



**TWELFTH PARLIAMENT
THE NATIONAL ASSEMBLY - (FIFTH SESSION)**

COMMUNICATION FROM THE CHAIR

(No. 30 of 2021)

**GUIDE ON CONSIDERATION OF PROPOSED AMENDMENTS TO THE
FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 18 OF 2021)**

Honourable Members,

Before the House proceeds to the next Order, which is the consideration of the Finance Bill (National Assembly Bill No. 18 of 2021) in Committee of the whole House, I wish to offer following guidance with respect to amendments proposed by individual Members and the application of the provisions of Article 114(2) of the Constitution.

Honourable Members, as you are aware, Article 114(2) of the Constitution provides that- ***if, in the opinion of the Speaker, a motion makes provisions for a matter listed in the definition of "a Money Bill", the Assembly may proceed only in accordance with the recommendation of the relevant Committee after taking into account the views of the Cabinet Secretary responsible for Finance.*** Under sub-article 3 of Article 114, a "money Bill" includes matters that contain provisions dealing with, *inter alia*, **taxation**; the imposition of charges on a public fund; the appropriation, receipt, custody, investment or issue of public money; and, the raising and guaranteeing of any loan or its repayment. In this regard, a Finance Bill, being one that deals with taxation is clearly a money Bill. Therefore its consideration in the House squarely falls within the confines of Article 114 of the Constitution as well as other provisions relating to processing of legislation in the House.

Having said that **Honourable Members**, as you will notice in today's Order Paper, several Members have proposed amendments to the Finance Bill, 2021. They are :- the Member for Dagoretti South (The Hon. John Kiarie) Nominated Member (The Hon. David Sankok), The Member for Kikuyu (The Hon. Kimani Ichungwa) and the Member for Moiben, (The Hon. Silas Tiren). These amendments were referred to the Departmental Committee on Finance and National Planning for consideration in terms of Article 114 of the Constitution as some make provisions for matters listed in the definition of 'a money Bill'. The Committee has given its recommendation taking into consideration the views of the National Treasury as required by law.

As such, **Honourable Members**, I now wish to guide the House as follows with regard to the various amendments for which a qualification has been made in the Order Paper-

- (i) ***Amendments on Petroleum Products Liquefied Petroleum Gas (LPG)***- the Member for Dagoretti South (Hon. John Kiarie) is proposing an amendment to Clause 15 to exempt petroleum products from the current 8% VAT and in Clause 22 to postpone the implementation of the 16% VAT on LPG from the current proposed date of 1st July 2021 to 1st July 2024.

The Departmental Committee on Finance and National Planning has recommended that the House **does not consider** the amendments. In making the recommendation, the Committee notes that if implemented, the proposals would have far-reaching implications on revenue collection and would greatly affect the implementation of the national budget, and indeed the financing of the Appropriation Act, 2021, which was passed by this House on Tuesday, this week. **Therefore, the amendments by the Hon. John Kiarie will not be considered at Committee of the whole House.**

- (ii) ***Amendments on Zero-rating of bread and maize flour and amendment relating to definition of the word "control"*** : Nominated Member (Hon. David Sankok) is proposing amendment to Clauses 2, 21, 22, and 23.

The proposed amendments to Clauses 21 and 22 seek to zero-rate bread and maize flour respectively, while the proposed amendment to Clause 23 seeks to remove excise duty on mobile money transfer. The Committee observes that the net effect of the amendments is reduced revenue collection which will in turn have a negative effect on the implementation of the national budget. On the zero rating of bread, the Committee is agreeable with the proposal as it has also proposed similar amendment on the subject Clause. The Member's proposed amendment may therefore be considered alongside that of the Committee in line with Standing Order 133 with priority being accorded to the amendment proposed by the Committee. **However, the Member's proposed amendments to Clause 22 and 23 will not be considered on account of their effect on revenue collection and the financing of the Appropriations Act, 2021.**

Similarly, the Member's proposal to amend Clause 2 to delete the definition of the word "control" **will also not be considered** as the Committee has proposed comprehensive amendments on the application of the said word. Indeed, keeping with our practice, I am persuaded to give priority to the proposals of the Committee given the fact that the proposed amendments are as a result of a lengthy process involving multiple stakeholders at the public participation stage envisaged under Article 118 of the Constitution.

- (iii) ***Proposed amendments to impose excise duty on imported onions, potatoes and eggs:*** The Member for Kikuyu (The Hon. Kimani Ichung'wah) is proposing amendments to Clauses 1, 7, 22 and 25 of the Bill and to also insert a new Clause 23A. The proposed amendments seek, *inter alia*, to introduce excise duty on imported onions, potatoes and eggs while removing excise duty on mobile money transactions.

Additionally, the Member proposes an increase on excise duty on money transfer services and inclusion of drones to the list of excise duty items.

Hon. Members, I am informed that upon consideration of the amendments, the Departmental Committee on Finance and National Planning has recommended that the **amendments to Clause 1, Clause 7 and paragraph (d) of the proposed amendment to Clause 25 should not be considered** as they have a considerable negative effect on revenue collection which may in turn require a reconsideration of the national budget. The said amendments will therefore not be considered.

Nonetheless, the proposed amendments to **Clause 22, paragraph (a), (b) and (c) of the proposed amendment to Clause 25, and New Clause 23A may proceed for consideration at the Committee of the whole House.**

- (iv) ***Proposed amendments relating to Value Added Tax Act on certain agricultural products:*** The Member for Moiben (The Hon. Silas Tiren) has proposed amendment to Clause 21 to include a list of twenty five agriculture machinery and farm implement items as VAT exempted items under the Value Added Tax Act, 2013. The items include ploughs, harrows, manure spreaders and other farm machineries. Whereas the intention is good and may go a long way in supporting agricultural activities in the country, my hands, and indeed those of the House are tied by the requirements of Article 114 of the Constitution. Similar to the previous proposals, the Committee and the Cabinet Secretary for the National Treasury are concerned by the huge effect of the amendments to revenue collection. The Committee has therefore advised against their consideration, with exception of one item.

Therefore, the amendments will not be considered by the Committee of the whole House, save for the first item of paragraph (b) of the proposed amendment, which is listed as proposed item No. 134 being "Tractors other than road tractors for semitrailers".

In summary **Honourable Members**, the proposed amendments that were received through my office and for which a disclaimer under Article 114 of the Constitution has been made in today's Order Paper, will be proceeded with in the manner that I have guided above.

As I conclude, I wish to remind the House of the provisions of section 39A of the Public Finance Management Act, 2012, which state in part, and I quote –

"39A. Submission, consideration and passing of Finance Bill

(4) Any recommendations made by the relevant committee of the National Assembly or resolution passed by the National Assembly on revenue matters shall –

(a) ...

(b) ...

*(c) consider the impact of the proposed changes on the composition of the **tax revenue** with reference to direct and indirect taxes;*

(d) consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth;

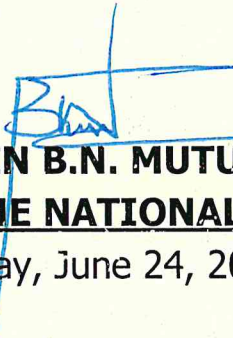
(f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and,

(g) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the East African Community Treaty."

In this regard **Honourable Members**, due consideration should always be made when proposing amendments to a Finance Bill or other revenue related legislation to ensure compliance with the Constitution, the Public Finance Management Act, 2012 and our Standing Orders.

The House is accordingly guided.

I thank you!



THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, June 24, 2021