. Indeed, they need more consultation among the presidency, KRA and the National Treasury. That is why the Chair is dropping it. We will be revisiting it in the Finance Bill.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we are done with that law and so, we need to put the omnibus Question on the various laws that we have dealt with so far. I will be putting the Question one after the other. This is an omnibus Question for all the laws that we have dealt with.

*(Provisions relating to Income Tax Act as amended agreed to)*

*(Provisions relating to Value Added Tax as amended agreed to)*

*(Provisions relating to Excise Duty Act as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order? You both stood but let us start with Hon. Chege.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Yes. Hon. Temporary Deputy Chairman, we had another new section immediately after section 3. I just wanted to confirm whether that has also been dropped.

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**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Which one? On which law?

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Written law of contract.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): No, we have not got to the law of contract. What we are doing is that all the laws we have dealt with so far, we are doing an omnibus question then we will go to the other new sections.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you. I stand guided, Hon. Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We are done with the Excise Duty Act 2019, now we are in the Tax Procedures Act, 2015.

*(Provisions relating to Tax Procedure Act as amended agreed to)*

*(Provisions relating to Miscellaneous Fees and Levies Act as amended agreed to)*

*(Provisions relating to Kenya Revenue Authority Act as amended agreed to)*

*New Statutes*

*Provisions Relating to the Law of Contract (Cap 23)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we now go to new statutes and we have four of them. Therefore, we should move fast.

Hon. Member, Hon. Chair of Committee on Finance and National Planning. That is Second Reading of the Law of Contract Act, 2019.

**Hon. Joseph Limo** (Kipkelion East, JP): You see, Hon. Chairman, I also want to beg Members. In fact, this is now to deal with COVID-19 and if you are not going to support Kenyans will be watching you and...

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order! Order Hon. Chairman!

**Hon. Joseph Limo** (Kipkelion East, JP): You see I am saying that because....

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chair, Move! Move the Second Reading!

**Hon. Joseph Limo** (Kipkelion East, JP): I am saying that because the Majority Whip is intimidating me.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order Chair! No one can intimidate you. The Members will have a chance to speak to what you move. Do not listen. Do not listen to Members, Move! Hon. Chair, you have the Floor. Let us give him a chance. Clerk, give Hon. Chair the mic.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Chairman, I want to move:

THAT, the Schedule be amended—

(g) by inserting the following new amendments to the laws specified in the first column in the provisions specified in the second column, and in the manner specified in the third column—

Written Law of

Provision

Amendment

Contract Act (Cap.23)

New

Contractual obligations during the COVID pandemic.

Insert the following new section immediately after section 3—

3A. (1) Without prejudice to any existing terms, provisions or exclusions in a contract which was existing prior the commencement of this section, the COVID-19 pandemic shall be construed as a “force majeure” occurrence.

(2) Where the effects of COVID-19 pandemic affect the performance of contractual obligations under an existing contract, the following actions shall be prohibited —

(a) commencement of levying of execution;

(b) enforcement of security over movable and immovable property used for the purpose of a trade, business or profession;

(c) repossession of any goods used for the purpose of a trade, business or profession; or determination of lease or licence of immovable property in connection with non-payment of rent or other monies

This particular section is touching on the Law of Contract and it is important during the COVID-19 period. During the COVID-19 period, the contracts, including those involving bank loans which have been taken, cannot be enforceable in case of failure to pay. The bank cannot sell your property for the time being because there is that risk if you fail to repay the loan. Industries such as hotel and airlines, and transport companies such as Easy Coach, have closed business. However, they have loans and if they are not protected, the banks can sell off all their assets. During the period of COVID-19, as declared by the Government, there is no flying or generally travelling, no opening of restaurants and bars. So, during this period, until the Government declares otherwise, banks cannot repossess your movable or immovable assets for purposes of recovering the loans you have. This is intended to save Kenyans from being intimidated and deprived of their property. This is a very good move. It will help Kenyans during this period.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well, Hon. Members. You will have opportunity to speak to this amendment but, first, allow me to propose the Question.

*(Question of the amendment proposed)*

I will open it up to a few Members. Let us hear Hon. (Dr.) Nyikal.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Deputy Chairman.

**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order, Hon. Otiende?

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**Hon. (Dr.) Otiende Amollo** (Rarieda, ODM): Hon. Temporary Deputy Chairman, before we debate this amendment, you need to give a ruling on a very fundamental issue. You realise that the issues proposed in these amendments touch on the provisions of Article 40 of the Constitution in so far as the Chairman has spoken to it. Article 40 of the Constitution is very clear. Article 40 (2) of the Constitution clearly states that Parliament shall not enact laws that arbitrarily dispossess anyone of his property. Property in terms of a house and anything is property within the meaning of Article 40. So, the first thing we need to be sure of is the constitutionality of this proposal before we even come to its merits. We need you to guide us to be sure that we have authority, under Article 40, to consider this amendment.

Secondly, you also need to give a ruling. This is the Tax Laws (Amendments) Bill, and this is an amendment to the Law of Contract Act. What in this provision relates to taxation that would empower us to consider it? Thirdly, you should know that under Article 94 (5), only this House has authority to make law. So far, we have not made any law called “COVID-19” yet this proposed amendment just jumps into it without any definition to something called “COVID-19”. It does not even propose to define it in the preparatory part of the parent Act. Can we just come into an animal called “COVID-19” and purport to make provisions? It is important to know that any intervention in any pandemic of this nature usually needs to have a sunset clause, and not an open-ended law. This is open-ended.

Hon. Temporary Deputy Chairman, before I give my views on this amendment, we need you to give direction. Fundamentally, this amendment is introducing a concept known to most lawyers as *force majeure*. It is a concept in common law, and is written in most contracts. If it is not written, then it is implied. But, on this occasion, the Committee wants us to legislate this consent of common law called *force majeure* even before we come to the wisdom of legislating it.

Is it actually possible for us to import a concept usually applied by the courts under common law and just bring it to all contracts? To say that these provisions want to protect tenants is an easy way of escaping and making it populist without looking at the content. The content of this proposal is not just about tenants. It is affecting all contracts of any nature. Hon. Temporary Deputy Chairman, you need to guide on this fast.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): I will hear one or two other Members around this and then give direction.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): On a point of order, Hon. Temporary Deputy Chairman. On the issues raised by Hon. Otiende and as a Mover of the Tax Laws (Amendment) Bill, this is not part of the Bill but a Committee amendment. I totally agree that it is in the wrong Bill.

In as much as I have a lot of respect for the Chair, I think we have passed so many things related to COVID-19, like reducing Value Added Tax on masks and other items. This amendment is so huge that it will open a Pandora’s box of serious litigation. As we are seated here landlord-tenant is a personal relationship. You cannot put it in law. I want to ask the Chair because it was not part of the original Bill to drop this.

I want to say that this must be from Sakaja's bill, he is a populist. He was talking about this on television and he cannot legislate outside the House. I want the Chair who has done a lot of work to withdraw the Law of Contract so that we can move to something else.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Ichung'wah, I will give a few other Members to speak to this.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Chairman. As I support the constitutional issues raised by Hon. Otiende, the surest way to introduce anarchy into an economy is through such amendments.

This principle in the law called *force majeure* touches almost in every contract from financial contracts to commercial contracts. This is so heavy that I beg the Chair to drop it. We are not saying it is bad but, we do not have enough time to consider such heavy amendments.

If you look at the amendments consequent to this one they touch on the Banking Act, Sacco Societies Act and many other contractual agreements. This in a way would be negated legally through the legislation we pass here blindly. Therefore, I beg the Chair to withdraw these amendments. We have all the time, there is no time limit on COVID-19 issues. We do not know when it will come to an end.

We have next month and the month after. We have adequate time to consider all these heavy issues in the right format and not in the Tax Laws (Amendment) Bill. They can introduce amendments to the Law of Contract and have an opportunity for Kenyans to deliberate on all the issues. I beg the Chair to withdraw these particular amendments.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Chair, take notes of what the Members are saying and then I will give direction.

**Hon. Junet Nuh** (Suna East, ODM): On a point of order, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is out of order, Hon. Junet?

**Hon. Junet Nuh** (Suna East, ODM): On a point of order, Hon. Temporary Deputy Chairman. I am not a landlord but as the Leader of the Majority Party and Hon. Otiende have alluded, before we proceed you need to make a ruling as the Chair. You cannot mix the Tax Laws (Amendment) Bill with cattle dip issues or add things into it.

These are separate laws. The Law of Contract is separate from this. Unless the Chair comes next week on Wednesday with a COVID-19 Bill so that we can discuss whether he does not want people to pay rent or buy soap. If we go this way as Hon. Ichung'wah has said, we are going to introduce anarchy into this country. The Government did not help landlords to build their homes or their buildings. So, you cannot tell landlords not to collect rent because there is COVID. That cannot work in this country. This is a country which is in a transparent and liberal economy. So, if we legislate here that tenants should not pay rent... I asked him a question on when the COVID will end and he did not tell me. He told me the Government will decide when COVID will end. It is not the Government that brought COVID. So, how will they know when it is going to end? Hon. Temporary Deputy Chairman, we cannot work like that.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have the Leader of the Minority Party

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Chairman, first I want to recognise and observe that the Speaker had made a ruling on this matter. Although I do not agree with it, he made a ruling that we discuss this matter. Therefore, I want to persuade this

House that we defeat this amendment. Instead of asking you for a ruling, we defeat it. I want to give two reasons.

Hon. Temporary Deputy Chairman, I want to persuade this House not to fall into the temptation of believing the Chair that this amendment is for tenants. This amendment is going to bring anarchy. Can I just give a hypothetical example? What this law is saying is that anybody who has a loan now can decide even if you have the capacity to pay not to pay and if you pay... That is a landlord and not even a tenant. If you do not pay, you can still continue charging tenants rent but you do not pay and if you do not pay nobody will hold you accountable. That is anarchy. If as a government we want to help people who have mortgages or loans, there is a better way to do it. But this is a populist approach. I think we praised you too much until you got spoiled. This populist approach from the Senate and these things borrowed from the Sakaja Bill which do not make sense should not find their way into this House. We reject this populist amendment.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Wambugu. I will give the Floor to two more members and then I give direction. We are speaking to what Hon. Otiende Omollo raised.

**Hon. Wambugu Ngunjiri** (Nyeri Town, JP): Thank you very much, Hon. Temporary Deputy Chairman. I surely really do not understand, like all Members have said, why this particular amendment has come at this time. It is important for us to remember that there are always two sides to every contract. We cannot legislate one side because both sides are Kenyans. If you start saying that tenants cannot pay rent, the person they pay rent to is a Kenyan.

Number two, you will find people who actually occupy both positions. You are a tenant in one position and a landlord in another. The whole idea of getting a contract that we legislate that allows people without defining even the circumstances under which you do not pay... As Hon. Otiende said, we have come up with a term called “COVID”. So, if I am a tenant and I tell my landlord COVID has made me not to be able to pay, there is nothing he can do. How do we even try to come up with a law like this? If we even passed, it would be the laughing stock of the region.

Thank you very much, Hon. Temporary Deputy Chairman.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Sherriff. One Member can speak at any given time. I am also trying to manage so that we also make progress and I give my ruling. You have one minute.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you, Hon. Temporary Deputy Chairman. The concept and the idea might sound very normal however, I need to agree with our brother, Hon. Otiende, that this particular issue... I wish to state that I do not own any property or a house unlike the Leader of the Majority Party but I beg for the Chair of the Departmental Committee on Finance and National Planning so that the goodness in these particular amendments do not go to waste. I would beg that he does not let the House to drop it. I beg that he withdraws it and it can come back at the Speaker’s discretion in a better way like how do we term what COVID is? This does not have time duration to it and many other elements into it. They can bring it in the Finance Bill.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Let us have Hon. Joseph Limo.

*(Hon. Members consulted loudly)*

Order Members. Give Hon. Joseph Limo a chance.

**Hon. Joseph Limo** (Kipkelion East): Hon. Temporary Deputy Chairman, allow me to say this and I beg the House to listen. When I was moving, I did say that there is a section which was covered wrongly. We withdrew that one because it is the one which can cause anarchy. In fact, that one was withdrawn completely. The Leader of the Majority Party is aware that we had withdrawn it. Indeed, it is captured here wrongly. In fact, my Committee discussed it and agreed that we do not agree with anything that will bring the landlord and the tenant into collision. So, it was captured wrongly.

*(Hon. Members consulted loudly)*

Let me explain.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Give him one minute.

**Hon. Joseph Limo** (Kipkelion East): Members, even if you try to intimidate and you do not get information... We were doing it in good faith. The one which you are talking about has already been withdrawn. These amendments are very important. However, we need to allow further consultations and ensure that they are properly captured in order to: save property from being sold in case one has a loan; save Kenyans who are losing employment unprocedurally; and, to save those who are being listed on the Credit Reference Bureau (CRB). So, the amendments were noble. We are not lawyers but we agree with my senior that they need to be captured properly. Therefore, we should allow time, even in the Finance Bill... I am going to withdraw them and allow time for them to be captured properly so that it does not cause anarchy because that was not the intention of the Committee. To save Kenyans, we are going to look for a way of reintroducing it.

*(Proposed amendments to the Law of Contract Act by Hon. Joseph Limo withdrawn)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Hon. Members, that remains withdrawn. To save the time of the House, I will not say what I intended to say, especially if he would have insisted that that proceeds.

Next.

#### PROVISIONS RELATING TO THE BANKING ACT (CAP 488)

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, there is the provision relating to the Banking Act.

**Hon. Joseph Limo** (Kipkelion East, JP): In the same spirit, Hon. Temporary Deputy Chairman, all of them are linked to the Law of Contract Act. The reason for having the Law of Contract Act is the loans which are outstanding in the banks. When you touch anything to do with loans, you probably need to go to the Law of Contract Act. That is why I am saying we are going to withdraw this to allow for further consultations so that it can be brought back in a better way in the Finance Bill.

*(Proposed amendments to the Banking Act by Hon. Joseph Limo withdrawn)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Very well. Next.

#### PROVISIONS RELATION TO THE EMPLOYMENT ACT (NO. 11 OF 2007)

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**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairman, new Sections in the Employment Act No. 11 of 2007.

*(Hon. Aden Duale spoke off record)*

**Hon. Joseph Limo** (Kipkelion East, JP): As I talk on it, Leader of the Majority Party, we respect you, but the Leader of the Minority Party is lower than you; you do not talk about Hon. Sakaja. There is nothing to do with Hon. Sakaja here.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Order, Hon. Joseph Limo, there is no...

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Chairman, this is a good one. In the same spirit, this is to protect Kenyans from being sacked anyhow. Therefore, the only offending clause here is the one defining COVID-19 period. Otherwise, it is a good thing. In fact, no one should talk about it negatively yet we want to save Kenyans from being sacked haphazardly. So, Members, because of the definition of COVID-19 and other issues...

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): What is your point of order?

**Hon. Joseph Limo** (Kipkelion East, JP): I withdraw so that you can go home.

*(Proposed amendments to the Employment Act by Hon. Joseph Limo withdrawn)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Okay, that is withdrawn. What is out of order, Hon. Sabina Chege? And do not speak to that because it has already been withdrawn.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Yes, Hon. Temporary Deputy Chairperson. I thank the Chair for withdrawing but it is not good to mislead the House. He has said that the amendments are good and the only issue was about COVID-19. Every law we make here must also have a solution. When you say that you are protecting the people who are employed not to be sacked, then what happens to the employers who cannot afford to pay their wages? So, let us not say that the whole thing was about COVID-19. We need to look at all the proposals but not just think about COVID-19.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Sabina, although I gave you an opportunity to contribute, there is nothing on the Floor now because the amendment has been withdrawn. However, you have made your point.

#### PROVISIONS RELATING TO THE RETIRMENT BENEFITS ACT (NO. 3 OF 1997)

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): The Leader of the Majority Party.

#### *Section 38 (1A)*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Chairman, I beg to move:

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THAT, the Schedule be amended by inserting the following new amendments to the law specified in the first column in the provisions specified in the second column, and in the manner specified in the third column-

*Written**Law*

The Retirement  
Benefits Act,

No.3 of 1997

38(1A)

*Provision*

Insert the words “or to purchase a residential house” immediately after the words “mortgage loan”.

*Amendment*

This amendment is from the Government. I have no amendment. You know that I do not bring amendments. I want Members to listen to me. If they feel it is okay, then we will pass it. Before I go to the main justification, Hon. Temporary Deputy Chairman, allow me to use my spectacles. There is a restriction on the use of the retirement benefit scheme funds. The law only allows the use of the scheme fund to secure a mortgage loan. This amendment is proposed to allow the use of a percentage of funds for the purchase of a residential house.

The Government realised that all this money that is in the banks is from pension funds where Kenyans put their money. Kenyans cannot access their money to buy a house. The law allows members of the retirement benefit schemes to use up to 60 per cent of the accumulated benefit as a security for mortgage. The intention of this provision is to allow Members to access cheaper mortgage. In order to use their contribution as a security, they have first to qualify for a mortgage. In order to qualify for a mortgage from a bank, the members of the retirement benefits schemes must have favourable credit risk profiles. These are elders. They have money in their schemes. A cash security of 66 per cent of contribution in a scheme can ideally shape more favourable credit risk profile for the members. However, although the benefit cannot be withdrawn if needed, mortgage lenders find this provision to be useful security. We, therefore, seek to change this provision, so that the Act can allow our members who save with pension schemes to directly access up to 60 per cent of their cumulative benefit and have the option to use it as a security to access it as cash towards the purchase of a scheme, including the houses which are being built by the Government.

This is the whole thing. This money in the pension schemes is put in banks which tell pensioners to bring security and credit profile. We are telling them that they can withdraw their money and go and buy a house.

*(Question of the new section proposed)*

*(New section read the First Time)*

*(Question, that the new section be read a Second Time, proposed)*

*(Question, that the new section be read a Second Time, put and agreed to)*

*(The new section was read a Second Time)*

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*(Question, that the new section be added to the Bill, put and agreed to)*

*(Clause 2 agreed to)*

*(Title agreed to)*

*Clause 1*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): There is an amendment by the Chairman of the Departmental Committee on Finance and National Planning.

**Hon. Joseph Limo** (Kipkelion East, JP): I beg to move that the Bill be amended by deleting Clause 1 and substituting therefor the following new clause—

|                              |  |
|------------------------------|--|
| Short title and commencement | 1. This Act may be cited as the Tax Laws (Amendment) Act, 2020 and shall come into operation—  |
|                              | (a) in the case of the amendment to section 5(2) of the Value Added Tax Act, 2013, on the 15 <sup>th</sup> day of the next month following assent; and |
|                              | (b) for all other provisions of the Act, on the date of assent.  |

This amendment is meant to align the commencement date with the date of application of the pump prices under the Energy Act so that it does not start in the middle of nowhere. It should coincide with the dates which the Energy Regulatory Commission (ERC) normally announces.

*(Question, that words to be left out to be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 1 as amended agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we are done. Let us now have the Mover for the Reporting of the Tax laws.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Members, I beg to move that the Committee doth report to the House its consideration of the Tax Laws (Amendment) Bill (No. 8 of 2020) and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker (Hon. Patrick Mariru) in the Chair]*

**REPORTS AND THIRD READING**

## SENATE AMENDMENTS TO THE DIVISION OF REVENUE BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): May the Chairperson for the Division of Revenue Bill proceed.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Senate Amendments to the Division of Revenue Bill, National Assembly Bill No 3 of 2020 and approved the same without amendments.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have the Mover.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I also request Hon. Lessonet to second the Motion for the agreement with the Report of Committee of the whole House.

**Hon. Moses Lessonet** (Eldama Ravine, JP): Thank you Hon. Temporary Deputy Speaker, I second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us move to the next one which is the Tax Laws.

## THE TAX LAWS (AMENDMENT) BILL

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, I beg to report that the Committee of the whole House has considered the Tax Laws (Amendment) Bill (National Assembly Bill No 8 of 2020) and approved the same with amendments.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee of the whole House in the said Report.

I request Hon. Joseph Limo, the Chair of the Departmental Committee on Finance and National Planning, to second the Motion for agreement with the Report of the Committee of the whole House.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Limo.

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Temporary Deputy Speaker, I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Mover.

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**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I beg to move that the Tax Laws (Amendment) Bill (National Assembly Bill No.8 of 2020) be now read the Third Time.

I request Hon. Mbadi to second because he wanted to say one word.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Temporary Deputy Speaker, I wanted to say one thing on this Bill. We have rejected amendments to the Law of Contract. I know reporting in this country is sometimes not informed by clear understanding.

*(Hon. Member spoke off record)*

Yes, it was withdrawn. It should come out clearly to the whole country that these amendments are issues of law. We were not rejecting cushioning of tenants as it was initially coached, but we have rejected ambiguity and confusion that would have brought anarchy. So, we have done the right thing for these tax laws. They are going to help the people of this country in a substantial way. Thank you.

I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

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

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Next Order.

## MOTION

### REPORT ON THE SECOND SUPPLEMENTARY ESTIMATES FOR THE FINANCIAL YEAR 2019/2020.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Chairman, Budget and Appropriations Committee.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, I beg to move:

THAT, this House adopts the Report of the Budget and Appropriations Committee on the Second Supplementary Estimates for the Financial Year 2019/2020, laid on the Table of the House on Wednesday, April 22, 2020, and pursuant to the provisions of Article 223 of the Constitution of Kenya, section 44 of the Public Finance Management Act, 2012, Public Finance Management Regulation 40 and Standing Order 243-

- (i) approves an increment of the total Recurrent Expenditure for Financial Year 2019/2020 by Kshs31,381,396,485 in respect of the Votes as contained in the Schedule II;
- (ii) approves a reduction of the total Development Expenditure for Financial Year 2019/2020 by Kshs83,048,345,383 in respect of the Votes as contained in the Schedule II;
- (iii) approves an overall decrease in the total budget for Financial Year 2019/2020 by Kshs. 51,729,948,898 in respect of the Votes as contained in the Schedule II; and,
- (iv) further makes the policy resolutions contained in the Second Schedule.

### **FIRST SCHEDULE**

#### **POLICY AND FINANCIAL RESOLUTIONS RELATING TO THE BUDGET POLICY SECOND SUPPLEMENTARY ESTIMATES FOR THE FINANCIAL YEAR 2019/2020**

##### **i) Policy Recommendations**

- 1) THAT, despite the need to reduce expenditure, payment of pending bills especially those that have already undergone verification process be prioritized in order to protect the businesses that supply goods and services to the national government.
- 2) THAT, within two weeks upon adoption of this report, the State Department of Broadcasting and Telecommunications, in conjunction with the State Department of Information, Communication and Technology (ICT) and Innovation should submit a comprehensive report on the status of recent measures put in place to scale up internet connectivity in unserved areas in the country. This includes use of airborne/extraterrestrial infrastructure and the role of Google as well as that of the government in providing such services. The report should include specific measures taken in response to the ongoing crisis and quantifiable outcomes or impacts since the declaration of the pandemic.
- 3) THAT, all funds allocated for cushioning the vulnerable against the impact of COVID-19 on livelihoods especially cash transfers to the poor and purchase of food stuff to sustain families, be channelled through the State Department for Social Protection and the State Department for Arid and Semi-Arid Lands respectively. This is for ease of identification of beneficiaries and the use of existing structures to expedite the process.
- 4) THAT,, the State Department for Social Protection and the National Treasury renegotiate the charges paid by the State to the Payment Service Providers (PSP) for the processing of the national safety net payments.

- 5) THAT, as a matter of urgency, the State Department for Social Protection and the Executive Office of the President should resolve the stalemate at the Child Welfare Society of Kenya (CWSK) so as to allow for the resumption of operations as activities in foster care centres run by CWSK have halted thereby putting at risk the lives of vulnerable children.
- 6) THAT, a prudent Pension Policy Plan for Sports Kenya be instituted by December 2020 so that pension payments do not become a matter of supplementary provisions in future.
- 7) THAT, all GoK resources allocated towards Covid-19 initiatives under the COVID-19 Emergency Response Fund must be appropriated by the National Assembly and proper mechanisms be put in place to oversight the same.
- 8) THAT, the National Treasury allocates Kshs.3 billion as special ring fenced resources to support the fight against the COVID-19 pandemic especially with regard to the protection of frontline health workers through purchase of PPEs among other protective gears. The centres to benefit are, Kenyatta National Hospital (KNH) & Mbagathi, Kenyatta University (KU) Hospital, Coast General Hospital, Jaramogi Oginga Teaching & Referral Hospital, Kitui County Referral Hospital, Mandera County Referral Hospital, and Moi Teaching and Referral Hospital.
- 9) THAT, the Ministry of Health should apprise the relevant Committee of the National Assembly on a monthly basis on the disbursements and implementation of the Kshs. 3 Billion ring fenced for Covid-1/9 related intervention.

## SCHEDULE II

### ALLOCATION OF REVENUE RAISED NATIONALLY AMONG THE NATIONAL AND COUNTY GOVERNMENTS FOR THE FINANCIAL YEAR 2020/21

| Type/level of allocation               | Amount in Ksh.    | Percentage (%) of 2016/17 audited and approved revenue i.e. Ksh.1,357,698 Million |
|--|-------------------|---|
| <b>A. Total Sharable Revenue</b>       | 1,856,700,000,000 |   |
| <b>B. National Government*</b>         | 1,533,411,510,000 |   |
| <b>Of which:</b>                       |                   |   |
| 1. <i>Leasing of Medical Equipment</i> |                   |   |

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|  |                        |               |
|--|------------------------|---------------|
|  | 6,205,000,000          |               |
| 2. <i>Compensation for user fees forgone</i>   | 900,000,000            |               |
| 3. <i>Level 5 hospitals</i>  | 4,326,000,000          |               |
| 4. <i>Supplement for construction of county headquarters</i>                                 | 300,000,000            |               |
| 5. <i>Rehabilitation of Youth Polytechnics</i>   | 2,000,000,000          |               |
| <b>C. Equalization Fund</b>  | <b>6,788,490,000</b>   | <b>0.50%</b>  |
|  |                        |               |
| <b>D. County equitable share</b>   | <b>316,500,000,000</b> | <b>23.31%</b> |
| Of Which Nairobi City County Equitable Share to cater for transferred functions              | 15,951,600,000**       |               |
| County Equitable share (excluding Nairobi City County)                                       | 300,548,400,000        |               |
| <b>Memo items</b>  |                        |               |
| <b>1. County equitable share</b>   | <b>316,500,000,000</b> |               |
| <b>2. Additional conditional allocations(National Government share of Revenue) of which;</b> | <b>13,731,000,000</b>  |               |
| 2.1. <i>Leasing of Medical Equipment</i>   | 6,205,000,000          |               |
| 2.2 <i>Compensation for user fees forgone</i>  | 900,000,000            |               |
| 2.3 <i>Level 5 hospitals</i>   | 4,326,000,000          |               |
| 2.4 <i>Supplement for construction of county headquarters</i>                                | 300,000,000            |               |

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|   |                        |               |
|---|------------------------|---------------|
| 2.5 Rehabilitation of Youth Polytechnics  | 2,000,000,000          |               |
| <b>3. Allocation from Fuel Levy Fund (15%)</b>  | <b>9,433,265,625</b>   |               |
| <b>4. Conditional allocations (Loans &amp; grants) of which:</b>                                  | <b>30,204,347,510</b>  |               |
| 4.1 IDA-Kenya Devolution Support Program (KDSP)<br>(Level 1)                                      | 2,115,000,000          |               |
| 4.2 IDA-Transforming Health Systems for Universal<br>Care Project                                 | 4,345,375,741          |               |
| 4.3 DANIDA-Universal Healthcare For Devolved<br>System Program                                    | 900,000,000            |               |
| 4.4 IDA-National Agriculture & Rural Inclusive<br>Growth Project (NARIGP)                         | 4,261,646,438          |               |
| 4.5 EU-Instruments for Devolution Advice and Support<br>(IDEAS)                                   | 216,014,391            |               |
| 4.6 IDA (World Bank) - Kenya Climate Smart<br>Agriculture Project (KCSAP)                         | 7,119,726,782          |               |
| 4.7 World Bank- Kenya Urban Support<br>Program(KUSP)- UDG   | 6,366,000,000          |               |
| 4.8 IDA- Water and Sanitation Development Project<br>(WSDP)                                       | 3,400,000,000          |               |
| 4.9 Sweden Agriculture Sector Development Programme II<br>(ASDP II)                               | 652,584,158            |               |
| 4.10 EU- Water Tower Protection and Climate Change<br>Mitigation and Adaptation Programme (WaTER) | 528,000,000            |               |
| 4.11 Drought Resilience Programme in Northern Kenya   | 300,000,000            |               |
| <b>Total County Allocations= (1+2+3+4)</b>  | <b>369,868,613,135</b> | <b>27.24%</b> |

The second Supplementary Budget for the Financial Year 2019/2020 was tabled in this House last week. I thank all Members of Parliament, especially Chairpersons of Departmental Committees who appeared within a very short time - less than a week - before the Budget and Appropriations Committee.

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It is important to note that the Departmental Committee on Agriculture and Livestock never made any submissions. All the other Departmental Committees except the Departmental Committee on Agriculture and Livestock made submissions before the Budget and Appropriations Committee.

Many of them were not able to engage meaningfully with their Ministries, Departments and Agencies (MDAs) because of the time constraints and the social distancing requirements due to the shortage of space in the National Assembly.

Hon. Speaker, you will appreciate that this Supplementary Budget is being processed at a very unique time when the country is grappling with a global health pandemic that has brought the economy to a near standstill. This has necessitated significant budgetary cuts and adjustments in order to reflect those new economic realities. Our revenues are at an all-time low largely because of the COVID-19 pandemic. It will continue to affect our performance in this last quarter of the year and, realistically, even at the beginning of the next financial year. Our revenues will be badly battered by this pandemic. It is necessary that we exercise austerity measures both in the Recurrent and Development Expenditure and that is reflected in this Supplementary Budget. For the first time, as the Budget and Appropriations Committee, we can comfortably say that this is one such time that the National Treasury is justified to have a second Supplementary Budget in the middle of the year.

There is a significant under-performance of our revenues. As at the end of March, our revenues had a shortfall of about Kshs123 billion. From the estimates done by the Parliamentary Budget Office (PBO), the Tax Laws (Amendment) that the President proposed to this House and announced to the country are good. But they will hit our revenues in this last quarter to a tune of about Kshs129 billion. If you consider the shortfall of about Kshs123 billion and the Kshs129 billion, you will appreciate the significance of this COVID-19 pandemic and how it is negatively affecting our economy this year and, maybe, even up to the next year.

It is important that the interventions by the Government towards fighting COVID-19 pandemic are supported. It has necessitated that under the Supplementary Budget, cuts are done even in the Development Expenditure as much as that may occasion the rise of pending bills in the coming year. That is because most of those monies had already been committed. Contracts had been signed and there are already ongoing works. There might be a rise in pending bills. We must appreciate the efforts by His Excellency the President, who announced the payment of pending bills in June last year in Narok. It is only until now that we have seen a meaningful effort towards resolution of pending bills, including the historical ones. I remember one old man from Kajiado lamenting that he had supplied his cattle to the State Department of Correctional Services and the Prisons Department, but was yet to receive payment. In this Supplementary Budget, Kshs6.2 billion has been set aside towards the settlement of pending bills specifically in the State Department of Correctional Services.

The National Youth Service (NYS), even with its many problems, will receive an allocation towards the settlement of pending bills. We have noted in our policy resolutions that, as much as there are pending bills; some that are historical and some that are scandal-ridden as described by the Chairman of the Departmental Committee on Labour and Social Welfare, Hon. Wario, the Government must make an effort to ensure that they are properly authenticated and paid. They should not pay anything on the excuse that Parliament has provided money for it. We are providing money so that once they verify and authenticate that the bills are payable, they have resources within their coffers to pay. Our people who have been suffering will now be paid.

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However, as I said because of those shortfalls in revenue, this problem might continue to the next financial year and, maybe, in a few years to come.

Other than those interventions that were highlighted by the President and what has been announced by the Government, the Committee is concerned that the response to COVID-19 through the Budget is somehow muted. If you look at the Budget and the Supplementary Budget, you will hardly see any direct linkage to the fight against COVID-19. I know the CS for the National Treasury has made announcements. Hon. Junet was just telling me that he has seen him announce on television that they have put aside Kshs40 billion. That includes part of this payment of pending bills and a part of the Kshs10 billion which has been set aside to be given to the old people who are above 70 years, the vulnerable in our communities and other small measures. However, the bulk of the expenditure increment in the Supplementary Budget is apparently to address the shortfall in personal emoluments on account of job evaluation and CBA agreements as well as settling of pending bills.

The national health institutions at the forefront of fighting COVID-19, institutions like KEMRI which are doing a splendid job towards the testing of COVID-19 cases, need support. I saw it in the news that they are developing a locally made test kits for COVID-19. We expected more resources would be given to institutions like those - institutions like Kenyatta National Hospital and Kenyatta University which are also at the forefront. I must say that, in cognizance of that, you will see what we have done in our resolutions.

I am just trying to save time. I do not have to go through everything in the Report. You will see in one of our resolutions in the Report, our policy recommendation number 23, that we want the National Treasury to allocate Kshs3 billion as special ring-fenced resources to support the fight against the COVID-19 pandemic. This is especially with regard to protecting frontline health workers through the purchase of personal protective equipment among other protective gears. We have ring-fenced resources to the tune of Kshs3 billion for the centers that we expected would have benefited from resources.

I know there has been something very populist. It is asking MPs to announce their salary cuts. Let me say the Kshs3 billion here are cuts that have come from Parliament, both the National Assembly and the Senate. I know the other House had also announced a meagre Kshs200 million. Therefore, you can tell where the bulk of the Kshs3 billion is coming from. We have said we want to ring-fence this money. We do not want to give sacrifice money from Parliament and just take it back to the coffers without saying where it should specifically go. We want this money to specifically go to combating COVID-19. We have said that we want to ring-fence this money for institutions like KEMRI, KNH, Mbagathi Hospital, Kenyatta University Hospital which has been identified as an isolation and treatment center, Coast General Hospital, Jaramogi Oginga Odinga Teaching and Referral Hospital in Kisumu, Kitui County Referral Hospital, Mandera County Referral Hospital and the Moi Teaching and Referral Hospital (MTRH) in Eldoret.

The selection and choice of those institutions was basically informed by where the epicenter of COVID-19 is and by the counties that have largely been affected by it. That is why we have picked Mandera and Kitui which have cases and, we have picked Mombasa that will cater for the Coast Region - that is Kilifi, Kwale and Mombasa counties.

I do not want to belabour the point because Members have copies of the Report. I will wind up because of time. The Leader of the Majority Party is saying he is tired. He forgets that we were with him here in the morning.

Despite the need to reduce expenditure, we should prioritize payment of pending bills, especially those that have already been verified in order to protect the businesses that supply goods and services to the national Government and the county governments. We took up this matter with the Cabinet Secretary, National Treasury, to also ensure that together with the Controller of Budget, they enforce the requirement that even our county governments pay our small and medium-sized enterprises (SMEs) that are supplying in the counties. This is one of the ways to ensure that we cushion our people and ensure that there is money circulating in the economy.

Funds allocated for cushioning the vulnerable against the COVID-19 pandemic on livelihoods, especially cash transfer to the poor for purchase of food to sustain families, should be channeled through the State Department for Social Protection and State Department for Arid and Semi-Arid Lands, respectively. This is for ease of identification of beneficiaries and the use of existing structures to expedite the process. There has been reported cases of chiefs and *Nyumba Kumi* elders who have been given the work of identifying beneficiaries. That process has not been transparent. I have heard a case from my constituency where one old man told me that the people who have been selected to identify the beneficiaries are *mikora*. He told me the *mikora* are either selecting their relatives or their friends and families. Therefore, we insist that the transfers should be done in a transparent and accountable manner.

The State Department for Social Protection and the National Treasury should renegotiate the charges paid by the State to service providers on the processing of the national safety net payments. With a payment of, for example, Kshs10 billion, you could end up losing a billion shillings to banks that are minting billions from Kenyans and yet, this is money that is being transferred to the poor people. We want the Government to sit and renegotiate with banks to ensure that the charges are reasonable, so that we do not have 10 per cent of that money going to our banks.

The resources of the Government of Kenya that are allocated towards the COVID-19 initiatives under the COVID-19 Emergency Respond Fund, must be appropriated by the National Assembly and proper mechanisms put in place to oversee the same. You know, money being collected from donors and other people, and public resources should be overseen by the National Assembly and I hope the same will come to this National Assembly for appropriation.

Lastly on the National Treasury – and I had spoken about this - it about ring-fencing. On the financial recommendations, after careful review of the financial recommendations submitted by the departmental committees under Schedule II, and after abiding to the hard budget constraints which entails realism in revenue performance and target deficit, the Committee has recommended reductions, increments and reallocations as provided in Schedule I.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Ichung'wah, you have a maximum of one minute.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. Further, the Committee recommends that this House resolves to:

- a) Approve the Report and the recommendation of the Budget and Appropriations Committee on the Second Supplementary Estimates for the Financial Year 2019/2020,
- b) Approve that Schedules I and II attached to this Report form the basis of the Supplementary Appropriations Act, 2019/2020.



On the National Government Constituencies Development Fund (NG-CDF), a number of Members approached me about it. I want to confirm that there was a proposal in this Second Supplementary Estimates to cut the fund by Kshs10 billion. Having looked at that matter and following engagements with the National Treasury, we realized that almost 90 per cent of Members have spent beyond the Kshs34 million that had been cut from their own accounts and committed. Some have spent way beyond what would have been cut. Therefore, since there were commitments, the Kshs10 billion has been ploughed back. Therefore, there is no cut on NG-CDF.

With that, I beg to move and request the Vice-Chairman, Hon. Moses Lessonet, to second.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Lessonet.

**Hon. Moses Lessonet** (Eldama Ravine, JP): Hon. Temporary Deputy Speaker, I thank you. As I second, this House should know that the Budget and Appropriations Committee was not happy about the application of Article 223 of the Constitution by the National Treasury. It came to our notice during consideration of the Supplementary Estimates that the application of Article 223 is not always in accordance with the law. Every time after we pass the Budget, there is another budget being operated under Article 223 of the Constitution and, by the time it comes to this House, it has already been spent. We are cautioning the Executive and the National Treasury to minimally use Article 223 of the Constitution.

In this Supplementary Budget, there is an attempt to sort out pending bills. I am saying there is an attempt because we look forward, as we go to the main Estimates probably next week and next month, to seeing more resources being set aside for sorting out pending bills, especially those bills which affect the common Kenyans like our local contractors. In the Supplementary Estimates, we noted that close to Kshs50 billion will go towards pending bills at the Ministry of Transport and Infrastructure.

With those comments, and because of time, I want to beg Members that, let us support these Supplementary Estimates. You have heard the comments on CDF. You have heard about donations by this House towards combating COVID-19. The only thing we need to do now so that we can win the war against this pandemic is to support these Supplementary Estimates.

Hon. Temporary Deputy Speaker, with that, I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We shall start with the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Temporary Deputy Speaker, I will just take a few seconds. First, I want to thank the Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning. People out there and in the media have been saying Parliament is not working. I want to confirm to them that we are not like other Houses. Our committees work, and then we come and ratify. The Budget and Appropriations Committee was busy with the Supplementary Estimates to provide money. The Committee on Delegated Legislation was busy with the regulations which we have passed. The Departmental Committee on Finance and National Planning was busy with the tax laws which we have passed this afternoon.

I want to say it here! And the Chair was very categorical. What are we giving to the people of Kenya? An amount of Kshs10 billion has been provided for cash transfers to vulnerable Kenyans to cushion them against the hard economic effects. As other Members have said, that money must be given in a transparent and accountable manner. An amount of Kshs13.1 billion has been provided to various Government agencies for payment of verified pending bills. I hope the Prisons Department and the National Youth Service will pay those verified bills in order to ensure that suppliers' dues are settled.

A sum of Kshs10 billion has been provided to KRA to expedite payment of VAT refund. That is what the President said. A sum of Kshs10.4 billion has been set aside for restocking the Strategic Grain Reserve to respond to the country's emergency food requirements. A sum of Kshs4.9 billion has been provided for recruitment of additional health workers as well as to take care of COVID-19 related health response measures, which include mass testing, provision of necessary health equipment and protective gear, among others. A sum of Kshs620 million has been provided for drilling of boreholes in informal settlements within Nairobi. Hon. T.J. Kajwang' must make sure that they do this because we have given them Kshs650 million so that they can provide water to informal sectors. A sum of Kshs1.9 billion has been provided for security operations during the pandemic period. This is what the National Assembly, through the many amendments that have been made to the relevant statutes, has done today.

We have removed taxes from face masks and other PPEs. Through the Supplementary Budget, regulation by means of delegated legislation and the Finance Committee alone, we have shown what the National Assembly – and I do not call it Parliament – can do to cushion Kenyans. The people of Garissa Township did not send me to the National Assembly to do a pay cut. That is not part of the reason. They have sent me to do this. They have not sent me to do a pay cut of Kshs30,000. They have sent me here to legislate and pass Budgets for money to go to them. People are saying pay cuts are populist, and they do not read the Constitution.

I urge hon. Members that we sit here until we reach Order No.10. We must pass this so that before next Wednesday, Parliament can prepare the Appropriations Bill so that when we come back on Wednesday, our work will be very easy. We shall do First Reading, Second Reading and Committee of the whole House.

I beg to support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Temporary Deputy Speaker. I am a member of the Budget and Appropriations Committee. We worked on Monday and Tuesday. In both days, we worked from 8.00 a.m. to 5.00 p.m. without breaking for lunch. Remember that we are doing this at a time when our mouths are covered. It is very uncomfortable, but we still managed to meet and talk like we are doing here today.

I also want to support the sentiments by my colleagues; that the work and function of Parliament and more particularly, the National Assembly, is to appropriate funds, provide oversight and legislate. This is the right time for those who have been asking what Parliament has been doing to know that. I want to let them know that it is through Parliament that money has been provided to enable us have enough food. We cannot afford a food crisis when we have a health crisis. We have provided funds to make sure that we have strategic food reserves in this country. We have also provided funds to help support our lecturers even though that is not directly linked to COVID-19. It is an agreement that was made. A sum of Kshs6.6 billion has been provided to that effect. The same goes for teachers. However, on the issue of Article 223, I

want to be very candid. The office which is failing us is the Office of the Controller of Budget. We need to make an amendment to require provision of information to this House continuously. The Controller of Budget has got to do that under Article 223. We cannot continue with business as usual. It is Parliament that finds inappropriate use of Article 223. We should remember that this House rejected the payment for the Ruaraka land. The money was eventually spent and to-date, no one has made an attempt to have that money refunded. So, the decision of this House does not make sense. Those in the Executive make decisions as they wish.

Hon. Temporary Deputy Speaker, what is also surprising is that the National Treasury has a project management unit, which is supposed or expected to review all the projects before they are introduced in the budget. However, what you see are new projects being introduced even under the Supplementary Budget, which should not be the case. A Supplementary Budget is supposed to go towards those areas with inadequate provisions of funds or unforeseen circumstances like now the case we have before us.

Finally, because I really want to be fair to others, one expected that with this crisis and with the pronouncements from the President, there will be a clear linkage between the Supplementary Budget and the fight against COVID-19. However, when you look at the entire Supplementary Budget, it is largely business as usual and very little attention to COVID-19. I think the Government should do what it says and say what it means to do. What we have seen in this Supplementary Budget is worrying. The Government should have put more money towards giving social interventions and giving people money.

Hon. Temporary Deputy Speaker, if you look at the poverty index of this country based on the 2019 Census, it is clear that we have 1.8 million households which are below the poverty line. If you give those households even Kshs2,000 each for four months, you will spend Kshs14.4 billion. That is what one would have expected the National Treasury to present before us.

Let me finally say that on the issue of the Constituencies Development Fund (CDF), it should be understood why first we could not allow that amount to be deducted. If you look at the provisions in this Supplementary Budget, it is like Parliament was being targeted too much, including CDF being seen like a Parliament thing. But the truth is that Parliament is guided by law. You cannot provide funds in this current financial year less than the previous one. This amount was maintained as it was in the 2018/2019 Financial Year. Moreover, as my colleagues have said, some commitments have been made and, therefore, it was wrong to remove the Kshs10 billion.

Thank you, Hon. Temporary Deputy Speaker. I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Mbarire

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Thank you Hon. Temporary Deputy Speaker. Let me first begin by really thanking the Budget and Appropriations Committee for a job well done and even for going further than that, upon noticing that there does not seem to be direct money earmarked towards COVID-19, they found it fit to ring-fence the money that came from Parliament towards COVID-19. That is not what we expected. Like the Leader of the Minority Party has said, I expected that we would first consider actually thinking outside the box as a country. We do not know for how long we are going to have this COVID-19 pandemic. We do not even know whether the numbers are going to get to the point where we may be forced to do a proper lock-down of this country, or even of Nairobi City. If we were to do that, then I would have expected that some real money be put aside to ensure that we cushion those

households that cannot afford to buy a meal for one week, two weeks, one month or two months, depending on the period of the lock-down.

Therefore, I am thinking that a lot more needs to be done going forward because we need to plan for the worst-case scenario. I feel the originators of this particular budget should have put their mind into that, so that we can protect ourselves going forward.

Otherwise, I am glad that some money has been set aside for the elderly and the most vulnerable people in the community. But we are still hearing a lot of complaints down in the villages of old or vulnerable people who have been left out of this important programme. We would want to see that going forward in the next budget, more money is put towards this important programme so that we can protect and care for the elderly people especially during this particular period when there is very little money that is going into people's pockets. I hope that this money will benefit the really needy people that we have in this country.

*[The Temporary Deputy Speaker  
(Hon. Patrick Mariru) left the Chair]*

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

Hon. Speaker, we have some Kshs10 billion that has been set aside for the Strategic Grain Reserves. However, we have heard of scandals where maize is bought from the wrong people. Can we ensure that we start with the farmers first? Let the Strategic Grain Reserve deal directly with Kenyan farmers without using brokers so that, that money can go into people's pockets during this period when things are getting tough economically. So, we are hoping that we are not going to hear of stories like we have heard before. There will be more monitoring of how that money is going to be used and that farmers will sell their maize at a good price so that they can feed their families. They also need to plough that money back to the farms so that they can get more food going forward.

With those few remarks, I beg to support and thank the Budget and Appropriations Committee (BAC) and the Departmental Committee on Finance and National Planning. Today, I feel that we have done a good job as a House and as the Committee on Delegated Legislation. You know we have been hit too hard. Right now, there is a thread on *twitter* about Pay as You Earn (PAYE), and we are being told that we have slept on our job. Today, we have done our job very well. We have followed the House procedures to give what is right to Kenyans.

With those few remarks, I beg to support.

**Hon. Speaker:** Let us have Hon. Junet.

**Hon. Junet Nuh** (Suna East, ODM): Thank you, Hon. Speaker, I would like to support this Motion. Hon. Speaker, this is a clear manifestation that Parliament is doing its job. We have been accused during this Coronavirus pandemic that we have abandoned our job. Little did people know that Parliament operates in committees. The Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning have been doing their work. They have been scrutinizing what they have received from the Executive, the Departmental Committee on Health and the Committee on Delegated Legislation. Today is when we needed to have a plenary to pass all the resolutions that have been passed by the committees. Those committees have big numbers. For instance, the Budget and Appropriations Committee has 27 Members. It is a mini-Parliament. So, I want to assure my fellow Kenyans that Parliament has been working.

Having said that, I am really surprised at the way financial issues of our country are being managed. Under Article 223 - and you being a senior lawyer and almost a Supreme Court Judge know- we are supposed to use it only when there are unforeseen issues. However, when I look at the Supplementary Budget, I see money that has been spent on ordinary things. It just shows how we are not prudent in implementing our budget. Why countries have budgets is because they want to achieve financial discipline. That is why we do a budget at the beginning of the year, present it to Parliament, it is passed, the Appropriations Bill is done and you go to implement it. What is this that we have not seen of ordinary things such as building railways and roads that cause one to spend money outside their budget, and then expect Parliament just to rubberstamp it like that? We must be a country that follows the rule of law and respects its Constitution. Outside that, we shall be embracing anarchy and the economy can collapse because of that.

There are good things that have been brought under this Supplementary Budget. There is the Kshs10 billion for cash transfer for vulnerable people. That is good and I really appreciate it. Parliament has given from its budget Kshs3 billion to go towards Kenyatta National Hospital and the front-line health workers in the fight against Coronavirus. However, Hon. Speaker, I expected much more than that in this Supplementary Budget. I want to indulge the Executive that they have not stood up to their equation. This is a time when the country is at war, fighting a disease that has become a pandemic in the whole world.

I expected much more money to be focused on social safety; on how to feed people who cannot afford food in their homes; how to alleviate the suffering of people because of loss of jobs or companies closing down because of the Coronavirus.

The African way of life is taking what is available, because what you do not have, you might not get. This is what the Government has provided and Parliament has also tried. If you have lemons, you make lemonade out of them. So, what the Executive has brought is a budget stating that it can afford Kshs10 billion for vulnerable people and Parliament added them Kshs3 billion. The tax cuts that we passed this morning are also important.

With those few remarks, I support and say that this has shot below my expectations. It is underwhelming. In the budget coming in June, because the effects of COVID-19 might take another three months, the House must rise to the occasion and come up with better approaches to the issues I have raised on social safety.

Thank you, Hon. Speaker for giving me this opportunity.

**Hon. Speaker:** Hon. Members, allow me to follow the screen. So, when a person speaks from one side, we give the other side. I can see there are so many of you who have interest. I may not know who is about to begin dozing, but let us have Hon. Chachu Ganya.

**Hon. Chachu Ganya** (North Horr, FAP): Thank you, Hon. Speaker for giving me an opportunity to contribute to this Motion. I want to support the Supplementary Budget. At this time of this public health pandemic, it is critical that we look at our budget and adjust where necessary. The Supplementary Budget is before us in a very timely way, and I think it is appropriate for us to speak about it now.

It is also important to note that some measures have been taken to cushion Kenyans in various ways and this is highly appreciated. For instance, the urban poor have been considered by provision of boreholes. There will be enough resources to enable us to have food in this country by investing in strategic grain reserve. It is also important to note that the most vulnerable Kenyans; the elderly, orphans and the poor of the poor, are also being targeted. This is through provision of money directly sent to them through social protection by various

Government agencies. This is timely and it is taking care of Kenyans at this very critical moment.

I also want to appreciate the leadership of this House. They are ensuring that, as Parliament, we do what it takes to adjust our budget and avail resources to Kenyans at this critical time in our history. The Kshs3 billion that Parliament has given to enable our country to invest in strategic public health institutions is highly commendable. I want to commend the Budget and Appropriations Committee and the leadership of Parliament for that role. This is highly appreciated and, as Members of this House, we highly support you on this.

Also, water has been provided in critical areas in the Arid and Semi-Arid Lands (ASALs). This is important because water is required in terms of food security. A major way of safeguarding oneself from the COVID-19 pandemic is having water, soap and good hygiene practices. This will enable Kenyans to cope with this calamity.

With those few remarks, I support the Report.

**Hon. Speaker:** Member for Alego-Usonga.

**Hon. Samuel Atandi** (Alego-Usonga, ODM): Thank you, Hon. Speaker. I want to join my colleagues in congratulating the Departmental Committees of Finance and National Planning and the Budget and Appropriations Committee for doing a great job during this pandemic period.

I am a member of the Departmental Committee on Finance and National Planning and we sat every day for seven days without taking a break. We never used to go for lunch. I have gone through the Supplementary Budget and I want to say that I support it. However, there are some things that this House must take a position on. One is the continuous abuse of Article 223 of the Constitution by the Executive. My Committee has brought a case before this House where immediately the new Salaries and Remuneration Commission was appointed, the first thing they did was to buy big fuel guzzlers using this Article 223. The next thing they did was to take Parliament to court before they even did any job that they were appointed to do.

As a Committee, we took a position and said that we will never approve that item. This Article continues to be abused by the Executive. It appears to me that the Cabinet Secretary of the National Treasury has some executive authority over resource expenditure using power that they have not been given by this House. Now that it has also appeared in this Supplementary Budget, it is something this House must take a position on.

Secondly, I have noted that the Supplementary Budget has set aside Kshs10 billion to be used for cash transfers to orphans and vulnerable members of our community. However, I have noted that this process is being managed by the Provincial Administration and Kenyans have less confidence in that department of the Government. Kenyans do not have confidence in anything they do. In the listing of beneficiaries, I think we need to find a way in which the money can reach Kenyans in a way that Kenyans really appreciate. I have noted that even the beneficiaries are not selected on merit. I also observe that in this period, the national Government and the county governments must give priority to water and food security. That is something that we must emphasise because if we do not invest sufficient resources on water, then we will not be able to fight this pandemic. If there is anything that COVID-19 has taught us as a people is that we must now continue to be more self-reliant. We cannot afford to be relying on others. In food production, we will get to a stage where every country will be securing themselves. They will not have excess to export to us. So, we must put sufficient resources in place to ensure that this country is secured from hunger and we have water everywhere. There are some villages where

people do not have water. They have to walk long distances to get water. That is why I support the proposals to allocate resources in that respect.

This House must now put strong measures on oversight. As you have seen, the Executive has spent a lot of resources under Article 223 without parliamentary oversight. I plead with you and the House leadership that we continue to put in place measures to ensure that the resources we allocate for COVID-19 are properly used. This issue of social distancing is making members of the Executive think that now that Members of Parliament are not sitting, they can just use resources the way they want. In the process, Kenyans are going to hurt and suffer.

Thank you, Hon. Speaker. I support.

**Hon. Speaker:** Member for Nyeri Town.

**Hon. Ngunjiri Wambugu** (Nyeri Town, JP): Thank you very much, Hon. Speaker. I stand to support the Report. I also join my colleagues in congratulating the Budget and Appropriations Committee for being able to sit especially during this period. I know earlier we were a bit hard on the Departmental Committee on Finance and National Planning on some issues, but I also congratulate them. The last week or two have been difficult and the circumstances in which committees are meeting are difficult. That they have been able to bring a Report and amendments to us is something that we need to congratulate them for.

The COVID-19 period has taught us that in this country, the most important things are health, food and water. This is what Kenyans are going to look at in that Budget. As we go out there to tell them what we have done - as we were being accused of not doing anything - I would urge my colleagues to also spend a lot of time focusing on explaining the money that we have put into those particular areas. I know at this moment in time all of us are getting calls from our constituents about food, and people are scared about what is happening on employment, but it all comes down to being able to live and support their lifestyle.

Hon. Speaker, as I congratulate the Committee, the fact that we have put money into hospitals, the fact that we are remembering our healthcare system, is very important. We have always had an option of leaving the country in case we were not happy with our health system. However, we have been taught a lesson we will never forget as a country that there can come a time and disease that we will not be able to go out of the country to get treated. Even as we keep on putting money into our healthcare system, even as we look at future budgets, we will need to keep remembering that if we cannot treat and feed our people, it does not matter what other developments we do, we will be setting up an environment for chaos.

So, I support the Report and commend the Committee for a job well done.

**Hon. Speaker:** Member for Seme.

**Hon. (Dr.) James Nyikal** (Seme, ODM): Thank you, Hon. Speaker.

Hon. Speaker, I take this opportunity to congratulate the Budget and Appropriations Committee, the Departmental Committee on Finance and National Planning as well as all other departmental committees that contributed to this Bill. It is clear evidence that Parliament has done the work it should.

Hon. Speaker, allow me to put a little emphasis on the comment made by the Chair of the Budget and Appropriations Committee that there seems to be lack of focusing on COVID-19 in this Budget although some money has eventually been put aside for it. There seems to be an issue at the National Treasury even this morning and later in the day when we were looking at the Tax Laws (Amendment) Bill. The many amendments that were made by the Departmental Committee on Finance and National Planning were so important. Things such as food,

agricultural inputs and tourism are so important for the welfare of the people and the situation we are in, yet the Committee had to make them understand. So, the National Treasury needs to be focused and look at the situation of the country today.

Hon. Speaker, I appreciate the Committee for saying that more money needed to go into health particularly into institutions like Kenyatta National Hospital, which apart from all the other things that it is doing, is setting up a place where health workers will be taken care of. That is extremely important. We know that health workers are at a great risk of being infected. The Kenyatta University Teaching Hospital, which is now the main high-level treatment centre of the COVID-19 patients complete with an Intensive Care Unit (ICU), needs support. In addition, the Moi Teaching and Referral Hospital (MTRH) and all the Level 5 hospitals that are being prepared for this pandemic, also need support. If you look at KEMRI, you will realise that they need more money. In fact, more than what they have got because they are at the forefront of fighting COVID-19, as we cannot get test kits due to the shortage all over the world. Therefore, if we can make ours, they will guide us in the progress that we are making.

Hon. Speaker, I appreciate that the Committee ring-fenced money for COVID-19. This is how it should be because the issue of testing, put together with contact tracing, isolation and quarantine, is an expensive process. The purchase of PPEs is key for our frontline workers. We need the equipment in case our good efforts such as hand washing, social distancing and contact tracing do not flatten the curve. Even if we flatten the curve, we will need very high-level treatment that is expensive. Therefore, we need to prepare for that. There has been a bit of too much emphasis on ventilators. When we get to the next discussion, maybe, we will see that probably we do not need to go that direction. We can put a little preparation, but we need to look into other areas.

We need to look at the issue of human resource, which is key. These are our workers. We also need to look at the vulnerable people and the cash transfers that have been put in place. I must say that we need a better way of identifying other vulnerable people, should we go to a lockdown. That is where our weakness will be, particularly in the high density urban areas where people live on a day-to-day work. That is important. They said that we need to review the payment we make to the banks on this.

Before I finish, there is the issue of two-to-three Members in our committee. A new project was starting in Kenyatta University which had not been budgeted for and perhaps money was already used.

**Hon. Speaker:** Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. I rise to support the Report by the Budget and Appropriations Committee. First and foremost, I thank them. The Budget and Appropriations Committee, the Departmental Committee on Finance and National Planning and the Committee on Delegated Legislation went out of their way to sit at these extraordinary times to deliver extraordinary reports. It is for this reason that as a House, we, must finalise what they have done today. Kenyans are waiting to see the results of our work, and especially there being hue and cry that Parliament was not rising to the occasion because of the pandemic.

We have several allocations that we must mention which are towards benefitting our people, especially during this time of the pandemic, including the Kshs10 billion that has been allocated to vulnerable persons in the country. I know there is another hue and cry out there as to how the Provincial Administration identified these people. There are claims of favouritism,



nepotism, bribery and corruption. However, we take it that the Government will deal with these issues so that those beneficiaries are properly identified and can benefit from the money.

We have also set aside money for development. The NG-CDF is retained because everyone looks forward to see what it can do, which is visible, in the villages. We have also set aside some money for water in urban areas. I have not heard of water in rural areas. We have constituencies that are dry and suffer a lot from lack of water including Tharaka Constituency. I plead with the Ministry of Water and Irrigation, so that we can have an allocation going to the constituencies to develop water services.

That applies also to roads. Rains are pounding all over the country. As a result, most of roads are dilapidated. We must set aside money for rehabilitation. As soon as the rain subsides, we will have money where roads can be put together, especially in my constituency. I hope Hon. Ichung'wah remembered to include some money for Tharaka Constituency. We passed this Report this morning.

With those few remarks, I support the Report and urge the House to pass it, so that as we move to next week, there will be matters that are ahead of us.

Hon. Speaker, I beg to support.

**Hon. Speaker:** Member for Kitui Central.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Speaker. I will be very brief because a lot has been said by the Members. I only want to say what has not been said.

In terms of supporting Kenyans who are exposed as a result of COVID-19, we have the traditional vulnerable groups. These are the elderly, orphans and widows. However, there is a new group which has come up which is very vulnerable as a result of COVID-19 and these are people who have been sacked from their employment. People have been told to remain in their houses and they are saying that they are dying because they have no food. With these resources, we urge the Select Committee on the Prevention, Response and Management of COVID-19 to immediately take action and support these Kenyans.

Secondly, other than what we have provided as Parliament, there is a lot of money that is being given by the private sector through the Emergency Fund (EF). For now, as a country, we have to put in place a very clear monitoring, evaluation and accountability framework, to assure those who are going to give money that it will be put to good use. This is the issue with county governments. We also urge county governments to properly target some of these resources.

Lastly is the issue of stimulating the economy. If you look at this Budget, some money has been set aside to construct water pans, boreholes and some access roads which are very important in stimulating the economy. My appeal is that these kinds of economic activities which can jumpstart the economy should be implemented immediately.

Finally, Kenyans are the kind of people who think about corruption when they see money. I want to appeal to the accounting officers and anyone else who will be in charge of these resources that this is not the time to think about how much you will make. It is time to think about how to save Kenyans out there. We can make money after saving Kenyans.

I submit and I thank you.

**Hon. Speaker:** Well-spoken because we usually tend to get lost in these last supplementary budgets in the manner that you have pointed out, Hon. Makali. Lest it be seen as if budget-making is a male dominated exercise, Hon. (Ms.) Sabina Chege, whose card is not working. It is not my fault, but that is how it looks.

**Hon. (Ms.) Sabina Chege** (Murang'a CWR, JP): Thank you, Hon. Speaker. I confirm that I have tried from morning and my card is not working.

But first and foremost, I want to thank you for allowing us as Members to meet and giving us a conducive environment at this special time. I also take this opportunity to thank the Departmental Committee on Budget and Appropriations for doing such a good job. I also hope that this is a chance that the Ministry officials, especially the accounting officers, will take the lead and see what they need to do for the main Budget.

My Committee met and I want to thank the Departmental Committee on Budget and Appropriations because they had to wait for me to first meet with the Principal Secretary. By the time they made their presentation, what we expected was not there. It is good for this House to know that the budget for health was reduced by almost Kshs12 billion. We are all fighting COVID-19 and the Budget and Appropriations Committee has supported that with Kshs3 billion from Parliament. We thank Parliament for doing that. Those issues were not covered at all.

Hon. (Dr.) Nyikal alluded to a project that the Ministry had put in the Supplementary Budget which was worth Kshs1.4 billion. Basically, we had not passed that project in the House. It was not urgent, but in the same institution that they wanted to run that project, we have a hospital that has a capacity of 600 beds. However, they are only operating with 300 beds. So, we made a decision as a Committee and made a proposal to reallocate that money to various institutions, namely Kenyatta University Hospital and Kenyatta National Hospital. We have a shortage of staff. We also have a new hospital called Othaya Hospital that will help this nation in the fight against COVID-19, especially looking at new isolation centres once it is complete.

As I thank the health workers who have really given their all, I also want to thank the Ministry because they have also established their centre which specifically takes care of our health workers. But as the Budget and Appropriations Committee has requested, the Kshs3 billion should be accounted for by the Ministry to the relevant Committee, which is the one I chair. It is important that we think about Kenyans, for example, the case of one Mr. Jared, who was working as a watchman in one of the quarantine facilities and contracted the virus. But when he was taken to Kenyatta University Hospital, he was given a hefty bill. How do we expect that guard to pay for the bill?

I hope the ministry will come up with a strategy to help the people at the forefront, including guards who might contact the disease especially in our public facilities. It is also my hope that as we give the money for boreholes and other essential services, as my colleagues have said, that money should go to helping Kenyans.

There are some ASAL areas that are really needy like Mathare-ini in Murang'a County. It was reported in the news that people in Mathare-ini bought masks that looked like underwear because they could not afford to buy the real ones. So, I urge the Government to use the National Youth Service and the Kenya Prisons Service to make affordable masks for Kenyans. We know free things are sometimes abused. Such masks should go for Kshs5 or Kshs10 for Kenyans to afford them.

Once again, I thank the Budget and Appropriations Committee. Kenyans now know that we are not there for populism or just to be seen to be working. This House is really working. We have passed laws and now we have given out money so that we can fully support Kenyans. Ours is not a game or a show. We are there as people's representatives to represent their interests in this House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Speaker for giving me the opportunity to support the Supplementary Budget.

A few weeks back, this House was termed by one of the dailies as a House of traitors. But what we have done today is commendable. We have done quite a lot in terms of the tax measures. We have resisted attempts to tax bread and milk. We have also removed taxation on masks and PPE. We have also taken many other measures that are going to help in the fight against COVID-19.

Going back to the Supplementary Budget, I have noticed, as a new Member of the House that we have been deteriorating in terms of adherence to the law, standards and best practices in the process of formulating the Supplementary Budget and the Budget generally, as a country. I say this because, Hon. Speaker, you have heard Members complaining about what is happening with regard to non-adherence to Article 223 of the Constitution. In this Supplementary Budget, I looked at the list of projects under Article 223 and we are talking about Kshs25.6 billion. That is not acceptable. I know the Leader of the Minority Party has said that the problem starts with the Controller of Budget. But I also think that the House is very lenient on this issue. In the next Budget, we need to be very clear that the law has to be followed.

On the issue of deterioration of the budget-making process, I have also realised that much of the budget reallocation in this Supplementary Budget exceeded the 10 per cent threshold that is allowed in the Public Finance Management (PFM) Act. This is also not acceptable. We have also new programmes and new projects that have been introduced in this Supplementary Budget contrary to the Public Finance Management Regulations. In many of Votes in the Supplementary Budget, no effort has been made to give an analysis of the fiscal impact of the additions or reduction in the expenditure of the various programmes.

This is an issue that we need to look at. The Budget and Appropriations Committee can guide us in this to ensure that we maintain high standards and adhere to the law when we make the Budget.

This Budget largely deals with pending bills which is a good thing because pending bills have been an issue here. The Supplementary Budget has very little to do with COVID-19. However, the measures taken to deal with COVID-19 are commendable because we have allocated Kshs1 billion towards recruitment of additional health workers, Kshs2.6 billion for external funding for COVID-19 Emergency Fund, and Kshs10 billion to the elderly. However, allocation of money to the elderly should be done in an accountable manner. We encounter many deserving people who have not been considered. The idea of using Provincial Administration and chiefs to identify those who should benefit is not good. It will be useful if elected leaders...

**Hon. Speaker:** Member for Tigania West.

**Hon. John Mutunga** (Tigania West, JP): Thank you, Hon. Speaker, for giving me an opportunity to add my voice in supporting the Report of the Budget and Appropriations Committee.

Hon. Speaker, Members have spoken about the lack of focus by the Supplementary Budget on COVID-19. I want to highlight why they are saying that. We do not expect a country like Kenya, in the 21<sup>st</sup> Century, and after many studies, to refer to the area managers and assistant chiefs to locate the vulnerable in the society. We have a lot of information that was collected last year during the Population and Housing Census by the Kenya Bureau of Statistics and the Huduma Namba study, which could have been corroborated and used to identify the

number and the names of the vulnerable and the extent to which they are vulnerable. We keep going out there to look for the vulnerable yet we do not have a single budget line to do this. It is mishandled. Right now, there is hue and cry on those who have been identified as the vulnerable.

Hon. Speaker, we are behaving like a non-developed country. A country like Rwanda is way ahead of us and is using data to locate and respond to the needs of its people. Why are we doing this at this particular point in time? The focus of the Supplementary Budget has been on other issues and not on COVID-19.

Procurement of food outside Kenya is another item that has been allocated money, but my question is why we are prioritising importation of food. Every country today is urging its people to save money. If we buy food from our people, will we not be saving for a rainy day? The rainy season is already here with us. We do not know when COVID-19 will end. Let us not import food. Our people are only asking for a small margin and they will give us food to store.

Strategic food reserve is not supposed to be given for free. It has always been sold. As the Departmental Committee on Agriculture and Livestock, we had followed up on the money generated after the selling of the strategic food reserves and the previous Cabinet Secretary told us they had enough money to buy food. Why are we allocating more money to buy food to sell and that money disappears? We must follow up on that issue. When we give food as relief, this House votes money for that particular purpose. We need to know where that money goes.

This Supplementary Estimate does not focus on supporting local manufacturing. This crisis has created an opportunity for us to manufacture simple things like masks in order to support our people. We should look at opportunities to upgrade our level of manufacturing in terms of producing PPEs and respirators. Our young scientists have come up with some innovative machines that we must support. If we supported the Nyayo pioneers, we would be driving Kenyan cars. We do not believe in our own scientists and innovations. We believe in importation from China and yet it is killing our people. People there will not even realise that they are not supportive of us.

Finally, I will speak about the Executive's focus on using Article 223. I would like to mention that upon analysis of the Supplementary Budget, 68 out of the 157 programmes had bypassed the 10 per cent mark. If they have passed the 10 per cent mark, it means they have broken the law. We need to be cautious.

Let me commend the Committee and Parliament for giving Kshs3 billion to the fight against COVID-19. We want to see what newspapers are going to say tomorrow because they just want to hear salaries have been cut. When salaries are cut, where does the money go? How is it consolidated and how does it respond to the fight against COVID-19?

**Hon. Speaker:** Let us hear the Member for Mathare. I am following the list. I said we will just follow the list, so that you do not have to call me. The next on the list after the Member for Mathare is the Member for Mogotio.

**Hon. Anthony Oluoch** (Mathare, ODM): Thank you, Hon. Speaker for giving me this opportunity. I support the Report and the work done by the Budget and Appropriations Committee, and the Departmental Committee on Finance and National Planning. They have worked very hard to give us the programmes we have been dealing with the whole day.

Given what has been going on, many of our people will be wondering whether we have adequately addressed the issue of COVID-19. We normally hear the Cabinet Secretary for Health talking about mass testing. He says that we have to do more mass testing for us to come out of this crisis. We hear how many people in our constituencies say they need food. In this Budget, it

is not very clear to many people how this has been addressed. On the issue of provision of equipment, the Chairperson of the Committee really wants us to say something has been done in this area. Leaders in the United States of America, like the Governor of New York, talk about the actual things that are required. He talks about the required number of PPEs, beds, ventilators and the amount of money required to address the issues. We have, to some extent, to address some of these issues. As it has been said, we have ring-fenced some money to address the issue of COVID-19. The National Assembly has set aside Kshs3 billion for that purpose. That will go a long way to address this matter. We would like to see the Cabinet Secretary addressing this more specifically. As he gives us the statistics of how many people are getting infected by the diseases, he should also be telling us specifically what they are doing. I saw in the *Standard* yesterday that they tried to give a breakdown of all the donations we have got from the Jack Ma Foundation. I have seen something trending today that we have already used Kshs40 billion. It is trending now. Whether it is true or not, many people are already questioning how we are spending Kshs1 billion a day to have already spent Kshs40 billion. We would like to see the Government giving more breakdown on how the money is being spent, especially on mass testing and acquiring the equipment. The other day we saw the Cabinet Secretary saying that we bought some testing kits from China. We would like to have more explanation on this equipment, so that we can be sure of success in the fight against this disease.

We want to see something on food. As Dr. Mutunga said, we need to check on the Strategic Food Reserve. They already have about Kshs10 billion in their account. I see the Budget and Appropriations Committee has set aside another Kshs10 billion or Kshs12 billion for food. We need to consolidate these figures so that we do not keep on adding more money to the budget line. The work that has been done by the Budget and Appropriations Committee within this short period is good although there was less consultation with departmental committees. Most of us did not even see input from committees. However, I heard the Chair of the Budget and Appropriations Committee say that the Departmental Committee on Agriculture, Livestock and Fisheries never gave an input. Basically, we were not informed. The Chairman said that although they were told over the weekend to give a report, they could not call the agencies to come and input something. Still, we commend the Committee's work. The Committee has worked very hard and I thank the Members very much.

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

**Hon. Katoo ole Metito** (Kajiado South, JP): Thank you, Hon. Speaker. I rise to support this Motion. I have only two points to make. One is on the issue of the Ministry of Foreign Affairs and International Cooperation. A lot of reductions have been made on this Second Supplementary Estimates Budget. The Ministry of Foreign Affairs and International Cooperation was unfairly targeted in the reduction. I will give two examples among so many where the Ministry lost money. This afternoon, I issued a statement on the plight of Kenyans in China, India and other foreign countries with regard to the COVID-19 pandemic.

With the Ministry of Foreign Affairs and International Cooperation losing Kshs439 million on recurrent expenditure on its missions abroad, definitely these missions will not be able to respond to distress calls from Kenyans in foreign countries. For example, if we take three countries, China, India and the United States of America, they are so vast. In China, we have an embassy in Beijing and a consulate in Guangzhou. In India, we have one in New Delhi and in the USA, we have a fully-fledged mission in Washington DC. We also have the same in New York and Los Angeles. These missions have no recurrent money to respond to these distress calls.

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Kenyans are calling for help. Definitely in the Statement that I laid on the Table of this House this afternoon, I said the Ministry of Foreign Affairs and International Cooperation requires Kshs4.5 billion to respond to all these distress calls by Kenyans in foreign countries. We have about 60 missions globally and that money would have been spent or allocated to all those missions to be able to help Kenyans. Still, the same Ministry lost Kshs700 million apart from the Kshs439 million. They lost this money in projects that they were doing in the missions, be it renovations or construction of our missions. Geneva lost Kshs410 million and Pretoria also lost. That will occasion, as it was said by the Mover of the Motion, extra pending bills because we have contractual obligations on this money. So, definitely as we move to the next financial year, which is about two months from now, we will likely appropriate money to pay pending bills.

The other one is on the ministries that the Committee I Chair oversees. The Ministry of Defence lost Kshs6.6 billion in the development vote. This money was for military modernisation, which is normally money allocated through what we call “export creditor facility”. This is money that has been contractually agreed on. Therefore, Kshs6.6 billion will be another pending bill for the next financial year. I understand the times we are in at the moment, but we needed to have targeted recurrent expenditure in other areas. In the Ministry of Foreign Affairs and International Cooperation, we need to ring-fence money that has already been allocated to our missions. Otherwise, we will not be able to project the image of Kenya globally.

**Hon. Speaker:** Member for Wundanyi.

**Hon. Danson Mwashako** (Wundanyi, WDM-K): Asante, Mhe. Spika. Kwanza nashukuru umenipa nafasi. Mimi ni mmoja wa wanakamati wa Kamati ya Bajeti na Makadirio. Kwa kweli, tumekuwa na kipindi kizuri cha kuangalia hesabu iliyotolewa kutoka Hazina ya Kitaifa. Mapema leo hii tulipata nafasi kuangalia ripoti ya Kamati ya Hazina. Sasa tumepata nafasi nzuri tena ya kujadili Mswada huu wa Makadirio ya Ziada.

**Hon. Speaker:** I am very sorry, Hon. Members. On account of the resolution of the House this morning, this Motion started at 8.30 p.m. and it had one-and-a-half hours. So, at 9.55 p.m., which is now, the Mover has to be called upon to reply. It is in keeping with your own resolution. Remember the Speaker cannot change the resolution of the House. The Speaker is a servant of the House.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. Let me begin by thanking Members for the resilient to be here until 10.00 p.m. Those who say Members of Parliament are not working, I hope they are watching to see the many Members of the National Assembly who are here, late into the night, to make sure the Supplementary Appropriations Bill and the Tax Laws (Amendments) Bill are passed.

I appreciate the valuable input that has come from Members. Members did hear the input from Hon. Mutunga, the Member for Tigania West, on issues touching on data. At a time like this when we are being encouraged to work from home, there is a recommendation in the Report on what we need to do to ensure that there is internet connectivity across the country. Even as we expend resources in this digital age, we must ensure that we get value for money. Remember we spent almost Kshs1.7 billion and another Kshs5 billion on the Huduma Namba Programme. From the concerns we have heard from all the Members who have contributed on identification of vulnerable people, it would have been expected that the Huduma Namba data and the Population and National House Census data would assist. A lot of data was collected last year to the extent of asking Kenyans whether they own a boat, even for those of us who live in Kikuyu and do not need a boat, and whether you own a cow, how many chicken and pigs you own, if

you are a pig farmer like me. That data ought to help the Government in planning. Therefore, there is no reason to ask Nyumba Kumi heads and chiefs to go back and identify vulnerable and needy families in the villages. You should have gone back to your data if you were really serious.

I must note that there are Cabinet Secretaries in this country who have made it a habit of just doing public relations work with the President and the people of Kenya. Even recently, there was one with Google balloons proposal. I do not know what value that has at this particular time. Unfortunately, it is the same Cabinet Secretaries who were in charge of data collection with the Huduma Namba and the Population and National Housing Census, telling us that the census data is now digitalised. With that digital data, we would have expected that the information would be readily available to the Government to use at such a time.

On the question of food import, as the Member for Mogotio and the Member for Tigania have said, a time like this the Government ought to encourage farmers by buying food from them and ensuring that we safeguard against inflation. One of the key drivers of inflation from now to the end of the year will be the cost of food. We must safeguard against high inflation by ensuring that we produce food locally and at a cheaper price.

With that, Hon. Speaker, I beg to reply and thank all the Members who have taken time, including those who are following the proceedings on Zoom and other channels especially those who are locked out because of age. We appreciate their support.

I beg to reply.

**Hon. Speaker:** Hon. Members, I know you have spoken a lot about infractions of Article 223. I have, however, been reflecting on what these complaints are about and concluded that you were complaining to yourselves. You have the power. If any Government official, regardless of their status, is in breach of the Constitution, you just need to talk to Hon. John Mbadi and Hon. Otiende Amollo and they will craft something for you. They will show you how you can move about with this. Do not cry when you actually have the answers in your hands.

*(Question put and agreed)*

Hon. Members, I congratulate you for the work and the many hours you have put in today. I also wish to announce that these resolutions give way for the publication of the Supplementary Appropriations Bill, No.2 for the Financial Year 2019/2020.

Hon. Members, there had been a request, which I think is good, in terms of keeping with the practice... I kept following what was going on in the House even after I had left the Chair. There was a request by Hon. Ngunjiri and I think, Hon. Aluoch, who has since left, that we could make it today for the next Motion. Unfortunately, the earlier Procedural Motion which was moved by the Leader of the Majority Party, and which was passed, had indicated that the House will sit until the conclusion of the business appearing as Order Nos.9 and 10.

I, however, think that what we have disposed of today now paves way, without doubt, for many of you to express yourselves on that Motion. Other than the Supplementary Budget and a few other procedural matters, I think we can allocate sufficient time. There are so many of you who have expressed interest in that Motion. I would encourage as many of you as possible to be present when the House next sits.

**ADJOURNMENT**

**Hon. Speaker:** Hon. Members, it is now five minutes past 10.00 p.m., and there being no other business, the House stands adjourned until Wednesday, 29<sup>th</sup> April at 10.00 a.m.

The House rose at 10.05 p.m.