

**PARLIAMENT OF KENYA**  
**THE NATIONAL ASSEMBLY**

**THE HANSARD**

**SPECIAL SITTING**

*(Convened Vide Gazette Notice  
No.4699 of 17<sup>th</sup> May 2021)*

Wednesday, 19<sup>th</sup> May 2021

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, I order that the Quorum Bell to be rung for 10 minutes.

*(Quorum Bell was rung)*

Order, Hon. Members! We are good to go. So, the Quorum Bell can stop and we commence business. Hon. Abdullswamad you have a Statement.

**STATEMENT**

POLICE BRUTALITY AGAINST DEMONSTRATORS IN MOMBASA

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you very much, Hon. Temporary Deputy Speaker.

Pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding police brutality against peaceful demonstrations by the residents of Mombasa while expressing their views on the ongoing conflicts in the Middle East, specifically on the people of Palestine.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

In the last two weeks, a number of demonstrations were experienced in the country regarding the treatment of Palestine by the State of Israel among them in Mombasa and Nairobi. The police were informed through the usual channels. However, they went ahead to violently disperse peaceful demonstrators despite the said notice.

It is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

- i) Could the Chairperson explain the plans put in place to end the manner in which police are handling peaceful demonstrators in Mombasa County to allow them freedom of expression as stipulated in Article 4 of the Constitution of Kenya?
- ii) Could the Chairperson provide an assurance on the manner the police should handle the residents of Mombasa and other parts of the country to express their emotions in solidarity with the Palestinians?

I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Chair.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker. I will be able to respond in two weeks' time. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Abdullswamad, are you okay with two weeks?

**Hon. Abdullswamad Nassir** (Mvita, ODM): Hon. Temporary Deputy Speaker, the problem is not the two weeks. I would have expected the Chair to confirm that it is within the rights of any Kenyan to demonstrate against any levels of inhumanity that is experienced within and out of Kenya. I just want him to say that it is not him, but the Constitution of this country. I expected him to say that in accordance and by abiding with the Constitution of this country, this country is not going to be dictated on, by foreign nations.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Abdullswamad, I believe you are not forcing the Chair to respond to you on his feet. You know that your Statement has just come. I even doubt the Chair was aware. You are a Chairperson. You must be fair. Hon. Mwathi has requested for two weeks. The best you would have done is to negotiate for a shorter period or such a thing. I do not think, Hon. Mwathi, you are under any pressure to respond to anything. Just give the Member a timeframe within which you are going to respond comprehensively.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Temporary Deputy Speaker. Just to confirm to my colleague, the Chair, yes, the Constitution provides for those rights. Nobody can take them away just like he has correctly stated. The only thing is that there is a feeling that they have been taken away. He will wait for us to prepare for a response as to why that occurred.

**Hon. Abdullswamad Nassir** (Mvita, ODM): One week?

**Hon. Peter Mwathi** (Limuru, JP): I still believe, if the Member wants to have a comprehensive answer, he should let us do it in two weeks, so that I can address all the issues.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I think that is fair, Hon. Abdullswamad. You still want to press on?

**Hon. Abdullswamad Nassir** (Mvita, ODM): Hon. Temporary Deputy Speaker, I agree and understand that from where the Chair sits, he cannot be in a position to dictate, but this is something very simple. There is no issue of a controversy on what the Constitution and the laws

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

guiding this country say. I am expecting someone from the Ministry of Interior and Coordination of National Government to say that the police who stopped that particular demonstration made a mistake. It is high time that when the Government makes a mistake on its people, they should say that they made a mistake and tell the people they can go ahead and show solidarity.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You are now answering yourself. Stop answering yourself. Hon. Abdullswamad, you seem to have an answer to the request for your Statement. Let us leave it at that. So, Hon. Mwathi, in two weeks, go and present a Statement to Hon. Abdullswamad.

Next Order.

### MOTIONS

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Chairperson, Committee on Delegated Legislation, Hon. Kamket. Why have you taken off your mask? I do not think you have an excuse of spectacles. You do not have any.

**Hon. Kassait Kamket** (Tiaty, KANU): I cannot breathe probably.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Yes, you can. Please, put on your mask.

#### CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (NATIONAL DROUGHT EMERGENCY FUND) REGULATIONS, 2021

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (National Drought Emergency Fund) Regulations, 2021, laid on the Table of the House on Thursday, 13<sup>th</sup> May 2021, and pursuant to the provisions of Section 24(4) of the Public Finance Management Act, 2012, approves the Public Finance Management (National Drought Emergency Fund) Regulations, 2021, published as Legal Notice No.27 of 2021.

The main purpose of these regulations is to establish a National Drought Emergency Fund. The purpose of the Fund is to improve the effectiveness and efficiency of drought risk management symptoms in the country. Furthermore, the Fund is meant to facilitate resilience building, preparedness and timely response to drought during different stages, in order to reduce and minimise the negative effects of drought. Furthermore, it is also to receive financial resources from different partners who support Government on drought risk management interventions and to provide for a common basket emergency fund in order to facilitate faster, transparent, predictable and accountable release of funds for drought risk management.

Hon. Temporary Deputy Speaker, I will give a quick overview of the Regulations. These Regulations establishes an oversight board. The Board of the National Drought Management Authority shall be established. There is going to be a secretariat of the Fund. Furthermore, there is the National Drought and Food Security Steering Committee.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order! I can see the Member for Kwale and I am not quite sure who the other one is. Please, you need to consult in an acceptable manner. Do not shout at each other. Go on Hon. Kamket.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Temporary Deputy Speaker, there is also the Intergovernmental Steering Committee on Drought and Food Security. There is also established a County Drought Committee which will be based at the county, made up of various officers of the county government. The Regulations, further, provide for an oversight by Parliament through annual reporting by the Auditor-General and quarterly reporting on projects financed by the Fund.

On scrutiny of the instrument, the Committee found that the regulatory-making authority was within the law in terms of the Constitution of Kenya, the Interpretation and General Provisions Act, the Public Finance Act, the National Drought Management Authority Act, as well as the Statutory Instruments Act of 2013.

On the matter of public participation, the Committee, during its consultations with the regulatory-making authority, which is the National Treasury jointly with the Ministry of Devolution and Arid and Semi Arid Areas (ASALs), established that extensive consultations were undertaken during the preparation of these Regulations. Various key stakeholders, including county governments, line ministries, development partners among others were consulted and their input taken into account before finalisation of the Regulations. Therefore, pursuant to Standing Order No.210 and having examined the Public Finance Drought Management Emergency Fund Regulations, and in accordance with the Constitution of Kenya and all the relevant Acts of Parliament, this Committee recommends that this House approves the said statutory instruments in accordance with Section 24(2)(a) of the Public Finance Management (PFM) Act.

Before I conclude, let me just mention that this is a very important Fund that these Regulations seek to establish. I am sure Hon. Members, especially those who come from drought prone areas, will be ready and willing to support the establishment of this Fund. The seed money for this Fund is Kshs2 billion annually. We have indication from our consultations that several donor agencies are interested in topping up what the Government will provide as seed money, therefore, covering the gaps that are left by the national Government as well as the county governments. This is a very important Fund in terms of helping various sections of Kenyans, for example, livestock farmers like myself, to recover from the effects of drought.

Without using too many words, I beg to move and ask Hon. Munene Wambugu to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Who is he?

**Hon. Kassait Kamket** (Tiaty, KANU): He is a Member of the Committee.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Okay.

**Hon. Munene Wambugu** (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to second this important Motion.

The Committee met the relevant Government agencies. The Regulations were well explained to us and we unanimously agreed to have them approved. The Chairman has said it all

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

except to add that this is not a new thing because this Fund had already been established under Section 18 of the National Drought Management Authority Act of 2016 and a seed amount of Kshs2 billion was set aside. However, it was later discovered that all Funds should be created under the Public Finance Management Act, which necessitated the amendment of the National Drought Management Authority Act in 2020 to enable these Regulation to be done under the Public Finance Management Act. So, in essence, Parliament had already passed the main Act. So, these Regulations are pursuant to the amendment of the parent Act, and they have been brought under the proper Act of Parliament.

Hon. Temporary Deputy Speaker, the issue of drought is a matter which this country lives with. Every now and then, there has always been drought and it will always be there. Basically, this Fund is for purposes of ensuring that when drought comes up, we will have financial resources to deal with the calamity that is associated with it to alleviate the suffering of our citizens and our country.

These Regulations have set two layers, namely, the national level and the county level. At the national level, the committee is supposed to be chaired by the Deputy President and deputised by the Chairperson of the Council of Governors (CoG). At the county level, the committee will be chaired by the governor and deputised by the County Commissioner. So, there will be seamless way of dealing with droughts in future. In fact, these Regulations have come at the right time so that we can put measures in place to ensure that the management will be better coordinated in future and the worse side effects of drought are arrested in time.

Hon. Temporary Deputy Speaker, basically, the Committee was to ensure there was public participation. The Committee was satisfied that thorough public participation was done before these Regulations were put in place. In addition, there was an issue of the regulatory impact assessment, in respect of which we concluded that it was not necessary in this matter because there will be no cost on the community by these Regulations coming into force or being approved by this House. We also established that the statutory timelines were met by the body making the Regulations and tabling them at the right time. Having considered all that, we recommend, as the Chairman has said, to have these Regulations approved. I urge this House to go with the Report of the Committee. We need these Regulations. We need this Fund as a country. As we know, 70 per cent of our country is arid and we normally have issues of drought in quite a number of areas in the country. So, with these Regulations and proper management, we hope that once the Fund is established, this country will be in a better place to handle calamities when they occur in future.

Hon. Temporary Deputy Speaker, with these many remarks, I beg to second.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order Members!

**Hon. Kimani Ichung'wah** (Kikuyu, JP): *Off-record.*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You consider yourself Chairman emeritus yet you want us to flout the Standing Orders? I have not even proposed the Question.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

*(Question proposed)*

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Is it the acceptance of Members that I put the Question?

**Hon. Members:** Yes!

*(Question put and agreed to)*

Next Order!

CONSIDERATION OF EXEMPTION FROM INCOME TAX FOR AIRLINES WITH  
GOK SHAREHOLDING OF AT LEAST 45 PER CENT

**Hon. Kimani Ichung'wah** (Kikuyu, JP): *Off-record.*

**Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. Ichung'wah! You are becoming rowdy.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Temporary Deputy Speaker, I do not know why the Member for Kikuyu is so excited this afternoon.

Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of Legal Notice No.27 of 2021 on the Exemption from Income Tax for Airlines with Government of Kenya shareholding of at least 45 per cent and its subsidiaries, laid on the Table of the House on Thursday, 13<sup>th</sup> May 2021, and pursuant to the provisions of Section 13(3) of the Income Tax Act, approves Legal Notice No.27 of 2021 on exemption from Income Tax for airlines with Government of Kenya shareholding of at least 45 per cent and its subsidiaries.

The objects and purpose of the exemption before us is to exempt an airline including its subsidiaries where the Government owns at least 45 per cent of its shares, from minimum tax imposed under Section 12D of the Income Tax Act.

This Legal Notice seeks to exempt from the Income Tax income derived from or accrued in Kenya from the provisions of Section 12D of the Income Tax Act (Cap 470) which introduced minimum tax payable by all entities regardless of whether they are in a profit-making position or not.

Hon. Temporary Deputy Speaker, the Kenya Airways Limited requested to be exempted from paying minimum tax citing the following grounds-

- i. The COVID-19 Pandemic affected the operations of airlines worldwide and therefore worsened the financial position of the already ailing airline which has been making losses in the recent past.
- ii. Considering its financial operations, the minimum tax will render the company's operations unsustainable.
- iii. The airline continued to pay lease expense even during suspension of all international operations occasioned by the COVID-19 Pandemic.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

- iv. Kenya Airways Limited as a national carrier plays a pivotal role in the economy through marketing Kenya as a tourism destination, trade facilitation and job creation among others.

Hon. Temporary Deputy Speaker it is, therefore, considered to grant the exemption from minimum tax to help the company continue its operations until it returns to profitability. Some of the subsidiaries of the Kenya Airways are the Kenya Airfreight Handling Limited, Jambojet Limited, Africa Cargo Handling Limited, Kencargo Airline International Limited and Fahari Aviation Limited (Pride Oil Limited).

In terms of helping this airline stay afloat, the Government has taken other measures including the following in negotiations with other international airlines-

- i. Senegal has announced US\$128 million for the tourism and air transport sector.
- ii. The Government of Seychelles has waived all landing and parking fees from April to December 2020.
- iii. The Government of Cote D’Ivoire waived its Tourism Tax for transport passengers.
- iv. Lufthansa agreed to a UD\$9 billion bailout with the German Government.
- v. South Africa is deferring payroll, income and carbon taxes across all industries.
- vi. The Tanzania Civil Aviation Authority has proposed measures including-
  - Postponement without penalties of payments related to charges.
  - Cessation of arrangements for increasing charges to operators among many others.

On scrutiny of the instruments, the Committee examined the exemption from tax to an airline in which the Government of Kenya owns 45 per cent, and in accordance with the Constitution of Kenya, the Interpretation and General Provisions Act and the Statutory Instruments Acts and found that all these pieces of legislation were followed.

As a matter of observation, on the matter of public participation, the Committee noted that the National Treasury and Planning submitted before the Committee that after the enactment of the Finance Act 2020 which introduced the minimum tax, the National Treasury received various presentations from stakeholders on the impact of the new tax on several classes of business including public entities that are facing challenges.

Hon. Temporary Deputy Speaker, in the process of handling this matter, the Committee was seized of constitutional petitions that were ongoing in other jurisdictions. For instance, there are constitutional Petitions No.001 and No.005 of 2021 both filed in the High Court of Kenya in Machakos. There is another Petition No.079 of 2021 by the Kenya Association of Manufacturers, the Retail Trade Association of Kenya and the Kenya Flower Council. The National Assembly, the Commissioner General of the Kenya Revenue Authority and the Attorney-General are joined in both petitions as respondents. However, the Committee received legal opinions from the Directorate of Legal Services of the National Assembly and the Directorate of Litigation and Compliance Services on the effect of considering a matter in view of the court cases under Standing Order No.89 on the matter of *sub judice*. The Committee, after listening to counsel from our internal lawyers, decided to proceed with the matter given that there was no injunction to the National Assembly.

Therefore, pursuant to Standing Order No.210(4), and having examined Legal Notice No.15 of 2021, in line with the Constitution, the Interpretations and General Provisions Act, the Income Tax Act, and the Statutory Instruments Act, the Committee recommends that this House approves the said statutory instrument in accordance with Section 6(2) of the Income Tax Act, Cap 470.

I beg to move and ask Hon. Murugara, a Member of the Committee, to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Murugara.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, some of you are consulting in very high tones. Consult in low tones.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I am sure they will do so. I beg to second the Motion.

I adopt the explanation given by the Chairperson of the Committee on Delegated Legislation, especially regarding the reason why the Committee dealt with the matter when there was an indication that there were petitions pending in court. We were satisfied that the petitions that are pending in court do not touch on the National Assembly and therefore, we could deal with the matter without breaching the *sub judice* rule. Reasons were given as to why this exemption was sought by Kenya Airways. We also considered the rationale of acceding to the request by the Ministry and the Government by putting out this notice.

First and foremost, we are not oblivious of the fact that KQ plays a strategic role and purpose in the operations of the Government, including the aviation industry, security and trade. We also took into consideration the fact that if the exemption is granted, we would be sustaining KQ, which in essence is not doing very well and requires jolts and measures to ensure it performs, now that it is our national carrier.

We considered the reasons that were given for the application, including the effects of the COVID-19 Pandemic and the fact that this minimum tax would render the company's operations unsustainable because of its income, which is not very high. There were other reasons that were given that under KQ, there are various subsidiaries, which would benefit from the exemption that is being sought.

We also looked at what is happening elsewhere in the globe where such exemptions are sought and given and we found that Ethiopia, South Africa and other countries, both in Africa and Europe, consider to extend this particular waiver to their national carriers with a view to ensure that they are competitive in the global market. So, many countries benefit from the waiver.

Having considered that, and especially the proper section of the Income Tax that empowers the Cabinet Secretary to issue such a notice, and failing to find any impediment to the fact that the Committee would approve the statutory instrument, we had no reasons not to approve. Therefore, we approved.

This is our Report and our request this afternoon is that this House considers it and extends the consideration to KQ as sought.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*



I beg to second.

*(Several Hon. Members consulted loudly)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order Members. Hon. Musimba. Is it that Members are still in the recess mode? Members, you are not paying attention. Order.

*(Question proposed)*

**Hon. (Ms.) Odhiambo Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Millie, what is out of order?

**Hon. (Ms.) Odhiambo Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity.

To enable us undertake our legislative, oversight and representation roles effectively, I would wish to request to be guided on whether when we go to the next Order, which is the Committee of the whole House, we are going to deal with the Kenya Library Services Bill. Hon. Temporary Deputy Speaker, with your kind indulgence, this is because there was a communication earlier in the morning by the Speaker. I would like to know whether the position has since changed and we are dealing with it and the one on drugs.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Millie, just be patient. You are anticipating debate and you know that. Just relax. Yes, Hon. Millie.

**Hon. (Ms.) Odhiambo Mabona** (Suba North, ODM): Hon. Temporary Deputy Speaker, I am not talking of the substance of the debate. We legislate, represent and oversee. I have amendments to that Bill. It would not be kind especially for somebody like me who is always in the House, and if I have something else to do, to sit here when one of those things is not coming. Just out of courtesy, it would be kind. I did not want to make it that obvious but it would be kind if the House would let us know whether, indeed, the Bill I have amendments to is coming. It is listed, but I am not sure if it is coming. It is online.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Millie, we are in Order No.9. Once we get to Order No.10, your question will be answered, actually, immediately after Order No.9. So, just relax.

**Hon. Yusuf Hassan** (Kamkunji, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Yusuf.

**Hon. Yusuf Hassan** (Kamkunji, JP): Hon. Temporary Deputy Speaker, I wanted to bring to your attention the issue of whether the House has quorum to continue this important discussion.

*(Loud consultations)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Yussuf, we have several Members out in the tents. We are properly constituted. So, let us go on. Let us start with Hon. Barasa Mutua, Member for Kimilili.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Chairlady, for giving me this opportunity to contribute to this very important Motion.

From the very outset I want to regret that the Hon. Chair of the Committee on Delegated Legislation has not convinced me to support this Motion. I say so because I am aware that Kenya Airways gets a lot of money from the Government. Kenya Airways is not even audited by the Auditor General. He has not told us whether Kenyans are going to pay less amounts of money in tickets if we exempt Kenya Airways from paying taxes. We have continued to support Kenya Airways and it seems not to be doing very well. Let it wind up if it cannot do very well. This House is the people's watchman; we are not the Government's watchman. We must continue to ensure....

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Didmus, we are full plenary. We are not in the Committee of the whole House. So, you are addressing the Temporary Deputy Speaker.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker for that direction. I am guided.

What I was saying is that this House is supposed to protect the interests of the Kenyan people and not the interest of Government. I say so because we as a people represent Kenyans. We must ensure that our contribution in the name of passing Motions, Bills and Reports is to assist Government to deliver better services to Kenyans. I am opposing this Motion because we cannot be giving Kenya Airways money every year. Because of management, for one reason or the other, they are unable to get back to profitability.

I see very many ills being committed to Kenyans by this Government but it is being assisted by this House. You saw what happened yesterday where the police entered a tallying centre and began to beat people and everybody. You have seen the Governor of Bungoma pronounce last week, that he has the February Eighteenth Resistance Army (FERA) blood. The February Eighteenth Resistance Army was a group in Bungoma. It was similar to *Mungiki*. These people are still moving around. If this House will continue ticking boxes for Government, if this House will continue aiding Government to commit more ills to Kenyans, I would rather resign than be part of a group of people in this House—people that are simply processing what the Government brings here without being guided by the interest of Kenyans. I want to make it very clear and urge Members of this House to oppose this Motion. The Motion is brought here not in the interest of Kenyans but a few businesspeople who are part of the State machinery that is capturing the economy of this country.

So, I oppose this Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): The Hon. Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Motion. It is important that we understand and appreciate what this Motion is all about.

Sometimes earlier this year and I believe from the beginning of this year, this House passed a law that said every business will have to pay one per cent of its gross turnover as tax, whether you are making a profit or not. Now, I know that matter has been suspended by the courts but that does not stop us from doing our work here. The rationale of that was that there are people who are constantly claiming losses to avoid paying tax. Now, that could apply for us here as individuals, private citizens. But the Government cannot cheat itself on its tax. What Government entity can avoid declaring a profit to avoid taxation? The Government is the shareholder; it knows whether it made profit or not. So, the Government cannot manipulate its tax books on itself, against itself. Private individuals could do it as a way of evading taxes.

If you look at Kenya Airways, it is 48 per cent owned by the Kenyan Government in shareholding. If you add the guarantees to the other loans, there is no doubt that Kenya Airways is owned by the Kenyan Government. Kenya Airways has been making losses. It may have turnover in the billions. But, when you look at the losses it is making and you ask it to pay one per cent of its turnover as a minimum tax, you are taking it into a deeper loss situation. You will be asking the National Treasury to pay tax to KRA on behalf of Kenya Airways. Then, KRA will take it to the National Treasury and then the National Treasury will give it back to KRA. It is more of the left pocket paying the right pocket. It is a zero-sum game.

So, I know calculations have been done given that kind of situation. Because of the very nature of this business and looking at the history with which Kenya Airways has run, there is loss. The Committee has gone through all that. The entire airline industry is in a shambles globally, even before Covid-19 and post Covid-19. If you look locally, the South African Airlines was the leader in Africa. From the information I have, the South African Airways is operating on only eight aircraft. They have surrendered all the others to the lessors and said they want to minimise their losses. They went into administration, which is receivership and surrendered all their aircraft and limited their routes. Kenya Airways could well have done the same and may, perhaps, end up doing the same at some point. If you look at Lufthansa of Germany, they have had to be bailed out with 9 billion Euros. The Emirates made a loss of 15 billion dollars last year. So, every airline has made losses. To expect Kenya Airways with losses to pay one per cent of its global turnover as minimum tax is killing it or passing a law that is not enforceable.

So, it is on this basis that the National Treasury looked at it and asked whether there is some way we could avoid killing Kenya Airways which is a national carrier. It is what is supporting the farmers out there.

Do I have five minutes or more?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You have five minutes, Hon. Leader of the Majority Party.

**Hon. Amos Kimunya** (Kipipiri, JP): Kenya Airways is supporting farmers in ferrying their goods in and out all time.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Wind up in a minute.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you.

Kenya Airways is a critical actor in this country, supporting the economy. If you kill Kenya Airways, you kill all the economy that is supported through transportation, be it tourism, be it agriculture, be it horticulture. Hence, this is a measure to shield it even from litigation that

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

they are not paying taxes and they are supposed to be doing it. So, I think it is a straightforward thing. Although you do it, you will be asking the same Government to pay on behalf of their company where they are the majority shareholder.

With those few remarks, I beg to support and ask Members to support this thing. We do not need to debate much of it. It is a debate different from that on the structure of its ownership. This is about minimum tax and salvaging that kind of situation.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Passaris Rosanna.

**Hon. (Ms.) Esther Passaris** (Nairobi CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. Taking off from where the Leader of the Majority Party has ended, we have to remember that KQ is our pride. We know that it has a lot of challenges. Over the years, we have bailed it out not once, but many times. We will probably continue to do so. We are still in a pandemic and airlines have been hit very hard. I was actually very proud of our national carrier during the pandemic because they turned their passenger aircraft into cargo aircraft and helped quite a number of our farmers to get their produce across to their clients. That was something that not many national airlines did.

We know that operating a national airline might not be easy. We have even seen takeovers. For example, KLM has been bought by other countries because of the cost of running an airline. In our region, because KQ set the pace as a national airline, we have seen other airlines come up, like Rwanda Airline. That has posed competition for KQ. But if we put the right structures in place and we give them systems... You know if you have a child that is not doing well, you do not stop educating or investing in the child. We come together and see how best we can help the child excel. We need to do that with KQ. We need to embrace it and see what we can do as the Government to ensure that this "Pride of Africa" that connects Africa to the world is of essence. It is not just about our country. When we do not support KQ, we are not supporting the bigger continent of Africa. The entire Continent of Africa depends on KQ for connectivity. So, as a country, sometimes, we have to stop politicising everything and call a spade a spade.

Kenya Airways has had some struggles. There has been corruption. We have asked various bodies that deal with corruption to make sure that, as the Government invests in KQ and gives it concessions, we should not lose the money through corruption. We should not say that because there has been corruption and because KQ has been bailed out, we should back off from it. That would be the wrong way to go. Without connectivity, no country can develop. Kenya Airways has had its challenges, but as a country, we have to understand that without this airline, we are not going to do well.

I also want to talk to the board and management of KQ. At the end of the day, you run an airline and you have competition. So, you have to style up and ensure that you have right prices and right services. I have seen airlines offering tickets at US\$1,000 to Europe. Kenya Airways operates to Paris. At the end of the day, if it is not going to try to be competitive, then it is going to lose markets. We will be bailing out an airline at a point when it is not competitive. They have to work very hard to ensure they are competitive and that their services are up to date, and to understand that the Government cannot eradicate competition for it. The Government can give it the cushion that it needs, but the management has to step up and ensure that it guards public resources. There was a time that one had pride when KQ was trading at the Stock Exchange for Ksh124 per share. Look at the price now. It is a shame! Whatever we have done wrong over the

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

years to bring this airline down to its knees; let the EACC go for all the people that brought this airline down. At the end of the day, it is a national pride of this country. It connects not only our continent but the rest of the world. African can always excel. I believe there are Kenyan managers that can bring up KQ. There are Kenyans in other countries that manage big institutions that are doing well. Every time we want to bail out KQ, we look for foreign managers. Let us look for the good brains we have in this country to ensure that this airline can rise up, excel, live beyond us and be our legacy as leaders.

Thank you, Hon. Temporary Deputy Speaker.

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

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity. Let me begin by saying that I support the report of the Committee on Delegated Legislation to exempt KQ. I must apologise to the people of Kikuyu and Kenya at large because I came in a little bit late this morning and there was a rush to pass the earlier piece of delegated legislation on exempting Japanese companies and consultants. It may be a very bad pointer to Kenyans that we are now moving towards a regime of tax exemption.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla, what is out of order?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Temporary Deputy Speaker, could the Member for Kikuyu please explain the insinuation that there was a rush to pass regulations on exempting Japanese companies from income tax? Could he expound on what he meant by the claim that it was contrived or planned?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): You are a member of the Committee right?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Yes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Ichung'wah, clarify that.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Temporary Deputy Speaker, you know I am not in the habit of clarifying things for people who are late. She was not even here in the morning. If she was seated here in the morning, she would have known that, indeed, there was a rush.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): On a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): What is it, Hon. Shamalla?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Temporary Deputy Speaker, the Member has said I was not even here in the morning. I was here from the beginning of the session. I sat here all morning.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): So, just clarifying for Hon. Shamalla. She was there and she has asked for a clarification.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Well, the time she came, she knows what happened in the morning. Indeed, what we have done with the business we transacted before this is exactly what happened in the morning. I was saying it is my regret and apologies to the people of Kikuyu and Kenyans at large. I walked into the Chamber late and by that time, we had

exempted Japanese companies and consultants from paying tax. With that, I support the move to exempt KQ from minimum tax.

I have heard the Member for Kimilili, Hon. Didmus, on this matter. I want to agree with the Leader of the Majority Party on the question of delinking what we intend to do with this delegated legislation from the ownership structure of KQ. I want to beg those of the opposite view, like Hon. Didmus, that it is indeed some of us who rose on this Floor when we were passing legislation on minimum tax to oppose the idea of minimum tax. You cannot tax a business based on its turnover. You tax the profits and the returns that businesses make, not the turnover amount. If you take the example of any airline - we should even think of how to extend this exemption beyond Kenya Airways to other airlines and other businesses. I am happy that the courts stepped in to save Kenya from this minimum tax legislation. I pray that the matter in court will be resolved in favour of the people of Kenya. As legislators, I think we did fail the people of Kenya by not protecting them.

The airline industry has so many levies and taxes loaded on ticket sales. Therefore, when you charge minimum tax on a ticket sale, you are actually taxing a tax. With the collapse of the aviation due to the COVID-19 Pandemic, many pundits now estimate that it would probably take airlines across the world a minimum of two to three years to be able to recover. Therefore, I want to support these regulations on the basis that the airline's operations will also have a ripple effect on other sectors of the economy - talk of tourism, taxi businesses and hotels - given the number of passengers it brings to the country. We must be in a position to secure at least our national airline and pride. But this must not be seen or used by those who intended to use State capture to capture the business of KAA. This must not be another avenue.

Lastly, we must ensure that if we exempt this corporation from taxes, it must also subject itself to audit.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I have listened to the Mover and the Leader of the Majority Party. I want to join them in supporting this request to exempt KQ from the 1 per cent turnover tax. We are all in agreement that KQ is a strategic investment for this country. It is the Pride of Africa and Kenya.

As a country, we have used taxpayers' money to build this airline so many times. Anytime they make losses, it is the taxpayer who raises resources through taxation. Unfortunately, the more we pump resources to KQ, the more they incur losses. For how long are we going to continue pumping more resources to KQ as a country? That is using good money to chase bad money. If the kind of billions being pumped into KQ were pumped into other development initiatives, Kenyans would benefit more. As we support this exemption, as a House, we need to start asking the hard questions.

The Government is so keen about shareholding and taxation of KQ. From my own assessment, there has been minimal effort by the Government to penetrate the management of KQ. That is where the problem is. How come we pump so much resources into KQ but we do little to ensure that we are controlling its management unless the management of KQ is kind of becoming a stake, given the kind of interest they take in pumped-in resources? Without fear of contradiction, we will continue using taxpayers' money to pump into KQ year in, year out. I believe this money could help other Kenyans who have no water where I come from. The same

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

can be used on other important national initiatives. Even as we support this, time has come when we must start asking the Government some hard questions. As we give money to KQ through Parliament, the management should become more careful and make profits. For now, it is understandable that because of COVID-19, airlines have not been doing well. Kenya Airways has not just been doing badly this year, but also over the years. For how long do we continue doing this? It is our work, as the representatives of the people, to make sure that taxpayers' money is used effectively and efficiently.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuyu): Member for Central Imenti, Hon. Kirima.

**Hon. Moses Kirima** (Central Imenti, JP): Hon. Temporary Deputy Speaker, I, hereby, stand to support this Motion.

Kenya Airways has not been so much beneficial to Kenyans despite pumping a lot of taxpayers' money in the said body. Kenya Airways has been a monopoly airline in Kenya. It has no competitor. One then wonders how a monopoly business entity makes great losses each and every subsequent year without competition. If the money that the taxpayers give to KQ every now and then is used to uplift the standards of the common man – the people suffering in the villages because of lack of infrastructure like motorable roads and lack of water - it would do a lot. In some places, you will find people travelling several kilometres to get water because there is no money to even dig a borehole. Kenyans are not happy with what we are doing as legislators or those who represent them here. As Members of Parliament, we are the people who take care of the common man's interest. Instead, we revive a moribund body which does not benefit Kenyans at all. What do you do about it?

At no time will you go to KQ and find it empty. It is always full. The people in KQ conduct themselves in a way that we do not understand. A body like KQ is a trading body and is supposed to be making losses when there are no customers. This entity is a monopoly. It is applying a monopoly method. It is always full. However, if you look at it, in many aspects, especially when it comes to international flights, KQ is not competitive enough in the international market because of its conduct and, therefore, it is killing its own self. As for that, even if we keep on pumping money into it, we are not going to assist it at the end of the day. We must have a term limit. It should be said that we are reviving it up to a certain time like tomorrow or next year. If by next year it will not have a foot to stand on, it should be disbanded and something else done or be put under liquidation.

We are killing Kenyans by giving money to a body which cannot come up. It is like trying to revive somebody in a mortuary. As a House, we are not doing the right thing as it pertains to putting the taxpayers' money in KQ. The Mover of the Motion must stand up and tell us; up to when will we support it?

The other day, we were trying to merge KQ with Kenya Airports Authority (KAA). Nobody knows what is happening. We are trying to mix things in a way that, at the end of the day, they are going to come out as per the way those people want it to be in order for them to achieve their aim.

I support the Motion. It is only that I would like my sentiments to be noted.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Mabona, did you remove your card? Do you want to speak to this one?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Yes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Go ahead and have the Floor.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): I would like to speak briefly to this matter.

I support the Motion. I hope we can take note of what Hon. Members are saying. The issue of KQ has come before this House several times. As patriotic Kenyans who are proud of our lines, we are worried by the way KQ is being managed.

*(Hon. (Ms.) Odhiambo-Mabona coughed)*

I am sorry! Sticking with this mask for too long is a problem. I have made Hon. Passaris run away.

Having said so, I thank you. I do not like crying over spilt milk since I was not here. However, it would actually be a fallacy then to give tax reliefs to Japanese companies and then fail to rescue our own company that is suffering in Kenya. I know this is a wrong time to have done so. However, nonetheless, I do support. However, we must actually look at the elephant in the room which is the issue of the management of KQ. I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Shollei Gladys.

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill, but with several reservations which we expect that we - as Parliament at some time - should be able to get a response. We have been told by the Mover of the Motion that the tax exemption being extended to Kenya Airways is ostensibly to help Kenya Airways get back on its feet because of the challenges due to the pandemic. They have also argued that Kenya Airways plays a pivotal role in tourism in this country and that is true and that is all good.

However, the issue is Kenya Airways is owned 45 per cent by the Government and the rest is owned by private business individuals. Therefore, what is actually happening here is a few privileged private businessmen who have the privilege of being shareholders in a Government company are actually being cushioned against the COVID-19 Pandemic. However, you must remember that there are millions of other business persons and companies in this country who do not get a similar cushioning. In fact, recently, the Government imposed a minimum tax on them and were it not for the courts, they would be in dire trouble. Therefore, why is it that businesses that are in business with Government are getting this cushioning? When you say that Kenya Airways plays a pivotal role in tourism, what about the thousands and millions of hotel owners, lodge owners in places like the Mara and some of our tourism sites who actually bring huge revenue to this country? They have not been cushioned. They are suffering. Recently, I was in the Mara and all the lodges were closed. Therefore, the entire community was suffering. Who is cushioning those people? Who is cushioning our ordinary business persons in Kenya from this pandemic? We should be saying as a House: Let us stop discussing individual companies - even if it is a state-owned company. It amounts to discrimination. Who is cushioning our operators of

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*



internal flights that operate within our country? This is because they also lost business. They have not been cushioned and we are not talking about that. Additionally, what guarantees do we have that with this exemption, Kenya Airways is going to get back on its feet? Moreover, we know that the tax exemption is not going to help Kenya Airways. The problem of Kenya Airways is that they ended up buying very expensive planes and then they overpriced themselves out of the market. Moreover, I think it is about time that this House begins to discuss that KQ is a liability; that they should declare bankruptcy and we start a fresh and start another airline. In any case, they cannot deal with the competition of airlines like Emirates, who still come into our country. There is no guarantee that KQ is going to be salvaged. Therefore, with those few remarks I support in essence that tax exemption is good. However, it must be extended to all other persons.

With those few remarks, I support. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Nakara

**Hon. Lodepe Nakara** (Turkana Central, ODM): Thank you, Hon. Temporary Deputy Speaker. I would like to join other Members who have actually decided to support the Motion but, at the same time, questioning the way KQ is being run. For sure, KQ is our brand. Wherever it goes, KQ represents this country. However, we cannot spend a lot of money on reviving KQ now and then. It makes us to look like we are not considering the man who works hard to pay the taxes so that this country can run. As other members have said, we want to make sure that if we are going to exempt KQ from paying the taxes, are they going to work hard so that they can come to the level of competing with the other airlines? This is because we want to make sure that the little money that people of this country are struggling to give through taxes, we are utilizing it in a very positive and right way. Moreover, we direct that money to where we can get benefit back to our people. We want to tell KQ that they need to wake up. This is because this issue of being exempted now and then has become too much and has become a routine to this House that we have been supporting lazy institutions which are not working hard to ensure that they get profit in their services.

As much as we want to see KQ on its feet again, we need to ensure that, as we exempt them, they can report how much they are getting, how they are working on, and how they are improving. This is so that as we give them that exemption, the country can benefit also.

With those few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Joyce Korir

**Hon. (Ms.) Joyce Korir** (Bomet CWR, JP): Thank you very much Hon. Temporary Deputy Speaker for giving me this chance to contribute to this matter on the issue of the KQ tax exemption. I want to echo the sentiments of a number of colleagues. However, though I am in support of the Committee, I still have a number of reservations as to why they should be exempted. The reason why I am saying this is because though I know the Committee might have done their background check and they are convinced to an extent that they are supposed to be exempted, I want to believe that as much as we want to see this country moving forward, there should be enough reasons as to why big companies that we have in this country are being exempted from paying the tax. If we are taxing the lowest person or the lowest companies or almost everybody in the country, why are we particularly exempting Kenya Airways? However, because it is like something that has been agreed by the entire House, I will still want to register

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

my reservations. I will look controversial in a way but I must register my dissatisfaction in terms of how KQ is being run. There are a lot of issues that I know are bringing down the company in terms of competing with other companies. There are a number of issues in terms of how they do their ticketing. There are a number of issues in terms of how they handle their employees. I want to say the problem we have in this country is that when a certain company is associated with somebody, that is where you find there is a lot of lobbying, and discussions on how we are going to allow it to survive. We know these politics. However, I want to say, just to be on record, I am agreeing with the Report of the Committee, but with a lot of reservations. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Sharrif.

**Hon. Abdullswamad Nassir** (Mvita, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I think the issue that is here is, as the Leader had rightfully put it, it is not an element of whether we are giving Kenya Airways money. It is an issue of certain taxation that this House passed and that taxation that a number of us felt was going to be unfair to Kenyans has come to bite us. When I say us, I means us as custodians of Government entities.

Hon. Temporary Deputy Speaker, we will convince the Government that this taxation that has now been declared and put aside by the Judiciary shall no longer take effect.

This is not something that will be unique to Kenya Airways who are right in appealing to this House that this tax should be suspended. We are looking at suspending this tax for Kenya Airways alone, but let us consider all the others. I am glad, and the Chair will agree with me that in countries like Senegal, where they announced US \$128 million to relieve the tourism and air transport sector, that was not for the national airline alone, but for the whole sector.

In Seychelles, they have waived all landing and parking fees from April to December 2020. That was not for the national airline alone or the local carrier but, rather, it was for all the airlines. Cote-de' Ivoire waived its tourism tax on transit passengers. It was not for a specific airline but for every single passenger who was using Cote-de' Ivoire as a transit point. When Lufthansa entered into an agreement with the German Government for a 9 billion Euro bailout... Let us not try and compare the two. I heard the Leader of the Majority Party talk of the Emirates. These are entities and companies that have been posting profits.

As much as it is right for us to agree with this Report, I am hoping that the Government is listening to the people's voices courtesy of the constitutional obligation of this House. When we come back, we will listen to the needs of Kenyans. We cannot have a tax that is based on volume and not profits. No country in the world has ever grown by overtaxing its citizens. At a time like this, when we see how badly the different sectors of the economy have been hit, it is enough for us to say that when we come back, let us simply remove it. Those of us who initially said that we cannot have such taxation; let us all talk in harmony, not for anything else but for the sake of Kenyans.

I thank you, Hon. Temporary Deputy Speaker.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): On a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Shamalla, you are on a point of order?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Yes. Thank you, Hon. Temporary Deputy Speaker. I wish to rise under Standing Order No.95 having noted that the majority of the

Members may have reservations but they agree with the Report by the Committee in charge of delegated legislation. I, therefore, do request that the Mover be now called upon to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, I will go on to put the Question. Members, when anyone stands under Standing Order 95, it is a matter of procedure and it is within the powers of the Standing Orders. So, we have to tolerate any Member who stands up under Standing Order 95. The decision is upon the Members. So, I will go on and put the Question on the Motion by Hon. (Dr.) Shamalla.

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

Mover! Kindly sit down Members. You are so far from.... Let us have Hon. Kamket reply.

**Hon. Kassait Kamket** (Tiaty, KANU): Thank you, Hon. Temporary Deputy Speaker. I take this opportunity to appreciate the contributions in support of this Report of the Committee. I appreciate all the Hon. Members who have stood in support. The reservations that have been raised by Hon. Members have been noted. I am sure that those who are concerned with the management of Kenya Airways will have taken note. If they did not take note today, *Hansard* a public document, I am sure they will be seized of the matter on the reservations that have been raised by Hon. Members of this august House.

I take cognizance of the fact that there was only one Member who had an extremely opposite view from the others, but I forgive him.

Otherwise, Hon. Temporary Deputy Speaker, with those many remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, having confirmed that the House is properly constituted, I go on to put the Question.

*(Question put and agreed to)*

Hon. Members, before we move to the Next Order, I have a Communication to make.

## COMMUNICATION FROM THE CHAIR

### CONSIDERATION OF THE KENYA NATIONAL LIBRARY SERVICE BILL

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, as you may be aware, today Wednesday 19<sup>th</sup> May 2021, during the Morning Sitting, I did communicate that part of the business to be considered in the Afternoon Sitting is the Committee of the whole House on the Narcotics, Drugs and Psychotropic Substances Control (Amendment) Bill, National Assembly Bill No. 27 of 2020 and the Kenya National Library Service Bill, National Assembly Bill No. 5 of 2020.

Hon. Members, as you will notice, the two Bills are listed in the Order Paper for the Afternoon Sitting as Order No. 10. However, with respect to the Kenya National Library Service

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Bill, National Assembly Bill No. 5 of 2020 which is appearing as Item 10 (ii), the Clerk's Office has received various proposed amendments from several Members, part of which ought to be considered by the relevant Committee pursuant to the provisions of Standing Order 131.

In this regard Hon. Members, I hereby invoke the provisions of Standing Order 131 regarding harmonisation of proposed amendments to a Bill and refer the amendments proposed by Hon. Millie Odhiambo-Mabona, MP and those proposed by Hon. (Dr.) Patrick Musimba, MP to the Departmental Committee on Sports, Culture and Tourism for consideration and harmonisation. My decision to invoke the provisions of Standing Order 131 should not in any way discourage the two Hon. Members since they ultimately reserve the right to have their proposed amendments published and considered by the House.

Indeed, this procedure is meant to ensure harmony and coordinated approach in the execution of the legislative authority of the House. In this regard, I encourage the Committee to also consider amendments proposed by any other Member to the Bill ahead of its consideration in the Committee of the whole House. Accordingly, Hon. Members, the Kenya National Library Service Bill (National Assembly Bill No.5 of 2020) will not be considered in the Committee of the whole House this afternoon.

This House is accordingly guided. I thank you.

Next Order! Order Members! Take your seats.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

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

### IN THE COMMITTEE

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

#### THE NARCOTICS, DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) (AMENDMENT) BILL

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we are now in the Committee of the whole House. We shall proceed to consider the Narcotics, Drugs and Psychotropic Substances (Control) (Amendment) Bill (National Assembly Bill No.27 of 2020).

#### *Clause 3*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by the Chairperson and Hon. Esther Passaris. We shall start with that of the Chairperson, Hon. Mwathi.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Chairperson, I beg to move:

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

THAT, clause 3 of the Bill be amended by deleting the proposed amendments to section 3 and substituting therefor the following —

Amendment of  
section 3 of No. 4 of  
1994.

3. Section 3 of the principal Act is amended by deleting subsection—

(2) A person guilty of an offence under subsection (1) shall be liable —

(a) in respect of *cannabis*, where the person satisfies the court that the *cannabis* was intended solely for his own consumption, to imprisonment to a term of not more than five years or to a fine of not more than one hundred thousand shillings;

b) in respect of a narcotic drug or psychotropic substance, other than *cannabis*, where a person is in possession of less than one gram, to a fine of not less than five million shillings, or to imprisonment to a term of not less than five years, or to both such fine and imprisonment; and

(c) to, in addition to the sentences in paragraph (a) and (b) respectively, committal to appropriate court appointed treatment programme or to voluntary submission to a rehabilitation programme for a period not less than six months, where the court deems fit.

The justification is that there was need to simplify the categories of grammes. This would enable implementors to fully comprehend who is to be charged under this penalty for possession and what possession entails. Further, there was need to introduce rehabilitation programmes when the court deems necessary.

*(Question of the amendment proposed)*

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

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Chairman. I support the proposal by the Committee because I was worried that we are criminalising the users when the people we should be targeting are the dealers. I also thank the Committee for going further and looking into treatment and rehabilitation because this is a very big problem affecting our communities. That is my only concern with this one. Otherwise, there are other serious sentences and if they are left that way, I will be very happy. Let them go for life and be given fines of Kshs1 billion because they are killing our children.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Let us have two other Members speak to this and then we make progress. We cannot tell if a Member has a divergent view until they speak. Hon. Chepkut.

**Hon. William Chepkut** (Ainabkoi, Independent): Thank you, Hon. Temporary Deputy Chairman. I just want to support because today we made history. The Chief Justice, Martha Koome, is passionate about children and family.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Whom are you dealing with? Hon. Chepkut, honestly get back to course.

**Hon. William Chepkut** (Ainabkoi, Independent): It is relevant, I have delivered. Thank you.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, is there anyone with a contrary view so that we make progress? Let me have Hon. Esther Passaris because she has an amendment to this and the decision made by the House on this one has an implication to hers as well.

**Hon. (Ms.) Esther Passaris** (Nairobi CWR, ODM): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 3 of the Bill be amended in the proposed amendments to section 3—

(a) in the proposed paragraph (b) (i)—

(i) by deleting the words “twenty million” and substituting therefor the words “one million”; and

(ii) by deleting the words “imprisonment for life” and substituting therefor the words “imprisonment to a term of not more than five years”.

(b) in the proposed paragraph (b) (ii)—

(i) by deleting the words “five million” and substituting therefor the words “five hundred thousand”; and

(ii) by deleting the words “five years” and substituting therefor the words “two years.”

I support the Committee in everything they have done so far. When I brought this amendment, I had not really interacted with the Committee Members but I got an opportunity to speak to them today. I noticed that all my concerns which brought about these amendments were covered in the current Bill. They have a way forward to ensure they deal with the issues which were of concern to me which is basically the way we punish users who in essence are unwell. The Committee recognised they are unwell and require rehabilitation and support. The various fines were looked into and I want to withdraw the amendments. I feel there is no necessity to have both amendments given that the Committee has done a very good job and has been in touch with what citizens of this country expect, in as far as this Bill is concerned.

I withdraw my amendments to clauses 3 and 5.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Esther Passaris, we shall come to clause 5 when that time comes. I will give you a chance to withdraw.

**Hon. (Ms.) Esther Passaris** (Nairobi CWR, ODM): I withdraw the amendments I sought in clause 3 because the Committee has very ably covered the same.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Not until I put the Question so you hear the decision of the Members.

*(Proposed amendments by Hon. (Ms.) Esther Passaris 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)*

Hon. Members, before I put the global Question, it is good to pronounce that Hon. Esther Passaris' amendments in this clause fall now that the one by the Chair is carried, just for record.

*(Clause 3 as amended agreed to)*

*Clause 4*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by the Hon. Chair.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Temporary Deputy Chairman, I beg to move: THAT, clause 4 of the Bill be amended in the proposed new section 4 by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) in respect of any narcotic drug or psychotropic substance—

- (i) where the person is in possession of between 1—100 grams, to a fine of not less than thirty million shillings or to imprisonment for a term of thirty years, or to both such fine and imprisonment;
- (ii) where the person is in possession of more than 100 grams, to a fine of not less than fifty million shilling or three times the market value of the narcotic drug or psychotropic substance, whichever is greater, or to imprisonment for a term of fifty years, or to both such fine and imprisonment.”

The justification is that there was need to simplify for purposes of clarifying the categories of trafficking. The fines as alluded to by Hon. Passaris for traffickers were previously small in accordance to what they were dealing with. So, this time round we are making it quite punitive to be found with narcotics.

Thank you.

*(Question of the amendment proposed)*

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

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

*(Clause 4 as amended agreed to)*

*Clause 5*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have two amendments one by Hon. Jennifer Shamalla and another by Hon. Esther Passaris. We shall start with that of Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, clause 5 of the Bill be amended by inserting the following new section immediately after the proposed new section 4B—

Records of premises.

4C. (1) A person who, being the owner, occupier or concerned in the management of any premises, shall keep a record in the premises of every tenant or occupier who occupies the premises.

(2) The information contained in the records under subsection

(1) shall include the name, address and any other particulars of the tenant or occupier of the premises.

(3) A person who, being the owner, occupier or concerned in the management of any premises and who fails to comply with this section, or who enters false information in the records, commits an offence and shall be liable on conviction to a fine of not less than one million shillings or to imprisonment for a term not less than two years, or both.

Hon. Temporary Deputy Chairman, I wish to withdraw my proposed amendment in view of the fact that the Committee has included my concerns in Clause 6A, if I am correct. It has been included, so, I wish to withdraw that amendment.

*(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)*

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

Hon. Passaris, you also had an amendment. Had you indicated that you are also withdrawing your proposed amendment on Clause 5 for record? Give her the microphone.

**Hon. (Ms.) Esther Passaris** (Nairobi CWR, ODM): Thank you, Hon. Temporary Deputy Chairman. Yes, I had an amendment which I do seek to withdraw. My concern at that particular time was for cancer survivors who use certain psychotropic drugs for pain relief, and I was assured by the Committee that, that has also been covered within the Bill for medicinal purposes. So, I wish to withdraw my proposed amendment.

Thank you.

*(Proposed amendment by Hon. (Ms.) Esther Passaris withdrawn)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Okay. The two proposed amendments by Hon. Shamalla and Hon. Passaris are withdrawn.

*(Clause 5 agreed to)*

*Clause 6*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have two amendments. One of them is by the Chairperson and the other one is by Hon. Shamalla. We shall start with the Chairperson.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*



- THAT, the Bill be amended in clause 6—
- (a) in the proposed amendment to section 5, by deleting —
    - (i) the proposed paragraph (c) (ii); and
    - (ii) the proposed paragraph (d).
  - (b) by inserting the following new clauses immediately after clause 6—

Insertion of sections 5A and 5B into No.4 of 1994.

6A. The principal Act is amended by inserting the following new sections immediately after section 5—

Information to be kept by an owner, occupier or a person concerned with the management of a premise.

5A. (1) An owner, occupier or person concerned with the management of any premises, shall keep a register in his premises, and shall enter or cause to be entered in the register the name and address of every tenant and occupier who occupies

the premises, and such other particulars as may be prescribed.

(2) An owner, occupier or person concerned with the management of any premises, shall enter or cause to be entered regularly in a book kept for the purpose, all such particulars, other than particulars prescribed in respect of the register required under subsection (1) to be kept, as may be prescribed.

(3) A person who fails to comply with this section, or who makes or causes or permits to be made in any register or book required in this section to be kept, any entry which he knows or has reason to believe to be false, shall be guilty of an offence and is liable to a fine of not less than one million shillings or to a term of imprisonment of not less than two years, or both such fine and imprisonment.

Offences relating to operation of clandestine laboratory.

5B (1) Subject to this Act, any person who—

(a) operates a clandestine laboratory;

(b) being the owner, occupier or person concerned with the management of any premises, permits the premises to be used for the purpose of operating a clandestine laboratory shall be guilty of an offence and is liable to a fine of not less than twenty million shillings or a term of imprisonment of not less than twenty years, or both such fine and imprisonment.

(2) It shall be a defence if a person who is an owner, occupier or a person concerned with the management of any premises, complies with section 5A.

The justification is that the proposed amendment is to provide for provisions relating to operations of a clandestine laboratory and provisions relating to owner and occupier on different sections. The provisions were originally lumped together, and this does not give clarity to this section.

*(Question of amendment proposed)*

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

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Jennifer Shamalla, yours falls automatically.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Yes, Hon. Temporary Deputy Chairman.

*(Proposed amendment by Hon. (Ms.) Shamalla Jennifer dropped)*

*(Clause 6 as amended agreed to)*

*Clause 7*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have two amendments. One of them is by the Chairperson and the other one is by Hon. Shamalla.

Proceed, Hon. Chairperson.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Temporary Deputy Chairman. I beg to move:

THAT, the Bill be amended—

(a) in Clause 7, by deleting the proposed amendment to section 17 and substituting therefor the following —

Insertion of section  
17A into No. 4 of  
1994.

The principal Act is amended by inserting the following new section immediately after section 17—

Penalty for law  
enforcement  
officers and public  
officers.

17A. (1) A law enforcement officer or a public officer who aids or abets any offence under this Act including through concealing the commission of any offence or colluding with any person suspected of committing an offence under this Act, commits an offence and shall be liable upon conviction to a fine of not less than twenty million shillings and imprisonment for a term of not less than twenty years.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

(2) Any person who, being employed as a law enforcement officer or a public officer, does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another, commits an offence and shall, upon conviction, be liable to a fine of not less than three hundred thousand shillings or imprisonment for a term of not less than five years, or to both.”

(b) by inserting the following new clause immediately after clause 7—

Amendment of  
Section 58 of

No. 4 of 1994.

7A. Section 58 of the principal Act is amended in subsection section (2) by deleting the words “Attorney-General” and substituting therefor the words “Director of Public Prosecutions”

The justification is that the proposed amendment is meant to include public officers. This will cater for officers who work on various entry and exit points of the country and other officers who may assist in trafficking of narcotics.

Further, the new clause intends to align Section 58 with the Constitution as the same grants a prosecutorial power in criminal matters to the Director of Public Prosecutions (DPP).

*(Question of amendment proposed)*

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

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

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Shamalla, yours falls automatically.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Yes, Hon. Temporary Deputy Chairman.

*(Proposed amendment by Hon. (Ms.) Shamalla Jennifer dropped)*

*(Clause 7 as amended agreed to)*

Clause 8

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairperson, you have an amendment.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 8 of the Bill be amended in the proposed section 59 (3) by deleting the word “shall” and substituting therefor the word “may”.

The justification is that, by deleting the word “shall” in the new subsection (3) and substituting with the word “may”, it will not limit the powers of the DDP.

*(Question of amendment proposed)*

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

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

*(Clause 8 as amended agreed to)*

#### Clause 9

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairperson, you have an amendment.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, Clause 9 of the Bill be amended—

(a) in the proposed section 80A by deleting the words “to a Chief Magistrate or” appearing in subsection (1);

(b) in the proposed section 80B, by inserting the following new subsection immediately after subsection (1)—

(1A) A person who conceals or fails to disclose information that is relevant in investigation, prosecution of another person for an offence committed under this Act, commits an offence.”

The justification is that the proposed amendment seeks to make the High Court the court which a police officer can apply and intercept communications order, and also to provide for the offence of concealing or failing to disclose information that is relevant to investigation of an offence committed under this Act.

*(Question of amendment proposed)*

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

**Hon. Makali Mulu** (Kitui Central, WDM - K): Thank you, Hon. Temporary Deputy Chairman. This amendment is very important because it implies that if you conceal information, then you can actually be punished. I support it.

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

*(Question, that the words to be inserted)*

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

*be inserted, put and agreed to)*

*(Clause 9 as amended agreed to)*

*Clause 10*

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

**Hon. Peter Mwangi** (Limuru, JP): Hon. Temporary Deputy Chairman, I beg to move:

THAT, the Bill be amended by inserting the following new clauses immediately after clause 10—

Amendment of  
section 81 of No. 4  
of 1994.

10A. The principal Act is amended in section 81 by deleting paragraph (b).

Insertion of section  
85 A into No. 4 of  
1994.

10B. The principal Act is amended by inserting the following new section immediately after section 85—

Disqualification if  
convicted of an offence  
under this Act.

85A. A person who is convicted of an offence under this Act shall be disqualified from being elected or appointed as a public officer for thirty years after the conviction.

Amendment of the  
First Schedule to No.  
4 of 1994.

10C. The principal Act is amended by inserting the word “tramadol” in the First Schedule.

Amendment of the  
Second Schedule to  
No. 4 of 1994.

10D. The principal Act is amended by inserting the word “ketamine” in the Second Schedule.

The justification is that Clause 4(b) provides, in details, for the offences relating to conspiracy, therefore, Section 81(b) is repetitive. For Clause 10C, the justification is that tramadol has opioid-like effects. It is, however, abused as a prescription medicine. Therefore, there is need to list it as a controlled drug.

Finally, for Clause 10D, the justification is that at high doses, ketamine produces dissociate state with visual and auditory hallucinations. There is increase in recreational use which has prompted for the drug to be listed as controlled substance.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Chairperson, you are using very technical terms. I know you are a person of higher standards of education, but it is good to break down some of these terms. However, I can tell the Members are appreciating and understanding what you are saying.

*(Question of amendment proposed)*

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

*(Clause 10 as amended agreed to)*

*Clause 11*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have an amendment by Hon. (Ms.) Jennifer Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Temporary Deputy Chairman, I wish to drop this amendment in view of the fact, as the Chairperson has just mentioned, that tramadol has been taken into consideration and has been put into the Schedule.

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Okay. In the circumstances, that is dropped.

*(Proposed amendment by Hon. (Ms.) Shamalla Jennifer dropped)*

*(Clause 11 agreed to)*

*New Clause 12*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members, we have new clauses, particularly New Clause 12 by Hon. (Ms.) Jennifer Shamalla. Move for the Second Reading of that New Clause.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Temporary Deputy Chairman, I wish to drop this amendment, again, for the reasons aforementioned with regard to Clause 11.

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

*(Proposed amendment by Hon. (Ms.) Shamalla Jennifer dropped)*

*New Clause 13*

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Temporary Deputy Chairman, I wish to withdraw this amendment for the same reasons.

*(Proposed amendment by Hon. (Ms.) Shamalla Jennifer withdrawn)*

*Clause 2*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): We have two amendments to Clause 2, one by the Chairperson and another one by Hon. (Ms.) Shamalla,

**Hon. Peter Mwathi** (Limuru, JP): Hon. Temporary Deputy Chairman, I beg to move:

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

THAT, the Bill is amended by deleting the proposed amendments to clause 2 and substituting therefor the following—

Amendment of Section 2  
of No.4 of 1994

2. Section 2 of the Narcotics, Drugs and Psychotropic Substances (Control) Act, (in this Act referred to as the “principal Act”) is amended —

(a) by inserting the following new definitions in their proper alphabetical sequence—

“cabinet secretary” means the Cabinet Secretary for the time being responsible for matters relating to interior;

"clandestine laboratory" means —

(a) the purchase or procurement of chemicals, supplies, equipment, or laboratory location for the illegal manufacture of specified controlled substances;

(b) the transportation or arranging for the transportation of chemicals, supplies, or equipment for the illegal manufacture of controlled substances;

(c) the setting up of equipment or supplies in preparation for the illegal manufacture of specified controlled substances;

(d) the activity of compounding, synthesising, concentrating, purification, separating, extracting, or other physical or chemical processing of a substance, including a controlled substance precursor, or the packaging, repackaging, labelling, or relabelling of a container holding a substance that is a product of any of these activities, when the substance is to be used for the illegal manufacture of specified controlled substances;

(e) the illegal manufacture of specified controlled substances; or

(f) the distribution, diversion or disposal of chemicals, equipment, supplies, or products used in or produced by the illegal manufacture of specified controlled substances.

“market value” means value of narcotic drug, psychotropic substance, prohibited plant, precursor or chemicals;

“public officer” means an officer, employee or member of a public body, including one that is unpaid, part-time or temporary;

"precursor chemicals" means a substance frequently used in the illicit manufacture of narcotic drugs or psychotropic substances as specified in the fourth schedule to this Act;

"law enforcement officer" means any person who is responsible for prevention, investigation, apprehension or deterrence of persons suspected to have committed an offence under this Act;

(b) by inserting the following subsection immediately after subsection (1)—

(2) Despite subsection (1), references in this Act to the expression “Minister” shall be construed to mean “Cabinet Secretary”

The justification thereof being the proposed new definitions are essential in the interpretation of terms as used in the Act. For example, the definition of the “Cabinet Secretary” as there is need to task the Cabinet Secretary in the Ministry of Interior and Coordination of National Government to implement the Act. The new Subsection 2 is to provide for the use of the term “Cabinet Secretary” to be synonymous with the term “Minister” as used in the Act.

*(Question of the amendment proposed)*

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

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

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Jennifer Shamalla’s amendment therefore automatically falls.

*(Proposed amendment by Hon. (Ms.) Shamalla Jennifer dropped)*

*(Clause 2 as amended agreed to)*

*(Title agreed to)*

*(Clause 1 agreed to)*

**The Temporary Deputy Chairman** (Hon. Patrick Mariru): Hon. Members we are done with that Bill and so we move reporting. Mover.

**Peter Mwathi** (Limuru, JP): Hon. Temporary Deputy Chairman, I beg to move that the committee doth report to the House its consideration of the Narcotics, Drugs and Psychotropic Substances (Control) (Amendment) Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*(The Temporary Deputy Speaker  
(Hon. Patrick Mariru) in the Chair)*



**REPORTS AND THIRD READING**

## THE NARCOTICS, DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) (AMENDMENT) BILL

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Speaker, I beg to report that a Committee of the whole House has considered the Narcotics, Drugs and Psychotropic Substances (Control) (Amendment) Bill and approved the same with amendments.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): The Mover. The Mover is you, Hon. Mwathi. Do not look at the Whip.

**Hon. Peter Mwathi** (Limuru, JP): I was looking for a Seconder.

Hon. Temporary Deputy Speaker, I beg to move that the House doth agree with the Committee in the said Report. I request, Hon. Kaluma to second the Motion for agreement with the Report of the Committee of the whole House.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Temporary Deputy Speaker. This is the happiest day of my life. The drug dealers in this country have only the assent of the President between them and the law. We have had cases where drug dealers easily pay the fine even if you put it at three times the value of the drugs they are caught with. Now, in addition to paying three times the value, they will be imprisoned for life. There will be peace now for our children around here. I am so pleased. I will say more at the Third Reading. I second.

*(Question proposed)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I have confirmed that we have numbers here and in the holding places where Members are. I will therefore put the Question.

*(Question put and agreed to)*

Mover, you need to move for Third Reading.

**Hon. Peter Mwathi** (Limuru, JP): Hon. Temporary Deputy Speaker, I beg to move that the Narcotics, Drugs and Psychotropic Substances (Control) (Amendment) Bill be now read the Third Time. I request that Hon. Makali Mulu seconds.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you Hon. Temporary Deputy Speaker. I rise to second the Third Reading of this important Bill.

*(Question proposed)*

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

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Is that the mood of the House that I put the Question?

**Hon. Members:** Yes.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I have confirmed that we have the numbers here and also in the holding spaces out there. I, therefore, put the Question.

---

**Disclaimer:** *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

Next Order.

## **BILL**

### *Second Reading*

#### THE PUBLIC PRIVATE PARTNERSHIPS BILL

*(Hon. Amos Kimunya on 13.5.2021)*

*(Resumption of Debate interrupted on 19.5.2021)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, this is resumption of debate; we had it in the morning. Hon. Mutua Barasa, you had a balance of four minutes.

Proceed.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker. I just want to pick it up from where I left. I support this Bill. This is a very important Bill. Previously, we were having various Government entities struggling on how to mitigate against the very many issues that would come as a result of the projects that were being undertaken jointly by Government and private entities. Therefore, this Bill seeks to streamline and provide proper direction and guidelines specifically on the specific roles and the amount of money that each of the various entities will be putting in a particular project to avoid misuse or loss of public funds in so far as this matter is concerned.

I just want to thank the proposer of the Bill. This is a Bill whose time has come. It intends to attract more private partners coming in to partner with Government. Where there is no framework, entities will shy away from partnering with Government on a number of projects.

Hon. Temporary Deputy Speaker, as I said when I began to support this Motion, I will be bringing further amendments during the Committee of the whole House so that we improve this Bill to be able to herald a new era in terms of development. When we have a Bill that specifies how different entities will relate with Government in so far as those joint projects are concerned, it will give more confidence to the private entities that are willing to come and invest in this country. As you are aware, the Government cannot meet all the development requirements of this country. It needs the input of the private sector, development partners and well-wishers to come and support the Government in terms of advancing various development projects.

Once this Bill is approved by this House, it will act as a precursor for more investors coming to partner with the Government to improve the lives of Kenyans. The many development partners who are taking their investments out of this country will begin to come back.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Didmus Barasa. What is out of Order, Hon. Jeremiah Kioni? Order, Hon. Barasa, Hon. Kioni is on a point of order.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Hon. Temporary Deputy Speaker, I am standing under Standing Order No.95. I wish to ask that the Mover be called upon to reply for the reason that we have exhausted debate on this Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Well. When the Speaker is asked to call upon the Mover to reply, he has to confirm that it is indeed the mood of the House but let us be fair to Hon. Didmus Barasa. Let us allow him to finish his two minutes that are remaining. I will then establish whether it is the mood of the House that we end this debate.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Speaker. With those very few remarks, I support this Bill and ask my colleagues to support it.

I thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, Hon. Kioni did request that the Mover be now called upon to reply. I would like to establish whether that is the mood of the House.

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

Mover.

**Hon. Amos Kimunya** (Kipipiri, JP): Hon. Temporary Deputy Speaker, I wish to thank you for this opportunity and thank the Members for, first of all, turning up today for the Special Sitting to conduct the business. We have done very well in the course of the day up to this Bill.

This is a very important Bill as it will unlock the infrastructural potential of this country by inviting private companies to come and team up with public partners so that Kenyans can be far much better than they are now. It will also bring down the level of debt that we are concerned about because projects will not have to be financed through debts but through private partnerships. The comments have been very much in support. Obviously after this, we can at least do our job as the National Assembly and pass the Bill to the Senate to do their bit. Hopefully, in the not-so-distant future, we will have the law that will help this country move forward from an infrastructure perspective.

With those words, I beg to reply.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, I have established that we have the requisite numbers here and in the holding areas out there.

*(Question put and agreed to)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members that being the only business we had for this Special Sitting, and the time being 4.45 p.m., the House stands adjourned until Tuesday, 8<sup>th</sup> June 2021, at 2.30 p.m.

The House rose at 4.45 p.m.