

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 20th August 2015

The House met at 2.30 p.m.

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

PRAYERS

PAPERS LAID

Hon. Speaker: The Leader of the Majority Party.

Hon. A.B. Duale: Hon. Deputy Speaker, Sir, I beg to lay the following Papers on the Table of the House today, Thursday, 20th August 2015:-

Report of the Auditor-General on the Financial Statements of Unclaimed Financial Assets Authority for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of Policy Holders Compensation Fund for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of Kenya Water Institute for the year ended 30th June, 2014 and Certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of Kenya Leather Development Council for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of National AIDS Control Council for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of Youth Enterprise Development Fund Board for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of Kenya Industrial Research and Development Institute for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of the Ministry of Industrialization and Enterprise Development for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of the National Housing Corporation for the year ended 30th June, 2014 and Certificate of the Auditor-General therein.

Report of the Auditor-General on the Financial Statements of Egerton University for the year ended 30th June, 2014 and the Certificate of the Auditor-General therein.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order!

COMMUNICATIONS FROM THE CHAIR

Hon. Speaker: Hon. Members, I had hoped that many of you would be present, but let me make these two communications.

EXTENSION OF TIME FOR LEGISLATION WITH CONSTITUTIONAL TIMELINESS

Hon. Members you will recall that the Chairperson of the Constitution Implementation Oversight Committee (CIOC) gave notice of Motion seeking approval of the House to extend by 12 months the period in respect of legislation with constitutional timeliness of August 27th 2015, pursuant to Article 261(2) of the Constitution. In the ensuing debate, which was adjourned pursuant to Standing Order No.96, Members from both sides of the House expressed their frustration for the delay by relevant bodies to timelessly initiate the process of developing the said Bills for consideration by Parliament, putting the House in a situation where an extension has to be sought. Consequently, I asked the Leaders of the Majority and Minority Parties in the House to urgently hold a consultative meeting with a view to finding a solution to this matter.

I wish to report that my office has received communication from the leadership of the House indicating that their meeting resolved that a Speaker's *Kamukunji* be convened on Tuesday, 25th August 2015 at 12.00 noon in the National Assembly Chamber to deliberate on this matter. Also arising from those consultations, business has been revised as indicated in the Supplementary Order Paper for today.

Hon. Members, you will also recall that on Tuesday, 19th August 2014, precisely a year now, this House finding itself in a similar situation in respect of the enactment of Year Four constitutional Bills adopted a Motion that extended the period in respect to legislation that had a constitutional timeliness of 27th August 2014 by nine months from August 2014. The Chairperson of the CIOC is making a similar appeal to this House. Indeed, even the previous House, namely the 10th Parliament, had to pass a similar Motion to extend the period prescribed for enactment of legislation relating to land in the year 2012.

Hon. Members, it is obvious that the Bills marked for passage by the 27th August 2015 cannot be enacted since Parliament has barely seven calendar days left. In this regard, I wish to urge Members to take their time to appraise themselves with the provisions of Article 261 of the Constitution. In so doing, Hon. Members, I request that you apply yourselves to how the provisions of that Article weigh in on Parliament, the implications contained therein and the window of opportunity provided to the House in the circumstances that this House finds itself in today.

In the meantime, Hon. Members, until this matter is resolved, I have directed that there will be no approval for travel outside Kenya by any Member, between now and the time the House proceeds on recess, which is 27th August 2015. I accordingly invite Members to attend the Speaker's *Kamukunji* to deliberate on the matter as aforesaid on Tuesday, 25th August 2015 alongside the matter touching on the CDF.

Thank you, Hon. Members.

Those Members making their way in, please take your seats so that I can proceed to communicate further.

Hon. Members, there is a longer communication; so, I would request that you take your seats.

PRESIDENTIAL MEMORANDUM ON EACC (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.33 OF 2015)

Hon. Members the second communication relates to consideration of the Presidential Memorandum on the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No.33 of 2015), which was submitted to the House for reconsideration.

Sorry, Hon. Members; let me make this communication when the House goes to Committee.

AMENDMENT OF A BILL TO AMEND THE CONSTITUTION
BY NATIONAL ASSEMBLY

Hon. Speaker: This communication relates to the issue on whether a Bill to amend the Constitution may be amended by the House and further, whether the Bill presented by the Member for Ugenya, Hon. David Ochieng, is a Bill that extends the term of Office of the President.

Hon. Members, you may recall that on Wednesday, August 4, 2015, during the morning sitting, the Member for Ainabkoi, Hon. Samuel Chepkong'a, while contributing to the Second Reading of the Constitution of Kenya (Amendment) Bill, National Assembly Bill No 1 of 2015, sought guidance of the Speaker on whether the House can amend a Bill seeking to amend the Constitution. During the same sitting, the Leader of the Majority Party also sought guidance of the Speaker on whether that particular Bill will require the approval of the people of Kenya by way of a referendum as contemplated under Articles 255 and 256(5)(a).

Hon. Members, You are aware that the said Bill, which is proposed by the Member for Ugenya, the Hon. David Ochieng,' is proposing to amend Articles 101(1), 136(2)(a),177(1)(a) and 180(1) of the Constitution of Kenya relating to the date of the general election for Members of Parliament, the President, Members of county assemblies and governors.

From the outset, according to me, it is clear that the scope of some of the matters submitted for guidance, particularly on the issue of a referendum is beyond matters of procedure and traditions of this House, and has implications beyond Parliament. In this regard, even as I make my determination known to the House, I am conscious that my findings are limited to one of my cardinal roles of facilitating the transaction of business in the House.

I will start with the first question of whether a Bill to amend the Constitution can be passed in the House. Hon. Members, to begin with, I wish to restate to the House provisions of Article 256 of the Constitution, relating to amendments of the Constitution through a Parliamentary initiative, which is the option preferred by the Member of Parliament for Ugenya in this Bill.

I wish to quote as follows:-

“(1) A Bill to amend this Constitution:-

- (i) may be introduced in either House of Parliament;
- (ii) may not address any other matter apart from consequential amendments to legislation arising from the Bill;

(iii) shall not be called for Second Reading in either House within 90 days after the First Reading of the Bill in that House and,

(iv) Shall have been passed by Parliament when each House of Parliament has passed the Bill, in both its Second and Third Readings, by not less than two-thirds of all the Members of that House.

(2) Parliament shall publicise any Bill to amend this Constitution, and facilitate public discussion about the Bill.

(3) After Parliament passes a Bill to amend this Constitution, the Speakers of the two Houses of Parliament shall jointly submit to the President,

(i) the Bill for assent and publication, and,

(ii) a certificate that the Bill has been passed by Parliament in accordance with this Article.

(4) Subject to Clause (5), the President shall assent to the Bill, and cause it to be published, within thirty days after the Bill is enacted by Parliament.”

Hon. Members, it must be noted from the foregoing that the Constitution sets out a distinct procedure for the consideration and passage of Bills to amend the Constitution, different from that prescribed for ordinary legislation. First, and with regard to amendments through parliamentary initiative, such a Bill is not to address any other matter apart from consequential amendments to legislation arising from it. Secondly, the Bill cannot be read for a Second Time until at least 90 days have lapsed since its First Reading, to allow for public discussion on its contents. Thirdly, the Bill requires passage by not less than two-thirds majority in both Houses of Parliament, at both its Second and Third Readings. Lastly, the Bill is to be assented into law within 30 days of its passage. This process deliberately excludes additional processes such as concurrence between the two Speakers on whether the Bill concerns counties, use of the mediation committees to harmonise differing views between the Houses, and reservations by the President to the content of such a Bill.

Hon. Members, from the foregoing, nothing would have been easier for the framers of our Constitution than expressly importing into, or at the very least referencing, the amendment procedure applicable to ordinary legislation under Articles 109-123 of the Constitution, into the framework provided under Article 256. Articles 3 and 10 of the Constitution, and Standing Order No. 47(3), oblige the Speaker to respect, uphold and defend the Constitution of the Republic. I am guided by this particular duty in my considered opinion that the provisions of Article 256 of the Constitution are worded deliberately. As was well noted by the Hon. Member for Ainabkoi, the Hon. Chepkong’ a, the former Constitution of Kenya imposed explicit limits on the nature of interventions that the House could make with regard to the content of a Bill to amend the Constitution. If you can recall, Section 47 (4) of the former Constitution provided as follows, and I quote:-

“When a Bill for an Act of Parliament to alter this Constitution has been introduced into the National Assembly, no alterations shall be made in it before it is presented to the President for his assent, except alterations which are certified by the Speaker to be necessary because of the time that has elapsed since the Bill was first introduced into the Assembly”.

The only change that could be made to a Bill to amend the Constitution at that time, was corrections to references related to time and dates, and such change could be made only upon certification of the necessary changes by the Speaker.

Hon. Members, you will agree with me that it would be imprudent for the Speaker, or, indeed, this House to assume that the exclusion of the above limits from the current Constitution is interpreted as allowing room for amendment to a Bill proposing to amend it. The customs and traditions of our democracy have been to restrict amendment Bills seeking to amend the Constitution. I see no reason to depart from this practice, as the Speaker cannot rely on allegory or allusion in guiding the House.

Hon. Members, you will note that the preamble to our Constitution highlights that, the people of Kenya adopted, enacted and gave themselves and, future generations of this Republic, the Constitution. The sanctity of the Constitution as a social contract between the people of Kenya, and not a document belonging to the Houses of Parliament, nor any other organ for that matter, is to be jealously safeguarded at every turn. And any process of its amendment is delicate and can only be undertaken with reference to a definite procedure that deviates from the ordinary.

Hon. Members, while Parliament has been given the power to amend the Constitution, we should be mindful that the Constitution belongs to the people of this Republic. Treating the process of its amendment as akin to an ordinary legislation would subvert the collective will of the people. In this regard, it is expected that any person intending to amend the Constitution, must be very clear and precise on what he or she is intending to alter, but not to change mind while in the process. It is my strong view that, any proposal to amend the Constitution should be preceded by the meaningful and adequate consultation before such a Bill is published, a principle embodied in Article 256(2) of the Constitution.

Bearing in mind that the legislative power is originally derived and consequently vested in the people, we ought to obtain the confidence of our fellow citizens even as we endeavor to amend the Constitution. The process of making or amending the Constitution, therefore, cannot be without consultations, precision and guarded restraint. Indeed, James Madison, the fourth President of the United States of America, 1809-1817, is considered the Father of the American Constitution. He once wrote, and I quote:-

“The American Constitution was not, like fabled goddess of wisdom, the offspring of single brain. It ought to be regarded as the work of many heads and many hands”.

Hon. Members, one of the fundamental questions that would arise if the Speaker was to allow amendments to a Bill proposing to amend the Constitution is whether such a Bill would be subjected to mediation processes in terms of Article 113 of the Constitution, as read with Standing Order No.149. A close reading of Article 256(1)(d) of the Constitution reveals unequivocally that a Bill to amend the Constitution would not, as I earlier stated, be subjected to mediation, as it is a process prescribed for ordinary legislation. Articles 111 and 112 of the Constitution, further extrapolate this by providing that only special and ordinary Bills may be subjected to mediation processes. A Bill to amend the Constitution is clearly not one of the Bills under Articles 111 or 112 of the Constitution, which invites the application of mediation processes. Further, as I earlier stated, the Constitution is a document belonging to the people of Kenya, and not to the Houses of Parliament.

(Applause)

In this regard, therefore, if mediation processes were to apply to Bills seeking to amend the Constitution, then it would negate the very essence for which the Constitution was made. Article 113(4) of the Constitution as read with Standing Order No.149(6) provides that if a Mediation Committee fails to agree on a version of a Bill to be presented to both Houses for approval, the Bill will be deemed to have been defeated and negated. A Bill to amend the Constitution may be termed as one that forms part of the engine which seeks to propel the aspirations of Kenyans as a people. Consequently, the drafters of the Constitution could not have intended to dilute, or hamper, any avenue, or channel, for Kenyans to do so by subjecting a Bill to amend the Constitution to mediation processes, which have the potential of ending in a *cul de sac*, where the mediation committee fails to agree on a version of the Bill.

Hon. Members, consciously aware that the House looks to the Speaker to decide on procedural questions that arise in the House, I am, therefore, of the opinion that a plain reading of Article 256 of the Constitution clearly reveals that while the Constitution does not expressly disallow amendments to a Bill proposing to amend any of its Articles, it deliberately discourages such amendments unless there is anything extraordinary in the proposed Bill that would require application of the extraordinary measures. In this regard, I am constrained not to allow any amendment to the Bill proposed by the Member for Ugenya or, indeed, any of the other four Bills proposing to amend the Constitution. This now settles the first question.

You can now allow the Members by the door to come in.

(Several hon. Members walked into the Chamber)

Hon. Members making your way, please just take your seats. You can record your attendance later. It is not a life and death matter. You may take your seats. Otherwise, you will be obliged to remain standing.

(Several hon. Members sat in their places)

Pay attention to what is happening. Hon. Members, this is just to conclude this Communication.

On the second question of whether the Bill proposed by the Member for Ugenya should be subjected to a referendum, several weighty matters were canvassed. In particular, there has been debate on whether the Bill has the effect of extending the term of Office of the President in terms of Article 255(1)(f) of the Constitution, an argument that has been advanced in this very House, in the previous House and elsewhere. The determination of whether this particular Bill should be subjected to a referendum is tied to first establishing what exactly the term of Office of the President is. In my gracious attempt to do this, allow me to refer to Article 142(1) of the Constitution which provides that:

“The President shall hold office for a term beginning on the date on which the President was sworn in, and ending when the person next elected President in accordance with Article 136(2) is sworn in.”

It should not escape our minds that the current President was sworn into Office on 9th April 2013. A reading of this provision does not, therefore, expressly state what the term of Office of the President is. Further, a reading of the interpretation clause of the Constitution under Article 260 does not also answer the fundamental question of what is really the term of Office of the President as that explanation is not included in the definitions. However, a quick perusal of the Constitution and in particular Articles 136(2)(a), 146(4)(a) and 177(1)(a) and (4) is, perhaps, the closest one would get in determining, or rather construing, what is the term of office of the President. Article 136(2)(a) provides that an election of the President shall be held on the same day as a general election of the Members of Parliament, being the second Tuesday in August of every fifth year. This provision seems to suggest that the term of Office of the President is five years but, Hon. Members, mark my words “seems to suggest.”

Further, Article 146(4)(a) provides that if the Deputy President (DP) assumes office where there is a vacancy in the Office of the President, such a person shall be deemed to have served for a full term as a President if at the date which the person assumed office, more than two and half years remain before the date of the next regular scheduled general election. Reference to the period of two and half years, which connotes a full half of a term of five years, seems to solidify the provisions of Article 136 that the term of Office of the President, indeed, could be five years.

Article 177(1)(a) and (4) and Article 180(1), as read together with Article 136, also indicate that the term of office of the President is five years, as it provides that the term of a county assembly is five years. Indeed, it is fair to remind ourselves that Members of County Assemblies (MCAs) are elected on the same day as a general election for the Members of Parliament, being the second Tuesday in August of every fifth year. It is the same day which is already discussed as the day the President is also elected.

Having looked at the Constitution, it will follow that the Bill by Hon. David Ochieng, which seeks to change the election date to provide that general elections shall be held on the third Monday of December in the fifth year, may not be one that has the effect of extending the term of office of the President, since under the provisions of the Bill elections would still be held within the fifth year.

(Applause)

Hon. Members, I now wish to draw the attention of the House to the provisions of Article 256(5) of the Constitution, which provides as follows:-

(1) If a Bill to amend this Constitution proposes an amendment relating to a matter specified in Article 255(1)—

(a) the President shall, before assenting to the Bill, request the Independent Electoral and Boundaries Commission to conduct, within ninety days, a national referendum for approval of the Bill.

(b) Within thirty days after the chairperson of the Independent Electoral and Boundaries Commission has certified to the President that the Bill has been approved

in accordance with Article 255 (2), the President shall assent to the Bill and cause it to be published.

I note in that regard that the question of whether or not the Bill proposed by the Member for Ugenya should be subjected to a referendum is that of construing and interpreting the Constitution. Indeed, any attempt by the Speaker to make such a determination would be, in my view, in blatant violation of the Constitution, which, pursuant to Article 165(3)(d), gives the High Court the jurisdiction to hear any question respecting the interpretation of the Constitution. As such, the Speaker can neither purport to wear the hat of the Judge of the High Court nor hide behind the mask that blurs the principle of separation of powers between the Legislature and the Judiciary. Needless to say, that the interpretation of the Constitution cannot be said to be a procedural matter for determination by the Speaker, which the Speaker has the mandate to do. Further, I wish to quote the authority derived from a commonly quoted publication titled: - *The Fifth Edition of the House of Representatives Practice of the Commonwealth of Australia* on the subject of interpretation of the Constitution, that: -

“Speakers have generally taken the view that, with exception of determining questions of procedure relating to business in the House, the obligation to interpret the Constitution does not rest with the Chair, and that the only body fully entitled to do so is the High Court. Not even the House has the power finally to interpret the terms of the Constitution.”

Hon. Members, I have no intention of deviating from this longstanding Commonwealth practice which in our case, and as stated earlier, is espoused in Article 165 of the Constitution that gives or grants exclusive mandate of interpreting substantive matters of the Constitution to the High Court. It is also important to state that in the process of amending the Constitution by parliamentary initiative, the responsibility of the Speakers ends when they jointly present the Bill to the President for assent together with a certificate that the Bill has been passed by Parliament in accordance with Article 256 of the Constitution. Indeed, the particular duty of determining that question of whether or not the Bill proposed by the Member for Ugenya should be subjected to a referendum is vested in other competent authorities including the President under Article 256(5)(a) of the Constitution and, indeed, the High Court in terms of Article 165(3) of the Constitution.

In summary, therefore, on the two questions, it is my finding: -

One, that I will not allow any amendment to the Bill proposed by the Member for Ugenya, or, indeed, any of the other four published Bills proposing to amend the Constitution; and, two, the determination as to whether a Bill proposing to amend the Constitution requires approval by a referendum in terms of Articles 255 and 256 of the Constitution is outside the purview of the Speaker and, therefore, the Speaker shall not determine whether or not this is a Bill that requires to be referred to a referendum. The House is therefore guided accordingly.

Thank you.

(Applause)

Hon. Members, allow me to recognise the following institutions, students and pupils: In the Speaker’s Gallery are pupils from St. Joseph Primary School, Tana River County; Christ Church School, Kisumu County and Muthambi Primary School, Tharaka-Nithi County. In the Public Gallery are pupils from Kimolwet Primary School, Nandi County; Erien Primary School,

Tharaka-Nithi County; Kamasat Primary School, Elgeyo-Marakwet County and Father Elias Limo School, Nandi County. They are all welcome to observe proceedings of the House.

Next is the Leader of the Majority Party.

BUSINESS FOR THE WEEK COMMENCING TUESDAY 25TH AUGUST 2015

Hon. A.B. Duale: Thank you, Hon. Speaker. That was a solomonic Communication. I am sure Hon. Ochieng now has to go back to the drawing board. That will touch on the fate of your Bill.

Hon. Speaker, pursuant to Standing Order 44(3)(a) and on behalf of the House Business Committee (HBC), I rise to give the following Statement regarding the business appearing before the House the week beginning Tuesday, 25th August 2015. The HBC met on Tuesday this week to prioritise the business of the House before we proceed for the long recess next week.

(Loud consultations)

Hon. Speaker, I need your protection. The Chair is back from Mogadishu; so, there are a lot of consultations among the Members of the Departmental Committee on Defence and Foreign Relations, which they can do in the lobbies. Before we proceed, Hon. Shill should share it with us. He is from Mogadishu. He has goodies. Maybe the Departmental Committee on Defence and Foreign Relations can retreat to a committee meeting.

(Laughter)

Before we proceed for the long recess next week, the HBC proposes to conclude the following Bills: The Finance Bill, 2015, The Special Economic Zones Bill, 2015, the Prohibition of the Anti-Personnel Mines Bill, 2015, The Excise Duty Bill, 2015, the Political Parties (Amendment) Bill, Senate Bill No. 3 of 2014 and the Statute Law (Miscellaneous Amendments) Bill, Senate Bill, No.6 of 2014.

Other Bills scheduled for consideration in the coming week are the Bills proposing to amend the Constitution of Kenya. This is the Bill by Hon. George Peter Kaluma regarding the jurisdiction of the courts on matters before Parliament and county assemblies. Second is the Bill by Hon. Samuel Chepkong'a on the two-thirds gender rule and finally, the Bill by Hon. Lati Lelelit, M.P. regarding the Equalisation Fund, which went through the Second Reading in August last year. So, it will be only fair to conclude these Bills before we proceed for the recess. The Mover of this Bill has time between now and next week to make sure you lobby and get the two-thirds, which is giving the leadership headache for only the extension. Those are your individual Bills which you need to lobby for. You need to talk to the party leaders, the Chairman of ODM, TNA, URP, UDF and---

Hon. Speaker: But that is not part of the business of next week.

(Laughter)

Hon. A.B. Duale: It is not part of it but we are a team.

Regarding the Cabinet Secretaries appearing before the Committee on Tuesday, 25th August 2015, the schedules are as follows:-

(i) The Cabinet Secretary for Lands, Housing and Urban Development will appear before the Departmental Committee on Lands at 10.00 am to answer questions from the following Members: Hon. (Dr.) Wilber Ottichilo Khasilwa, Hon. Philip Rotino and Hon. Alex Mwiru.

(ii) The Cabinet Secretary for Education, Science and Technology will appear before the Departmental Committee on Education, Science and Technology at 10.00 a.m. to answer questions from the following Members: Hon. (Maj.) Marcus Muluvi Mutua, Hon. Muthomi Njuki, Hon. Joe Musyimi Mutambu and Hon. Wilberforce Ottichilo.

(iii) The Cabinet Secretary for National Treasury will appear before the Departmental Committee on Finance, Planning and Trade at 11.30 a.m. to answer questions from the following Members; Hon. Benson Mutura, Hon. Timothy Wanyonyi, Hon.(Dr.)Wilber Ottichilo Khasilwa, Hon.Abdullswamad Sheriff Nassir and Hon. George Peter Kaluma.

Hon. Speaker, the HBC will convene on Tuesday, 25th August 2015 at the rise of the House to consider the business for the next week. I now wish to lay the statement on the Table of the House.

(Hon. A.B. Duale laid the document on the Table)

Hon. Speaker: Very well but the committees are also reminded that the plenary of the National Assembly should be free on Tuesday before 12 noon; if any committee will be sitting here taking evidence or responses from Cabinet Secretaries, they will have to clear out of here. We do not want to meet strangers called Cabinet Secretaries because we will be here for a *Kamukunji* from 12.00 p.m. Whichever Committee will be here, they are reminded to clear strangers out before midday.

Hon. Washiali: Thank you, Hon. Speaker. I rise on Standing Order No.39 under the heading of “Weekly Programmes for the Business of the National Assembly”.

Hon. Speaker, if you allow me, I will read out the contents of Standing Order No.39. It states that the Clerk shall prepare and publish on the Parliamentary Website a weekly programme showing the business of the House and the schedule of sittings of various committees, and shall circulate such programme to Members, State Departments and the media not later than the Friday of the week preceding such business.

I am a Member of Parliament representing Mumias Sugar Company, where many sugar cane farmers---

Hon. Speaker: I thought you were a Member for Mumias East. You are not a Member for Mumias Sugar Company.

(Loud consultations)

Hon. Washiali: Hon. Speaker, I want to correct that. What I have seen on the Order Paper has confused me a bit. Allow me to put my point across. I am a Member for Mumias East, where Mumias Sugar Company is situated. I am representing very many sugar cane farmers. On this Weekly Programme, we have had this Report on the sugar crisis, which we were meant to debate and come up with findings or solutions to the problems afflicting the sugar sector. I came in to find that we have a Supplementary Order Paper. My understanding of the word

“supplementary” is additional, to supplement whatever is available. Surprisingly, I have found that we do not have the Report on the sugar crisis, yet our people are suffering. They need this Report so that we can have solutions to the problems we are currently experiencing.

I really would have wished that the House is informed of what caused Order No.14 to be removed. The problems in the sugar sector are well known to you and they are in the public domain. Right now, they are a topical issue. We really need to find a solution to this problem, so that the sugar cane farmers can also relax.

Thank you, Hon. Speaker.

Hon. Wakhungu: Thank you, Hon. Speaker. On what Hon. Washiali has mentioned, there is something circulating on the Luhya Whatsapp; Sen. Khalwale is accusing me of not supporting the sugar issue and an amendment that Hon. Wandayi has brought to the Floor of the House, yet the matter is not on the Floor. We know Sen. Khalwale wants to be the governor of Kakamega, but he should not put me in his campaign politics, because I am not aware of the report that is on the Floor pertaining to sugar. I have just been discussing with Hon. Washiali that people are sending me messages. Is this in order?

Hon. Speaker: Order, all of you, even those who want to say something about this! Hon. Wamalwa, honestly, the Speaker cannot make reference to social media or other media. We do not know the person who wants to become a governor of which village and such places.

(Laughter)

Nobody is interested. I thought you were going to address the issue Hon. Washiali raised.

Hon. Midiwo.

Hon. Midiwo: On a point of order, Hon. Speaker. I take with a light note what Hon. Chris is saying. I hear there is a Luhya media called whatsapp, a Luhya Whatsapp where Sen. Khalwale is reading the Order Paper and the debates which have not taken place.

I am surprised by the point of order raised by the Deputy Whip of the Majority Party. Yesterday the Leader of the Majority Party and I walked to your seat and asked you if it was possible for us to get consensus on what was before us, which was the extension of the time for constitutional Bills. We met. It is good to inform Members that we met in Hon. Katoo ole Metito’s office. We met for a long time to try to find a solution that would carry us all along.

May I hasten to add that many Members have not addressed themselves to Article 261 of the Constitution of Kenya. That Article, if I may inform them, says that if we do not enact these legislations by 27th of August, which is next Thursday, the President must dissolve Parliament and an election must be held. The new Parliament must enact the Bills within three months.

We then sat as leadership and Hon. Washiali was busy with the fertilizers issue which we understood. He asked for leave to participate in Parliament. We said that if we want to reach a consensus and have at least 233 Members, we must get out of the Order Paper controversial things. The sugar matter is controversial. In a meeting in your office when we came to inform you about it, Hon. Washiali came. The explanation he is mischievously seeking on the Floor of the House, he got in your office.

This sugar thing has turned sour, and so people are calling each other names. We pleaded with our brother that in order for us to move forward, as a Parliament, we must first of all lessen the load on the Executive to make a decision whether to send us home or otherwise, and then we give Members an opportunity, as we have done since 2010, or since we had the new

Constitution, to decide how to get consensus and vote. My brother did not have a problem with it. It is incumbent upon all of us that when you sit in a meeting and you disagree, you say it but we agreed for the sake of this country that we all--- There is nothing about this Report that is not in other reports. Other than politics, there is nothing special about it. So, all these Members belong to committees with reports before the House Business Committee (HBC).

Lastly, the HBC, under your chairmanship, has the powers to alter the Order Paper. That is what we did, unless somebody is questioning your powers and the powers of the HBC. I plead with my brother, let us sober up and approach this issue of extension then we will come back and deal with our side shows. Right now, I plead with both sides of the House that we sober up and move on, so that we can do this thing for our country.

Thank you, Hon. Speaker.

(Loud consultations)

Hon. Speaker: You see if you shout from where you are seated claiming points of order, obviously, I will not see you because you are using your mouth. We are now digital.

Leader of the Majority Party, you may not have been in the meeting, but I can give you a chance. I want to confirm what the Hon. Midiwo has just said. They all came to report to me that they had reached some consensus. That is how we approved this Supplementary Order Paper.

Hon. A.B. Duale: Absolutely true, Hon. Speaker. I was in another meeting but in consultation with you on the meeting taking place in Parliament. The position of the Deputy Leader of the Minority Party is clear. To make it clearer, the scheduling of business and the preparation of a Supplementary Order Paper are the sole mandate of the House Business Committee (HBC), according to the Standing Orders. Our Members need to know that we are dealing with important issues in the country.

We had the matter of the Hustler's Jet. Ultimately, when we brought it for debate, only five Members contributed to it. We were being crucified to bring the "Hustler's Jet" Report for debate. When we brought it, the Chairperson of the Public Accounts Committee (PAC) could not get somebody to second the Motion. Therefore, even the Motion on Mumias sugar, which will come before the House next week--- I hope Members will be here to debate it.

What Hon. Washiali wanted to do was to speak to another constituency, which he has done. So, let us move on. He was speaking to Mumias. Sugar is not sour to him. Maybe it is sour to some of us. For him, it is very sweet; it is the lifeline of his people. I want to assure him that once we deal with the issues which need consensus, as the Leader of the Majority Party, I have agreed if Tuesday you give us the extension, then this Report will be on the Floor on Wednesday morning. You can do what you want with the Mumias Report, including bringing all the amendments.

Hon. Speaker, we need to move on. I want to thank Hon. Washiali, because he together with my good friend, Hon. Wamalwa--- For the first time, I am hearing there is a media platform called "WhatsApp. I am sure Hon. Wamalwa as a senior leader from the sugar belt area will be keen on the Report. The only sugar belt is in western. The rest are scattered sugarcane farmers. The sugar belt is in Bungoma, Busia and Kakamega. Hon. Mbadi's is like a small nomadic group.

Thank you, Hon. Speaker.

(Laughter)

Hon. Speaker: Hon. Members, there is no debate on this. The only thing is that Hon. Washiali wanted to understand how we have come by the Supplementary Order Paper. Those of you raising up your hands, like Hon. Olago Aluoch, I do not know whether you want to explain where the Supplementary Order Paper came from. I am sure you do not know. I can confirm you were not there; therefore, you do not know where it came from.

Hon. Aluoch: *(Inaudible)*

Hon. Speaker: No; do not bother. We know you are a trained lawyer of many years' standing. Hon. Olago Aluoch, the procedure provided for in Article 261 of the Constitution is so clear and elaborate that what you want to correct Hon. Midiwo about--- I can do it on your behalf very easily. I do not even need to look at the Constitution because it is very clear to me. It is a simple thing.

More importantly, I have already communicated that we have a Kamukunji on Tuesday, 25th August 2015, to discuss that matter, including listening to esteemed lawyers like the Hon. John Olago Aluoch. I have no doubts in my mind that you too know the procedure provided for at the back of your palm. I am sure we will benefit a lot on that day, because we shall be doing consultations among ourselves, and it will be easier.

Hon. Washiali, the decision arrived at was not to deny you, the representative of Mumias East, an opportunity to debate the Report.

Hon. F. K. Wanyonyi: *(inaudible)*

Hon. Speaker: What are you saying? This is the plenary of the National Assembly.

Hon. Washiali, the issue you have raised is legitimate. The decision was arrived at after consultations. Hon. Midiwo also explained that you were in the Chamber. The Report has not been shelved. It is something that means a lot to you and the people you represent. It is one of those businesses that will be transacted at the earliest opportunity next week in order to deal with very recent issues. Rest assured that the Report on the crisis facing the sugar industry will be among the first businesses to be transacted next week.

(Loud consultations)

Hon. Naicca: On a point of order, Hon. Speaker.

Hon. Speaker: Let me give an opportunity to the Member for Mumias West.

Hon. Naicca: Hon. Speaker, thank you for giving me this opportunity to raise a point of order. Is Hon. Washiali, the Member for Mumias East, in order to claim that Mumias Sugar Company is in Mumias East when it is in Mumias West? He knows very well that when the President was there, it was me who took over and introduced all Members of Parliament present. You must tell Hon. Washiali not to get used to encroaching onto other peoples' turfs as he encroached onto Jubilee.

(Laughter)

Hon. Speaker: Order, Members! Order, Members! Order, Hon. Makali! Hon. Members, the Leader of the Majority Party was right to say that sugar is both sweet and sour. That would call for the services of some trained cartographer. I do not claim to have expertise in that area.

So, for the time being, I will allow both of you to lay claim to whichever part of the factory, if it pleases either of you. I have no way of determining where it is from where I sit. Maybe it is a matter that can be referred to the Independent Electoral and Boundaries Commission (IEBC), who will determine where the factory is located.

Hon. Naicca, I sympathise with you if, indeed, the factory is in your constituency. You ought to be the one raising the concern. However, both of you represent cane farmers within the larger Mumias. That is important in this matter. Let us not concentrate on where the factory is. Let us deal with the Report on the crisis bedevilling the sugar industry. Both of you will have the right to lay claim to represent cane farmers when it comes to debating the Report. Let us not split hairs.

Let us proceed, Hon. Naicca.

Next Order.

PROCEDURAL MOTION

REDUCTION OF PUBLICATION PERIOD OF THE ENERGY BILL

Hon. A.B. Duale: Hon. Speaker, I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order No. 120, this House resolves to reduce the publication period of the Energy Bill (National Assembly Bill No. 50 of 2015) from 14 to nine days.

Hon. Speaker, this is just a follow-up on the Motion under which we reduced publication period of some Bills yesterday. This one came last evening. It is part of the Bills that have a constitutional deadline. We just wish that we reduce the publication period, give it to the Committee tomorrow, they do public hearing and by the time we come back from the recess, a report will come to the House.

So, it is a straightforward matter. It is one of the Bills with a constitutional deadline of August 27. This is just a Procedural Motion. I ask Hon. Chrisanthus Wamalwa to second.

Hon. Wakhungu: Thank you, hon. Speaker. I rise to second. As the Leader of the Majority Party has clearly mentioned, this is a Bill that has a constitutional timeframe. It has no big issue. I second.

Thank you.

(Hon.(Dr.) Shaban and Hon. Arama stood up)

Hon. Speaker: Hon. Members including the Deputy Leader of the Majority Party, you cannot start doing that. The Member who has just sat should remain up standing. It is you, Hon. Arama. Since you were standing, you should remain standing.

(Question proposed)

(Question put and agreed to)

BILLS

First Reading

THE ENERGY BILL

(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Departmental Committee)

Second Reading

THE BUSINESS REGISTRATION SERVICE BILL

Hon. Speaker: Hon. Members, debate on business appearing as No.10 was concluded. So, what remains is for the Question to be put. I proceed to do so.

(Question put and agreed to)

(The Bill was read a Second Time and committed to a Committee of the Whole House tomorrow)

MOTIONMEDIATED REPORT ON THE FERTILIZERS AND
ANIMAL FOODSTUFFS (AMENDMENT) BILL

Hon. Speaker: Order, hon. Members. Again, the business appearing as No.11 was concluded. What remains is for the Question to be put, which I hereby do NOW.

(Question put and agreed to)

COMMUNICATION FROM THE CHAIRMANNER OF CONSIDERATION OF PRESIDENTIAL
MEMORANDUM ON EACC (AMENDMENT) BILL

Hon. Speaker: Before we proceed to the next Order, I wish to make a Communication regarding the manner of consideration of business appearing as Order No.12 (i), which is the Presidential Memorandum on the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No. 33 of 2015).

You may recall that on Thursday, 28th July 2015, I issued a Communication relating to the consideration of presidential reservations on Bills referred to Parliament for reconsideration. Hon. Members, I wish to remind you that from the Communication, I guided that the Presidential Memorandum can be amended in two ways:-

(i) that where the proposed amendment does not fully accommodate the President's reservations, it will require two-thirds majority for its passage;

(ii) that if the proposed amendments fully accommodate the President's reservations, it will require a simple majority for its passage.

Hon. Members, in this regard, you are aware that the Presidential Memorandum to the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No. 33 of 2015) has attracted amendments from the Departmental Committee on Justice and Legal Affairs and from Hon. Chrisanthus Wamalwa, MP.

Hon. Members, I made the following determinations regarding the proposed amendments to the presidential reservations to Clauses 4 and 6. They are as follows:

(iii) the proposed amendments by the Departmental Committee on Justice and Legal Affairs relating to Clause 4 have the effect of fully accommodating the presidential reservations relating to that clause and, therefore, will require a simple majority of Members for passage.

(iv) the proposed amendments by the Departmental Committee on Justice and Legal Affairs and those proposed by Hon. Chrisanthus Wamalwa, MP, to the presidential reservations to Clause 6 have the effect of negating the presidential reservations on the said clause and, therefore, will require two-thirds majority of Members for passage.

My determinations on those two clauses have been summarised in the Order Paper on Pages 740 and 741. Hon. Members, it is also important to remind you that the absence of at least two-thirds majority at the time of putting the Question does not, in any way, imply that the House is improperly constituted. The Committee of the Whole House will, therefore, proceed as guided.

I thank you.

Hon. Wakhungu: In line with Standing Order No.1, you can provide some direction. I have looked at the Memorandum from His Excellency the President where he has indicated that the Ethics and Anti-Corruption Commission (EACC) should be vetted within a period of 12 months. In my understanding, when you talk of within a period of 12 months, it might be the first month and the second month. My proposal for the amendment was that instead of going for the 12 months, they be vetted within six months, which is within the reservation of His Excellency the President. So, I need your guidance on that because I thought it was in line with the reservations, and so we do not need the two-thirds majority.

Thank you.

Hon. Speaker: Hon. Wamalwa, you have already raised that matter with me. I clearly showed you what your proposal is.

Your proposal, which is in writing, talks about "from the date of commencement of the Act". Hon. Wamalwa, it does not matter how many times you will shake your head. It will not change. I have applied my mind to that determination and guided you by what was presented to me. It is true that you have subsequently explained to me that the people you gave to draft for you misunderstood your instructions. It is unfortunate that they so misunderstood you. You actually meant well, as you explained to me. You did not mean from the commencement of the Act. I explained to you that if, indeed, the Act is passed, it will entail the process of recruiting commissioners. That is not a process that can be said to take one or two months. If it is from the commencement of the Act, it means that your intention could very well be frustrated as captured in what was presented to me. But what we are saying is your intention was six months from the date when the commissioners assume Office, but that is not what was presented to me. I can only go by what was presented to me. You are guided that way. We cannot change because that is

what was presented. You say that is not what you meant. I fully understand what you are saying. You were misunderstood by the people you asked to draft your proposed amendment.

Hon. Wakhungu, what do you want?

Hon. Wakhungu: Hon. Speaker, in future, in line with our procedure in legislation, any amendment has to go through the Committee in charge of justice and legal affairs. I have evidence of what I wrote. I have signed it and you have approved it. In future, the relevant officers who misunderstood what I meant should not repeat that mistake. I stand guided but as you can see from the evidence of my amendment which you have signed, there is nothing; I indicated “at the commencement of the Act,” but I stand guided. In the future, the Committee in charge of justice and legal affairs should pay attention.

Hon. Speaker: Very well. I am sure we are on the same page because you explained what you meant.

COMMITTEE OF THE WHOLE HOUSE

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

IN THE COMMITTEE

*[The Temporary Deputy Chairman
(Hon. Kajwang') took the Chair]*

THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL

*(Consideration of Presidential Memorandum on the Ethics and
Anti-Corruption (Amendment) Bill, National Assembly Bill No.33 of 2015*

The Temporary Deputy Chairman (Hon. Kajwang'): Hon. Members, this is the Committee of the whole House convened to consider the Presidential Memorandum on the Ethics and Anti-Corruption (Amendment) Bill, National Assembly Bill No.33 of 2015. We shall begin.

Clause 4

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

THAT, Clause 4 of the Bill be amended by deleting the proposed Section 10 and substituting therefor the following new section –

Filling of vacancy 10. Notwithstanding section 6, whenever a vacancy arises in the membership of the Commission, the Public Service Commission shall, within fourteen days after the vacancy arises, advertise, interview and shortlist three qualified applicants for each vacancy and forward the names of the applicants so qualified to the President for appointment

The object of that is that the provisions of Section 6 which we are deleting provide for the appointment of the commissioners by a selection panel. The intention of the National Assembly

was to remove the requirement of a selection panel for the purpose of filling a vacancy. It is now necessary to amend the proposed section in order to clarify the intention. When we were doing it last time, we left Section 6 hanging. It was not very clear. It has now been deleted and substituted with Section 10 which specifically gives the Public Service Commission the power to do the advertisement, interviews, shortlisting and submitting of three names.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): The Chairman of the Departmental Committee on Justice and Legal Affairs, you have an amendment affecting this. This is the point at which we should hear you.

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

THAT, the Bill be further amended in the proposed Clause 4 by deleting Section 10 as proposed by H.E the President and substituting therefor the following—

Filling of vacancy

10. (1) Whenever a vacancy arises in the membership of the Commission, the Public Service Commission shall, within fourteen days—

- (a) invite applications from persons who qualify for nomination and appointment by advertisement in at least two daily newspapers of national circulation;
- (b) consider the applications received to determine their compliance with the provisions of the Constitution and this Act;
- (c) short list the applicants;
- (d) conduct interviews of the shortlisted persons in public;
- (e) shortlist three qualified applicants for each vacancy; and
- (f) forward the names of the qualified persons to the President.

(2) The President shall, within fourteen days of receipt of the names of successful applicants forwarded under subsection (1) (f), select the person to fill the vacancy in the Commission and forward the name of the person to the National Assembly for approval.

(3) The National Assembly shall, within twenty-one days of the day it next sits after receipt of the name of an applicant under subsection (2), vet and consider the applicant, and may approve or reject applicants for any or all vacancies in the Commission.

(4) Where the National Assembly approves of an applicant, the Speaker of the National Assembly shall forward the name of the approved applicant to the President for appointment.

(5) The President shall, within seven days of receipt of the name of the approved applicant from the National Assembly, by notice

in the Gazette appoint the applicant to the Commission.

(6) Where the National Assembly rejects any nomination, the Speaker shall within three days communicate its decision to the President and request the President to submit fresh nominations.

(7) Where a nominee is rejected by the National Assembly under subsection (6), the President shall within seven days, submit to the National Assembly a fresh nomination from amongst the persons shortlisted and forwarded by the Public Service Commission under subsection (1)(f).

(8) If the National Assembly rejects any or all of the subsequent nominees submitted by the President for approval under subsection (1), the provisions of subsections (1) and (2) shall apply.

(9) In short listing, nominating or appointing persons to fill a vacancy in the Commission, the Public Service Commission, the National Assembly and the President shall ensure that not more than two-thirds of the members are of the same gender.

As you know when the reservation from the President was forwarded to the House and then submitted to the Departmental Committee on Justice and Legal Affairs Committee, the Committee went through it and noted the Presidents' reservations. The Committee in its meetings, deliberated upon the reservations of the President which it concurs with as mentioned by the Leader of the Majority Party. He wanted to ensure that the intention of the National Assembly of removing the requirement for a selection panel for the purpose of filling a vacancy in the Commission was achieved. Consequently, the Committee noted the following that the import of the recommendations by the President was for the House to accede to the President's assertion that its intention was to remove the selection panel in its entirety from the process of appointing the EACC commissioners.

It was also noted that Article 79 of the Constitution mandates Parliament to enact legislation to establish an independent EACC which shall have the status and powers of a Commission under Chapter 15 for purposes of ensuring compliance with and enforcement of the provisions of this Chapter.

In recognition of that role of the House, we, therefore, sought to ensure that we complied with the Speaker's ruling which stated very clearly that any amendment to the presidential reservations must be within the spirit of the President's reservations. Consequently, it is to ensure that the process of nominating persons after the removal of that process which was supposed to be followed within the selection panel is, therefore, followed in the nomination of commissioners by the Public Service Commission (PSC). Further, to ensure that once those persons have been nominated and submitted to the President, before the President appoints them, they are brought to the National Assembly for purposes of approval as required by Article 250 of the Constitution. What we sought to do was just to ensure that we align the President's reservation to the Constitution and the spirit of ensuring that the PSC conducts the interview in a very systematic manner. That is the proposal.

Thank you.

(Question of further amendment proposed)

An hon. Member: Put the Question!

The Temporary Deputy Chairman (Hon. Kajwang’): We will not put the Question. This is a weighty matter. The Speaker has made a determination that the proposed amendments by the Chairman are in tandem with the reservations of the President. Therefore, after debate, the passage will be based on a simple majority threshold.

I have a long request list here. This must have been when we were in the Plenary dealing with the sweet-sour issues. I am just trying to find a criterion in which I am able to recognise Members. Can you just press the intervention buttons? Those of you who want to speak to the amendments of the Committee on this issue should press the intervention button. Now I can see you. Let us begin with the Member for Kiminini.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairman. I rise to support the amendment of the Committee. It is true that it is in line with the President’s reservations. Initially, the way it was amended, it was actually hanging. But now, the Committee has improved it further to bring clarity on the issue of conducting interviews.

So, I rise to support Hon. Chepkonga’s amendment of the Committee. Thank you.

The Temporary Deputy Chairman (Hon. Kajwang’): I thank you. Yes, the Member for Suba.

Hon. Ng’ongo: Thank you, Hon. Temporary Deputy Chairman. I rise to oppose these amendments. First of all, it should be noted that to constitute all commissions, you have specific and special selection panels and the procedure does not involve the PSC. In fact, if you go to the IEBC, you will find that there is a selection panel and when you go to the Judicial Service Commission (JSC), you find that there is a procedure set out in law which is separate and distinct.

If you come to the Parliamentary Service Commission, you will find that the procedure does not involve the PSC. This, if effected, will subject one Commission to another Commission. The commissions should be equal in law and in power. Now, you are subjecting this Commission to another as if it is a junior Commission to the PSC. I do not see why we cannot go with the current trend where we have a special selection panel doing the recruitment or the recommendation of names to the President for nomination, for subsequent approval by Parliament and final appointment by the President.

Let us go with the tradition which governs almost all Commissions. I cannot remember any Commission where another Commission would be the one recruiting the commissioners. Personally, I do not agree with this amendment.

I oppose.

The Temporary Deputy Chairman (Hon. Kajwang’): I hear you, the Member for Suba.

Hon. Wakhungu: On a point of Order, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon. Kajwang’): Please, do not raise points of order when you want to debate. We will have time to debate, give information or make justifications. Points of order should be raised when something is out of order.

The Member for Suba, I hear you. You are saying that this Commission should be independent. So, one independent Commission should not be subjugated under another independent Commission. But, if you look at the President’s reservation, you will find that it has already imported this thing called “PSC”. Now, that is where the issue is. For you to be able to take away what the President has said in his reservation, then we now have to go through the

threshold that we require to change the President's reservation. This is where the issue is. It is in the context that the Departmental Committee has taken care of the President's reservation, but modified it to create a criterion on how it is done within the reservations of the President. That is what I hear.

The Member for Suba, one last bite.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, I agree with you. I understand Hon. Chepkong'a and his Committee completely. Remember we are debating both the President's reservations and the proposed additional amendment by the Committee together. I know we may not get the two-third majority, but it should go on record that what the President has recommended is fatally wrong in law and practice of this country. This is one of the things that we have been talking about, that the President is getting involved in legislation. That is interfering completely with the objectiveness in terms of going forward. This is an example. I want to repeat that these lawyers the President has accumulated in State House are misleading him. They should have flagged off this inconsistency. This is the only Commission out of the many Commissions that the PSC is going to recruit commissioners.

The Temporary Deputy Chairman (Hon. Kajwang'): Point taken. Your point is that you object both the Presidential reservation as much as you object the Departmental Committee's amendments. Let us go on. Yes, the Member for Githunguri. You should not try to answer back because I had made it clear. Just make new issues out of it.

Hon. Baiya: Thank you, Hon. Temporary Deputy Chairman, for giving me the opportunity to also contribute. I rise to support the recommendation by the Committee. I am not really answering but addressing the fears and the concerns raised by Hon. Mbadi. The appointments of commissioners took place as the country was implementing the new Constitution in the 10th Parliament; at a time when the country was being governed by the Coalition Government. It was the arrangement under the Coalition that prompted the appointment of panels which were shared between the Coalition's political parties. Therefore, the idea of the panel was prompted by the fact that, at that time, we had not carried out the reforms in PSC which is supposed to be independent. Its constitutional mandate is to concentrate on appointment to the public service.

As we speak now, the PSC is a fully independent and functioning body. Its function is basically to conduct HR issues on behalf of the Government. The procedure provided is very effective because the PSC is accountable to Parliament. It is more expedient in the sense that with the appointment of the panel, in every occasion we are appointing commissioners, the President has to appoint panels and so on which makes it very laborious and time consuming to the point of being very expensive. This is the standard way the country should go in using the PSC and the functions that are constitutionally due to it as the public service function.

To that extent, this amendment carefully coincides with the direction the country should take. I, therefore, support.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. Let us move faster on this. The Member for Kitui Central, two minutes are long enough.

Hon. Mulu: Thank you, Hon. Temporary Deputy Chairman, for giving me the chance to contribute. We agree that we cannot raise the numbers as it has been said but it is important that we put the record straight. Before Constitution of Kenya 2010 came into being, the problem with the earlier Kenya Anti-Corruption Commission (KACC) was that it was not anchored in the Constitution. There was a strong push on the basis of governance matters to have it anchored in

the Constitution. We are talking about two constitutional commissions which are independent. What we are trying to do by these presidential amendments is putting one commission under another bearing in mind that these are two independent commissions. This is wrong. Could it be done by anybody else? I am not a lawyer but even from logical thinking, it is wrong. I cannot support this. It will go through but we need to tell Kenyans that this is wrong.

Thank you, Hon. Temporary Deputy Chairman.

The Temporary Deputy Chairman (Hon.Kajwang'): Okay. Yes, the Member for Kipkelion West.

Hon. Rop: Thank you, Hon. Temporary Deputy Chairman. Let me also contribute to this amendment. I want to support it. The Committee's amendment is good. It is detailing the procedures that are to be used, the criterion that has to be used when selecting commissions, interviewing, recommending, appointing and vetting.

Further, it has also stated what will happen in case the National Assembly rejects them. It is indicated in this amendment. It has also taken care of the two-third gender rule which is the constitutional requirement when appointing commissioners. So, I want to support this amendment.

The Temporary Deputy Chairman (Hon.Kajwang'): All right. Yes, the Member for Saku.

Hon. Dido: Thank you very much, Hon. Temporary Deputy Chairman. I rise to support this amendment. Straightaway, I want to point out that when we were debating this Bill, the issue of the Public Service Commission was never challenged. Article 233 of the Constitution clearly lays out the responsibilities of the PSC. More to that, the import of the amendment that the Committee has suggested provides us with a clear trail on how individuals are selected and interviewed, and how the paper trail arrives before this House. Further to that, we do not have control over panels which are appointed by the President. However, if a Commission such as the PSC vets and shortlists individuals, we will know if there is a problem from the beginning.

So, I beg to support.

The Temporary Deputy Chairman (Hon.Kajwang'): Hon. Amina Abdalla, you are annoyed. Can I make you a little happy by hearing you out?

Hon. (Ms.) Abdalla: Thank you, Hon. Temporary Deputy Chairman. I rise to support the Committee's amendment. However, I want to clear a misconception that has been raised by the contribution of Hon. Mbadi that the President has interfered with this amendment. The reality is that this amendment is as a result of the shortcoming of my amendment to have the PSC appoint. So, the President's amendment is clearing that shortcoming where I was mentioning in my amendment a clause in that Bill that still refers to the panels. So, that means that he is cleaning up a mess on an amendment we had made by referring to something that we had already removed.

Hon. Ng'ongo: *Inaudible.*

Hon. (Ms.) Abdalla: I am the one who created the mess and I am very happy about it, Hon. Mbadi. The issue that you have raised on why one commission should be recruiting another commission is what Hon. Baiya has talked about. We were not confident of the independence of the PSC when we were doing these Agenda 4 institutions. We then transported it to this Bill to have panels. If, for example, I, as an applicant, is dissatisfied with the conduct of a panel, whom do I sue? Would I sue the representative from the National Gender and Equality Commission (NGEC) or the Judicial Service Commission? That is what I am trying to cure. Because you have

mentioned that other commissions are doing panels, we should clean up that mess because if a rogue representative from any of those institutions comes and is unfair to any applicant, who will be sued? Will you sue the individual or the 12 persons who were involved in that process? When you infringe on any of my rights if I am an applicant, I have the right to seek recourse. So, that is what we are trying to cure. We should cure this in all institutions. We should not transport the fears that we had during the Coalition arrangement to recruitment of persons. If you are not confident with the PSC, we should get rid of it and get one that we are confident with.

With those remarks, I support.

The Temporary Deputy Chairman (Hon.Kajwang'): The Member for Suba is trying to give you some information. Do you need that information?

Hon. (Ms.) Abdalla: Hon. Temporary Deputy Chairman, considering how he spoke and the level of awareness on this subject, I do not think he can give me any useful information.

The Temporary Deputy Chairman (Hon.Kajwang'): So, the Member for Suba, you can see that the Member is well informed. I thought you wanted to give information. He is on a point of order. So, allow him to speak. He is right to rise on a point of order. He could not be rising against a Member but on some issue of order in the Chamber. Let me hear him.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, there is great ---

(Laughter)

Anyway, let me reserve that comment. The Nominated Member of Parliament who is a very good friend of mine wanted to mislead this House that if one would be dissatisfied by this process, one would go to sue the PSC and yet she knows that the appointing authority will not be the PSC. It will just be making recommendations. Therefore, if one is dissatisfied, then you sue the appointing authority. These others are working at the behest of the PSC. You cannot sue the PSC.

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Suba, you have made your point. Allow me to also make this point that I find nothing out of order. If the point is misleading, it should be based on a false information but not an error or misjudgement of law. That is not misleading. What is misleading should be false, untrue and which the law does not suggest.

Hon. Ng'ongo: But, Hon. Temporary Deputy Chairman---

The Temporary Deputy Chairman (Hon. Kajwang'): The Member for Suba, when you start altercations with the Chair, then we do not get along.

Hon. Ng'ongo: I am seasoned enough!

The Temporary Deputy Chairman (Hon.Kajwang'): Well, even if you are seasoned enough, you can only do that seasoning from here. Order!

(Loud consultations)

I have made a decision that there is nothing out of order and it is final. Give him the microphone if that is an interaction and he wants to engage the Chair.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, I must register my very serious reservations.

The Temporary Deputy Chairman (Hon.Kajwang'): I have made a decision and it is final. So, let me know if that is an engagement with the Chair.

Hon. Ng'ongo: Hon. Temporary Deputy Chairman, I want to say without any fear of contradiction that I am finding it completely unacceptable to agree with the rulings of the Chair always. This is not the first time on what is misinformation in this House.

Hon. Temporary Deputy Chairman, remember this is not the first time I am sitting in this House. On the issue of misleading the House, you should tell me the Standing Orders where it is defined the way you are putting it.

An Hon. Member: On a point of order, Mr. Temporary Deputy Chairman.

Hon. Ng'ongo: These are the kind of procedures that I do not like. I am on a point of order and he is also standing on a point of order. You should tell him to follow the procedure instead of reprimanding me, someone who is trying to correct the procedure. This is something that I have no apologies to make about.

The Temporary Deputy Chairman (Hon. Kajwang'): All right. I will not descend into an issue that will spoil a good debate. I will proceed. All right, where was I?

*(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)*

(Clause 4 as amended agreed to)

Clause 6

The Temporary Deputy Chairman (Hon. Kajwang'): Mover, let me hear you first.

Hon. (Dr.) Shaban: Thank you, Hon. Temporary Deputy Chairman.

I beg to move:-

THAT, the Bill be amended by deleting Clause 6 and substituting therefor the following new Clause-

Transitional
provision

6. (1) Every person who immediately before the commencement of this Act was an employee of the Commission, shall upon such commencement continue to serve in his or her respective position in accordance with the contract of employment:

Provided that the Commission shall, within the period of one year after the appointment of Commissioners under this Act, using criteria determined by the Commission, vet such employee to ensure that he or she is fit and proper to continue serving as such.

(2) The services of any person who fails to meet the vetting criteria established by the Commission under

Hon. Temporary Deputy Chairman, the import of this recommendation by His Excellency the President is to ensure that there is continuity in the work as the new commissioners come in. They would do the vetting as per the set down criteria.

(Question of the amendment proposed)

The Temporary Deputy Chairman (Hon. Kajwang’): Let us have the Hon. Member for Kiminini.

Hon. Wakhungu: Thank you, Hon. Temporary Deputy Chairman. You realise that I had proposed an amendment but the Hon. Speaker had earlier ruled. It is good to note that, indeed, I am the one who had initially proposed this amendment. From the outset, I want to thank the President because he saw the need of vetting the Secretariat and, at least, he accepted that the Secretariat must be vetted. I know, he indicated that continuity has to be there and they have to be vetted within a period of 12 months. From basic understanding of English, when you say: “Within 12 months” and you propose six months, it is within the 12 months. I rise to support this. I wish that instead of waiting for the 12 months, we should have shortened the period to be within six months upon that recruitment or selection of the commissioners.

We know that corruption cost about 250,000 jobs as President Obama had mentioned. So, I am not opposing anything. I am supporting but I wish that instead of giving a grace period of up to 12 months, it should have been limited to six months. Unfortunately, somebody somewhere messed with my amendment. It should be a wake-up call to our Committee that drafts this because that was not in the spirit of my amendment. That is why in my amendment, I thought it should not be two-thirds majority but a simple majority.

Thank you and I support.

The Temporary Deputy Chairman (Hon. Kajwang’): So, what have you done? What is your proposal then?

Hon. Wakhungu: Because it is in the same spirit, I had wished to shorten the 12 months to six months. But because it was messed up by one of our departments here, I wish to withdraw my amendment and support the one that has been proposed by His Excellency the President.

The Temporary Deputy Chairman (Hon. Kajwang’): All right. So, that amendment is dropped. Let us have the Chairman of the Departmental Committee on Justice and Legal Affairs.

Hon. Linturi: Hon. Temporary Deputy Chairman---

The Temporary Deputy Chairman (Hon. Kajwang’): What are you saying, the Member for Igembe South? You cannot just rise and talk. You can only rise on a point of order. Okay? Can I hear this Member?

Hon. Chepkong’a: Thank you, Hon. Temporary Deputy Chairman. Hon Linturi is a---

The Temporary Deputy Chairman (Hon. Kajwang’): No! Just a minute. Hon. Chairman, for these reasons, I will step you down and ask the Member for Igembe South to talk.

Hon. Linturi: Thank you, Hon. Temporary Deputy Chairman, for indulging me. Just in the event that I may have missed on anything, I really want to apologise. However, I thought this cannot just pass unnoticed. I want to agree with the Presidential Memorandum and say that it is completely in the spirit of the amendment that was initially moved by Hon. Chris Wamalwa. I feel that Hon. Wamalwa is somebody whose efforts must be recognised. This is because, were it not for his proposed amendment, this country would not be alive to the fact that this institution requires serious overhaul.

The Temporary Deputy Chairman (Hon. Kajwang’): Are you supporting or---

Hon. Linturi: I am supporting the Presidential Reservation.

The Temporary Deputy Chairman (Hon. Kajwang’): You are in support of the Presidential Reservation?

Hon. Linturi: Yes, but I am acknowledging what Hon. Wamalwa did because were it not for his amendment, then the whole country would not have woken up to that idea that we required to do an overhaul to this institution. So, the President agreed with the major position that was taken by the majority of Members that there was need to relook at the composition of the commissioners. What remains---

The Temporary Deputy Chairman (Hon. Kajwang’): I was indulging you, thinking that you were on a point of order. Now, can we allow the Chairman?

Hon. Linturi: I am concluding---

The Temporary Deputy Chairman (Hon. Kajwang’): No! Just a minute. It will add value to what you are saying. This is because you will be in the picture when the Chairman rises to move the amendment.

Hon. Linturi: I stand guided.

The Temporary Deputy Chairman (Hon. Kajwang’): Hon. Chepkong’a, proceed from where you are.

Hon. Chepkong’a: Thank you, Hon. Temporary Deputy Chairman. As you know, I have tremendous respect for Hon. Linturi who is my very good friend. I also thought that he was rising on a point of order. Unfortunately, he put the cart before the horse.

The Committee considered the Memorandum of the President and forwarded this request to the Hon. Speaker to determine whether it is in line with his recent ruling as to whether this proposed amendment by the Committee was in line with the President’s Reservation. Unfortunately, the only thing that we may have missed was in respect to the time period. Otherwise the entire recommendation from the Departmental Committee on Justice and Legal Affairs was ensuring that it is systematic and was done in a fair manner.

The reason why the Committee felt that it should be six months, as you know, we recently passed the law on the Fair Administrative Action. We wanted the process to be short so that you do not keep people waiting and guessing whether they are going to be retained or not. We wanted this process to be as quick as possible. Unfortunately, we were misunderstood. The intention was not to oppose the President at all. Our intention was to ensure that the President’s Reservation is carried through. In light of the ruling by the Speaker, I wish to withdraw the amendment so that we can make progress with respect to this matter.

As I conclude, we hope that the process will be carried out expeditiously to ensure that the members of staff who were at the Ethics and Anti-Corruption Commission are not left in limbo. They must be sure that they will continue to serve Kenya. They also have a right to serve in the positions in which they have been employed.

(Proposed amendment by Hon. Chepkong’a withdrawn)

*(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)

(Clause 6 as amended agreed to)

The Temporary Deputy Chairman (Hon. Kajwang'): Let us have the Mover.

Hon. A. B. Duale: Hon. Temporary Deputy Chairman, I beg to move that the Committee doth report to the House its consideration of the Presidential Memorandum on the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No.33 of 2015) and its approval thereof with amendments

(Question proposed)

(Question put and agreed to)

(Hon. Members stood in their places)

The Temporary Deputy Chairman (Hon. Kajwang'): Order! Resume your seats. We want to proceed to the next item.

Hon. A. B. Duale: Thank you, Hon. Temporary Deputy Chairman. After consultation with the Speaker, now that the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives is away and majority of the amendments are his, we want you to defer the Committee of the Whole House on the Fisheries Management and Development Bill.

The Temporary Deputy Chairman (Hon. Kajwang'): Is the Chairperson of the Departmental Committee on Agriculture, Livestock and Cooperatives present?

Hon. Members: He is absent.

The Temporary Deputy Chairman (Hon. Kajwang'): I see. With those facts, we have no option but to defer the business appearing as Order No.12 (ii) to the date at which it will be convenient for the House Business Committee.

(Committee of the Whole House on the Fisheries Management and Development Bill deferred)

(The House resumed)

*[The Temporary Deputy Speaker
(Hon. Kajwang') in the Chair]*

REPORT

PRESIDENTIAL MEMORANDUM ON THE ETHICS AND ANTI-CORRUPTION COMMISSION (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. Kajwang'): Order! Chairperson of the Committee, you have the Floor.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, I beg to report that a Committee of the Whole House has considered the Presidential Memorandum on the Ethics and Anti-Corruption Commission (Amendment) Bill (National Assembly Bill No.33 of 2015) and has approved the same with amendments.

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report.

I also request Hon. Pukose to second the Motion for agreement with the Report of the Committee of the Whole House.

Hon. (Dr.) Pukose: Hon. Temporary Deputy Speaker, I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang'): Yes, the Member for Garissa Township.

(Loud consultations)

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, there is a serious coalition meeting at the back of the Chamber.

The Temporary Deputy Speaker (Hon. Kajwang'): The Leader of the Majority Party, do not help me to restore order in the House. I know how the Chamber is running.

Hon. A. B. Duale: Thank you, Hon. Temporary Deputy Speaker. I want to thank the Departmental Committee on Justice and Legal Affairs and my colleagues for passing and agreeing with the Presidential Memorandum.

The matter that was before us this afternoon was very important. I am sure the President must have looked at the law. This House has passed the Fair Administrative Justice Act which says that each and every person, whether public or private, must be given a fair hearing.

Secondly, Section 17 of the Ethics and Anti-Corruption Commission Act says that it is only the Commission which has power to hire and fire staff.

The most important thing that came out was that the men and women who were at Integrity Centre, from the Chief Executive Officer (CEO) down to the investigators, must be men and women of high integrity. Once we put the Commission in place, in my honest opinion, everybody who works in the Commission must be vetted and take an oath to protect the integrity of that institution and the work that they are doing in the war against corruption.

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Kajwang'): Next Order!

BILL

Second Reading

THE EXCISE DUTY BILL 2015

Hon. A. B. Duale: Hon. Temporary Deputy Speaker, I beg to move that the Excise Duty Bill, 2015 be now read a Second Time.

After harmonising customs legislation in the region and in the East African Community Customs Union (EACCU), there is need for enacting separate excise duty legislation. Our East African Community partners have a separate legislation for Excise Duty. Kenya has continued, for a long time, to use the Customs and Excise Act for the administration of Excise Duty.

Our East African partner states have been urging Kenya to create a separate legislation and that is why we have, today, a new Excise Duty Bill, 2015. The Bill contains Excise Duty charged on goods which have negative externalities as well as other goods and services which are being charged Excise Duty for purposes of raising more revenue to finance Government expenditure.

Hon. Temporary Deputy Speaker, what does this Bill do, in the context it is before this House? It proposes to require persons not to manufacture or to import excisable goods, or supply such services unless they are licensed by the Commissioner of Domestic Taxes, or are registered to supply those services and goods.

This Bill also provides for the procedure in the application, issuance, suspension and cancellation of any licence given by the Commissioner.

The Kenya Revenue Authority (KRA) - over many years in realizing revenue collection - has widened the gap, the net and sealed all revenue leakages. Kenyans might not be aware that when the National Rainbow Coalition (NARC) Government took over the reign of power in 2002, the KRA was collecting close to about Kshs150 billion. Twelve years down the line, the KRA has surpassed the Kshs1 trillion mark. They deserve to be congratulated. What they have done has given us the independence. A country where 90 per cent of its Budget is financed by its own resources is a country that has economic independence. In order to prevent revenue leakage, this Bill provides that---

(Hon. Nuh spoke off record)

Hon. A. B. Duale Hon. Speaker, Hon. Junet is completely out of order. He is talking to me across in vernacular. He is telling me to see him after this. I would like to tell him that this is not the party caucus. This is a Chamber.

This Bill provides that, in order to prevent revenue leakage, excisable goods stored in a factory of a licensed manufacturer shall be subjected to the control of the Commissioner at any given time, even when they have to be released. That is part of the leakage that this Bill wants to seal. It also provides that such goods may only be removed if the taxes are paid or, with the permission of the Commissioner. This was not there before. There were many transit goods or other goods under custom warehouses which were disappearing.

This Bill empowers the Cabinet Secretary (CS), to bring to this House, regulations specifying excisable goods to which excise stamps can be affixed. The CS must tell us the goods that require the stamp duty to be affixed. Within that regulation, it brings the systems for management of excise stamps and how these goods manufactured for export or exempted are to be marked. The use of the stamp will be stipulated in the regulation that this Bill is empowering the CS of the National Treasury to provide to Parliament.

This Bill prohibits totally the removal of excise goods from excise control without an excise stamp unless with approval. It gives control that nobody can remove goods if the excise stamps are not there, or without a written approval of the Commissioner.

The Bill provides for a refund on excise duty paid on excisable goods that are damaged or stolen. Sometimes it happens that when these goods are in a warehouse, they are damaged or stolen. This Bill provides a mechanism in which the investor or the owner can be refunded the Excise Duty that he paid.

The Bill also provides for the payment of Excise Duty on excisable goods that are meant for export if unloaded in Kenya for home use. If you had goods on transit or, for export in a warehouse and feel you want to sell the same goods in Kenya, the payment of the Excise Duty is provided for in this Bill. The Bill provides for offences on manufacturing or importing into Kenya excisable goods that are not licensed. This is something that was not there. I am doing a summary of what the Bill entails.

In the recent past, this Bill has seen an increased prevalence on non-communicable diseases such as diabetes. In order to curb the increase of these diseases, this Bill proposes to retain Excise Duty for sugar sweetened beverages, soft drinks and juices. For the first time, the CS and the Commissioner-General of KRA want to do something in this Bill to help a section of the population that is diabetic.

Hon. Temporary Deputy Speaker, with the World Health Organisation (WHO) estimating that tobacco accounts for more than 60,000 deaths per annum, this Bill proposes to increase Excise Duty on tobacco. The Bill also proposes to increase Excise Duty on certain alcoholic beverages to reflect current effective rates and is mainly dealing with spirits and other drinks in that category. For my colleagues from central Kenya, this is an opportunity to extend the war we had on illicit brews to bring an amendment to increase further taxes made on spirits.

I wish the CS was talking about *miraa*; my amendment could have been ready like yesterday. I am sure, as my colleagues from central Kenya read this Bill, they will bring an amendment. We need to increase taxation and make those spirits a bit expensive for our young people in the villages to avoid them.

This Bill has departed from the previous tax regime where majority of the excisable goods were having two rates which are both specific *ad valorem*. This Bill has proposed one rate with only few items that deals with one particular section in terms of taxation regime. To ensure the Government does not lose value for money as a result of inflation over the years, this Bill proposes specific rates to be adjusted every year by average annual inflation metrics.

Hon. Temporary Deputy Speaker, with the current taxation regime on motor vehicle, we noted that it does not take into consideration, pollution emitted by different categories of motor vehicle based on their age. In order to address pollution of the older cars in our environment, this Bill proposes to change the taxation regime of the motor vehicles and, base it on the age of the vehicle. Taxes will now be based on the age of the vehicle that one is buying or importing.

Hon. Temporary Deputy Speaker, before I conclude, if you look at the Finance Bill that will come next week and that we concluded yesterday, you will find that the banks' minimum capital has been raised in that Bill from Kshs1 billion to Kshs5 billion until 2018. That proposal by the Cabinet Secretary is, in my opinion, double-edged. I am not a banker but I might own a bank in future if I decide to sell the few camels that I own and ask the Chairman of the Departmental Committee on Finance, Planning and Trade to sell the two or three acres of tea that he has in Kericho. It says that that proposal of the CS is going to create only five major banks.

So, banks will be forced to merge. If you look at it from the other side, you will find that the Chairman of Equity Bank, a man I respect a lot, started Equity Bank with Kshs2,000 shillings. Why are we not giving that opportunity to Kenyans of this century so that tomorrow Hon. Chachu Ganya and many others can bring resources together? I think Members of Parliament must look at that.

At the same time and more importantly before I finish, the CS is again trying to propose or double the capital of insurance companies from Kshs300 million to Kshs600 million for general insurance and Kshs400 million to Kshs800 million for the other section. We need to look at all this because these Bills are before the House so that we do not kill one sector. So, if you are for the idea of saving small banks, then you must come with an amendment to disagree with the CS. If you feel that we can have three banks only, you can even increase the proposal given by the CS and say that the capital baseline of a bank should not be Kshs5 million but Kshs10 billion.

Those are the highlights. I have just highlighted a few provisions in this Bill as Members will have time to debate during the Second Reading and bring amendments.

With those very few remarks, I will ask the Chairman of the Departmental Committee on Finance, Planning and Trade, who has done a better scrutiny of this Bill than me, and who has met the stakeholders and a cross-section of industry players to second and enlighten the House. I read the Bill individually to see what it proposes. I am sure he will bring the Report next week because he has not tabled the Report on this Bill as at now. He needs to work next time.

Hon. Temporary Deputy Speaker, you need to reign in the Chairpersons. The Mover of the Bill is far much ahead of them. They are following me. They should be ahead of me. So, next time they should bring the Report before I move the Bills.

I beg to move and ask the Chairman of the Departmental Committee on Finance, Planning and Trade to second.

The Temporary Deputy Speaker (Hon. Kajwang’): All right. Thank you. Before you rise to second, may I recognise the Pontifical Missionary Children (PMC) from Marsabit County? I am told that they are led by the Bishop of the Diocese of Marsabit.

(Applause)

All right. Yes, the Member for Ainamoi.

Hon. Langat: Thank you very much, Hon. Temporary Deputy Speaker, for this opportunity you have given me to second this Bill. I would like to thank the Leader of the Majority Party for moving it very well.

He seems to cast aspersions on my ability. I also want to remind him that next time he is bringing business to the House, he must also consult the Chairpersons of Committees so that we come into this House as one.

Having said that, I would like to say a few things concerning the Excise Duty Bill.

(Hon. A.B. Duale consulted loudly)

The Temporary Deputy Speaker (Hon. Kajwang’): Order! The Leader of the Majority Party, there is an equal response which I think is fair to hear. The Hon. Member for Ainamoi, repeat what you have said. I do not think he heard.

Hon. Langat: Hon. Temporary Deputy Speaker, I was saying that the Leader of the Majority Party seems to have cast aspersions on my capacity but I want to tell him that we have been tabling serious Reports in this House. I also want to remind him that he should consult the respective chairpersons next time he moves his Bills so that we come to the House when we have consulted.

On this one, he has actually forced me today. In fact, he forced me when I was trying to travel to my constituency. He told me not to travel because he wanted me to second this Bill.

(Laughter)

The Temporary Deputy Speaker (Hon. Kajwang’): Hold on. The Leader of the Majority Party was making those comments on a light touch. Let us keep what is administrative outside the HANSARD. Let us get into business.

Hon. Langat: Thank you, Hon. Temporary Deputy Speaker. I was also saying that with a light touch.

Let me say this is the first time we are introducing Excise Duty Bill which is separate from the Customs and Excise Act. This is pursuant to the East African Community Customs Management Act of 2004 which had the effect of removing all the issues that dealt with customs from the Customs and Excise Act which left alone the matters on excise in the former Customs and Excise Act. So, the reason this Bill is coming up is to have a law which specifically deals with excise duties.

I wish to inform the House that Excise Duty alone on average contributes 12 per cent to our annual revenue. In 2015/2016, it is expected that Excise Duty will yield Kshs144 billion against our budgeted ordinary revenue of Kshs1.3 trillion. So, this is a very important tax law because it contributes significantly to our revenue. There is a slogan in the Kenya Revenue Authority (KRA) which says you pay your taxes so that you stand and do not depend on others. If we are to enhance this tax alone, we will move closer to Kenya becoming independent in terms of the resources it generates.

Out of the Kshs144 billion or out of the normal Excise Duty, quite a proportion, close to 70 per cent, is collected from two commodities; alcohol and tobacco. This tax is normally called “sin tax” because those who engage in alcohol and tobacco are engaged in sins. The sins must be taxed so that we can make Kenya move forward. The other reason this tax is levied is because some of these products are harmful and their prices do not reflect those inherent harmful items. Therefore, this tax is levied to compensate for those harmful effects which these products bring to our environment.

Through this Bill, Excise Duty changes are proposed to be imposed on harmful cigarettes and tobacco, volumes of harmful alcoholic beverages, sugar-sweetened beverages consumed, volume of polluting fossil fuels and old vehicles we import into the country. This will be subject to debate. Initially, we have been using a rate to apply to the age of the vehicle but because we are moving to what we call the specific rates, this Bill proposes to use a specific rate of Kshs150, 000 for any vehicle of any age. This House will make a decision. For example, if you are buying a Probox, you will pay Kshs150,000. If you are importing a Range Rover, this Bill proposes that you pay Kshs150, 000. At the right stage we may have to look at whether that is fair to the low income and high income earners.

This Bill converts what we have been actually calling “Hybrid Tax Regime” where we have been having what we call the *ad valorem* rates which are the percentages applied on the prices with what we call the specific rates. This is where the tax law has provided the specific figure that if it is Kshs10 it is Kshs10. This Bill proposes to do away with *ad valorem* rates and only remain with specific rates so that if you look at the Bill you will see if it is alcohol of this content, it gives the specific amount to be charged. I refer Members to the schedule for details. It means then that it will be very easy to administer because we are using a specific amount and not the percentages.

In the percentages, you have to know the price, compute and then get the figure. With this one, if it is one litre you charge Ksh10 and that is it. It is actually very easy and it will reduce leakages. However, we may at some point be faced with the issue of inflation but the Bill seems to be trying to address that. Unfortunately, we have very many stakeholders who are saying if you introduce a rate linked to taxation, it might be too much. There are two conditions. Do we adjust the specific figures to the inflation, and what is the rate? The dispute has been what is the rate of inflation that we apply to update the specific figures?

In particular, to address the challenges of environmental degradation caused by careless disposal of plastic bags, the Bill proposes to enhance Excise Duty on non-biodegradable plastic to Ksh120 per kilogramme. This is because we have a menace in this country. If you go to our estates and markets, you will find serious problems with these plastic bags. They are causing a lot of problems. We need to control them. In fact, the rates should even be higher to ensure that we move from these non-biodegradables to something which is temporary.

In order to address the social problems resulting from consumption of illicit brew in this country--- This is a very serious matter. The Mover of the Motion was actually quoting Central Kenya. I want to congratulate the Members from Central Kenya. They demonstrate a lot of zeal in dealing with these illicit brews. They did it with a lot of zeal but that was a dangerous move.

The Temporary Deputy Speaker (Hon. Kajwang’): Then let us have you on the microphone saying whether you are seconding the Bill or not.

Hon. Langat: Thank you, Hon. Temporary Deputy Speaker. I did not realise time has gone but with those few remarks, I second the Bill and ask Members to support it.

(Question proposed)

The Temporary Deputy Speaker (Hon. Kajwang’): The Member for Kikuyu is not present and not desiring to contribute. The Member for Emurua Dikirr, proceed. He is not ready and not desiring to contribute. Yes, the Member for Turkana Central.

Hon. Nakara: Yes, I want to contribute to the Bill.

The Temporary Deputy Speaker (Hon. Kajwang’): I beg your pardon please. I did not hear you.

An hon. Member: He wants to contribute.

The Temporary Deputy Speaker (Hon. Kajwang’): Yes, that is the reason he has the Floor.

Hon. Nakara: Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill for the following reasons: One, having this Excise Duty Bill is one way to curb corruption in this country. There are many people in this country who do not pay taxes. As one of the Kenyans

who is faithfully paying his tax, I would like to encourage you that once we have this Bill we will actually curb corruption in this country.

As the Mover of the Motion said, the level of corruption here has destroyed our nation. Kenya, except South Africa, is the only country which does its budget which is financed locally. That gives us strength as a country. We want to encourage the citizens of this country to pay their taxes so that we can depend on our money than relying on outside help.

On the issue of the position of the licence and others, this gives equal opportunities to all people. In this country, when we apply for licence, some people go through the back doors and businessmen lack the authority to have the licence. This Bill has already given us the procedures to follow so that each person in this country can apply for the licence.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. Yes, the Member for Endebess.

Hon. (Dr.) Pukose: Thank you, Hon. Temporary Deputy Speaker for allowing me to contribute to this very important Bill, the Excise Duty Bill of 2015. If you look at the principal object of this Bill, you will find that it is actually consolidating the provisions of the imposition and collection of Excise Duty into a separate law which is quite important.

If you look at the East African Community (EAC), you will realise that there was the Customs Act that was done in 2004 in which there are provisions of Customs Duty being enforced under the Excise Act Cap. 472 which was also incorporated into this. These provisions consequently repealed the Customs and Excise Act leaving only provisions relating to Excise Duty. Therefore, this is a very important Bill.

Just to touch on a few areas that I think are key, if we look at some of the areas dealing with penalty and offences on licensing, we will find that it is the offence of those people who manufacture excisable goods without the requisite licence and are now being liable for imprisonment for a term not exceeding three years or a fine not exceeding Kshs500,000. Although a deterrent but also on the same Bill, it talks of proposing a penalty of double the excisable duty that would have been payable if such a person was licensed.

We also have substantial increases of Excise Duty on alcoholic beverages where we have as much as 43 per cent in beer. When it comes to liquids such as beverages and spirits the more than 35 per cent tax, this might turn out to be punitive because it will make people to go back to taking the second generation alcohol and other things. So, this is an area we need to re-look at again and see if amendments can be moved by the Committee because as was mentioned by the Chairman of the Departmental Committee on Finance, Planning and Trade, 70 per cent of what we collect as Excise Duty is from alcohol and tobacco. Therefore, we need to exercise caution in these areas so that people do not go to “third” generation alcohols.

Hon. Temporary Deputy Speaker, the other area we have looked at is the motor vehicles and the motorcycles taxation regime. It is proposing that the tax of motor vehicles which are about three years old will be about 20 per cent which will be much better than what is currently prevailing. Currently, if you import a motor vehicle which is new and more environmentally friendly, you pay more tax. This will mitigate environmental issues. People will now tend to go for motor vehicles that are friendly to the environment because the taxation will be less compared with an old vehicle where they will be required to pay more.

There are also other issues such as the introduction of Excise Duty on other fees on the insurance industry. This Bill proposes to reduce Excise Duty by about 10 per cent on other fees

charged under *inter alia* persons licensed under the Insurance Act. We see this in the First Schedule. Given that the insurance sector is heavily reliant on intermediaries, this will make the fees payable to intermediaries high making the insurance business to be less profitable due to the subsequent decline in profit margins. Therefore, this is an area the Committee will need to look at so that we do not over charge and kill the intermediaries especially in the insurance sector.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. Kajwang'): Thank you. Yes, the Member for Saku.

Hon. Dido: Thank you, Hon. Temporary Deputy Speaker for this chance. I rise to contribute to this Bill which is important. Reading it tells me that our tax regime must be people friendly particularly in accessing goods which our people use daily. For example, if we give *boda bodas* tax exemption, what net effect does it have on our people?

This Bill lays down to the citizenry what they have to pay to the tax man. Currently, we have the East African Common Market and the Customs Union under the East African Community. For Kenya and Kenyans to operate effectively in that market, they should clearly understand the tax regime throughout the East African Community. What has been happening is that if the tax regime in another East African country is much more amiable--- The citizenry have been taking goods to Uganda or Tanzania and bringing them back to Kenya. In the process, that fights competition and the traders who import their good directly to Kenya get disadvantaged.

This Bill also lays down, in principle, the Excise Duty attracted by various goods. In the olden days, we used to see the power of the Commissioner-General of the KRA who decided on waiving duties or decided the individuals to be charged excess duties and undervaluation of goods. This Bill provides us the basis of moving away from the whims of individuals to decide what duty to be paid but to pay duty as laid down in the statute or the law of the land.

This Bill is likely to encourage investment in our country. One of the problems investors have been finding in investing in Kenya is primarily in the area of the excise duties to be paid. In most cases, this is where rampant corruption is experienced. An individual is told that for him to invest in Kenya he has to pay a certain amount to individuals or proxies and this does not necessarily cover what they want to recoup from their investments.

The Customs and Excise Act that used to be there provided a lot of liberties to technocrats in determining what businessmen were going to pay in tax. The Excise Duty Bill provides us with a clear intention on how the tax man should proceed. This Bill is also about resource generation. Over the years we have heard that 30 per cent of our tax money goes to a black hole called "corruption". It does not go to development. More and more, the Kenyans we represent want to see that their tax money is not wasted, pilfered and is not stolen by individuals.

Finally, there are many areas in this Bill which will be amended so that it reflects the needs and wishes of the people we represent.

I beg to support.

The Temporary Deputy Speaker (Hon. Kajwang'): Yes, the Member for Rarieda.

Hon. (Eng.) Gumbo: Thank you, Hon. Temporary Deputy Speaker, for the opportunity to contribute to this Bill. As it has been mentioned by those who have contributed before me, the enactment of this Bill is consequent upon the establishment of the East Africa Community Customs Union. Therefore, with the establishment of that Union, it makes the Customs and Excise Act that we have had more or less repealed.

The major sources of excise tax in our country still remain alcohol. In fact, every year when we read the Budget, we talk about “sin taxes.” That being so, the method of determination of excisable value must not be, in my view, a whimsical exercise or an algorithmic process such as the one outlined in Clause 9 of this Bill.

If you look at Clause 9 of this Bill, which talks about the excisable value, what would form the Excise Duty, you will understand why over the years we have had a lot of disputes over this tax. As we speak, there are major industrial establishments in this country which are almost grinding to a halt arising from the determination of what is the excisable value or indeed what is the Excise Duty payable. I do not take alcohol or smoke. I do not even own shares in companies that sell alcohol and tobacco because of my beliefs. However, the truth of the matter is that manufacturers of alcohol and tobacco still remain some of the largest taxpayers in our country. That is a reality that needs not to be over-emphasised. When we deal with them, we must understand that to that extent they remain more or less the goose that lays the golden egg.

I have spoken before of the need to help home-grown companies grow. Look at a company like Keroche Industries which manufactures alcohol. It beats logic that a company which only recently hosted none other than the Cabinet Secretary (CS) for Industrialisation and Enterprise Development to launch a product could have been lumped together with companies that are making illegal alcohol. It does not make sense to me.

Most importantly, the misunderstanding that is currently going on between Keroche Industries and the Kenya Revenue Authority (KRA) is not healthy. We are sending wrong signals to Kenyans who own companies. Mrs. Tabitha Karanja remains one of those Kenyans who need to be congratulated because through Keroche she has taken on some of the multinationals. It is not an easy thing to take head on companies like Diageo and Guinness. Yet it appears that through wrong application of taxation, particularly Excise Duty, this major Kenyan enterprise is almost going on its knees.

When taxation of any kind appears to be punitive, then it does not make sense. Tax must ultimately help the people of Kenya. A tax regime which appears to particularly target home-grown companies in a way that does not help them to grow is wrong. Therefore, Clause 9 needs to be made simple so that the determination of excise value of goods and services is a simple process. These long algorithms that go into the method of determining the excisable value are not helpful.

More often than not, part of the reason that people tend to evade taxation is when the tax is punitive or in cases where people are overtaxed, the procedure for getting refunds is not simple enough. Clause 28 of this Bill talks about the procedure for refunds. The procedure provided here is too laborious. When people are faced with a situation where they feel they need to be refunded taxes that have either been taken in excess of what ought to be paid or taxes that ought not to have been paid in the first place, they go through a long process. It makes the procedure for determining excisable value whimsical and too lengthy. It reduces it to a subjective process where the tax authorities more or less are the ones to decide what they want. Sometimes it does not give the taxpayer an opportunity to also be part of that determination. The procedure for refunds outlined in Clause 28 is too long. I will be very keen to see what the Committee report says about Clauses 9 and 28 on excisable value and on the procedure for refunds.

If this Bill is passed, in my view the Excise Duty Act will create the Commissioner for Excise Duty. This Bill largely bestows the administration of tax on the Commissioner-General. While it is good to consolidate administration, we need to be clear. We need to create the office

of the Commissioner of Excise Duty and give it clear roles. Apart from the fact that it may be a department or a directorate within KRA, it should have clear roles so that we do not seem to over-centralise everything at the doorstep of the Director-General of KRA.

There are offences and penalties outlined in the Bill. Paying tax is never a pleasant thing. It is a pain that we impose upon tradespeople. However, as long as people are able to see what their taxes do for them, the need for these penalties will never arise. People will be happy to pay tax. If Kenyans were to be assured that on the taxes they pay, their children will go to school, they will have good roads, there will be running water and all the other services will be provided, they will be happy and pay tax.

I support this Bill, but I will be proposing amendments. I thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Kiambu.

Hon. (Ms.) Gathecha: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Bill. The tax regime in this country has been quite punitive and unclear. It has been used to mainly harass a number of businesses instead of growing the businesses. This Bill aims to put in place practices for taxation to ensure that it is clear. Hopefully, the Commissioner-General will be somebody working towards ensuring the tax regime in place and the taxes that will be charged will encourage investment in terms of industrialisation.

The purpose of this Bill is to keep the procedure of administering excise tax in tune with international best practices that currently exist around the world. This harmonisation will assist Kenya to be one of those main participants in regional integration.

It will put in line investments within this country so that we do not have those who are trying to evade taxes by importing goods, taking them to other countries and ensuring that raw materials are not exported to other countries and then we end up importing a lot of those goods. It will help encourage industrialisation and growth of industries, which will also create employment in this country. This will be a good thing for our country.

The aspect of the compensation for harmful effects caused by production, supply, consumption and use of goods and services is one that I find helpful. Members of Parliament in the Central region have fought so hard to ensure that at least the youth of this country and of particular counties are saved from the harmful effects of the illicit brews and from the greedy works of those who are only interested in adding harmful additives into the alcohol that they currently sell. This is done to ensure that these youth will become productive members of this society. People sell illicit brews and second generation drinks that have tremendous harm to the revenue of this country because the youth had been rendered ineffective. They are individuals who engage in crime just to get the Kshs50 to ensure that they got a hit which made them unproductive.

I am not even sure that some of those taxes are punitive enough. When you take a look at the impact of illicit brews in the country, it causes 94 deaths a year. In the county that I represent, one death a year is too much for this country.

I also oppose what the Member had mentioned about some of the taxes that have been involved. If you were to take a look at some of the revenue streams--- We are not opposing industrialisation and home grown industries in this country. However, we cannot allow revenue streams to be made from products that are endangering or killing the youth of this country. When we say that the tax regime that was imposed on Keroche Industries was too much, ethanol should

be a very controlled industry. It is supposed to be a substance that is not just sold to anybody. Not everybody should be able to go out and purchase 1,000 litres of ethanol without an institution giving them any guidelines. They then make a concoction of it like they are making a fruit juice and then sell it to unsuspecting members of the public. Before we know it, these people will be blind and will have died and the person just goes off scot-free. We expect those who are sure that they want to engage in this type of industry that provides “sin taxes” or luxury taxes to be in compliance with the established rules and not to be engaged in the activities of providing a raw material to another person who will be used to harm Kenyans. They will in turn be culpable and held criminally responsible for those types of engagements.

Finally, I will speak on the issue of revenue leakages. When we have a tax regime that is compliant, that is clear and one that is understood, it actually ensures that everybody is fully aware of what is available. What has made paying taxes in this country difficult are the enforcement officers simply because the tax bill is so huge and unclear that in order to just get away from being constantly bothered, it is easier to pay somebody as opposed to following the law. We hope that with the introduction of this particular Excise Bill, we will ensure that even those who are hired to go out and do these jobs will be people of integrity and people who when they go to visit these companies will look at if they have paid their taxes as they are supposed to. For those who are paying, they will be in compliance and more willing to contribute to the revenue base of this country so that our taxes will be used in the manner that is clear. We should ensure that the taxes are being used to the advantage of Kenyans and in projects that are tangible and that can be seen as opposed to the black hole that 30 per cent of the taxes of this country have been going into.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for North Horr.

Hon. Ganya: Thank you, hon. Temporary Deputy Speaker for giving me this opportunity. At the outset, I support the Excise Duty Bill 2015. It is a good Bill. As a country, we must fund our budget. This is one strategy of raising revenue to develop this nation. The Bill simplifies administration of taxation in the country and this will enhance compliance with taxation. The Bill also optimises the revenue collection from the Excise Duty itself. It further aims at harmonising various tax laws in the country as well as in the region, Kenya being a member of the East African Community (EAC).

Considering the harmful impacts of alcoholic beverages if abused, the Bill also increases tax rates on them. I am really happy with this Bill. I will call it an environmentally friendly Bill. For instance, this Bill increases taxation on all classes of fossil fuels, which is a great thing. This will force people to use public transport instead of everybody driving, which actually damages our environment. The Bill also enhances taxation on plastic bags which are not biodegradable. This is very doable. It is being done in Rwanda. If you go to Kigali it is a very clean city. You will hardly see a plastic bag anywhere in Kigali. This is because the law there is very punitive. Actually, it is banned completely. In reality, we do not factor the harmful aspects of these goods to our environment. The prices that we give to these goods are not realistic. They are not holistic at all. If all the damages they do to the environment are costed, then the consumers will be forced to pay the real price for those goods. This is very good and I really hope that gradually, we can even increase taxation on these plastic bags or even ban them completely and force people to use containers that are biodegradable.

As we move on, in future, other materials or goods in our country which are not environmentally friendly should, in the spirit of this Bill, also be taxed heavily or punitively so that we can conserve mother earth and ensure that we live in a very clean environment.

With those few remarks, I support the Bill.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Murang'a.

Hon. (Ms.) S. W. Chege: Thank you, hon. Temporary Deputy Speaker. At the outset, I support this Bill. I have been going through the items and where I would like to dwell on is the excisable goods.

I actually support the proposal to introduce excise tax on alcoholic beverages. My county is one of the counties where we are now trying to rehabilitate people who were affected by the alcoholic syndrome. It is sad to see the Government spend a lot of money on health and also on broken families while we have a few individuals making a lot of money selling these alcoholic products.

Hon. Temporary Deputy Speaker, when I spoke to the people who were already at the rehabilitation center, most of those who were taking alcohol, were also taking tobacco. I am happy to see that tobacco is one of the items that are going to be impacted by this duty. I am hoping that this will reduce the number of people who were able to access these products. I always say that things like alcohol and tobacco are not things that are a matter of life and death. They are things one can avoid. I would hope that we do not see other companies coming up now. I am very sad to see main companies in Kenya reporting that they are making billions of money out of the sale of alcohol and they all took advantage of the second generation alcoholic beverages being out of the market. Now they are selling and doing booming businesses. The kind of cheap liquor they are giving is going to cause more damage than the second generation alcohol. When beer is served frozen and in a very cold area like it is in Central Kenya yet these people are not feeding very well then it will cause more harm than the second generation alcohol. I am hoping that this House can sit and look at some of the laws that we can come up with to make sure that whatever any company is selling to the consumers in this country is not going to cause any harm.

When alcohol is frozen and is given to a man who has not fed very well and the place is also very cold then we will have a lot of cases of people dying of pneumonia. I support. I was a little bit confused when I saw the issue of mobile cellular phones. You know everybody in Kenya has gone digital and I am a little bit concerned on that issue because it is part of the accessible services.

I also support the issue of plastic shopping bags.

The Temporary Deputy Chairman (Hon. Kajwang'): The brand of Kenya internationally is a cold Tusker. Is it something that you, as a Member of the National Assembly, is not proud of?

Hon. (Ms.) S. W. Chege: I am not proud of cold Tusker. I would have liked Kenya to be known as a country where we have the Eighth Wonder of the World; the migration of the Wildebeests. I would be proud of that, but not cold Tusker. We can say the highest mountain, Mt. Kenya or the wildebeest. I can confirm to this House that I am not proud of the cold Tusker.

Going back to the issue of plastic bags, we know some of our neighbours like Rwanda who by the time you get to their airport you cannot get to their country with plastic bags. Aside from adding more duty on them, I am hoping that this House can also move to save our environment and ban the use of the plastic shopping bags. There are other ways. If we can go

back to our traditions, when I did a wedding, my mother gave me a *Kiondo*. When I am going for shopping I can surely carry *Kiondo*. We do not need plastic bags to do the same. I am hoping that we can regulate and make sure that we ban the use of plastic bags in this country.

I have seen the duty on food supplements. Everybody is watching weight in this country. I may also be a victim. When I see that we have added 10 per cent of Excise Duty on food supplements, I am a little bit concerned. We need to be healthy. I am hoping this can be amended. I am not sure but I stand to be guided but food supplement should not be included in this category where we are adding the Excise Duty. We know that when our seniors get old, they need a lot of food supplements. I do not support food supplement being part of the items that are going to be affected by this.

Another thing is the issue of fruit juices. This is about health and living healthy. On vegetable juices, unfermented and not containing added spirits or sugar or other sweetening matter, I would also not support the fruit juices to be slammed with this Excise Duty because we are encouraging most Kenyans to take fruit juices and avoid other soft drinks. I am hoping we can do a little bit of amendment if it will be possible.

Hon. Temporary Deputy Speaker, I support and thank you.

Hon. (Ms.) Muhia: Thank you very much, Hon. Temporary Deputy Speaker. I stand to support this very good Bill particularly to women in Central Kenya. We have been known to be victims. I am hoping that by the end of this Bill, the lives and livelihoods of people in Nyandarua shall improve.

As this Bill stipulates, I want to confirm that I am on healthcare currently and I am doing a cancer center. As a result, I have been doing a lot of research because I do not come from a medical background. I can confirm that effects of alcohol and cigarette go to as high as 16 per cent or even more for those who get cancer. We should not only look at alcohol from one side. It is a health challenge to our people. If you look at those who consume alcohol, particularly what we witnessed a month ago, these are people at very productive age. Possibly they form 60 per cent of the people who determine the future of this country. Once they engage themselves in the lifestyle of alcohol and cigarette smoking then they become very unproductive.

The Temporary Deputy Chairman (Hon. Kajwang’): Be fair to these manufacturers and producers. Is this Bill concerned about taxing illicit consumption of alcohol or it is taxing legal manufacturers of alcohol? Should you, as the National Assembly, send signals that legally manufactured alcohol is a problem?

Hon. (Ms.) Muhia: As I stand guided, I am referring to excisable goods; Part I where the drafter has indicated what should be taxed. I was coming to that point. In the description, you will note that there is denatured ethyl alcohol which should be taxed at Kshs175 per litre. One litre can be divided to half or quarter litres. This will give the illicit brewers an opportunity to imitate. They imitate and make these quarters and the youth think they are taking spirits of a particular brand. I am not very good with the brands but at least I know there is one that is as clear as water. So the youth consume it thinking it is a genuine one but it is an imitation. In a nutshell, we may also speak of illicit brew which is an imitation of the rightful manufacturers.

I will bring very serious amendments because I feel that these charges are too low. A charge of Kshs175 per litre will give an avenue for those quarters to be sold illegally. If it went to about Kshs400 per litre, even if there was an avenue to imitate, then half would go to Ksh200 and a quarter litre would probably go to a Kshs100. This makes it difficult for the youth to get

Kshs100 to buy the alcohol but in the event they can buy at Kshs30, the imitation business will rise.

Speaking of cigarettes, we know that even those who do not smoke get affected seriously from a distance. This is another case where I am viewing this country in a vicious cycle. When people smoke or drink, they get ill and seek medication in hospitals. Much as we have collected a lot of revenue and as a Member was trying to illustrate how Government should be fair with industries like Keroche, I would not be fair. I would want to minimize them or possibly discourage other investors to go that direction. I do not understand the cycle where we collect so much revenue from alcohol then we use the same revenue collected in healthcare because people who would be working for this country are lying in hospitals spending the same revenue on drugs.

I wish to say that investment or entrepreneurship is a range and people can diversify so that those who remain in this industry can make pure and hygienic alcohol that cannot be easily imitated

Hon. Temporary Deputy Speaker, I am concerned about the motorcycles. Today, we know that our youth have become entrepreneurs on motorcycles, not only on transport but on other businesses like carrying cargo. I am concerned and I feel that during the Third Reading, we need to bring amendments and possibly agree as a House if we want to go this direction or not. Why do I say this? I always feel that insecurity in this country is as a result of frustrated youth. So, these youth have gone and joined a group and they have got Uwezo Fund, they have bought motorcycles, then we have taxed them so heavily such that they cannot maintain their business. The next moment, they would be googling the common known Islamic State of Iraq and al-Sham (ISIS) website. On that page, again, they are radicalised. We shall again find ourselves with insecurity issues. I am very concerned like my colleague of juices because we know some parts of this country like the coast region are quite hot. The temperatures are always very high and so people have to keep on drinking these kind of drinks. I would not like the taxman also to benefit at the cost of the ordinary mwananchi's living standards. Some people may not afford those juices that are costly. However, as a result of the cost, again, the other manufacturers can come on board and try to manufacture.

I am also concerned about the issue of telephone. Today, we have all gone digital. Even my grandmother has a phone. Even the youth who are doing business have phones. Again, I want us to look at the taxman benefiting and the ordinary mwananchi losing business. Which tax should we collect more? Do we go this direction where we get revenue but we get fewer youth operating the phones? If they are not going to be in business of using their phones or changing with the lifestyle---Today, we have gone all the way to using S4,S6 or iPhones. If the prices get very high, then the youth will maintain their *kabambes*. So, we may lose the revenue from one side as we look at the other side.

I want to compare this country with Europe where people drive very simple cars and in Kenya where we are fond of driving very big vehicles. This is with the exception of politicians because our roads are not good. So, the Vitz cannot take me to Kinangop or Ndaragwa constituency. Ideally, we should limit the people from driving the big vehicles unnecessarily. This is one way where Europe has maintained good standards and their environment is safe. This is because they have been regularised by the taxes. You cannot afford to pay so much tax on your vehicle if it is old or polluting the air.

In Kampala, Uganda, people are no longer using plastics. In Kenya, there is always an issue of unemployment. People say that if you do this, we shall lose this and that. In the west people go for shopping carrying their own homemade baskets. They carry their things to the vehicles. In Uganda, they use whichever kind, but they do not use plastics. Time has come that we do not regularise, but put a net. I may possibly want to bring this amendment in the Third Reading.

My view is that if we heavily tax the alcohol, the social life of our people, particularly in Central Province, shall come to the normal. Thank you

The Temporary Deputy Speaker (Hon. Kajwang!): Member for Emurua Dikirr

Hon. Kipyegon: Thank you once again, Hon. Temporary Deputy Speaker, for giving me this chance. I also wish to support this particular Bill which is intended to bring sanity to some products which are bringing chaos in the country.

Before I even delve into that, I would wish to congratulate the Chairman although there are some few issues which he failed to look into seriously. Some Members of this House from Central Province are complaining majorly about the killer brews which are not as a result of some of the factories that we have in the country, but as a result of the many illegal factories that are manufacturing those brews and are known. They are not even registered or licensed. Therefore, even the products they are making are illegal in the first place. So, we need to differentiate between those illegal factories which are manufacturing illicit brews and those ones which have been licensed and are meant to produce the brews which are legal.

First, I wish to support the Chairman on the question of the plastic bags although most of our families in the villages use these plastic bags as a means of carrying one, two or three things. They use it to carry unga, vegetables and such like things. Sometimes, as much as we are complaining that they are also littering the environment, we must also bear in mind that these bags are used by most of the families. Some of us may argue that we are having these kind of bags with these other expensive bags but the people in the village may not access those ones because of the limitations of finances.

We also need to see if we are helping those people down there by suggesting to ban or even overtaxing plastic bags. We should have also looked at how we can recycle these plastic bags so that they can be reused. I would also wish to seriously look at the question of killer brews. Taxation on spirits and other drinks has been raised. When you also look at the ordinary beers, the levies have also been raised. But there is something which I had discussed with the Chairman sometimes back and I do not know if he forgot or we can bring that if it was to be amended.

Although we are looking at beers, we have to look at it in two areas. For example, the products used in making beer; wheat and barley, are giving our farmers an earning. This will motivate them to grow more barley and wheat. That can be used to produce this particular beer. Sometimes, when you overtax them, the production will go down. Therefore, even the farmers will also suffer. Take the example of Keg and Senator drinks; Senator is produced from sorghum. It was overtaxed last year. It was taxed over 50 per cent thus killing its production. Even the industry which was making that drink closed that section of the factory. It has two ripple effects. It affected the farmers who were planting sorghum because nobody could even buy them. The East African Breweries Limited (EABL) could not buy it. The only market we had was the Meru area where people just use it as a staple food. The major consumer which was EABL closed the consumption of that plant. You remember that most of the areas which used to

plant maize, their production died. Maize died and they could not plant it anymore. Most of the people resorted to planting sorghum thinking that maybe they will have some market somewhere. Because of overtaxing, the market which used to be there was closed.

Secondly, you know these drinks, Keg and Senator, were largely consumed by small persons, that is, those people whose earnings are so meagre. These are the people who when this drink---

The Temporary Deputy Speaker (Hon. Kajwang'): This drink, its name seems to be synonymous to the other House.

Hon. Kipyegon: The Senator drink was named after President Obama when he came to this country as a Senator. The drink was re-branded.

The Temporary Deputy Speaker (Hon.Kajwang'): That is a drink which is consumed by Members of that House. Is it not so?

Hon. Kipyegon: It is not. I cannot say that it is consumed by the Members of that House but it is a brand name for that drink. It was made from sorghum. When this drink was overtaxed, the people who used to drink it went to the second generation drinks. That is what is killing our people right now. They went to the cheaper illicit brews. These are the people who used to drink these Keg and Senator drinks. We should relook at overtaxing these drinks because of these two issues: The farmers and the people who were forced to go and drink those other illicit and cheap brews.

I believe that the Chairman must have put serious considerations on the tax regime. He only talked about the importation of used vehicles. We should also look deeply into exempting certain machinery from taxation especially the farm machinery. This country is still an agricultural country. We cannot promote agriculture if we do not use machineries. There was a time when farm machinery were tax free. Farmers used to import machinery like tractors and so many others. I do not know what happened and then tax was introduced again. So, we need to relook at the farm machinery. The country is only looking at the construction equipment from which they removed taxation. The farm machinery should also follow suit because these are the equipment which farmers use in helping elevate farming in this country. So, as much as we might want to remove or exempt construction equipment, we must also look at exempting the farm machinery so that our farmers can access cheap machinery.

I am also happy because we have harmonised the way we tax with other countries. For example, people have been forced to import vehicles to Uganda and then they bring them across the border thus denying this country that taxation. Because this country's taxation is very high, people would just prefer to go to Uganda or Tanzania to import their vehicles there and then they bring them to Kenya simply because their taxation is almost half of ours. I am happy because we are trying to harmonise the taxes of all these countries. Although we also look at how these levies or excise duty works, we must also understand that. I am happy because the way the Chairman and the previous regimes have been doing is majorly the reallocation of resources from the rich to the poor by taxing or overtaxing the rich. We are trying to balance and put the people in the same level because the poor man down there has nothing to be taxed or even if they do, they are rarely taxed. So, this taxation also will also help us balance, bring together and help the poor man down there by taxing the big man up here.

Thank you, Hon. Temporary Deputy Speaker. I support.

The Temporary Deputy Speaker (Hon.Kajwang'): Member for Kitui South.

Hon. (Ms.) (Dr.) R. K. Nyamai: Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute to this Bill. At the outset, I would like to say that it is a fact that excise duty is an important component of our self-governance. This Bill brings harmonisation to various forms of taxation that are happening in this country. I would also like to point out that by bringing this Bill at this time, it is important because we are able to harmonise with other East African Community (EAC) countries where new laws have already been established. So, this Bill is timely. It has come at a time where we can debate on it and make useful contributions that can make it better than it is.

I would like to point out that this Bill interests me for various reasons. It brings about some controls whereby it provides that excisable goods stored in a factory or by a licensed manufacturer shall be subjected to the control of the Commissioner. It also provides that such goods may only be removed if taxes due are paid or with the permission of the Commissioner. So, it brings some form of control that is necessary so that the country does not lose revenue.

This Bill which enhances resource generation for this country is also important because it brings some control to goods that may be unhealthy for this country. I would like to go to the part where it focusses on handling some of the products which may be increasing the prevalence of non-communicable diseases. This country today is at a rate that it has never been before when it comes to non-communicable diseases. In order to curb the increase of these diseases, the Bill proposes to retain excise duty for sugar sweetened beverages, soft drinks and juices. Some of the soft drinks which are sweetened beverages are highly not recommended in most of the developed countries but they find their way here. So, the fact that it has retained and ensured that they continue to be taxed more is positive.

It is important for this House to be aware of the fact that the biggest burden to this country now is the non-communicable diseases like cancer, diabetes, among other diseases. So, focussing on these kinds of drinks is important. However, for these controls to be done properly, it is important for them to be done in consultation with institutions that have an understanding of the health effects. It is not only the financial department that is involved but also consultation with institutions that have capacity to identify the beverages that might be harmful.

The taxation of tobacco is a positive part of this Bill. According to the World Health Organisation (WHO) estimates today, tobacco accounts for more than 60,000 deaths. I am sure that it is much more especially for a country like this where most people will end up losing lives and we are not sure of the cause of death.

This Bill proposes an increase on excise duty rates on alcoholic beverages in order to reflect the current effective rates. This is positive. I consider and I know most of us consider alcohol as a luxury. It is a positive gesture for it to be taxed more. Alcohol affects productivity of a nation especially when it is uncontrolled. As other Members have said, it is a positive gesture that we saw recently Members of Parliament going out there and handling the alcohol menace especially the second generation alcohol.

From the previous tax regimes, majority of excisable goods had two specific rates. They were *ad hoc* in nature. So, this Bill brings a regime which brings some sanity than it was before. It proposes to have one rate which is specific with only few items which are not--- It brings sanity by ensuring that there is a specific rate of taxation.

We note that the current taxation regime does not take into consideration pollution that is emitted by different categories of motor vehicles.

I see this as a negative thing because any emissions that are emitted by vehicles, especially the old vehicles that are imported into this country also have a health aspect. This matter needs to be looked at to ensure that we do not have vehicles that are causing respiratory infections among our citizens. The emissions are not good for the environment of our country.

The Bill gives penalties. Any Bill that has clear penalties especially enhancing reduction of loss of money for this country is positive. This Bill provides a penalty of payment of two times the excise duty payable if the licensed manufacturer removes the goods from the excise control without the permission of the Commissioner. This is because, for us to be independent, we must ensure that we are able to raise funds. We know that without these controls, unscrupulous businesspeople can also cheat the country and ensure that they do not pay the excise duty as expected.

This Bill also provides for a refund for duty paid on excise goods where the goods have been damaged or stolen. To me, this is a way of protecting business because there are some of the areas where the payments are high. When goods are damaged or lost, it has a way of ensuring that refunds are done. So, I see it as a positive aspect within this Bill.

With those many remarks, I highly support this Bill.

The Temporary Deputy Chairman (Hon. Kajwang’): Let us have the Hon. Member for Mbooni.

Hon. Kisoi: Thank you, Hon. Temporary Deputy Chairman, for giving me this opportunity. I thank the Chairman for taking note of a few issues that have been of serious concern to this nation during the preparatory stages of this Bill. I concur with other Members that this Bill is quite timely. It is seeking to create harmonisation and regulation of the tax regimes both locally and within the East African Community (EAC). It is good because we have to be focused as a country on how we are dealing with issues relating to taxation. In any case, it is the only way we tend to evaluate the benefits in terms of revenue collection, *vis a vis* the outputs of what we sieve after we have already collected the revenue.

I have a few concerns that I want to raise on this Bill which one of my colleagues may have also mentioned. One is on farm machinery. This country depends entirely on agriculture. Agriculture is one of the stable pillars that this country is looking at in terms of economic development. I do not think it was wise enough to think of taxing farm machinery when we need to create incentives on agricultural machinery, so that we can encourage farmers to purchase this equipment at a far much lower cost. We need to bring down the cost of production in agriculture. This will consequently encourage job creation.

I also have concerns on the taxing of motorcycles. This country had serious problems concerning the youth. It is only through these motorcycles that in the last few years we have seen our youth get properly engaged in constructive issues. This is because each and every youth can earn some revenue through *boda boda*. However, when we start taxing the same motorcycles which are being used by our young people, we will deny them their daily bread. So, are we really creating incentives for the youth so that they get engaged in constructive activities that will better their lives? At the end of it, it will have serious effects in terms of what our youth will do at the end our cycle.

I am also concerned about telephones. I recall very well sometimes back when this issue of mobile phones came into play. The cost for owning a mobile phone was quite exorbitant that it was a preserve for just a chosen few. Now these telephones and mobile phones have created an avenue where now these phones are a tool of business and life. So, we should look at how we

can encourage each and every Kenyan to access a mobile phone at a very low cost. This will enable each and every Kenyan to communicate and do certain transactions that are now inevitably being transacted on phones. So, as we look into this Bill, there is the question of sensitization of our public towards this because it is important that we sensitize Kenyans on the importance of taxation. Definitely, we need to create a culture that has very strong values and that encourages people to pay taxes.

On the other hand, I am looking at the issue of plastic bags. This country looks like a dumping pit because everywhere you go, there are plastic bags. Scientifically, it has been proven and noted that they are environmentally hazardous and they do not create a clean environment. Rwanda, which is a bit below us in terms of economic growth has put in very firm measures to deal with the issue of plastic bags. The effect of using plastic bags is the degrading of our environment and that has a heavy impact on this country. We had a noble idea in Kamba land and other areas about the *Kiondos* which were made from sisal and did not have these effects on the environment. So, we need to look into our own traditional ways on how to enhance the use of paper and *Kiondos* as opposed to plastic bags as this has brought a lot of problems. Thanks to the late Noble Peace Prize winner Prof. Wangari Maathai for the good work. If she was alive today, I am sure she would have been fighting this issue of plastic bags so much. We need to emulate her vision. We need to share this passion with other Kenyans. Every Kenyan needs to know that these plastic bags have become a total menace and something needs to be done.

Hon. Temporary Deputy Speaker, there is the issue of alcohol and cigarettes. Recently, we saw what happened in Central Kenya and other parts of the country. Leaders decided to take the issue head on and destroyed the unlicensed and unregulated second generation alcohol. The country was almost grinding to a halt with very serious effects both economically and socially because of such kind of second generation alcohol. We need to keep the spirit on and discourage such unregulated, unlicensed and unregistered alcohol because they have serious effects on the economy.

We know how hazardous cigarettes are to human beings. It is with regret that the Tobacco Bill is still hanging somewhere unnoticed and without proper consideration. Having come across one of the pieces of the effects of cigarettes on the human body that has been prepared by National Authority for Campaign Against Alcohol and Drug Abuse (NACADA) and health experts, you realise that this country is really coughing up quite a lot in terms of the control measures, medication and trying to deal and mitigate the effects of cigarettes.

In principle, I support the Bill but with reservations on certain factors which we should look at before the Bill is passed so that we can really polish it into a document that is acceptable to all.

I support the Bill.

The Temporary Deputy Speaker (Hon. Kajwang'): Member for Lugari.

Hon. Angatia: Thank you, Hon. Temporary Deputy Speaker. I stand to support this Excise Bill, 2015.

The Bill is long overdue because Kenya enacted several pieces of legislation in support of common trade in the East African region. But this was done without considering the consequences that would befall the country when the excise duty is administered by the Kenya Revenue Authority (KRA) under one bloc. We signed the East African Treaty (EACT) by retired President Moi on November 20th 1999. We also signed the East African Protocol for Customs Union (EAPCU) by retired President Kibaki in March 2004. We also signed the Common

Market Protocol for Free Movement of Goods and Services (CMPFMGS) by President Kibaki in 2009. All these pieces of legislation in support of common trade in East African region have been hurting this country because they were no mechanisms on how to trade both internally and externally without a streamlined Excise Duty Act.

In Kenya, we have been losing a lot of ethanol products to the Ugandan market because we did not have a streamlined way in which the distributors of ethanol to East African countries. But this was done under the guise of CMPFMGS, the East African Community Treaty and the East African Single Customs Union in terms of payment of excise levy. In the end, we only had Kenyan companies registered to export to Uganda but the Ugandan companies that imported from this country were not registered hence heavy loss of revenue in terms of excise duty to this country.

Secondly, when you are in western Kenya and you approach an area like Bungoma and Busia and you are on a network like Safaricom, you seem to be controlled or hosted by the MTN network. There was no clear cut provision on how this East African Treaty Single Customs Protocol, Common Market Protocol for Free of Movement of Goods and Services within that region could enable Safaricom obtain its necessary share of revenue from MTN because you are roaming, but in essence, you are still in your country. However, with the streamlined tax measures that are contained in this Bill, we are going to have our companies getting a lot of revenue through such network platforms. Immediately you reach Bungoma and you cross to Malava, you are still in your country, but you are roaming. Who benefits? It is MTN which benefits in terms of the excise duty payable.

I have looked at the Bill critically and it gives us a structure like that of Brazil. Brazil is the leading producer of ethanol in the world. They mix their ethanol with jet fuel to fly their aeroplanes. They mix the ethanol with normal petrol which is low cost but attracts high tax income payments that assist to grow an economy. In Kenya, the cigarette and alcohol industries are the ones supporting the Free Primary Education Programme. If we have streamlined measures separating excise duty from the rest of the legislation that KRA administer to be independent, then we will increase the income that is collected across the country hence provide better services for the people of this country.

With those few remarks, I beg that once we pass this Bill, we should ask the Government – the Leader of the Majority Party is here – to provide free secondary school education because we will have enough money to support the funding of the system.

I support the Bill.

The Temporary Deputy Speaker (Hon. Kajwang'): There being no other Member desiring to make further contribution to this Bill, I order that the Mover be called upon to respond.

Hon. A. B. Duale: Thank you, Hon. Temporary Deputy Speaker. From the outset, I want to take this opportunity to thank my colleagues who contributed immensely to the Excise Duty Bill this afternoon. It is a very important Bill. It touches on spirits, the tobacco industry and provisions that will help Kenyans who have diabetes.

The most important thing is that the provision of this Bill is to consolidate the imposition and collection of excise duty into one major, separate law called the Excise Duty Act. This, as I have said earlier, is in line with the East African Community Customs Management Act (EACMA). I am sure there are a number of issues that need to be looked at both at the

Departmental Committee on Finance, Planning and Trade when it presents its report next week and again prepare Members to bring amendments.

I want to thank each and every Member who contributed. I am sure that will translate to a better improvement on this Bill. It is the function of the Legislature to look at Bills in totality, to agree or disagree with the Executive in some cases and to improve on the current Excise Duty Bill, 2015.

With those many remarks, I beg to assure the House that with the passage of this Bill and the Finance Bill, that gives us the completion of the budget-related legislation for the 2015/2016 Financial Year.

This is part of the measures within the tax reform regime of the Executive to increase, make it easier and seal all the tax leverages that people might use to evade taxation.

With those few remarks, I beg to move.

The Temporary Deputy Speaker (Hon. Kajwang’): Thank you. I order that the Excise Duty Bill of 2015, be printed on Tuesday’s Order Paper, for purposes of taking vote in the Order Paper.

Next order!

BILLS

THE POLITICAL PARTIES (AMENDMENT) BILL (SENATE BILL NO.3 OF 2014)

Second Reading

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, I understand from the Chairperson of the Departmental Committee on Justice and Legal Affairs that this business needs to be looked at by the Committee. Therefore, we will defer it and wait for the Committee to finish and finalize its report.

(Bill deferred)

THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (SENATE BILL NO. 6 OF 2014)

Second Reading

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, I have equally been informed that the Chair of the Departmental Committee on Justice and Legal Affairs, that this Bill is being processed by the Committee. Therefore, we will defer it until it has been processed.

(Bill deferred)

MOTION

RESETTLEMENT OF SQUATTERS

The Temporary Deputy Speaker (Hon. Kajwang’): Chairperson of the Departmental Committee on Lands.

Hon. Member: He is not in.

The Temporary Deputy Speaker (Hon. Kajwang’): The Chairperson is not in the Chamber. Therefore, in the interest of convenience and public policy, I order that this Bill be deferred to such time as the House Business Committee (HBC) will program it.

(Motion deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. Kajwang’): Hon. Members, there being no other business, and time being 6.27 p.m., this House stands adjourned until Tuesday, 25th August 2015, at 2.30. p.m. It is so ordered

The House rose at 6.27 p.m.