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THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

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Thursday, 30th November 2023

The House met at 2.30 p.m.

[Hon. Speaker (Hon. Moses Wetang'ula) in the Chair]

PRAYERS

QUORUM

Hon. Speaker: Serjeant-at-Arms, ring the Bell.

(The Quorum Bell was rung)

Hon. Members, we now have quorum to transact business. Clerk-at-the-Table!

COMMUNICATION FROM THE CHAIR

NOTIFICATION OF LEGISLATIVE PROPOSALS TO AMEND ARTICLES 88 AND 89 OF THE CONSTITUTION

Hon. Speaker: Hon. Members, I have a Communication on a Notification of Legislative Proposals to Amend Articles 88 and 89 of the Constitution. Pursuant to the provisions of Standing Order 114(7A), I wish to notify the House that I have approved the pre-publication scrutiny of two legislative proposals seeking to amend the Constitution by the Member for Mandera North Constituency, Hon. Major (Rtd) Bashir Sheikh Abdullahi and the Member for Thika Town Constituency, Hon Alice Ng'ang'a.

The first proposal seeks to amend Article 88 of the Constitution to provide that, in instances where the Independent Electoral and Boundaries Commission (IEBC) is not fully constituted, the Secretary to the IEBC shall discharge the duties and functions of the Commission with regard to the conduct of by-elections. The second proposal seeks to amend Article 89 of the Constitution to require the IEBC to ensure that the review of constituency boundaries does not result in the loss of a constituency that existed before the promulgation of the Constitution 2010.

The manner of amending the Constitution through parliamentary initiative is provided for under Article 256 of the Constitution. Standing Order 114(7A) actualises this process in the National Assembly by providing as follows.

(Several Members walked into the Chamber)

Members at the back, take the nearest seats. Thank you.

Standing Order 114(7A) says that in respect of a proposal to amend the Constitution—

- (a) The proposal shall be accompanied by the signatures of at least 50 other Members in support, unless it is sponsored by the Majority Party or the Minority Party;
- (b) Where the Speaker approves the pre-publication scrutiny of the proposal, the Speaker shall notify the House of the approval and may—

- (i) Allow the sponsor to make a statement on the objectives of the proposal;
- (ii) Allow comments on the statement made by the Member;
- (iii) Facilitate collation of the views from the comments of Members at an appropriate forum; and,
- (iv) invite Members with similar or related proposals to make submissions before the committee to which the proposal is referred.

This procedure is informed by the decision of the High Court in Petition No. E282 of 2020, consolidated with Petition Nos. 397 of 2020, E400 of 2020, E401 of 2020, E402 of 2020, E416 of 2020, E426 of 2020 and 2 of 2021, which states that a Bill proposing to amend the Constitution cannot be amended once it has been published. Therefore, this procedure in our Standing Orders aims to collate as many views as possible from as many stakeholders and experts as possible before a proposal to amend the Constitution is published into a Bill.

Indeed, I note that the proposals by the two Hon. Members have complied with the first part of this provision, having obtained the signatures of more than 50 Members of this House. As your Speaker, my obligation is, therefore, to facilitate the rest of the processes as provided for in the Standing Orders.

In this regard and in keeping with the requirements of the said Standing Order, I wish to notify the sponsors, that is, the Member for Mandera North and the Member for Thika Town, that on Wednesday, 6th December 2023, I will accord them an opportunity, of not more than 15 minutes each, to make general statements outlining the contents and objectives of their proposals.

To facilitate the initial stage of collation of Members' views, I will nominate a time for the House to make general comments on the proposal. Subsequently, I will refer the proposals to the Departmental Committee on Justice and Legal Affairs or issue other directions given the comments that Members will make during the proceedings. Any Member with similar or related proposals will be at liberty to make submissions to the committees for consideration in line with Standing Order 114(7A).

Hon. Members, in the meantime, the Clerk of the National Assembly is hereby directed to circulate the legislative proposals to all Members. The House is accordingly guided.

Thank you.

Hon. Speaker: Next Order.

PETITIONS

Hon. Members, there are two Petitions; one will be presented by yours truly, and the second one by the Member for Chepalungu, Hon. Victor Koech. After the presentation, we will allow you a few minutes to make comments on both.

ENACTMENT OF THE KENYA ROBOTICS AND ARTIFICIAL INTELLIGENCE SOCIETY BILL, 2023

Hon. Members, I have a Petition regarding the enactment of the Kenya Robotics and Artificial Intelligence Society Bill, 2023.

Article 119 of the Constitution accords any person the right to petition Parliament to consider any matter within its authority. Further, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member.

In this regard, I wish to report to the House that my Office has received a Petition from one, Fred Ondieki Sagwe, Passport No. BK117283, representing the Robotics Society of Kenya (RSK). The Petitioner states that it is a non-profit organisation registered as R54783,

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based in Kenya with a mission to promote computing in institutions and communities through robotics, Artificial Intelligence (AI), physical computing, maker space, Internet of Things (IoT), STEAM, chess education and research.

The Petitioner further states that the fields of robotics and Artificial Intelligence are rapidly growing with the potential to revolutionise many industries, including healthcare, manufacturing and retail, and improve human lives in many ways ranging from increasing efficiency to creating new jobs and businesses.

Despite the upside of artificial intelligence, the Petitioner highlights privacy, security and civil rights concerns. A case in point is the World Coin platform, which has been criticised for its lack of security and privacy features. He explains that to tackle those challenges, the European Union (EU) has developed the Artificial Intelligence Act, which is expected to be fully approved by the end of the year. The use of artificial intelligence in the EU will be regulated by the world's first comprehensive law on artificial intelligence.

The Petitioner, therefore, prays that the National Assembly enacts legislation to formally establish the Kenya Robotics and Artificial Intelligence Society as a professional body which will immensely assist in regulating, promoting and facilitating the activities of robotics and Artificial Intelligence practices in the country.

Hon. Members, having established that the matters raised in the Petition are well within the authority of this House; and further that the matters raised in this Petition are not pending before any court of law, constitutional or legal body, I hereby commit the Petition to the Public Petitions Committee for consideration pursuant to Standing Order 208A.

The Committee is required to consider the Petition and report its findings to the House and Petitioner in accordance with Standing Order 227(2).

I thank you.

Hon. Speaker: Member for Chepalungu.

GAZETTEMENT OF CHEPALUNGU SUB-COUNTY
AS A HARDSHIP AREA

Hon. Victor Koech (Chepalungu, CCM): Thank you, Hon. Speaker.

I, the undersigned, on behalf of the residents of Chepalungu Sub-county, draw the attention of the House to the following:

THAT, the harsh climatic conditions in Chepalungu Sub-county have become a great concern to the residents who are left with no clear sources of livelihood;

THAT, Chepalungu Sub-county meets the requirements of a hardship area due to its land being purely black cotton soil and fairly flat terrain, leading to deplorable road networks that have to be re-done every year; hampered movements amongst the locals, lack of clean drinking water and basic social amenities among others;

THAT, the geographical orientation and rugged rocky terrain in most parts of the Sub-county have made it impossible for public service providers, among them the Kenya Power & Lighting Company to access the villages leading to extremely low electricity connection;

THAT, the fairly flat terrain and poor road network and infrastructure make the area inaccessible with limited access to clean water and equally low access to water for farming; with surveys showing that the water table is at an average depth of 220 meters below the surface with low yields, making the process of drawing underground water very expensive and uneconomical;

THAT, with over 201 primary schools and 97 secondary schools in Chepalungu Sub-county, teachers posted to those schools have been reluctant to take up jobs, with

those posted seeking transfers elsewhere due to non-payment of hardship allowances by the Government;

THAT, there are very few medical facilities, making the locals travel long distances in search of medical care;

THAT, Chepalungu Sub-county borders two constituencies which are in the same climatic conditions and yet, both have been gazetted as hardship areas;

THAT, despite Chepalungu Sub-county having met the criteria used to qualify and gazette it as a hardship area, the Government and the relevant Ministry and/or agencies have not been affected to date; and,

THAT, the matters raised in this Petition are not pending before any court of law, constitutional or any other legal body.

Therefore, your humble Petitioners pray that the National Assembly, through the Public Petitions Committee:

1. Recommends to the relevant ministry/agencies to gazette Chepalungu Sub-county, as a hardship area; and,
2. Makes any other appropriate recommendations it deems fit in addressing the circumstances that are raised in this Petition.

And your Petitioners will ever pray.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Member for Chepalungu. Hon. Murugara.

Hon. George Murugara (Tharaka, UDA): Thank you very much, Hon. Speaker. The two Petitions are well-timed. I may not have a lot to say about the one on robotics, but the Public Petitions Committee should look at it and see whether robotics would be of great benefit to the country and the economy, especially at a time like now. The Petition by Hon. Victor Koech Mandazi of Chepalungu is timely. We have had many Members of Parliament come here to Petition the House to recommend gazette of various places as hardship areas. I also brought a Petition to Gazette Tharaka Constituency as a hardship area as far as the rest of the civil service is concerned. This is because the constituency is a hardship area for the Teachers Service Commission (TSC) and the Judiciary. I continue to pursue that Petition because it has not been implemented despite it being passed by this House.

The same applies to a sub-county in Tharaka Nithi known as Igamba-ng'ombe, a very dry area similar to Tharaka, which should be gazetted as a hardship sub-county. Those are areas that should not be ignored. For the motions and petitions that are brought to the Petitions Committee, which makes recommendations and are passed by the House, I implore the Select Committee on Implementation to have them implemented the way the House passes them. This is because Kenyans are waiting, and many areas need to be gazetted as hardship areas, but they are not.

Therefore, I plead for the Igamba-ng'ombe Sub-county to be included as a hardship area.

Thank you.

Hon. Speaker: I see many Members on the screen. Are they on these petitions?

Hon. Members: Yes, it is on those petitions.

Hon. Speaker: Hon. Abraham Kirwa.

Hon. Abraham Kirwa (Mosop, UDA): Thank you, Hon. Speaker, for giving me this opportunity. I want to support this Petition by the Member for Chepalungu about the hardship allowance. Gazetting some areas as hardship has been an issue that has affected many constituencies, including...

Hon. Speaker: Clerks-at-the-Table to allocate two minutes to each Member. Hon. Kirwa, you have two minutes. Compose your submissions.

Hon. Abraham Kirwa (Mosop, UDA): Yes, including Mosop, where we have a big problem along the Nandi Escarpment. No teacher wants to go to most of the schools in those areas. The area itself is harsh. As such, if most of those areas are gazetted as hardship areas, it will attract many teachers. This will help most learning institutions get students and good teachers.

Thank you, Hon. Speaker. I stand to support.

Hon. Speaker: Hon. Rachael Nyamai.

Hon. (Dr) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Speaker. I rise to support the Petition you read on behalf of one Victor Koech. There is a lot of use of artificial intelligence in our country without much regulation. People who are visually handicapped and those who are physically handicapped are using different gadgets to move around and understand their surroundings without regulating those kinds of gadgets.

Artificial intelligence is also used in the marketing, banking and security sectors to identify faces and eyes. Sometimes our data is taken without even noticing that it is being taken and stored. It is also being used in medical diagnostics and education. It is important to have this matter discussed in this House and possibly have some form of regulation of artificial intelligence.

On the matter brought up by the Member for Chepalungu, I support this Petition. I have realised that Mutomo and Ikutha, the two sub-counties I represent in this House, are identified as some of those removed. I, therefore, support the Petition. I will be there to stand with the people of Mutomo and Ikutha in their assertion that we are highly marginalised. Our people need to remain on that list of the marginalised.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Beatrice Elachi.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Speaker. I also rise to support, especially the one on robotics. The Committee should do more research so that we do not find ourselves in a crisis. At one point, we had machines, like robots, coming to Kericho, and we had a lot of conflict. It is good to do research there. Robotics is good in assisting humans, but we need to ask ourselves as a country if we are, indeed, ready for it. It is a more advanced technology that reduces the number of people who are required to do the work. This is one thing we need to research on.

About hardship, we have had this issue here before. At one point, I stood and said: If we are talking about hardship, then when we look at the crises we have in the country today, you will find every county or constituency with some hardship. It does not matter whether it is the hardships of teachers; you will find crises with children. All those are things that are creating hardships within every area that we have. This House has to discuss and agree that people face hardships in every corner of this country. If you bring it in clusters, you will always have those issues.

Therefore, I support it, but we need to do more research on it.

Thank you.

Hon. Speaker: Hon. Robert Pukose.

Hon. (Dr) Robert Pukose (Endebess, UDA): Thank you, Hon. Speaker. I stand to support the Petition you presented on robotics and artificial intelligence issues. In medicine, we use robotics mainly in operations. Many of the uses of robotics are not well-regulated. It will be important that we have a law because this is a new technology and field. It is important that even as we use it, we need to have a law and regulation that governs its use. Should somebody get injured from using robotics, then the person should be well compensated, and someone apportioned responsibility.

On the issue of the hardship by Hon. Victor, aka Mandazi, it is not just Chepalungu. This is something that has been recurring in this House, where Members have presented about

hardships. I wonder who does the gazettelement or regulations of which are the hardship areas? The criteria they used in the past are no longer viable as they are based on dry areas. You will find that there are areas with hard terrain. In Endebess, you talk of Salama, Chepkirowot, Chepkenge, Kashaber and Kibosit. They have a hard terrain where if a teacher is posted, will not want to go to those places. We need to redefine the issue of hardship areas and do proper gazettelement of hardship areas.

With those few remarks, I support.

Hon. Speaker: Hon. Mangale Chiforomondo.

Hon. Chiforomondo Mangale (Lungalunga, UDM): Thank you, Hon. Speaker. I stand to support the Petition by one Hon. Koech. This issue of hardship is very important. In my constituency, Lungalunga, or Lungalunga Sub-county, the area deserves to be gazetted as hardship. I have followed up on the issue with the Principal Secretary and other high offices, but we are just being taken round in circles. This House should have more say when it comes to hardship areas and their gazettelement.

I want to support the idea that there are areas like the Highlands where teachers cannot stay. Whenever they are posted there, they look for transfers. A bigger part of Lungalunga is semi-arid. Therefore, I support and request that this issue be given the importance it deserves.

Thank you.

Hon. Speaker: Member for Kamukunji, Hon. Yusuf Hassan.

Hon. Yusuf Hassan (Kamukunji, JP): Thank you, Hon. Speaker. I stand to comment on the Petition by the Hon. Member for Chepalungu. We may need to look more comprehensively at this issue. It appears as if every neighbourhood in our country could be declared an area that needs to be classified as a hardship area. For example, there are several informal settlements in Nairobi where there are schools. One could argue that they deserve to be considered as hardship areas. But to be fair to him and many others, there is a need to investigate and develop a comprehensive plan, which can also give us a picture of which areas are more deserving and which should be declared as hardship areas.

The artificial intelligence and robots issue is very important. They impact every aspect of our lives, industries and workplaces. It is the future. We should not be found sleeping or napping on this issue. We should be up there developing legislation, rules and regulations because many jobs will disappear. After all, machines and robots can do them. Artificial intelligence is going to put many people out of jobs. How prepared are we as a country? If we are going to be part of the global economy, our country should be ready and prepared to benefit and create regulations that would serve us well. We should not wait, even for a moment, because artificial intelligence and robots are very important.

Hon. Speaker: Thank you. Hon. Titus Lotee.

Hon. Titus Lotee (Kacheliba, KUP): Thank you, Hon. Speaker. I stand to support the Petition that has been brought by Hon. Victor Koech, also known as *Mandazi*, on the aspect of hardship. You hear every Member stand and say that their area is supposed to be classified as hardship. I want to take this debate to another level, where the problem of classifying places as hardship or not hardship is given to a few biased people in this country. This is why we have spoken about hardship in this House several times. Members come here to vindicate their areas that have not been classified as hardship because somebody sat and just decided, not because of any physical, social, psychological or anything whatsoever. Because of this person's biasness, some areas are classified as hardship areas, and others are not.

When we classify an area as a hardship area, it should not just be because of the teachers' salaries. I have listened to this all the time. Everybody says: "It is because my teachers do not get hardship allowance". Hardship goes beyond the salaries of teachers. If you are not a teacher, what then do you benefit from being in a hardship area? We want to go beyond that and also ensure that infrastructural...

Hon. Speaker: Add him 30 seconds to finish.

Hon. Titus Lotee (Kacheliba, KUP): ...infrastructural development of those areas is also considered. If you go to a place like Kacheliba, classified as a hardship zone, children are out of school now, searching for water. They are looking for water because they only look at hardship as the teacher's salary, not knowing that many other things need to be done. As we look at hardship, let us also include other infrastructural development.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. Hon. Francis Sigei

Hon. Francis Sigei (Sotik, UDA): Thank you, Hon. Speaker, for allowing me to also support my neighbour and good friend, Hon. Victor Koech, also known as *Mandazi*. Chepalungu borders Sotik Constituency. All the conditions which *Mhe. Mandazi* has enumerated are the same for Sotik Constituency. I want to talk about teachers because they are the beneficiaries of this thing. Teachers from Sotik have shifted to *Emurua Dikirr* to benefit from the hardship allowance. I ask the Government to develop a policy that is objective and not subjective.

You recall that Chepalungu Constituency was one. Hon. Koech was a Member of Parliament. We need to have the same policy applied to Sotik Constituency.

Thank you, Hon. Speaker.

Hon. Speaker: I want us to end here. The Hon. Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Yes.

Hon. Speaker: The consistent presence of petitions on hardship requires you to speak to the Executive to formulate regulations that are clear, determinate, understandable and bring to you, perhaps, through the Committee on Delegated Legislation, so that you can debate and set the criteria on what is hardship and what is not hardship.

(Applause)

Hardship cannot be reached because a Member petitioned this House, and his area is declared hardship.

(Applause)

That is not the proper direction of policy. As the principal representative of the Executive on the Floor of this House, it is your duty to engineer this process so that we limit those petitions through policy. Do you want to say something?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Speaker. I agree with you. We cannot designate places as hardship areas based on the number of petitions. I was consulting with the Deputy Leader of the Majority Party. I was telling him that even in my constituency of Kikuyu, there are places where I have many petitions from teachers petitioning that those places be designated as hardship areas. You know the circumstances in each of our constituencies are different. What is hardship in Kikuyu may be heaven in North Horr. We, indeed, need a policy that will guide it. As they look at the marginalisation policy, the Commission for Revenue Allocation (CRA) has a huge responsibility in guiding the Government on what areas would be designated as hardship areas. There is a very good correlation between those areas that benefit from the Equalization Fund and those that would be categorised as hardship areas, so that we do not have a situation where places are designated as hardship, basically driven by petitions. Especially from public servants who want to earn a little bit more than people in other areas based on a place categorised as hardship.

It is also true that with the advent of devolution, some places would have been categorised as hardship because it was not easy to access those areas. There was no electricity, water, health facilities and schools. But with the advent of devolution, circumstances have

changed. Therefore, some places that were formerly hardship areas are no longer hardship areas. I agree with you. We will pick it up and look into it with the Executive and CRA.

Hon. Speaker: Thank you. Take it up. And avoid this irrational thinking that hardship is limited to teachers. What about water? What about electricity? What about roads? What about health facilities? What about security? All those constitute a hardship. Thank you, Leader of the Majority Party, for that promise.

Equally important, as I commit the petitions, you may have to give attention to the Petition on Robotics and Artificial Intelligence. The issues raised go just beyond the Public and Petitions Committee. You need to take it up.

Hon. Speaker: Yes, Hon. Omboko Milemba.

Hon. Omboko Milemba (Emuhaya, ANC): On a point of order, Hon. Speaker. As you delivered that ruling, the last time another petition about hardship was on this floor, you also made a ruling. That particular day, the Chair of the Education Committee was in the House, and you made him give certain responses to Members. You ruled that the Ministry, which is in charge of the hardship areas, the Minister be called here. We discovered that the hardship issue is not in the Teacher Service Commission (TSC) or Civil Service. It is actually in the Ministry of Interior and National Administration. That is the reminder that I want to put it to you. Could you confirm if the Ministry of Interior and National Administration will be coming to speak about the hardship issues?

Thank you.

Hon. Speaker: Hon. Omboko, the right route is what the Leader of the Majority Party has undertaken. I do not think it will be prudent for me to invite any minister to come here and tell us about hardships. Let us have a policy formulation you will all speak to and reach a consensus.

Hon. Members, allow me to acknowledge, in the Public Gallery, Pate Girls Secondary School from Lamu East, Lamu County. On your behalf and my behalf, I welcome the girls to the House of Parliament. You can see how immaculately dressed they are. I invite the Member for Lamu East. She has requested to be given a minute to welcome her girls into the House of Parliament. Hon. Ruweida.

(Applause)

Hon. Ruweida Mohamed (Lamu East, JP): Asante, Mhe. Spika, kwa kunipatia nafasi hii niwakaribishe wasichana wangu wa shule ya Upili ya Pate. Ninashukuru Mwenyezi Mungu kwa kutujalia kufika hapa. Ninawashukuru familia nzima ya Pate Girls. Wao kuletwa hapa ni mfumo tuliouweka Lamu Mashariki – kwamba anayeongoza, iwe shule ya msingi au ya upili, watakuja kutembea Nairobi. Mwaka wa 2022, Pate Girls walikuwa *number one Lamu East*. Ndio maana wamekuja hapa leo. Nilikuwa nimeng'ang'ana nitimize ahadi yangu kabla hatujapata majibu ya 2023. Tuombe Mungu waje hapa tena; na kama si wao, waje wengine.

Ninachukua fursa hii niwasihi watoto wangu wazuri. Ninajua maeneo tunayotoka. Mnaskia vile Wabunge wanavyozungumzia mambo ya maeneo magumu. Nyinyi mnajua maeneo magumu ina maanisha nini. Ni nyinyi wenyewe mubadilishe kule. Sisi tunang'ang'ana. Elimu ndiyo itatufanya sisi tuyabadilishe yasiwe maeneo magumu.

Hon. Speaker: Order. I gave you an opportunity to welcome your girls to the House of Parliament. Now you are giving us a lecture on hardship.

(Laughter)

Have you finished welcoming them?

Hon. Ruweida Mohamed (Lamu East, JP): Ninawakaribisha Nairobi. Ninawakaribisha Bunge. Mtembee mjionee ndio mubadilisha mawazo na akili zipanuke zaidi. Karibuni sana. Huko Pate Girls, kuna nafasi za waalimu *interns*. Watu hawataki kwenda huko kwa sababu ni maeneo magumu. Tuna nafasi 47, lakini waalimu hawataki kwenda Lamu Mashariki kwa sababu ni maeneo magumu. Wenzangu hapa wajue “maeneo magumu” inamaanisha nini. Kama kuna watu wenu ambao wangetaka kuja kule, waje. Tikiti kutoka hapa kufika Lamu Mashariki ni elfu kumi na tano. Mnalipa mwalimu *intern* elfu kumi na tano! Watasomeshwa na akina nani?

Ahsante, Mhe. Spika.

Hon. Speaker: Thank you. Hon. Members, we will now go to the next Order.

PAPERS

Hon. Speaker: Deputy Whip of the Majority Party. Give her the microphone.

Hon. Naomi Waqo (Marsabit County, UDA): Hon. Speaker, I beg to lay the following Papers on the Table:

Reports of the Auditor-General and financial statements for the years ended 30th June 2021, and 30th June 2022, and the certificates therein in respect of:

- (a) Nderi Secondary School.
- (b) St. Thomas Amagoro Girls Secondary School.
- (c) St. John School, Kanunga
- (d) Teremi Boys High School.
- (e) Sugoi Girls Secondary School.
- (f) Nambale Boys High School.
- (g) Johmark Mwanjumwa Secondary School.
- (h) Dungicha Secondary School.
- (i) Gitwe Girls Secondary School.
- (j) Chania Girls High School.
- (k) Kyamulendi Secondary School.
- (l) P.C.E.A Mai-A-Ihii High School.
- (m) Kamahindu Secondary School.
- (n) Kigwede Girls Secondary School.
- (o) St. Mathias Busia High School.
- (p) Ndumberi Girls Secondary School.
- (q) Moi Girls' High School Kamusinga.

Hon. Speaker, I lay.

Hon. Speaker: Hon. Naomi, are you done?

Hon. Naomi Waqo (Marsabit County, UDA): Yes.

Hon. Speaker: Chairperson, Public Accounts Committee.

Hon. John Mbadi (Nominated, ODM): Hon. Speaker, I beg to lay the following papers on the Table:

Report of the Public Accounts Committee on the examination of the Report of the Auditor-General on the Financial Statements for the National Government Ministries, Departments and Agencies for the Financial Year 2020/2021.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you. The Chairperson, Committee on Regional Development.

Hon. Peter Lochakapong (Sigor, UDA): Hon. Speaker, I beg to lay the following papers on the Table:

Report of the Departmental Committee on Regional Development on Budget Implementation Oversight for the State Department for ASALs and Regional Development and the State Department for Devolution for the FY 2022/2023.

Thank you.

Hon. Speaker: Thank you. Next Order!

NOTICE OF MOTION

ADOPTION OF REPORT ON FINANCIAL STATEMENTS FOR NATIONAL GOVERNMENT MINISTRIES, DEPARTMENTS AND AGENCIES

The Chairperson of Public Accounts Committee.

Hon. John Mbadi (Nominated, ODM): Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT, this House adopts the Report of the Public Accounts Committee on its consideration of the examination of the Report of the Auditor-General on the financial statements for the National Government Ministries, Department and Agencies for the Financial Year 2020/2021, laid on the Table of the House on Thursday, 30th November 2023. Thank you.

Hon. Speaker: Next Order.

STATEMENTS

SDGs PARLIAMENTARY OPEN DAY 2023

We have several Statements. The first one is by the Vice-Chairperson of the Caucus on Sustainable Development Goals (SDGs), Hon. Martha Wangari.

Hon. Martha Wangari (Gilgil, UDA): Thank you, Hon. Speaker.

Pursuant to Standing Order 43, on behalf of the Kenya Parliamentary Caucus on Sustainable Development Goals (SDGs) and Business, I wish to make a Statement regarding the Parliamentary Open Day 2023 on the SDGs. The Parliamentary Open Day 2023 on SDGs will be held on Tuesday, 5th December 2023, at the Parliament Gardens, within the Parliament Buildings. This year's event will be celebrated under the theme "Partnerships towards Realizing Agenda 2030 on Sustainable Development Goals". The occasion has been organized by the Kenya Parliamentary Caucus on SDGs and Business, with the main objective of promoting awareness of SDGs at the Parliamentary level, as well as highlighting SDGs by mainstreaming them into the legislative, oversight and budget processes. It will bring together representatives from the diplomatic corps, development partners, civil society organizations, United Nations (UN) agencies, the private sector, the Government and other key stakeholders to jointly reflect on the important role of Parliamentarians in achieving the SDGs.

The meeting will also explore partnerships and collaborations with other stakeholders in realizing and accelerating Agenda 2030. This Agenda is a global development framework that guides national, regional, and global development policy and practice. It was adopted by all UN Member States in 2015. The 17 SDGs are an integral part of the 2030 Agenda and a call to action to end poverty worldwide, protect the planet, and promote peace and prosperity for everyone, everywhere. As the elected representatives, parliamentarians have a critical role in driving forward people-centred development that is reflective and responsive to the electorate's needs.

Therefore, I invite all Members of this August House to attend and participate in this very important event and other platforms that promote the implementation of the SDGs.

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Members will also get an opportunity to enhance partnerships and collaboration with various stakeholders towards implementing SDGs.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Martha. Member for Mwea, Hon. Mary Maingi.

STATUS AND DEVELOPMENT OF ON-FARM ROADS IN MWEA IRRIGATION SCHEME

Hon. Mary Maingi (Mwea, UDA): Thank you, Hon. Speaker, for giving me this opportunity to make my statement.

Pursuant to Standing Order 44(2) (c), I wish to request a Statement from the Chairperson of the Departmental Committee on Blue Economy, Water and Irrigation regarding the status and development of the on-farm roads in the Mwea Irrigation Scheme. Mwea Irrigation Settlement Scheme is the largest rice-producing scheme in the country, contributing approximately 20 per cent of the domestic rice that is consumed in the country. The scheme, which covers an area of about 30,000 hectares, is fully developed under irrigation for paddy rice production. The cost of transporting one bag of rice from the rice farms to the main road has risen from Ksh200 to Ksh500 in some areas due to the impassable state of the on-farm roads. Consequently, this has increased the cost of rice production substantially, and this is what the Kenya Kwanza Government is seeking to reduce.

The current approach to scheme management is Participatory Irrigation Management (PIM), where the Government, through the National Irrigation Authority, and the farmers, through their organizations, have partnered in the management of the irrigation scheme. The rice farmers contribute up to Ksh5,000 annually to the National Irrigation Authority as an operation and management (O&M) fee. Out of this, Ksh3,000 is for the main crop and Ksh2,000 for the ratoon.

It is against this background that I seek a statement from the Chairperson of the Departmental Committee on Blue Economy, Water and Irrigation on the following:

1. What is the status of on-farm roads within the Mwea Rice Scheme, with details on how the operation and maintenance fee paid by farmers totalling approximately Ksh150 million every year is spent?
2. Audit of the accounts of the said operations and management fees for the last three years.
3. Explain reasons why the Scheme Management Committee, as provided for in Section 8(2) (c) of the Irrigation Act, 2019, has not been put in place to date.
4. Information on when the last distilling of feeder canals and drainage took place in the Mwea Irrigation Settlement Scheme.

I thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Mary. Is the Chairman of the Departmental Committee on Blue Economy and Irrigation, Hon. Bowen Kangogo, here? I direct that since we are going on long recess on Thursday next week if he can, he should bring the Statement on Thursday morning. In the event that he is unable to, I direct that he writes to the Member directly because the response to this statement will not come after the long recess. Okay?

Member for Runyenjes, Muchangi Karemba.

RAMPANT THEFT OF COFFEE IN RUNYENJES CONSTITUENCY

Hon. Muchangi Karemba (Runyenjes, UDA): Thank you, Hon. Speaker.

Pursuant to the provisions of Standing Order 44(2)(c), I wish to request a statement from the Chairperson of the Departmental Committee on Administration and Internal Affairs regarding the rampant theft of coffee in Runyenjes Constituency.

In the last three months, there has been rampant coffee theft within Runyenjes Constituency. For instance, on 26th August 2023, there was an attempted theft of bags of coffee belonging to Ena New Runyenjes Co-operative Society. On 25th November 2023, an unknown number of bags of coffee belonging to Ena, Kang'onde and Nduuri Coffee Factory were stolen. The recurring theft has caused anxiety among farmers and risks negatively affecting the economy of the constituency. It is imperative that adequate security be provided to ensure that the struggling farmers are assured of the security of their farm outputs to guarantee their common well-being. This is especially crucial as coffee is a major cash crop and a foreign export earner; therefore, it ought to be considered as critical infrastructure.

It is against this background that I request a Statement from the Chairperson of the Departmental Committee on Administration and Internal Affairs on the following:

1. Could the Chairperson provide information on the measures that have been put in place by the Ministry of Interior and National Administration to enhance security within the constituency and in other coffee-growing areas?
2. What measures is the Ministry taking to ensure that the perpetrators are arrested and prosecuted without delay?

Hon. Speaker: Thank you, Hon. Karemba. Is the Chairperson of the Departmental Committee on Administration and Internal Affairs here? Is it Hon. Tongoyo? He is not here. Hon. Owen Baya, give him the same direction as the one in relation to the first request for a statement.

(Hon. Ali Raso spoke off the record)

Hon. Speaker: Yes, Hon. Raso. I direct that you bring the response on Thursday next week, which will be the last day of this Session. In the event that you experience any difficulties, please write to the Member.

Hon. Ali Raso (Saku, UDA): Thank you very much, Hon. Speaker. I am much obliged.

Hon. Speaker: Hon. Kazungu Tungule, Member for Ganze Constituency. You are giving the microphone to the wrong person. Please share it with Hon. Kazungu.

DEATH OF WORKERS DURING DRAINAGE UNCLOGGING OPERATION IN MOMBASA

Hon. Kenneth Tungule (Ganze, PAA): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Transport and Infrastructure regarding the tragic deaths of three casual workers in Mombasa County.

On Friday, 24th November 2023, seven casual workers were unclogging a manhole at Makupa Roundabout when they got stuck inside the main drainage systems. Despite rescue efforts, only four workers were rescued and rushed to hospital, where they are currently receiving treatment. Sadly, three workers, who are all residents of Ganze Constituency, drowned and have been identified as:

NAME	ID NUMBER	SUB-LOCATION	LOCATION
Joseph Charo Jillo	23370540	Paziani	Bamba
Alphonse Saidi Mwaya	22793968	Lutswani	Mutsaratatsu
Kadhengi Karissa Ngumbao	23857964	Mirihini	Ndigiria

This unfortunate incident is a result of the neglected state of the drainage tunnel at the Makupa Roundabout. Reports indicate that the constant clogging of the tunnel is caused by the erection of a drainage system on top of another system by the Kenya National Highways Authority (KeNHA) during the construction of the road. It has become arduous to adequately deal with any blockages. With the current *El Nino* rains and the continued adverse weather conditions, there is an urgent need for the Government to take immediate action to address the drainage system at Makupa Roundabout and other affected areas.

It is against this background that I request a statement from the Chairperson of the Departmental Committee on Transport and Infrastructure on the following:

1. What plans has the Kenya National Highways Authority put in place to assess the existing drainage infrastructure at Makupa Roundabout and rectify it?
2. What emergency preparedness protocols are in place to mitigate future disasters?
3. What plans are in place to adequately compensate the families of Mr Joseph Jillo, Mr. Alphonse Saidi and Mr Kadhengi Ngumbao, and those who sustained injuries in the incident?

Hon. Speaker: Chairperson of the Departmental Committee on Transport and Infrastructure. I thought I saw Hon. GK here. Hon. Owen Baya, please transmit directions in the same manner as the other two requests for statements.

Deputy Leader of the Majority Party.

STATEMENT

BUSINESS FOR THE WEEK OF 4TH TO 8TH DECEMBER 2023

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon. Speaker, for allowing me to present the usual Statement by the Leader of the Majority Party on Thursdays.

Pursuant to the provisions of Standing Order 44(2)(a), I rise to give the following Statement on behalf of the House Business Committee, which met on Tuesday, 28th November 2023, to prioritise business for consideration during the week.

With regard to business scheduled for Tuesday next week, the House is expected to consider the following Bills at various stages, some of which are listed in today's Order Paper.

1. Committee of the Whole House on:
 - (a) The Gambling Control Bill, 2023; and,
 - (b) The Kenya Drugs Authority Bill, 2022.
2. Second Reading of:
 - (a) The Statute Law (Miscellaneous Amendments) Bill, 2023;
 - (b) The National Disaster Risk Management Bill, 2023;
 - (c) The Vocational Training Bill (Senate Bill No.3 of 2022); and,
 - (d) The Cotton Industry Development Bill (Senate Bill No.5 of 2023).

Additionally, debate will also be undertaken on the following Motions, should they not be concluded today:

1. Sessional Paper No.2 of 2023 on the National Tax Policy, which is ongoing and is currently on the Order Paper.
2. Reports of the Auditor-General on 23 Non-Compliant State Corporations;

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3. Report on the Proceedings of the Second Ordinary Session of the Sixth Pan-African Parliament (PAP);
4. Report on the Proceedings of the 2023 United Nations High Level Political Forum on Sustainable Development Goals; and,
5. Report on Enhancing Reporting of Parliamentary Business on Online Platforms.

In accordance with the provisions of Standing Order 42A(5) and (6), I wish to convey that the Cabinet Secretary for Roads, Transport and Public Works is scheduled to appear before the House on the afternoon of Wednesday, 6th December 2023 to respond to the following Questions.

At this juncture, I request Members whose Questions are listed for that day to be present in the House.

Question by Private Notice No...

Hon. Speaker: Order, Hon. Owen. You may skip that. I directed that we would dedicate time to clearing pending business, especially bills that are half-debated and motions that are in progress in the last two weeks of the Session. Therefore, no Cabinet Secretary will come to answer Questions next week.

Hon. Owen Baya (Kilifi North, UDA): Much obliged, Hon. Speaker.

Hon. Omboko Milemba (Emuhaya, ANC): On a point of order, Hon. Speaker.

Hon. Speaker: Yes.

Hon. Omboko Milemba (Emuhaya, ANC): Hon. Speaker, as a religious person, just like other Members, you further directed that ...

Hon. Speaker: The Cabinet Secretary for Roads, Transport and Public Works will be here to respond only to specific issues that have been raised and not to answer questions as Hon. Owen Baya was enumerating.

Hon. Omboko Milemba (Emuhaya, ANC): Well guided, Hon. Speaker.

Hon. Owen Baya (Kilifi North, UDA): Hon. Speaker, as I conclude, so that the Christian man can also listen and follow, allow me to reiterate my appreciation to Members and committees for their active participation, which has led to the conclusion of several key items. This has been a tremendous week. We have concluded several key legislations, and we will finish with another one today. I sincerely thank all Members for a job well done, although we have struggled with raising the quorum at times.

I wish to remind Members that the House is scheduled to proceed for recess next week. As such, Members should note that the House may be required to sit longer or have additional sittings on some days, including Thursday morning, to conclude any urgent matters before proceeding for the long break. I wish to remind Members that the House is scheduled to go for recess next week. As such, Members should note that the House may be required to sit longer or have additional sittings on some days, including having to sit on Thursday Morning to conclude with any urgent matters before proceeding for the long break.

In conclusion, the House Business Committee will reconvene on Tuesday 5th December 2023 to conclude business for the rest of that week. I now wish to lay this Statement on the Table of the House.

Hon. Speaker: Thank you, Hon. Owen Baya. For the avoidance of doubt, on Wednesday, Minister Murkomen will be here to answer specific Questions on roads that were raised and to which I directed that he be here. It is the issue that Hon. Omboko Milemba is trying to remind us.

Next order.

MOTION

NOTING OF REPORT OF THE KENYAN DELEGATION TO THE 4TH

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GENERAL ASSEMBLY OF THE EAPA-FSN IN KIGALI, RWANDA

THAT, this House notes the Report of the Kenya Delegation to the 4th General Assembly of the Eastern Africa Parliamentary Alliance on Food Security and Nutrition, held in Kigali, Rwanda from 7th to 9th December 2022, laid on the Table of the House on Tuesday, 11th April 2023.

(Moved by Hon. Dan Wanyama on 30.11.2023 – Morning Sitting)

(Debate concluded on 30 .11.2023 – Morning Sitting)

Hon. Speaker: Hon. Members, before I put the Question to this Order, I have been requested by Hon. Emmanuel Wangwe, the Chair of Public Investments Committee on Social Services, Administration and Agriculture that we stay Order number 11 to next week because he has some emergency to attend to. I have acceded to the request. So, Clerk, when you get to Order number 11, you skip it and move to the next Order.

Hon. Speaker: Hon. Members, I will now put the Question

(Question put and agreed to)

Hon. Speaker: Order, Hon. Members. May you be upstanding.

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

[The Speaker (Hon. Moses Wetang'ula) left the Chair]

IN THE COMMITTEE

[The Temporary Chairlady (Hon. (Dr) Rachael Nyamai) in the Chair]

THE NATIONAL LOTTERY BILL
(National Assembly Bill No.69 of 2023)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Order, Hon. Members. This is the Committee of the whole House. We are considering the National Lottery Bill (National Assembly Bill No.69 of 2023).

(Clauses 3 and 4 agreed to)

Clause 5

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Mover.

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady. I beg to move:

THAT, clause 5 of the Bill be amended —
(a) in sub-clause (1)—

(i) by deleting the words “the National Lottery” appearing in paragraph (c) and substituting therefor the words “internal security and national administration”;

(ii) by inserting the words “or her” immediately after the word “his” appearing in paragraph (d);

(iii) by deleting paragraph (e) and inserting the following new paragraph:

“(e) four other members who have proven business acumen or applicable knowledge or experience with regard to matters connected to the functions of the Board, appointed by the Cabinet Secretary, comprising of:

(i) be an Advocate of the High Court of Kenya;

(ii) a practicing Certified Public Accountant;

(iii) a representative of persons with disability;

and,

(iv) a representative of the faith-based organizations;

(iv) by inserting the words “who shall be an *ex officio* member” immediately after the words “the Chief Executive Officer” appearing in paragraph (f);

(b) by inserting the following new sub-clause immediately after sub-clause (1)–

“(1A) In appointing the members of the Board under subsection (1)(e), the Cabinet Secretary shall ensure that not more than two-thirds of the members are of the same gender, shall observe the principle of regional and ethnic balance and shall have due regard to the principle of fair competition and merit as the basis for the appointments.”

(c) in sub-clause (2) by deleting the words “holds a university” appearing in paragraph (b) and substituting therefor the words “holds a bachelors”;

(d) in sub-clause (3) by deleting the words “twelve months” appearing in paragraph (e) and substituting therefor the words “three years”; and,

(e) in sub-clause (4) by inserting the words “based on satisfactory performance” immediately after the words “one further term of three years”.

The amendment seeks to:

1. mandate the Principal Secretary in the Ministry for the time being responsible for matters relating to internal security and national administration to sit in the Board as the representative of the parent Ministry in line with the provisions of Section 6(1)(c) of State Corporation Act CAP 446;
2. provide for the requirement of fair competition and merit as the basis for appointment in line with Article 10 and 232 of the Constitution;
3. provide for gender neutral drafting in paragraph 1(d);
4. remove reputation in paragraph 2(b);
5. ensure inclusivity and equality among the persons appointed by the Cabinet Secretary;

6. provide that the Chief Executive Officer shall be a member of the Board as an *ex-official* member, so as to align the provision with the recommendations of the Mwongozo Code of Governance for State Corporations;
7. increase the period within which a member of the Board should be required to not have actively engaged in the gambling sector so as to eliminate the possibility of conflict of interest; and,
8. ensure that re-appointment to the Board shall be based on satisfactory performance.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): The Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairlady, I want to propose a further amendment to sub-clause (4) which talks of “based on satisfactory performance” immediately after the words “one further term of three years”. This makes the law very subjective. How do you tell what is satisfactory performance? If you read the Bill, it says that: “a member shall be appointed for a term of three years and shall be eligible for re-appointment for one further term of three years.” It has been that way in line with all the other legislations that we have done. So, we should delete “satisfactory performance.” It is automatic that one was evaluated. If you say “satisfactory performance” you must go to the definitions and define it. Otherwise, it will become very subjective.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(Question of the further amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chair.

Hon. Daniel Wanyama (Webuye West, UDA): We will drop it. I concur with the further amendment.

(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)

(Clause 5 as amended agreed to)

(Clause 6 agreed to)

Clause 7

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Mover.

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 7 of the Bill be amended—

(a) in sub-clause (2) by deleting paragraph (f); and,

(b) by deleting sub-clause (3).

But I drop (f) and retain (b). The justification is to remove the repetition in sub-clause (3) since the provisions are contained in paragraph 2 (c).

(Question of the amendment proposed)

Hon. Daniel Wanyama (Webuye West, UDA): I have dropped (a) in sub-clause 2. The one deleting paragraph (f).

(Proposed amendment by Hon. Wanyama to clause 7(a) dropped)

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

(Clause 7 as amended agreed to)

(Clause 8 agreed to)

Clause 9

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 9 of the Bill be amended by—

(a) renumbering the existing provision as sub-clause (1); and,

(b) inserting the following new sub-clause after sub-clause (1)—

“(2) Despite the provisions of sub-section (1), not more than four committees may be established under this section.”

The amendment seeks to align with the provisions of the Mwongozo Code, which limits the number of committees to four.

(Question of the amendment proposed)

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

(Clause 9 as amended agreed to)

Clause 10

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 10 of the Bill be amended by deleting the words “in consultation with the relevant Government Agencies.”

The amendment seeks to align with the provisions of Article 230(4) of the Constitution which provides that it is the function of the Salaries and Remuneration Commission to advise the national Government on the remuneration and benefits of public officers.

(Question of the amendment proposed)

(Question, that the words to be left out)

be left out, put and agreed to)

(Clause 10 as amended agreed to)

Clause 11

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I withdraw the amendment to Clause 11.

(Proposed amendment by Hon. Wanyama to clause 11 withdrawn)

(Clause 11 agreed to)

Clause 12

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 12 of the Bill be amended—

- (a) in sub-clause (1) by deleting the words “Secretary to the Board” and substituting therefor the words “Corporation Secretary”; and,
- (b) in sub-clause (2) by deleting the words “Secretary to the Board” and substituting therefor the words “Corporation Secretary”.

The amendment seeks to align the title with the Mwongozo Code to provide that the Secretary to the Board shall be the corporation secretary.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Melly.

Hon. Julius Melly (Tinderet, UDA): Chair, I agree with the amendment by the Mover in the sense that, in most instances, corporation secretaries are legal counsels to institutions and they understand the workings of the institution and the legal framework underpinning how an institution operates. Previously, it used to be the CEO. In some instances, the CEO has no legal background on how the institution work.

I support.

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

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

(Clause 12 as amended agreed to)

Clause 13

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 13 of the Bill be amended by deleting the words “in consultation with the relevant Government agencies” and substituting therefor the words “on the advice of the Salaries and Remuneration Commission”.

This is to align the provision with Article 230(4) of the Constitution, which provides that it is the function of the Salaries and Remuneration Commission to advise the national Government on the remuneration and benefits of public officers.

(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 13 as amended agreed to)

(Clause 14 agreed to)

Clause 15

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 15 of the Bill be amended in sub-clause (1) by deleting the words “Chief Executive Officer or such other person as the Board may direct” and substituting therefor the words “Corporation Secretary”.

The amendment seeks to align with the Mwongozo Code which provides that the corporation secretary shall be the custodian of the common seal and account to the board for its use.

(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 15 as amended agreed to)

(Clauses 16 and 17 agreed to)

Clause 18

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, the Bill be amended by deleting clause 18 and inserting the following new clause—

18. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

- (2) The annual estimates shall make provisions for all estimated expenditure of the Board for the financial year concerned, and in particular shall provide for the—
- (a) payment of salaries, allowances and other charges in respect of the staff of the Board;
 - (b) payment of pensions, gratuities and other charges in respect of former staff of the Board;
 - (c) proper maintenance of the buildings and grounds of the Board;
 - (d) maintenance, repair and replacement of the equipment and other property of the Board;
 - (e) payment of allowances of the members of the Board and the members of the Board; and,
 - (f) creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, insurance, replacement of buildings or equipment, or in respect of such other matters as the Board may deem fit.

The amendment seeks to provide for the comprehensive provision on annual estimates as per the house drafting style.

(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 18 as amended agreed to)

(Clause 19 agreed to)

Clause 20

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 20 of the Bill be amended—

- (a) in sub-clause (1) by inserting the words “the National Assembly” immediately after the words “Controller of Budget”; and,
- (b) by deleting sub-clause (2) and inserting the following new sub-clause—

“(2) The Board shall continuously and on a regular basis monitor and report on its performance and on the performance of the operator on a quarterly basis, with a summary of performance reported through the Board’s annual report on the basis of a clear outcome-based performance framework based on the policy developed by the ministry responsible for performance and service delivery.”

The justification on (a) is to ensure that reports of the Board are also submitted to the National Assembly. This will ensure that the House exercises its oversight role by overseeing the Board. This is pursuant to Article 95 (5) (b) of the Constitution.

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The justification on (b) is to specify the organ of the National Government which is responsible for developing the framework on performance. According to Executive Order No.2 of 2023 on the Organisation of the Government of the Republic of Kenya, the function of overseeing performance of Government Ministries, Departments and Agencies is placed in the Ministry of Public Service, Performance and Delivery Management.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): The Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairlady, first I want to propose a further amendment on Clause 20 (b) by deleting the last words, "by the Ministry responsible for Public Service, Performance and Delivery Management" to read: "by the National Government". The sentence will read thus: "on the basis of a clear outcome-based framework based on the policy developed by the National Government".

This is to give flexibility to His Excellency the President because if it is specific to the Ministry of Public Service, Performance and Delivery Management... If in future the docket is moved to another Ministry, he will be legally tied. That role should be specific to National Government, and then it will be upon the President to decide on which Ministry to place it. This is because even the argument of the Committee is based on an Executive Order which can be revised and a new one issued. With such changes, it can even be placed under the Ministry Youth Affairs, Arts and Sports. That will be difficult for Government to be re-organised since its prescribed in the law.

Secondly, I have not been convinced by the Chairman on (a). Clause 20 states:

"The Board shall prepare quarterly and annual financial and non-financial reports in a format prescribed by the Public Sector Accounting Standards Board and submit the same to the National Treasury with copies to the Controller of Budget and the Commission on Revenue Allocation".

I do not see the need for submitting those reports to the Commission on Revenue Allocation, unless I am convinced otherwise.

Additionally, there is no need for the reports to be submitted to the Controller of Budget or the National Assembly. This is because Clause 18 already gives an elaborate reporting mechanism that will deal with audited financial accounts. What shall the National Assembly do with quarterly financial reports? I am not convinced on why the Committee wants quarterly reports to be submitted to the National Assembly. Where will these reports go to and what does National Assembly do with them? This is because National Assembly oversees State Corporations, but is not involved in their day-to-day running. That should be left to the National Treasury and the Auditor-General. I propose that the Chairman agrees that we drop the amendment that requires reports to be submitted to the National Assembly, Commission on Revenue Allocation, and Controller of Budget because I do not see their role.

Thank you, Hon. Temporary Chairlady.

(Question of the further amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman.

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I disagree with the Leader of the Majority Party. This is because we are carrying out our oversight role as is enshrined in the Constitution.

Two, it is also reasonable enough that, that body is overseen to make sure that the resources being channelled to the Board are well articulated in terms of accounting and making

sure that the Board is doing the right thing. There is no harm in the three bodies having the information on how the Board is run. These are only reports that we need to look at and make sure that whatever the Board is doing is right. So, I do not know why the Leader of the Majority Party is saying that the reports should not be submitted to those institutions that we have suggested.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Melly.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Temporary Chairlady. I agree with the Leader of the Majority Party, specifically on the issue of quarterly reports. Quarterly reports are working reports which shall be summed up in the annual reports that are submitted to the House. So, by bringing quarterly reports, we are micro-managing the institution and that is the work of the Board and institution. So, I disagree with the Chairman on that.

(Hon. Daniel Wanyama spoke off the record)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman, let us hear Hon. Melly and then we can come to you.

Hon. Julius Melly (Tinderet, UDA): As I was saying, we have four quarters in a year. Those reports will be brought every quarter to the committees. Those are the working reports of committees that shall be tabled before Boards. The Boards then work on them and prepare the summative annual report that shall be tabled before the House.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman.

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I do not know where the Chairman, Departmental Committee of Education and the Leader of the Majority Party have got this word 'quarterly report'. What is stated here is: "ensure that reports of the Board are also submitted to the National Assembly to enable..."

Hon. Kimani Ichung'wah (Kikuyu, UDA): On a point of information, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Would you like to be informed by the Leader of the Majority Party?

Hon. Daniel Wanyama (Webuye West, UDA): I do not want to be informed.

Hon. Kimani Ichung'wah (Kikuyu, UDA): On a point of order, Hon. Temporary Chairlady.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): What is your point of order, Leader of the Majority Party?

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairlady, since the Chairman does not want to be informed, let me educate him. We are amending the Bill and not the talking notes by the Chairman. The Bill reads: "The Board shall prepare quarterly..." Indeed, that is where I am getting 'quarterly' from. We are amending the Bill, Chairman. Let me help the Chairman. The Hon. Speaker always encourages the chairpersons of committees to be present in the House throughout so that they can know what goes on in the House. The Chairman cannot be amending a Bill and does not have a copy of that Bill. Let me donate my copy to him. Our argument is simple. I have also consulted with the counsel in charge of the Committee who has confirmed that there is no basis for the National Assembly to get quarterly reports. Where will those quarterly reports go to? Our financial reports come to either the Public Investments Committee, in the case of a Board like this, or to the Public Accounts Committee. They only look at audited accounts. So, if that report comes to this House, what will this House do with it? That is the question.

Hon. Temporary Chairlady, I implore Hon. Chairman to withdraw this amendment, and instead move a further amendment to delete the need for those reports to go to the Controller of Budget. Since this is a Board, she has no business with it. They should be taken to the

National Treasury and a copy to the Auditor-General who has a basis to start looking at the operations of that organisation ahead of the close of the financial year.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): That is in Clause 20. Hon. Chairman, you may refer to it, as we give one more Member a chance to contribute. Hon. Tongoyo.

Hon. Gabriel Tongoyo (Narok West, UDA): Hon. Temporary Chairlady, I want to echo what the Leader of the Majority Party has said. This is not the first Board. We have a standard practice on how Boards are run or operated. Boards analyse the quarterly reports. I support that this amendment should be withdrawn and amended, as suggested by the Leader of the Majority Party.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Owen Baya, you have an intervention.

Hon. Owen Baya (Kilifi North, UDA): I support the amendment by the Leader of the Majority Party. What will we do with quarterly reports in this House? Which committee will handle them? It is in good order that we only receive annual reports and audited accounts.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Lesuuda. She is not in the House.

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

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

(Clause 20 as amended agreed to)

Clause 21

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Mover.

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I withdraw the amendments in Clause 21.

*(Proposed amendment by
Hon. Daniel Wanyama to Clause 21 withdrawn)*

(Clauses 21 and 22 agreed to)

Clause 23

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Mover.

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 23 of the Bill be amended—

- (a) In sub-clause (3) by deleting the words “in the opinion of the Board was” appearing in paragraph (a)(iii) and substituting therefor the words “is proven to be”;
- (b) by deleting sub-clause (4) and inserting the following new sub-clause—
“(4) The Board shall satisfy itself that the applicant has sufficient appropriate knowledge or experience to carry out the operation of a

National Lottery and will be able to conduct the National Lottery in accordance with this Act.”

The amendment seeks to eliminate the subjectivity in the provision which will be open to abuse and provide correct grammatical flow in sub-clause 4.

(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)

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

(Clause 23 as amended agreed to)

(Clauses 24, 25 and 26 agreed to)

Clause 27

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Mover.

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 27 of the Bill be amended in sub-clause (2) by deleting the word “gambling” appearing in paragraph (b) and substituting therefor the words “conduct of the national lottery”.

The amendment seeks to ensure that the mandate of the National Lottery Board shall be limited to the conduct of the National Lottery but not to gambling.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Leader of the Majority Party.

Hon. Kimani Ichung’wah (Kikuyu, UDA): Hon. Temporary Chairlady, I want to move a further amendment.

Hon. Temporary Chairlady, I beg to move:

THAT, Clause 27 of the Bill be amended in sub-clause (2) by adding the words “and the conduct of the National Lottery” immediately after the word “gambling” appearing in paragraph (b).

This lottery is also gambling. If we remove the mandate of the Cabinet Secretary and the Board in ensuring that there is responsible gambling, then we will be doing injustice to all the issues that people spoke to when we were debating the Gambling Bill and also in this one. There ought to be very responsible gambling.

I propose that we drop the deletion of the word “gambling” and add the words “and the conduct of the National Lottery. Clause 27(2)(b) will read: “Subject to subsection (1), the Cabinet Secretary, the regulatory authority and the Board shall in exercising their respective mandates under this Act adopt strategic and inclusive frameworks for responsible gambling and the conduct of the National Lottery.”

(Question of the further amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman.
Hon. Daniel Wanyama (Webuye West, UDA): I concur with him.

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

(Clause 27 as amended agreed to)

Clause 28

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Mover.
Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, Clause 28 of the Bill be amended—

- (a) in sub-clause (3) by deleting the word “revoke” appearing immediately after the words “intends to” and substituting therefor the word “vary”; and,
- (b) in sub-clause (5) by deleting the words “cease to be valid” and substituting therefor the words “be deemed to be varied”.

The amendment seeks to ensure consistency as the provision speaks on variation of the conditions of the license to operate the National Lottery and ensure that where the operator fails to give reasons, the license shall be varied and not invalidated for that reason.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Melly.

Hon. Julius Melly (Tinderet, UDA): Hon. Temporary Chairlady, I want the Mover to be clear that when a license is issued, it is for a specific kind of business or activity in gambling or lottery. He has to come out clearly on this issue of varying because one license cannot serve another activity. I kindly request that he explains further.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman.

Hon. Daniel Wanyama (Webuye West, UDA): The variation is on the same license but not on another one. It is also on the same activity.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Catherine Omanyoo. Do you intend to comment on this amendment?

Hon. Catherine Omanyoo (Busia County, ODM): Yes, Hon. Temporary Chairlady. The renewable license should be issued once a year.

(Laughter)

*(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 28 as amended agreed to)

(Clauses 29 and 30 agreed to)

Clause 31

Hon. Daniel Wanyama (Webuye West, UDA): Thank you Hon. Temporary Chairlady. I beg to move:

THAT, clause 31 of the Bill be amended in sub-clause (1) by deleting the words “suspension or” appearing immediately before the word “revocation”.

This Clause provides for the revocation of a licence to operate a national lottery, and not for the suspension of the licence. The provisions on suspension of a licence are contained in clause 32.

(Question of the amendment proposed)

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

(Clause 31 as amended agreed to)

Clause 32

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 32 of the Bill be amended in sub-clause (2) by deleting the words “*mutatis mutandis*” and substituting therefor the words “with the necessary modifications”.

The word *mutatis mutandis* is legalese whose meaning may not be understood by a lay person. Therefore, there is a need to draft the provision in simple language.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Leader of the Majority Party.

Hon. Kimani Ichung’wah (Kikuyu, UDA): Hon. Temporary Chairlady, I object. You know, we are legislating and law is legalese. The lawyers in the Committee should have explained to the Members what is *mutatis mutandis*. I was actually going to google. Any layman like myself can google what *mutatis mutandis* means. It means, with necessary modifications. It is used when comparing two or more cases or situations making necessary alterations while not affecting the main point at issue. Therefore, it is important for that to be there because you are saying the provisions under the suspension revocation in Clause 31, the one stipulated all the way to number six will apply as they are with necessary modifications in Clause 32. If you remove this *mutatis mutandis* – and it is not Mutandi... Mutandi is someone who comes from the Eastern part of Kenya. I heard Hon. Osoro saying Mutinda. It is *mutatis mutandis*.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): You are replacing *mutatis mutandis* with the necessary modifications?

Hon. Kimani Ichung’wah (Kikuyu, UDA): Yes.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Meaning the same?

Hon. Kimani Ichung’wah (Kikuyu, UDA): Yes. Why do we not just leave it to stay?

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairman.

Hon. Daniel Wanyama (Webuye West, UDA): Thank you, Hon. Temporary Chairlady. You can see that even the Leader of the Majority Party is having problems with the terminology *mutatis mutandis*. You can imagine of Wanjiku in the village. We are making this law to be understood very clearly, so that somebody cannot enter into issues purporting to have not understood the terminologies that are used. I beg to say that we have replaced the same *mutatis mutandis* and substituting therefore ‘with the necessary modifications.’

I uphold.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Melly.

Hon. Julius Melly (Tinderet, UDA): I do support the Mover, the Chairman Departmental Committee on Sports and Culture; that, we actually need to make the law readable, acceptable and understandable to the people. We should not be having archaic foreign terms that are not easily understood. I think the Hon. Chairman is very current and we really need to support him on this one.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Leader of the Majority Party.

Hon. Kimani Ichung’wah (Kikuyu, UDA): Hon. Temporary Chairlady, I have been convinced by the Hon. Chairman that *mutatis mutandis* is not in place but ‘with necessary modifications’ can work. Let me support the Hon. Chairman.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you. Hon. Catherine Omany.

Hon. Catherine Omany (Busia County, ODM): Thank you Hon. Temporary Chairlady. This language that is under seal or incognito is not good even to the Wanjikus or Nafulas of today. Simplicity is better because it is fair to both the lawyer and the other person who needs to also be part of the understanding.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

*(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 32 as amended agreed to)

(Clauses 33 and 34 agreed to)

Clause 35

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 35 of the Bill be amended in—

(a) sub-clause (1) by deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) a child;”

(b) sub-clause (4) by deleting the words “children do” and substituting therefor the words “a child does”.

The Bill defines the word ‘child’ in the interpretation clause. Therefore, there is need to maintain consistency in drafting.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

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(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 35 as amended agreed to)

(Clauses 36, 37, 38 and 39 agreed to)

Clause 40

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 40 of the Bill be amended—

(a) by deleting sub-clause (3);

(b) in sub-clause (4) by deleting the words “the time specified by the regulatory authority shall be forfeited and paid to the Fund” and substituting therefor the words “five years shall be presumed to be abandoned and shall be surrendered to the Unclaimed Financial Assets Authority.”; and

(c) by inserting the following new sub-clause immediately after sub-clause (4) –

“(4A) An operator shall keep and maintain a register of prizes surrendered under subsection (4).”

The amendment seeks to, one, eliminate conflict. The provision provides that the prize monies paid under the Act shall not be charged Income Tax. An exemption to Income Tax is best provided for under the Income Tax Act cap 470. The prize monies should be exempted through an amendment to the First Schedule of the Act.

Secondly, the amendment seeks to ensure that the Bill complies with the provisions of the Unclaimed Financial Assets Act, No.40 of 2011 with regard to the assets that are presumed to be abandoned.

Lastly, the amendment obligates an operator to maintain a register of prizes surrendered to the Unclaimed Financial Assets Authority for purposes of accountability.

(Question of the amendment proposed)

Hon. Kimani Ichung’wah (Kikuyu, UDA): Hon. Temporary Chairlady, I particularly support the deletion of sub-clause (3), which was exempting the prize monies paid under this Act from Income Tax. In fact, my view was that this would have been a very unconstitutional provision in the Bill.

Therefore, I support.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Thank you.

(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 added
be added, put and agreed to)*

(Clause 40 as amended agreed to)

Clause 41

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 41 of the Bill be amended in sub-clause (2) by deleting the word “organization’s” appearing in paragraph (a) and substituting therefor the word “operator’s”.

This is to provide clarity on the entity to be audited by the person appointed by the regulatory authority.

(Question of the 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 41 as amended agreed to)

Clause 42

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 42 of the Bill be amended in sub-clause (1) by deleting the words “National Lottery” appearing in paragraph (d).

The justification for this amendment is that the word “Board” has already been defined in the Bill to mean ‘the National Lottery Board.’ Therefore, any subsequent reference to the “Board” means the National Lottery Board.

(Question of the amendment proposed)

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

(Clause 42 as amended agreed to)

Clause 43

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 43 of the Bill be amended—

- (a) in sub-clause (4) by deleting the words “National Lottery”; and,
- (b) in sub-clause (5) by deleting the words “National Lottery”.

The justification for this is that the word “Board” has already been defined in the Bill to mean the National Lottery Board.

(Question of the amendment proposed)

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

(Clause 43 as amended agreed to)

Clause 44

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 44 of the Bill be amended—

(a) in sub-clause (1) by deleting the word “oversight” and substituting therefor the word “administration”;

(b) in sub-clause (2) –

(i) by deleting the words “or non-statutory bodies, or non-state actors” appearing in paragraph (g);

(ii) by deleting paragraph (m) and inserting the following new paragraph—

“(m) ensure that the amount of money that may be spent from the Fund on administrative expenses is 3 per centum of the total funds in a fiscal year;”

(c) by deleting the last sub-clause and inserting the following new sub clause—

“(3) The Board shall, while proposing and determining the allocation, setting the criteria and conditions for accessing the Fund, ensure equitable distribution across the country.”

The amendment seeks to provide that the Board shall be responsible for the administration and not oversight of the fund to avoid conflict of interest. It also restricts the potential recipients of the Fund to statutory bodies. It ensures that the administrative and operational cost for the regulatory authority and the Board is capped at 3 per cent according to clause 42 (2). It also ensures that the profits on the National Lottery shall be channeled towards the good cause of the state actors.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Leader of the Majority Party.

Hon. Kimani Ichung’wah (Kikuyu, UDA): Hon. Temporary Chairlady, I want the Chairperson to take us slowly. I got the first bit. Can he take us sub-clause by sub-clause? He is reading his justification in a very jumbled up manner. His justification on the first clause is clear. I need clarification for Clause 44 (1) (m) and (2).

Hon. Daniel Wanyama (Webuye West, UDA): Sub-clause (m) is insertion of:

“(m) ensure that the amount of money that may be spent from the Fund on administrative expenses is 3 per centum of the total funds in a fiscal year;”

The justification for this amendment is that we are reducing this from 5 per cent, and not 3 per cent. I hope it is clear now. The last sub-clause is to ensure that the proceeds of the National Lottery shall be channeled towards good causes of state actors.

(Hon. Kimani Ichung'wah consulted Hon. Daniel Wanyama)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Departmental Committee Chairperson, would you like to explain further as we wait for further consultations?

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, we want to ensure that these funds are not abused in any way. Therefore, the good causes will be identified by the state actors.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): You are proposing to delete the words "Including allocations to state and non-state actors". Is that so?

Hon. Daniel Wanyama (Webuye West, UDA): Yes. Just give me a minute.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I persuade the Chairperson to drop the last sub-clause that says:

"(3) The Board shall, while proposing and determining the allocation, set the criteria and conditions for accessing the Fund, ensure equitable distribution across the country including allocations to state and non-state actors."

The import of this amendment was pegged on another amendment on clause 21 that we have since dropped. So, this is not proper because as Clause 21 appears in the Bill, they are non-state actors.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Departmental Committee Chairperson, are you convinced?

Hon. Daniel Wanyama (Webuye West, UDA): I concur.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Departmental Committee Chairperson, can you be on record that you have dropped that amendment?

Hon. Daniel Wanyama (Webuye West, UDA): I drop the amendment to the proposed new sub-clause 44 (c) (3).

*(Proposed amendment by Hon. Dan Wanyama
to new sub-clause 44(c) (3) dropped)*

*(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)*

(Clause 44 as amended agreed to)

Clause 45

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

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THAT, Clause 45 of the Bill be amended in sub-clause (1)

- (a) by deleting the words “and non-state” appearing in paragraph (c); and
- (b) by deleting sub-paragraph (d)(iv).

The amendment seeks to ensure that the allocations are restricted to state actors. In (b), the Fund shall be restricted to raising additional revenue for the national Government.

(Question of the amendment proposed)

Hon. Catherine Omanyo? Hon. Kombe, Member for Magarini, you have indicated that you want to say something on Clause 45. What is your comment?

Hon. Harrison Kombe (Magarini, ODM): Thank you, Hon. Temporary Chairlady. I support the Chairman.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Has Hon. Dorothy Ikiara stepped out? Hon. Melly.

Hon. Julius Melly (Tinderet, UDA): Hon. Temporary Chairlady, we need to give these monies to all the deserving people noting that they are to benefit the welfare of both state and non-state actors, more specifically those who have been affected by floods. We are, therefore, dropping part (a) of the amendment.

I support.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Leader of the Majority Party.

(Laughter)

Hon. Kimani Ichung’wah (Kikuyu, UDA): I am laughing because the Chairman of the Departmental Committee on Education has now taken over the work of the Chairman of the Departmental Committee on Sports and Culture. He is dropping an amendment without the owner dropping it. He should be persuading the Chairman of the Departmental Committee on Sports and Culture to drop part (a) of the amendment. The Chairman of the Departmental Committee on Sports and Culture is convinced that we should drop part (a) on deleting the words ‘non-state’. The reason is simple. There are many non-state actors, including the people of Magarini, who may want to benefit from the money meant for flooding. They should be allowed to obtain this money from the national lottery.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman, what is your comment? Are you convinced?

Hon. Daniel Wanyama (Webuye West, UDA): I concur.

(Part (a) of the proposed amendment by Hon. Daniel Wanyama withdrawn)

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

(Clause 45 as amended agreed to)

(Clause 46 agreed to)

Clause 47

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 47 of the Bill be amended by deleting sub-clause (1) and inserting the

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following new sub-clause –

“(1) The funds from the Fund shall be accessible to state actors for the purposes of undertaking projects and programs for good courses.”

Hon. Temporary Chairlady, the amendment seeks to provide proper grammatical flow and to ensure that the accessibility of the Fund is restricted to state actors. We also want to drop that amendment because they are related.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Have you also dropped that amendment?

Hon. Daniel Wanyama (Webuye West, UDA): Yes. We drop that amendment because it is related to the other one.

(Proposed amendment by Hon. Daniel Wanyama dropped)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Does that mean there is no amendment?

Hon. Daniel Wanyama (Webuye West, UDA): Yes.

(Clause 47 agreed to)

(Clauses 48, 49, 50 and 51 agreed to)

New Clause 5A

THAT, the Bill be amended by inserting the following new clause immediately after clause 5:

Vacancy in the Board.

- 5A. (1) The office of the Chairperson or a member of the Board appointed under section 5(1)(a) and (e) shall become vacant if the holder—
- (a) dies;
 - (b) resigns from office by notice in writing -
 - (i) in case of the Chairperson, to the President; and,
 - (ii) in case of a member, to the Cabinet Secretary;
 - (c) is convicted of an offence and sentenced to imprisonment for a term exceeding six months without the option of a fine;
 - (d) has been absent from three consecutive meetings of the Board without a notice to the Chairperson; or
 - (e) is removed in accordance with subsection (2).
- (2) A member of the Board may be removed from office for—
- (a) violation of the Constitution or any other law;
 - (b) gross misconduct, whether in the performance of the functions of the office of a member or otherwise;
 - (c) physical or mental incapacity to perform the functions of the office of a member;
 - (d) incompetence; or
 - (e) bankruptcy.
- (3) The Cabinet Secretary shall ensure that any vacancy in the Board is filled as soon as practicable in accordance with the provisions of the Act.

(The new clause was read a First Time)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Mover.

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move that the New Clause 5A be now read a Second Time.

The amendment seeks to introduce provisions relating to vacancy and removal of the members of the board which is currently not provided for in the Bill.

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

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

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

(Schedule agreed to)

Clause 2

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, clause 2 of the Bill be amended in the definition of “Cabinet Secretary” by deleting the words “the National Lottery” and substituting therefor the words “internal security and national administration”.

(Question of the amendment proposed)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): We pushed the Chair to move Clause 2 when he was still perusing his papers. So, he has not given us any justification. Before we decide, it is only fair that we hear the justification.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Chairman, this is the one concerning the Cabinet Secretary. Have you seen it?

Hon. Daniel Wanyama (Webuye West, UDA): Yes, Hon. Temporary Chairlady. It is Clause 2. I have seen it.

I beg to move that Clause 2 of the Bill be amended as it appears...

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): You have already moved. You only need to give the justification, Chair.

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, the amendment seeks to ensure that the Cabinet Secretary responsible for National Administration shall provide the Ministerial oversight over the national lottery as well as offer policy guidance. Further, the Cabinet Secretary for National Administration will be best placed to put in place enforcement measures in the conduct of national lotteries as well as effective management of the risk associated with the industry such as tax evasion, money laundering and financing of terrorism.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairlady, I have heard the justification. Clause 2 defines the term “Cabinet Secretary” as the Cabinet Secretary for the time being responsible for matters related to national lotteries. The Chairperson has just said that the Cabinet Secretary for Interior and National Administration will be best placed to put

in place enforcement measures in the conduct of national lotteries. I agree with the second bit on effective management of risks associated with the industry such as tax evasion, money laundering and financing of terrorism. I wonder if stipulating the Cabinet Secretary responsible for a certain function will not restrict the Head of State in terms of general organisation of the Government. Ideally, it is up to His Excellency the President to designate the Cabinet Secretary responsible for a particular docket and their functions.

I, therefore, beg the Chairperson to reconsider that particular amendment. We are represented on the National Lottery Board since we included the Principal Secretary in charge of the State Department for Interior and National Administration. That should suffice so that we do not restrict the President by law when it comes to the general organisation of the Government. We are using legislation to organise the Government yet we cannot do that on behalf of the President.

I request the Chairperson to drop that amendment.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairperson, you have heard the Leader of the Majority Party. What is your comment?

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I have heard the Leader of the Majority Party. The only Ministry that can ensure that monies from the national lotteries are safeguarded is the Ministry of Interior and National Administration. That is why we had to ensure that the National Lottery Board falls under that Ministry. It is because the Ministry has the personnel to combat that menace. That is the justification.

However, the Leader of the Majority Party has a point. I, therefore, buy his idea because I know the President will use his wisdom to see to it that the Ministry with the capacity to handle that menace is allocated this portfolio.

I, therefore, withdraw this amendment.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Have you been convinced by the comments of the Leader of the Majority Party?

Hon. Daniel Wanyama (Webuye West, UDA): I concur with him.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Do you agree with the Leader of the Majority Party?

Hon. Daniel Wanyama (Webuye West, UDA): I agree.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Member for Bomet.

Hon. Richard Yegon (Bomet East, UDA): Thank you very much, Hon. Temporary Chairlady. I wanted to support my Chairperson, but he has already supported the suggestion by the Leader of the Majority Party. I wish the Chairperson could listen to me. I am a Member of the Committee and I wanted to contribute.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Did you want to contribute to Clause 2?

Hon. Richard Yegon (Bomet East, UDA): Yes. The President is in charge of all Ministries. Therefore, specifying that the National Lottery should fall under a specific Ministry does not stop the President from re-organising his Government.

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): Hon. Chairperson, I would like you to go on record that you have withdrawn the amendment to Clause 2.

Hon. Daniel Wanyama (Webuye West, UDA): I withdraw my amendment to Clause 2.

(Proposed amendment by Hon. Daniel Wanyama withdrawn)

(Clause 2 agreed to)

Long Title

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The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): There is an amendment to the Title. Hon. Chairperson.

Hon. Daniel Wanyama (Webuye West, UDA): Hon. Temporary Chairlady, I beg to move:

THAT, the Bill be amended by deleting the Long Title and substituting therefor the following new Long Title—

“An Act of Parliament to provide for the establishment of the National Lottery; provide for the establishment, powers, and functions of the National Lottery Board; provide for the establishment and administration of the National Lottery Fund; and for connected purposes”

(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)

(Long Title as amended agreed to)

(Clause 1 agreed to)

The Temporary Chairlady (Hon. (Dr) Rachael Nyamai): We now go to reporting.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Chairlady, I beg to move that the House reports its consideration of the National Lottery Bill (National Assembly Bill No.69 of 2023) and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

IN THE HOUSE

[The Temporary Speaker (Hon. David Ochieng') in the Chair]

MOTIONS

CONSIDERATION OF REPORT ON THE NATIONAL LOTTERY BILL

The Temporary Speaker (Hon. David Ochieng'): Thank you Members, for your industriousness and patience during the Committee of the whole House.

I call on the Temporary Chairlady to report to the House.

Hon. (Dr) Rachael Nyamai (Kitui South, JP): Hon. Temporary Speaker, I beg to report that a Committee of the whole House has considered the National Lottery Bill (National Assembly Bill No.69 of 2023) and approved the same with amendments.

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The Temporary Speaker (Hon. David Ochieng’): Mover.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I beg to move that the House do agree with the Committee in the said Report.

I request the Member for Kabete, who is the Vice-Chairperson of the Departmental Committee on Sports and Culture, Hon. Githua Wamacukuru, to second the Motion for agreement with the Report of the Committee of the whole House.

Hon. Githua Wamacukuru (Kabete, UDA): I second.

(Question proposed)

Hon. Members: Put the Question!

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, allow me to take this opportunity to thank Members of the Departmental Committee on Sports and Culture and all Members who have sat...

(Technical hitch)

The Temporary Speaker (Hon. David Ochieng’): Give him a microphone.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you. I thank Members who have sat throughout the Committee of the whole House. This is where actual legislation is done. I must commend all Members. I hope they will all be present on Tuesday afternoon to testify to what the few Members present this afternoon have accomplished.

The Temporary Speaker (Hon. David Ochieng’): Thank you, Leader of the Majority Party. We will wait for Members to come on Tuesday afternoon and do the needful.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Temporary Speaker, I seek your indulgence. I rise under Standing Order 53 to request that we defer putting the Question to the next sitting.

The Temporary Speaker (Hon. David Ochieng’): Putting of the Question on the Report of the House on the National Lottery Bill is deferred to Tuesday afternoon next week.

(Putting of the Question deferred)

Next Order.

ADOPTION OF SESSIONAL PAPER NO.2 OF 2023: THE NATIONAL TAX POLICY

THAT, this House adopts the Report of the Departmental Committee on Finance and National Planning on its consideration of Sessional Paper No.2 of 2023 on the National Tax Policy, laid on the Table of the House on Thursday, 23rd November 2023, and approves Sessional Paper No.2 of 2023 on the National Tax Policy as recommended in the Report.

(Moved by Hon. Kuria Kimani on 30.11.2023 - Morning Sitting)

(Resumption of debate interrupted on 30.11.2023 - Morning Sitting)

The Temporary Speaker (Hon. David Ochieng’): Members, debate on this Motion started this morning and it is ongoing. The Mover had already moved the Motion. Leader of the Majority Party, you will not have the first bite today. Take some water. Let us have Hon. David Mboni, if he is in the House, to contribute to this Motion.

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Hon. David Mwalika (Kitui Rural, WDM): Thank you, Hon. Temporary Speaker, for allowing me to say one or two things on the National Tax Policy. This is the first Tax Policy in the country and it is long overdue. In the last Parliament, we were pushing the National Treasury to bring it to the House to be adopted. The proposed tax policy has two aims. First, to create predictability in the tax laws. Having been in the Departmental Committee on Finance and National Planning, where we handle tax issues, I know that tax in this country cannot be predicted. We had cases where this time, we were zero-rating some goods and the same goods in the next year went to exemption. This creates a lot of uncertainty in terms of doing business. To have predictability of tax is very important. The policy should propose that before changing any tax, its impact should be analysed so that for the next one, we know the impact in terms of economic growth. Some of the taxes are very harmful to the economy.

Tax policy also proposes to expand the tax base. Manufacturing, finance, insurance and Information, Communication and Technology (ICT) are sectors which contribute 17 per cent of the Gross Domestic Product (GDP). They contribute 53 per cent of the tax revenue in this country. If you look at that, 17 per cent of the GDP contributing 53 per cent of the tax revenue means that these sectors are overtaxed. It is, therefore, important to expand the tax base.

In 2013, our tax revenue to GDP was at 22 per cent. Currently, it is at 15 per cent, and the globally accepted level is around 25 per cent. This means that there are many other sectors, because the economy has been expanding, but our tax revenue to GDP is going down. We are not doing well in terms of tax collection. When you look at the policy, there are very many gaps in it. I was wondering, was the National Treasury ready to bring this policy? It is something which they picked somewhere and decided to bring to the National Assembly.

There are a few very important proposals. One is that the National Treasury should be able to go through and improve it so that it can be a good policy. There is a need to provide for policy concerns, objectives, actions and outcomes, which are lacking in it. There is also a proposal to expand the tax base to include a digital economy. This is a sector which has been expanding. There are so many players in it and there is a lot of money we can make from there. There is also a proposal to expand the informal and agricultural sectors. Agriculture contributes about 24 per cent of GDP, yet it contributes less than 5 per cent of tax revenue in this country.

The policy also provides for budgetary funding to ensure the settlement of tax refunds. There are so many companies and businesses which are owed a lot of refunds by the Kenya Revenue Authority (KRA). Therefore, they keep on going to KRA to look for their refunds and this is affecting their operations and businesses. The provision for funding for the refunds should be provided in the budget so that at least these people can get their refunds. There are what we call incentives and exemptions. These should only target manufacturing and investment. They should be sustained for not less than five years so that they can spur economic growth.

The other one is excise duty. Currently, we are imposing excess excise duty on each thing. Excise duty is supposed to be for luxury goods. We are suggesting that excise duty should go to luxury goods and communication services and not essential goods like food, medicine and extras. The policy should also eliminate double taxation. When we tax our goods and expand them to our neighbouring countries, they become very expensive.

Hon. Temporary Speaker, it is not bad to tax but there is an extent to which you can tax. We have overdone it on some goods like cigarettes and beer. If you go to the Kenyan borders with her neighbours – Busia and Namanga – most of the cigarettes and beer consumed by Kenyans in those areas come from our neighbouring countries because they are cheaper there than in Kenya. We also need to look at why we should keep taxing some of these sectors. Some sectors are highly taxed like gambling and gaming. Sometimes I wonder why we should not as a country say we do not require some of these sectors and do away with them.

High taxation reduces disposal income. When you impose high taxes, we reduce the disposal income, which in turn reduces demand, production and tax and, therefore, GDP. We also need to look at this. On the business side, I was looking at the figures for foreign direct investment in the country. I was comparing 2002 and 2001. In 2002, Uganda got US\$2.5 billion as opposed to US\$1.2 billion the previous year. Tanzania got US\$1.2 billion and the following year they got US\$1.3 billion. Kenya improved. In 2001, we got US\$300 million and the following year we got US\$751 million. What this tells us is that foreign direct investors prefer our neighbours to Kenya. One of the contributing factors is taxation. Some of the companies setting operations in Tanzania and Uganda are Kenyan companies. They are producing for Kenya under Common External Tariff. Basically, we are losing. We need to adopt this policy and ensure the proposals by the Committee are implemented. This will promote a conducive environment not only for businesses, but for Kenyans so that they can have disposal income, consume and inspire economic growth.

Thank you. I support.

The Temporary Speaker (Hon. David Ochieng’): Hon. Milemba.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Temporary Speaker, for this chance. It is true that since Independence, we have never had a tax policy. This is the first one being prompted. I thank the Chairman and the Committee for having moved us a step forward to a tax policy which can generally manage our legislation on taxes and regulate matters tax.

I also had a chance to listen to the Chairman when he was moving this Motion and many of the things he spoke about were good and to some extent they would relieve Kenyans who are currently talking about just two things: foreign debt and taxes. There are other things, but those ones hold more priority.

This policy will first give Parliament a chance to be the only body that is regulating the taxes that are imposed on our citizens. It will curb the idea of the taxes that are imposed by the East African Community Customs Management Act, 2004 (EACCMA), which sometimes are implemented without approval of Parliament which leads to double taxation. This will be very good so that Parliament takes total responsibility of the management of taxes. The proposal is very good and it will go a long way in having tax control in one centre.

Also, this policy will lead to a situation whereby we can predict the tax regime. This will go a long way in attracting foreign investors. The speaker preceding me talked about how investors are moving from Kenya to Tanzania and the neighbouring countries. It is important that we have a tax policy with a time frame that indicates the period that a levied tax will take before it is changed. We have been operating on a knee jerk reaction where you can change it anytime. Investors who come in having been attracted by a particular tax law, go ahead and invest a lot of money in that particular sector only to realise that the same has been changed in six months or one year. That makes them run away to countries like Tanzania and Uganda possibly where there are serious tax policies where you can predict what is going to happen in the sector. So, I find that very good.

This is something we have to look at very seriously because we need to attract foreign investors. We are in a very competitive market with our neighbours. Originally, we used to boast of being the most attractive people in terms of attracting foreign investors, but passively because we had infrastructure and labour, but now, the issue of taxes is making us lose and compete weakly against our other competitors who are also our neighbours.

Let me also indicate that the digital sector has really expanded. Be that as it may, it is the sector which will take more of the businesses because everything is getting digitized. Unless we tap into that sector, it will be very difficult to reach out to those who are doing business. This tax policy indicates that it wants to widen the net to reach the businesses being done online and digitisation which again is being promoted by the Kenya Kwanza Government given that

we are going to do hubs all over and the young people will be doing business. It is very important that we mop out that. It is also very fine that we expand our tax base by going in all sectors especially the digital platforms which are the modern sector of business that we are having.

There was an issue on the Excise tax. The Excise Tax is supposed to be punitive in a way on products that are discouraged like alcohol and gambling which we have been dealing with a few minutes ago. The Excise Tax in Kenya has also been applied to many other goods which otherwise should not be put in this particular bracket. I hope in this policy, and I overheard the Chairman mention something on this, they are going to be limited to luxury goods. In economics, we used to call them the giffen goods.

(Hon. Omboko Milemba's microphone was switched off)

The Temporary Speaker (Hon. David Ochieng'): Give him a minute.

Hon. Omboko Milemba (Emuhaya, ANC): I thought it is 10 minutes. We used to call them the giffen goods which is a luxury and needs to be discouraged. The policy generally is good.

As I conclude, let us make sure that Kenyans feel reprieve in this sector. We can attract foreign investments as well as support the Government to have enough tax money.

Thank you, I support.

The Temporary Speaker (Hon. David Ochieng'): The Leader of the Majority Party and Member for Kikuyu. We keep losing Kikuyu as a constituency.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Temporary Speaker. I am very proud to represent the good people of Kikuyu even as we serve the rest of the country. I rise to support this Motion on the National Tax Policy. This National Tax Policy is one of the measures that the Kenya Kwanza Government has taken to ensure that there is uniformity and certainty in our tax policies. This will ensure that we enhance transparency in tax policies and form a basis for tax reforms and a review of the existing tax legislation now and in the future.

Kenya joins a few nations in Africa like South Africa and Nigeria that also have a National Tax Policy. When we lack a national tax policy or tax policy like this, then our tax regime becomes rather unpredictable. The unpredictability of any tax regime in a country leads to loss of foreign direct investments in terms of foreign direct investors who may choose to invest in their country or any country because they cannot predict the kind of returns they would make in that country.

We are, in a way, seeking to create attractiveness and retain our foreign direct investments when we have a very predictable and certain tax policy that even investors out there or anybody in the world can predict what taxes they are bound to pay if they invest in this country. We are happy that this is coming at a time when we have just concluded the National Dialogue Committee's work. I must commend the Chairman of the Departmental Committee on Finance and National Planning for the robust public participation he conducted during the legislation of the Finance Bill, 2023. It is out of robust public participation that the majority of Kenyans now realise that there is something called a Finance Act, 2023.

Before this year, Kenyans never knew what a Finance Bill is. But after public participation that was conducted by the Departmental Committee on Finance and National Planning, Kenyans now know that there is a Finance Bill and what it does; that it designates what taxes they are to pay. No wonder in the judgement that came the day before yesterday, the courts noted that indeed, the National Assembly conducted adequate and meaningful public participation in enacting that legislation.

We have had a lot of engagements throughout the year even in the courts, on the Finance Bill, 2023 and the Finance Act, 2023. A lot was said about our tax regime. Beyond the Finance

Act, we have carried on this conversation on the issues around the cost of living in the National Dialogue Committee discussion. There are those especially in the minority and those not on the Government side who were of the view that it is out of the tax regime that the cost of living in this country has gone up. We were however of a different view. You will see that from the report that we just submitted to the principles of the two coalitions and which we will be tabling before the House, one of the things that those of us who were on the Kenya Kwanza side portended is that the high cost of living is not principally out of our tax regime. The high cost of living is a conglomeration of many factors be it the war in Ukraine and Russia; the war in the Middle East; global challenges with the recession post Corona Virus Disease (COVID-19); the slow recovery of the global economy post COVID-19; or the monetary policy tightening in the United States (US). All these factors have contributed in a big way in escalating the cost of living in our country and in the world, because Kenya is not unique.

Hon. Temporary Speaker, a few others in the opposition were telling us, 'Oh, it is out of taxation'. Up to now, I have heard people saying it is 'the frequent increases in taxation'. I was just asking the Chairman of the Departmental Committee on Finance and National Planning whether he has introduced another Bill, other than the one he did in July, that people keep talking about increases in taxation every now and then as if this House is legislating on tax every day. This is not the case.

As I said, this National Tax Policy will inform a review and a reform of the entire tax regime. I am glad that when the Cabinet Secretary for the National Treasury and Economic Planning appeared before the National Dialogue Committee, he asserted that fact. In fact, in our report, we have agreed with him that we shall give him up to the end of February next year to table before Parliament a reviewed and reformed national tax regime. It will be targeting all our tax instruments and not just dwelling on the Value Added Tax (VAT), fuel or the Housing Levy. I have tremendous respect for judges in the Judiciary, but surprisingly, I heard them saying the Housing Levy is unconstitutional on the basis that it is being levied on people who are salaried. I wondered because we also have Pay As You Earn (PAYE) that is only paid principally by people who are salaried. As I have said, I have tremendous respect for our judges, but if I were a lawyer like you, I would have really wanted to appear before that judge and ask them that if PAYE is taxed on basis of being salaried, and the Housing Levy is also being taxed to those who are salaried, then they should tell us that PAYE is also unconstitutional, if that is the argument.

The Temporary Speaker (Hon. David Ochieng'): Leader of the Majority Party, I think the National Assembly was a party to this suit. Advise them to appeal.

Hon. Kimani Ichung'wah (Kikuyu, UDA): We will advise them on appeal. I am certain that the able lawyers led by our senior Sir George, Member for Tharaka Constituency, will be articulating these issues. In fact, I called Hon. Murugara and some of our legal counsels to ask them if they can ask for me in court that if PAYE is not unconstitutional, how then is the Housing Levy unconstitutional on the basis that it is levied on salaried people? How will you then levy it on people who are not earning a salary if you do not levy PAYE on those not earning a salary?

I am saying this because the Cabinet Secretary, National Treasury and Economic Planning, indicated that they intend to review the entire tax regime and all the tax instruments whether it is VAT, Excise Duty, Income Tax and all other levies that fall under our tax regime.

I beg that you add me two minutes to finish that point.

The Temporary Speaker (Hon. David Ochieng'): I have actually given you ten minutes and you have exhausted the ten already. You have one minute to finish.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you. You know I have also been pausing to listen to you when you interrupt me. That is why I am begging your indulgence for two more minutes.

The Temporary Speaker (Hon. David Ochieng’): Okay. Go ahead.

Hon. Kimani Ichung’wah (Kikuyu, UDA): If we were to review all these tax instruments, we would find the optimal level of taxes on each of the instruments with a view to broaden our tax base, increase our national revenue raised from taxation, and lessen the tax burden on Kenyans. That is the problem that Kenyans are complaining about. Those who are salaried may feel that they are overburdened by taxation because there are those in the informal sector who are probably not paying tax. There are tax instruments that we could use and utilise to make sure that we collect more taxes even from those in the informal sector especially those whom what they do is not known.

The second issue is on the question of whether or not we are overtaxing Kenyans. Recently when I visited France, I was in a meeting where the president of the International Monetary Fund (IMF) was asking European countries to increase their tax to Gross Domestic Product (GDP) ratios. In that meeting I was seated next to someone from Austria and I asked them what the tax to GDP ratio in their country is. They told me 43.6 per cent. While in the same meeting, I googled and found that France was in the region of 48 per cent. Close to 50 per cent. The US is at 16 per cent on federal tax. If you go to the States, a State like California, that is the size of Kenya although its economy is much bigger, is at 13.5 per cent. That tells you they are about 29.5 per cent. Our tax to GDP ratio today is only at about 15 per cent. When you say Kenyans are being overtaxed and yet we are the same people going to the US and France to borrow money, that money is not manna from heaven. It is money that those countries have raised from their taxpayers. We want other people to be taxed for us to get that money, but we do not want to pay taxes.

I support this National Tax Policy. It will inform us based on empirical data from the review what the National Treasury is doing. I must thank the Danish International Development Agency (DANIDA) for supporting the National Treasury in doing that comprehensive tax review that will ensure we get a tax regime that is fair, equitable, transparent and predictable. It will help us to not only attract, but also retain foreign direct investments. More importantly, it will ensure that we raise adequate revenue to finance our budget. We shall broaden our tax base so that every Kenyan bears an equal burden in payment of taxes.

I hope that as I indicated to the Cabinet Secretary of the National Treasury and Economic Planning, we shall have a review, especially of the tax expenditure on VAT. He indicated to us during the National Dialogue Committee that about 18 per cent of the tax expenditure goes to tax refunds on VAT and 95 per cent of those tax refunds go to only two products; milk and bread.

Hon. Temporary Speaker, you need to ask yourself who the beneficiaries are.

(Hon. Kimani Ichung’wah’s microphone was switched off)

The Temporary Speaker (Hon. David Ochieng’): Thirty seconds.

Hon. Kimani Ichung’wah (Kikuyu, UDA): Hon. Temporary Speaker, Kenyans must begin to ask themselves how we arrived at that situation where we spend 95 per cent of our tax refunds on two companies dealing with bread and milk. When I spoke about instituting a State capture commission, I meant business. This House must act and ensure that it is there, so that we know how we influenced tax policies to ensure that milk processors get 95 per cent of our VAT refunds at the expense of Kenyans. Then you incite them that they are being overtaxed, yet you do not tell them that you steal and take their taxes through State capture by influencing Government policy.

As we debate the National Tax Policy, this House must end the era of State capture. We shall not have tax policies that will be geared towards ensuring that people get tax refunds for the benefit of private businesses at the expense of majority of Kenyans whom you turn around

and incite. I can only see the Member for Gem and Member for Busia. I wish those who shout over the weekends in funerals were here this afternoon to discuss the National Tax Policy. This is where you discuss tax matters, but not in funerals and churches. Come and debate them on the Floor of the House. You can see that there are only three Members on the Minority Party side: Member for Gem, Member for Busia and...

(Laughter)

The Temporary Speaker (Hon. David Ochieng’): Well said, Leader of the Majority Party. I need to inform you that all of us are waiting for the day you will announce the members of the State capture commission. You keep on talking about it. Everyone is asking when it will be appointed.

The Member for Karachuonyo, Hon. Andrew Adipo Okuome.

Hon. Adipo Okuome (Karachuonyo, ODM): Thank you, Hon. Temporary Speaker, for giving me the opportunity to contribute.

I will start by urging the Leader of the Majority Party to note that the concern of Kenyans on taxation, as it is today, is justified. Using the National Tax Policy that has been brought to us, we should find a way to answer people’s concerns. They are concerned with our tax affairs. We need a tax policy that will encourage businessmen to do their work. If they succeed, they will have enough revenue which we can tax. That is the only way tax will be spread thinly on individuals.

I have mentioned businessmen. Let me say the same on manufacturers. If we have a tax policy that does not care about their businesses, we are going to collect more taxes from them. I particularly picked up these two bodies because the tax we have today has made them migrate from this country to other countries. They are creating unemployment and shortage in foreign exchange here. Therefore, we must have a policy that encourages them to earn more for us to tax them more. When I say this, I am talking of a friendly taxation. It allows them to make good profit and at the same time remain with enough for other things upon which we can also tax them.

The tax policy we use can either destroy or create employment. The tax regime that we have today is very unfriendly to creation of employment. This must end. I am glad we are formulating a policy on taxation. Let us direct it towards creation of employment. We want to create incentives to pay tax for both individual companies and manufacturers. If the tax is not a burden to them, they will pay tax voluntarily. They will not need anybody or income tax officers to have a whip at their back for them to pay. They will volunteer to pay. We will teach them that it is their responsibility to pay tax because it is what makes the Government run. How much tax are we talking about? If it is a killing tax which allows nobody to remain with income for food, then people will evade it. They will try means of not paying it. You will force people to pay what you cannot get. In English, they say you will be killing the goose that lays the golden egg.

The National Tax Policy is extremely important. Since everybody is crying that our taxation is too much, I wish they came to contribute to this particular Motion so that we can start again and use taxation to create employment, investments and enable manufacturers to come to Kenya. It will also enable everybody to pay taxes without crying. People are crying currently. That is why I am talking of creating friendly tax.

[The Temporary Speaker (Hon. David Ochieng’) left the Chair]

[The Temporary Speaker (Hon. Farah Maalim) took the Chair]

Thank you, Hon. Temporary Speaker, for giving me the opportunity to contribute.

The Temporary Speaker (Hon. Farah Maalim): The Member for Tinderet, Hon. Julius Melly.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Temporary Speaker. I rise to support Sessional Paper No.2 of 2023 on the National Tax Policy.

I laud the good work done by the Chairman of the Departmental Committee on Finance and National Planning. Over the years, we did not have a national tax policy. We have a lot of Acts of Parliament on taxes, but a national tax policy will guide the taxation system in this country. I thank the Committee for the good work.

The Sessional Paper is a blueprint which will guide this country to avoid the unpredictability of the taxation system. If it is not well anchored in a policy and good direction, it ends up making investors to run away from the country. It gives a very detailed overview on what the National Treasury should have in place, before they engage in any form of taxation system. There is also the motivation aspect of it. This will make sure the taxpayers do not look at the tax they pay as punitive, but as a form of enhancing and promoting the environment under which they can do business. Businesses thrive in a proper regulated tax environment.

I have looked at the Sessional Paper which shows the various ways in which the National Treasury is guided to ensure that any form of taxation that comes into play has to first of all favour the business environment. It will promote and ensure there is creation and distribution of wealth, and there is fairness or equity across the republic and in all levels of producers.

A tax system that does not look into the importance of the businesses and how to grow a business is actually inhibiting the growth of a country and that is why the national policy is having a global look from the lowest level to the big businesses and even the people who are in the pay roll and in the informal sector. This is a very important policy and this gives the direction under which, as a country, in all sectors of the economy, be it in agriculture, innovation, technology and in all these aspects, we will not develop taxation systems or policies that do not favour the growth of the industries that we have.

Lastly, if you look at this policy, it seeks to establish a tax incentives and exemptions scheme that is aligned to Kenyans development agenda. The taxes that we have, if they are not well taken care of and administered, are going to make investors run away. This is a very good policy and I want to tell the Chairman that it is the right way to go and very soon our economy will grow. Thank you. I support.

The Temporary Speaker (Hon. Farah Maalim): Member of Parliament of Mosop Constituency.

Hon. Abraham Kirwa (Mosop, UDA): Thank you for this opportunity to also contribute on this debate on Tax Policy 2023. I want to thank the Committee for the great job that they have done so far to make sure that we overhaul the tax policy in the country because of the challenges that we have had in the past in tax collection. Kenya is one of the countries that collect taxes, but the rate of collection is slow.

By the Committee sitting and looking at all the challenges this country has gone through, I support the suggestions that they are bringing forth. One is enhancing transparency in tax processes, and addressing the challenges that there is a huge population that is not being taxed. As such, the Committee has given proposals on how we can increase our tax base. If we increase it, it means we are going to get more taxes. The current tax policy does not address these matters. Another difficult area which they looked into is the digital sector.

There is amoral business that is going on in the digital world, but the current system does not factor what can be done to tax those businesses. This tax policy is giving suggestions on ways that we can go about it so that we can collect more taxes from digital businesses. They also came up with solutions for a tax system that we have had for a very long time and we

continue to use. Any investor who is planning to go to any country, the first thing that they look at is the tax policy of that country and if it is not favourable to their businesses they will not even consider investing there.

I want to thank the Committee because they sat and looked at the factors that we will consider making it attractive for most of the businesses to come to this country. As we move forward as a nation, we will make sure our taxes are favourable to the businesses and individuals and also that we are increasing the tax base to make sure that everybody is paying their fair share. There is also a huge population and businesses that are evading taxes in this country. As such the policy has addressed those matters and the issues as to what can be done to make sure the individuals who are evading taxes pay including arresting them. There are so many activities and suggestions from this Committee and I support. If we are going to enact this new tax policy, Kenya is going to increase its revenue and it is going to be fair and transparent for most businesses. This is going to attract many investors in this country. I support.

The Temporary Speaker (Hon. Farah Maalim): Hon. Catherine Omanyo

Hon. Catherine Omanyo (Busia County, ODM): Thank you. This tax issue is a headache. I think it is being implemented haphazardly and it is becoming like somebody gives you snow in your hands and tells you that in a couple of years, the snow will still be in your hands. The nations that the Leader of the Majority Party was counting and giving a percentage of how much they deduct have sealed gaps of corruption and their systems work. Our nation is suffocating with so many issues to the level that any Kenyan today, if they were to speak the truth loud enough, the truth is that this Government is a burden to everyone including the President himself.

We need to re-think before we introduce many other taxes because Kenyans are already bleeding and we do not want to make our people, whom we are supposed to protect, to suffer because of dubious, crafty or doggy agendas that we suddenly wake up to. I know very well we have been forced to accept these things, yet we were never asked. Where was public participation done?

The Temporary Speaker (Hon. Farah Maalim): What is your point of order, Hon. Kimani Kuria

Hon. Kimani Kuria (Molo, UDA): Is it in order for the Member to misinform this House completely? Before she contributes to this debate, let her take time to at least read what she is contributing to. Saying that we are introducing dubious and crafty taxes on this is completely wrong and out of order.

Hon. Catherine Omanyo (Busia County, ODM): I want to inform my colleague that if you want anybody to accept what you want to introduce to me, let me also participate. Kenyans are stakeholders; they voted and trusted that we are coming to put their interest first. All of us at the crack of dawn wake up to these news. You cannot keep giving me something to swallow and I do not understand how you have prepared it and with who you are benefiting. These tax levies are a burden.

(Laughter)

The Temporary Speaker (Hon. Farah Maalim): Order Hon. Catherine Omanyo. It is also part of the Standing Orders of the House that you maintain relevance. The relevance here is that it is the creation of a national tax policy. It is not a tax that is being debated right now. It is the institution that is going to be managing the taxes in the future. It is a Sessional Paper, which are policy papers that the Government gives out. Therefore, whether we need a tax policy or not is what should become the gist of the debate. Proceed.

Hon. Catherine Omanyo (Busia County, ODM): Thank you for that, but anything that is introduced is suspicious; I do not trust it anymore. Let Kenyans decide, come up with their own ways and then bring them up and we will help. I have heard the Leader of the Majority Party talking of housing levy, and milk tax. I do not know where he was taking us to and nobody corrected him when he was talking about milk. I knew who he was mentioning, but I just want to beg again that it is too much. Let us have things that work, not just beautiful theories with no pragmatism. Thank you.

The Temporary Speaker (Hon. Farah Maalim): Member for Nyando Constituency, Hon. Jared Okello.

Hon. Jared Okello (Nyando, ODM): Thank you for the opportunity and on the same breath delve into this Sessional Paper No. 2 of 2023 on National Tax Policy. This Government puts the horse before the cart or vice versa. What ought to have happened in the early days of this administration was to bring this sessional paper with very good recommendations on expanding the tax bracket. What we witnessed with our courts a few days ago on the Housing Levy, that talked about discrimination and only targeting the salaried people, could have been cured if this Sessional Paper was brought in good time. Therefore, we have caught ourselves in this situation at a time when the whole country – let me borrow from the words of my sister Hon. Catherine Omanyo – is bleeding. I tend to believe that certain times when people occupy positions of authority, they block their ears to anything else, but sycophancy. When Kenyans talk about the burden on their shoulders, in terms of taxation, then something needs to happen.

This Sessional Paper, if properly midwived, can give a remedy to the few who are in the tax bracket now and have to contend with servicing all the expenses of our country. It becomes very difficult for any Government to target those who are not salaried - people in the informal sector - unless it is charging VAT on the products that they consume. Any other tax targeting those in the informal sector becomes quite a challenge to marshal and put inside the basket.

I do not know what can cure the economy of this country because none other than the Deputy President, Hon. Rigathi Gachagua, who was here for one term, came out openly and said they have lost track of this country; they do not know how to fix the economy, and anyone who has an idea should come forth and they will listen, without providing a platform upon which all those proposals will be channelled to.

Hon. Kuria Kimani (Molo, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): What is your point of order, Hon. Kimani Kuria?

Hon. Kuria Kimani (Molo, UDA): Hon. Temporary Speaker, is it in order for my good friend, Hon. Okello, to mislead this House? The statement that His Excellency the Deputy President said that there is no plan and anybody could come to advise is untrue. I was with His Excellency the Deputy President during the 40th Institute of Certified Public Accountants of Kenya (ICPAK) conference in Mombasa, and it is important to put the context in which that conversation was said. To say that we have no plan or direction and anybody can come and advise is completely out of order and the Member should retract that statement because it is not true.

The Temporary Speaker (Hon. Farah Maalim): Proceed, Hon. Okello Jared.

Hon. Jared Okello (Nyando, ODM): Thank you very much, Hon. Temporary Speaker. Whereas I speak very good dholuo, I equally speak much better English than when I speak dholuo. When the Deputy President speaks, I do not need any further interpretation because I know English very well.

Aside from that, we just saw a few days ago the Kenyan National Bureau of Statistics (KNBS) giving us a report that over 10,000 firms have since severed relations with Nairobi Securities Exchange (NSE). That is testament to things working the wrong way in this country.

Today, the NSE tinkered with certain regulations so that they can maintain those already in the net because everybody is getting out. This is something that they ought to have done immediately a few companies started getting out of the scheme.

Therefore, the National Dialogue Committee, which has given certain recommendations, some of which have been trashed by this administration, if given an opportunity, could have brought forth workable ways of addressing the perennial challenges that we experience as a country.

No country can develop through taxation and I do not know where this Government learnt that a country can only move through taxation. One fundamental thing that you must do is to widen the manufacturing sector, not heaping a lot of taxes on an already taxed populace. When these taxes continue to shift from one taxation regime to another, no investor wants to come to a place where there is no certainty. All what investors would want, first and foremost, is stability then certainty, in terms of taxation. When we have to change and reposition all our taxation regimes, then that portends great danger to this country.

It is quite absurd that those in Government, and I am taking a tangent from my very initial statement, tend to block their ears on the plight of every Kenyan, including very good ideas that they should have benefited from. Today, when we talk about this, they say we belong to the opposition, as if this country belongs to only Kenya Kwanza. When we are suffering, everybody is suffering.

Lately, I have seen what is happening in Rift Valley where cabinet secretaries cannot be given an opportunity to address any gathering. They are not talking to those cabinet secretaries; they are talking to their appointing authority that they are tired of him and his taxation regimes. Something must happen. Whether this Sessional Paper will address it, I do not know, but as every other Kenyan, I am equally very pessimistic.

Thank you.

The Temporary Speaker (Hon. Farah Maalim): Hon. Njeri Maina.

Hon. Njeri Maina (Kirinyaga, UDA): Thank you, Hon. Temporary Speaker. It is very imperative for Members of Parliament to be honest to the citizens of this nation. There is no other way that any Government raises money internally besides collection of revenue. I always hear Members lobbying for projects in their constituencies such as roads, amenities and infrastructure, and I wonder where they expect money to come from.

This sessional paper brought forth by my very good friend, Hon. Kuria Kimani, Member of Parliament for Molo Constituency, is going to ensure equity and fairness. It is going to act as a guide for any other future legislation in regard to taxation. It is populist to throw words around, to dim or purport to defend and protect the interests of the people, whereas we are really not telling them the real dire situation that this country has been in for years.

Perhaps what we should be questioning and demanding, is to ensure that the money collected and/or borrowed, is applied to the benefit of Kenyans in this nation. What we should be angling at is to ensure that our health sector, which is ailing in many parts of this country, our education sector, and other infrastructure like roads are improved.

There was an uproar here when there was a proposition to cut the budget for road infrastructure. So, it is doublespeak for Members to seem to be aggressively fighting against a sessional paper that is going to ensure that there is equity in all constituencies of this nation.

I support this very timely Sessional Paper for the betterment of our nation.

The Temporary Speaker (Hon. Farah Maalim): Member for Limuru, Hon. John Kiragu.

Hon. (Eng.) John Kiragu (Limuru, UDA): Thank you, Hon. Temporary Speaker, for giving me an opportunity. I rise to support the Sessional Paper on the National Tax Policy, mainly because it is a good thing for this nation.

As a country, we have been spoilt over the years by depending on other people to pay their taxes and for us to go and beg them to support our development operations. In countries like Austria, if you declare that you are a Christian, they take 10 per cent of your earnings, which is then given to many of us here. We think this money is free, but some of it comes with attachments. This policy is calling for us to relook at the way we do our taxes. Can we find out the loopholes that are there? Many say that people are running from this country due to taxes. Some companies exist mainly because they have been evading taxes. They bring materials to the country and make money without contributing to their rightful share of taxes. In the hotel industry, some people are paid overseas despite having visitors, who leave nothing in this country. We never get to know how much tax they ought to surrender to this nation.

This policy is a strategy for us to enlarge our base so that we can include those who are not salaried. If you visit different parts of the country, including my home area, you will see herds of cows and goats that produce milk. There is no record of how much they get and how much they pay as tax. If we approach these people who are outside the tax bracket and ensure that they also pay taxes, we can support ourselves. I feel that the strategy is right and this policy is good for us to adopt. We will finally establish that this nation will not develop by begging and kneeling to our masters out there. It is about time we look at our problems and find solutions to them. I support.

The Temporary Speaker (Hon. Farah Maalim): Member for Gem.

Hon. Elisha Odhiambo (Gem, ODM): Thank you, Hon. Temporary Speaker. I want to congratulate the Member for Molo, Hon. Kimani, for this Sessional Paper. Members have given their views, but as I listened, some of them lost context in that conversation. The policy objective is to expand the tax base to enhance fairness and equity in the tax system. I think that is what Hon. Kimani is looking at curing. This will ensure issues of equity and taxation are fairly expended to the members of the public and the business community so that the country can grow. It is important to note that this country cannot grow without taxes. The country has loans to pay and without taxing the citizenry for the services they enjoy, it cannot redeem itself. I believe our grandchildren will have the opportunity to enjoy the services, but pay the loans that we take now.

I rise on Standing Order 95 to request that the Mover be called upon to reply.

The Temporary Speaker (Hon. Farah Maalim): Order, Member for Gem. You do not rise on a point of order to call the Mover to reply after you have made your contribution. Only a Member who has not contributed can rise on a point of order. In this case, you did not rise on a point of order. You were given an opportunity by the Speaker. Hon. Richard Yegon.

Hon. Richard Yegon (Bomet East, UDA): Thank you, Hon. Temporary Speaker. I also rise to touch on this National Tax Policy. For a country to run well, we need to look at how we collect and put taxes in order. The challenges we have faced before in the collection of taxes have to be looked into. No country in the world runs without issues of taxes. This country needs to seriously implement this National Tax Policy. I know that if some of my able colleagues, like Jared Okello, came to power tomorrow, they would increase taxes for the Government to run. In fact, we are currently heading in the right direction. I support.

The Temporary Speaker (Hon. Farah Maalim): The Nominated Member, Hon. Jackson Kosgei.

Hon. (Dr) Jackson Kosgei (Nominated, UDA): Thank you, Hon. Temporary Speaker. I take the Floor to support the Motion on this Sessional Paper concerning taxation. Scholars studying the rise and fall of empires in history have previously said that two things bring down nations and regimes. First is what they consider as an internal decay, which is the failure to cap those things that undermine what people do to survive. Second is a wrong fiscal policy. If a nation is unable to balance between meeting its bills and raising revenue, it is destabilised. It is therefore important to consider this Sessional Paper that will provide a policy framework

with the intention of bringing everybody on board. This will ensure we equitably contribute towards the generation of wealth of the country.

Hon. Temporary Speaker, I support.

The Temporary Speaker (Hon. Farah Maalim): Hon. Waqo Naomi.

Hon. Naomi Waqo (Marsabit County, UDA): Thank you, Hon. Temporary Speaker, for allowing me to add my voice to this very important debate. I support this Sessional Paper No.2 of 2023 on the National Tax Policy. I also congratulate Hon. Kimani...

(Hon. Richard Yegon spoke off the record)

The Temporary Speaker (Hon. Farah Maalim): You are right. It is No.2 of 2023. Proceed.

Hon. Naomi Waqo (Marsabit County, UDA): I congratulate Hon. Kimani for bringing it to this House. I would like to encourage our young people because any time Hon. Kimani does his work diligently as the Chairman, I am encouraged. We have many youths who can emulate and be inspired by him and see some of the good work they can do to serve this country in the best possible way. I support the policy because it offers solutions to the ailing tax system by promoting equality in tax administration and providing policy guidelines. At the moment, many Kenyans are crying because of taxation and everybody is talking about it. In the past, we did not have good policies in place that guarded our interests. But once we put this in place, then we will protect our citizens and also take care of ourselves in many ways.

In this policy, we have also seen that we have a huge untaxed informal sector that the Government can tap into by having innovative ways to increase the tax collection. This will help us because we know that Kenya has suffered in the past due to a lot of borrowing and debts that Kenya Kwanza Government is now paying. We have a lot of things that we need to put into consideration. If we have this policy in place, we will be able to collect taxes even from the informal sectors that we are currently not taxing hence sustain our country. There is nothing as good as self-sustenance. As Africans, we have in the past depended a lot on grants and begging. However, our country can set an example to others by sustaining ourselves, giving support to the citizens, living a better life, giving best education to the young ones and serving the elderly and the vulnerable well. Nothing else can be better than that.

Hon. Temporary Speaker, with those few remarks, I support.

The Temporary Speaker (Hon. Farah Maalim): Member for Masinga. Proceed.

Hon. Joshua Mwalyo (Masinga, Independent): Thank you very much, Hon. Temporary Speaker. I just want to take a minute to congratulate the Chairperson of the Departmental Committee on Finance and National Planning for bringing this Sessional Paper No.2 of 2023. The Government had started very well especially on guiding and guarding foreign exchange by introducing the Export Processing Zone (EPZ) and the Special Economic Zones Authority (SEZA). This ensured that manufacturers who were able to secure space can manufacture goods and export them to generate revenue. The raw material was supposed to be imported without Value Added Tax or even extra duty. When they sell, the money comes in foreign exchange in this country. I would like to request the Government to keep on stressing on the exercise they had started so that we can have revenue collection in terms of foreign exchange.

It is very difficult to import anything or do a tender because three months after it has been awarded, the dollar exchange rate is different. So, the only persons that are benefiting are the exporters of vegetables, flowers and so forth because they are selling in foreign exchange. They should be encouraged because when they are paid in dollars or euros, the money helps the country to have reserves in terms of foreign exchange in our banks. Therefore, the

Government policy should not be left out. They should continue to fulfil exactly what they were doing before and what they are supposed to do now.

There was a budget allocated last year to expand the Dongo Kundu Special Economic Zone. I now understand that the project is being taken over by the Kenya Ports Authority (KPA). The income generated will benefit the KPA. Companies will pay taxes to the KPA instead of the Government. Such things should not be approved without the input of Parliament or committees of Parliament so that we can discuss the matter and set the record straight.

I support the Sessional Paper because the policies contained therein are good.

The Temporary Speaker (Hon. Farah Maalim): There being no other Member interested in contributing to this Motion, I now call upon the Mover to reply. Proceed, Hon. Kuria Kimani. You can donate some of your minutes before you reply.

Hon. Kuria Kimani (Molo, UDA): Thank you very much, Hon. Temporary Speaker, for allowing me to reply. I would like to donate two minutes to my neighbour, the Member for Sotik.

Hon. Francis Sigei (Sotik, UDA): Hon. Temporary Speaker, I tried to raise my hand, but I was unable to catch your eye. I thank the Chairperson of the Committee for this opportunity. I commend him for the excellent manner in which he has done his work.

Sessional Paper No.2 of 2023 is trying to demonstrate to Kenyans the agenda of this Government. The Kenya Kwanza Government is serious about dealing with public debt, which can only be addressed by generating more revenue within the country. This Policy is trying to address existing gaps and broaden the tax base. We must offer services to Kenyans, build schools and roads, and provide water. I commend the Chairperson for an excellent job done.

I support the National Tax Policy.

The Temporary Speaker (Hon. Farah Maalim): I would have given you an opportunity if I had seen you because during my first term in Parliament, you were the District Commissioner (DC) in my district. You were one of the most exemplary DCs I have ever seen in this country. I congratulate you for being a Member of Parliament and representing your constituency. Thank you, Hon. Sigei.

Proceed, Chairperson of the Committee.

Hon. Kuria Kimani (Molo, UDA): Thank you very much, Hon. Temporary Speaker. I thank all Members who have contributed to the National Tax Policy. They took their time to read through it, sit in the chamber up to this time, and contribute to it. I also thank Members of the Departmental Committee on Finance and National Planning, whom I worked with. I also thank our secretariat who worked tirelessly to ensure that we produce the Report.

I would like to specially thank the 22 stakeholders who gave their views during public participation. Some of them wrote to us, while others appeared before us in person. We had amazing conversations and they offered suggestions on how we could enrich the Report. I would also like to specially thank the Institute of Certified Public Accountants of Kenya (ICPAK) who came and sat with us and offered technical assistance as we drafted our recommendations.

We urge the National Treasury to incorporate our proposed amendments. The National Tax Policy will then be re-submitted to Parliament for publishing with the said amendments. Kenyans and businesses are concerned that there are too many changes to our taxes. At times, they apply for a license to start a business or set up a plant and by the time they are finishing to set up, the incentive that made them go for a particular business or a manufacturing plant will have changed. This is the first policy since Independence. It is important to mention that there has never been a national tax policy. We have policies on everything else, but the national tax, so this is the first one. It will ensure that there is a predictable tax environment. The tax proposals that will come in future will be based on this policy. Final recommendations will

give timelines where particular decisions will not be changed every year. They will take some time.

One of the key things that we noticed during the Finance Act was when stakeholders told us that if we were to check products that are zero rated and tax exempt is that, if, for example, they are zero rated this year, they will be tax exempt the second year and then, the year after they will be zero rated again. This kind of unpredictability does not look good on us when we are trying to market Kenya as an investment destination of choice. I want to assure Kenyans and the business community that we will try our best to adhere to this national policy so that we have a conducive working tax environment.

The proposals that we have made on expansion of the tax base are very critical. If every Kenyan pays their rightful share of tax, we can reduce some of these taxes. What is happening is that we have few people in the tax net. This policy aims to get more people on the tax base. If you have more people contributing towards the national basket, then the burden on individuals contributing to it will be less.

Something key to note is that when I was moving this Sessional Paper this morning, I mentioned proposals to shield salaried employees from too much taxation. If you check how companies are paying their taxes, they are allowed to have deductions on their taxes. This is lacking when you look at Pay As You Earn (PAYE). So, as we prepare for the next conversation on the Finance Bill of 2024, this is one of the areas that we hope to look into.

Among the people who appeared before us as stakeholders was the Blockchain Association of Kenya. Everybody in the country is using a mobile transfer service because of the revolution in M-PESA that we saw a few years ago. If you send money to my grandmother's phone in Mukinyai, she will believe that that money is there. That is not something that was there a few years ago before this revolution. Other countries are trying to catch up. We have Apple coming up with Apple Pay. Google is coming up with Google Wallet.

An interesting phenomenon that is happening in the financial space is the digital assets is bitcoins and crypto currencies. It is surprising that Kenya is the third largest trader in Africa and one of the highest traders in the world on these. Last year, Kenya traded \$1.2billion on crypto currencies and bitcoins. We are calling all these areas "hard to tax areas" This country needs to come up with a legislation that will make sure that there is a legal framework on how it can tax these areas.

I know many people mentioned the issue of the Housing Levy and the High Court judgment. I want to laud the Judiciary and the judges for the judgement that they made. They gave us, the Departmental Committee on Finance and National Planning, a clean bill of health. This Parliament carried out extensive public participation. Many of the clauses that were challenged in court passed the test of time. They were credibly and properly done. That means Parliament is improving in terms of adherence to the law. We cannot be the lawmakers who make laws and be at the same time the ones who do not follow the same laws.

With that, I beg to reply.

The Temporary Speaker (Hon. Farah Maalim): We will put the Question at a later date.

(Putting of the Question deferred)

We already have a communication that Order No.11 will be stood down. We will move to Order No. 12.

Hon. Njeri Maina (Kirinyaga County, UDA): On a point of order.

The Temporary Speaker (Hon. Farah Maalim): What is your point of order?

QUORUM

Hon Njeri Maina (Kirinyaga County, UDA): Hon. Temporary Speaker, I do not think we have quorum to proceed with the House business.

The Temporary Speaker (Hon. Farah Maalim): Fair enough. I agree with you. Indeed, we do not have quorum.

Serjeant-at-Arms, under the circumstances, I order that the Quorum Bell be rung for 10 minutes.

(The Quorum Bell was rung)

(Hon. Julius Melly and Hon. Joshua Mwalyo walked out of the Chamber)

The Temporary Speaker (Hon. Farah Maalim): Order! Serjeant-at-Arms, please, note that when the Quorum Bell is ringing, nobody is allowed to leave the chamber. So, other than Hon. Naomi Waqo, the other two Members of Parliament cannot leave the chamber.

Hon. Melly and Hon. Mwalyo, the rules are clear. You have to come back. It is only the Whip who is allowed to go and look for more Members.

(The Quorum Bell was rung)

The Temporary Speaker (Hon. Farah Maalim): Order, Hon. Members. We have not attained the requisite quorum at the expiry of 10 minutes of the Quorum Bell being rung.

ADJOURNMENT

The Temporary Speaker (Hon. Farah Maalim): Hon. Members, the time being 6.30 p.m., this House stands adjourned until Tuesday, 5th December 2023 at 2.30 p.m.

The House rose at 6.30 p.m.

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