

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

**THE HANSARD**

**Wednesday, 9<sup>th</sup> October 2019**

The House met at 2.30 p.m.

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

**PRAYERS**

**PAPERS LAID**

**Hon. Speaker:** Hon. Members, I have noted that before we commence there is a request for intervention by Hon. Sankok. I have noticed his card is in the intervention slot. The Vice-Chair, Departmental Committee on Health, Hon. (Dr.) Mishra.

**Hon. Swarup Mishra** (Kesses, JP): Hon. Speaker, I beg to lay the following Papers on the table of the House:

Reports of the Departmental Committee on Health on its consideration of:

- (i) Public Petition No.59 of 2019 regarding Mental Health Issues and the need for more counsellors in public facilities; and
- (ii) Public Petition No.60 of 2019 regarding the management of Haemophilia and other bleeding disorders among patients in Kenya.

Thank you, your Excellency Hon. Speaker.

**Hon. Speaker:** The Chairperson, Departmental Committee on Energy, Hon. Gikaria.

**Hon. David Gikaria** (Nakuru Town East, JP): Hon. Speaker, just give me a minute I organise myself. I have just arrived.

**Hon. Speaker:** But I have approved the Report. Just table it.

**Hon. David Gikaria** (Nakuru Town East, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

Reports on the Departmental Committee on Energy on its consideration of:

- (i) Public Petition regarding Water Supply Constraints Caused by the Kenya Power Tariffs in Kilifi County.
- (ii) Public Petition regarding Demolition of Houses in Chokaa, Mihang'o Area, Embakasi East Constituency by Kenya Power Limited Company.
- (iii) Public Petition regarding Wayleave Compensation to Land Owners in Maraigishu by the Kenya Electricity Transmission Company (KETRACO).
- (iv) The 63<sup>rd</sup> General Conference of the International Atomic Energy Agency (IAEA) in Vienna, Austria from 16<sup>th</sup> to 20<sup>th</sup> September 2019, and
- (v) The Conference of Africa Oil, Gas and Energy in Fraser Suites, Perth, Australia from 2<sup>nd</sup> to 7<sup>th</sup> September 2019.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

## NOTICE OF MOTION

### PROVISION OF FREE ASSISTIVE DEVICES TO PERSONS LIVING WITH DISABILITY

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you, Hon. Speaker. I beg to give notice of the following Motion:

THAT, aware that according to the World Health Organisation, an estimated 15 per cent of the world's population live with some form of disability or different ability, with 80 per cent of them living in developing countries; further aware that in Kenya, approximately 6.5 million people live with some form of disability out of whom, 3.8 million are women and girls, while approximately 85 per cent of the total number live in abject poverty; concerned that majority of Persons Living with Disabilities (PLWDs) face numerous challenges, including being denied their fundamental rights and freedoms, including the right to education and opportunities to work, virtually guaranteeing that they will live their lives in poverty which often exacerbates their vulnerability and dependency on other people, assistive devices and critical medical items and requirements; deeply concerned that lack of these devices, medical items and requirements makes it impossible for PLWDs to live normal and dignified lives; this House urges the National Government to provide assistive devices and required medical items and requirements free of charge to Persons Living with Disabilities at the constituency level through government hospitals or any other government body and to put in place mechanisms for replacement of worn-out devices to enable them live a dignified life, be more productive and coexist with other people in the society.

Thank you, Hon. Speaker.

**Hon. Speaker:** Next Order!

The first Question is by Private Notice by the Member for Embakasi Central, Hon. Benjamin G. Mwangi.

## QUESTION BY PRIVATE NOTICE

*QPN 37/2019*

### COMPENSATION TO VICTIMS OF POLICE HARASSMENT IN EMBAKASI CENTRAL CONSTITUENCY

**Hon. Benjamin Mwangi** (Embakasi Central, JP): Hon. Speaker, I rise to ask the Cabinet Secretary for Interior and Coordination of National Government the following Question:

(i) Could the Cabinet Secretary explain why on Sunday, 6<sup>th</sup> October 2019, police officers subjected innocent citizens walking along Spine Road in Kayole 1, Masimba Road and Junction Area in Embakasi Central Constituency to arbitrary arrests on falsified charges?

(ii) Could the Cabinet Secretary further explain why on the same date, police officers subjected innocent businesspersons in Kayole Estate, Nairobi County to harassment and vandalism of their business wares and properties?

(iii) Could the Ministry consider compensating the affected victims for the harassment and loss of properties, and what measures are in place to ensure that innocent people are not victimised during police operations?

(iv) What is the role of the national intelligence service while planning the searches?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Administration and National Security. The Committee should note that this is a Question by Private Notice. It requires response within a period of not more than three sitting days. The next Question is by the Member for Bomachoge Chache.

## ORDINARY QUESTIONS

*Question No. 447/2019*

### REQUIREMENTS TO SECURE ENTRY-LEVEL JOBS IN THE PUBLIC SERVICE

**Hon. Alfah Ondieki** (Bomachoge Chache, KNC): Hon. Speaker, I rise to ask the Cabinet Secretary for Public Service, Youth and Gender Affairs the following Question:

(i) Could the Cabinet Secretary provide details on the Public Service Commission's policy on requirements needed by applicants to secure entry-level jobs in the public service?

(ii) Could the Cabinet Secretary confirm whether work-based experience is a requirement for youth to secure entry-level jobs?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Administration and National Security for response. The next Question is by the Member for Mathare, Hon. Anthony Oluoch. Hon. Oluoch, you have made it? You had sent a message to the secretariat to say that you are held up in traffic jam.

**Hon. Anthony Oluoch** (Mathare, ODM): I was in traffic and I have made it. I am trying to look for the Question.

**Hon. Speaker:** In the meantime, we can have the Member for Mathioya, Hon. Peter Kimari Kihara, ask his Question.

*Question No. 449/2019*

### EQUIPPING OF NYANGITI BOREHOLE IN MATHIOYA CONSTITUENCY

**Hon. Peter Kimaru** (Mathioya, JP): Hon. Speaker, it is my prayer that the Question will be redirected to the Ministry for Devolution and Planning because this particular borehole was sunk by the Tana and Athi River Development Authority (TARDA). Hon. Speaker, I rise to ask the Cabinet Secretary for Water, Sanitation and Irrigation the following Question:

(i) Could the Cabinet Secretary explain why Nyangiti Borehole in Gitugi Ward of Mathioya Constituency which was sunk using public funds in 2017 is yet to be equipped?

(ii) When will the said Borehole be equipped to ensure provision of safe and sufficient water to thousands of residents of Mathioya?

**Hon. Speaker:** The secretariat should note that the Question is referred to the Departmental Committee on Finance and National Planning and not to the Departmental Committee on Environment and Natural Resources. This is because the questioner desires it to be responded by the Ministry of Planning and Devolution.

Now we go to Hon. Anthony Oluoch.

*Question No. 448/2019*

LAND OWNERSHIP DISPUTE BETWEEN KENYA POLICE DEPOT  
AND RESIDENTS OF MATHARE AREA

**Hon. Anthony Oluoch** (Mathare, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Lands the following Question:

(i) Could the Cabinet Secretary provide the ownership status of the parcel of land LR. No. 209/8600 located in Hospital Ward, Mathare Constituency, currently inhabited by over 30,000 residents, but whose ownership is disputed between the Kenya Police Depot situated in Mathare and area residents?

(ii) What urgent steps is the Cabinet Secretary taking to resolve this dispute?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Lands. Order, Hon. Members! Before we go to the next segment, allow me to recognise the presence of the following pupils and students from these institutions: Moi Airbase Primary School from Kamukunji Constituency, Nairobi County; AIC Matiani Girls Secondary from Kilome Constituency, Makueni County and Ndiamumo Secondary School from Mwingi Central, Kitui County.

They are welcome to observe the proceedings of the National Assembly this afternoon.

**STATEMENTS**

**Hon. Speaker:** The first on the list is Hon. Anthony Oluoch again.

IMMINENT CLOSURE OF INFORMAL SCHOOLS ACROSS THE COUNTRY

**Hon. Anthony Oluoch** (Mathare, ODM): Pursuant to Standing Order No. 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education regarding the imminent closure of informal schools across the country.

The Basic Education Regulations, 2015, were gazetted by the Cabinet Secretary for Education on 4<sup>th</sup> April 2015 for the mapping, recognition, registration and provision of other benefits to Alternative Provision of Basic Education and Training Schools, otherwise known as APBET. The Basic Education Regulations have not been comprehensively incorporated into the Basic Education Act 2013 to fully embrace and mainstream APBET schools into the formal education structure or systems and further the legal framework governing the APBET schools is unclear and cumulative effect of this ambiguity violates the rights to quality free basic education for every child.

The ABET is conducted by schools largely found in informal settlements and slum areas and are categorised or described as schools that are neither public nor private. Further, APBET schools comprise 70 per cent of schools in informal settlements and lack infrastructure and basic amenities and have no budgeted provisions under the Ministry of Education. The informal schools across the country are currently facing imminent closure following a Government reactionary decision made as a result of the death of eight pupils at Precious Talent Top School in Nairobi's Dagoretti South.

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

(i) What alternative arrangements has the Government made to accommodate all learners who are likely to be affected by the recent decision to close APBET schools?

(ii) What deliberate steps is the Ministry putting in place for the mapping, recognition, registration and provision of other benefits to alternative provision of basic education and training, otherwise known as APBET schools, which include but not limited to capitation, infrastructure funding and Teachers Service Commission (TSC) posting and staffing?

**Hon. Speaker:** Which Committee is your Statement directed to?

**Hon. Anthony Oluoch** (Mathare, ODM): It is directed to the Departmental Committee on Education and Research.

**Hon. Speaker:** Very well. The Departmental Committee on Education and Research will respond.

The next request for Statement is by Hon. John Paul Mwirigi.

#### EVICTION OF RESIDENTS IN ISEMBE SOUTH CONSTITUENCY

**Hon. John Paul Mwirigi** (Igembe South, Independent): Thank you, Hon. Speaker.

Pursuant to Standing Order No.44 (2)(c), I wish to request for a joint Statement from the Chairpersons of the Departmental Committees on Lands and Administration and National Security regarding evictions of residents who are the real owners of parcels of land in Amungenti B Subsection D Adjudication Area of Igembe South Constituency, Meru County.

Recently, there have been rising conflicts in the said area over land ownership that has resulted in loss of lives and eviction of residents. It is sad that on Friday, 4<sup>th</sup> October 2019, a man named George Mithika Marinya, ID No.25700970, was killed by an armed gang on his way back home after meeting on issues related to land matters. Further, a retired teacher named Peter Kabita Gitavi, ID No.7723437, was seriously injured with machetes and admitted to Meru Level 5 Hospital. Further, two weeks ago, a lady named Ann Wanja Mbua, ID No.26358596, was attacked and injured in her farm, just to mention a few.

The land issue in the said area has been worsened by the Ministry of Lands where officers in charge have continuously been issuing allotment numbers to non-resident persons and parties without any laid-down procedure. The land officers have continued to cause eminent conflicts and a surge in chaos due to re-demarcating the same pieces of land in Amungenti B Subsection D, which was earlier demarcated in 1997-1998. It is also alleged that there is an increase of illegal gangs as a result of the said land ownership disputes.

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

(i) What measures is the Ministry of Interior and Coordination of National Government putting in place to ensure that the communities living in Igembe South Constituency co-exist in harmony and that there are no more killings over land disputes?

(ii) What measures is the Ministry of Lands and Physical Planning putting in place to ensure that all land owners in all of Amungenti B Adjudication Area are issued with title deeds, and in particular, those residing in Subsection D Adjudication Area?

(iii) What actions are the Ministries of Lands and of the Interior and Coordination of National Government undertaking to ensure that conflict that has resulted in insecurity over land conflicts is resolved and, further, could the Ministry of Interior and Coordination of National

Government provide details and status of investigations on the killing of the late George Mithika Marinya and injuries inflicted on Peter Kabita Gitavi and confirm whether any culprits have been arrested?

**Hon. Speaker:** Which Committee do you want a response from?

**Hon. John Paul Mwirigi** (Igembe South, Independent): The Departmental Committees on Lands and Administration and National Security.

**Hon. Speaker:** Very well. It will be forwarded there. Let us have Hon. Pukose.

#### INTERFERENCE IN PROCUREMENT PROCESS

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Thank you, Hon. Speaker.

Pursuant to Standing Order No.44 (2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Finance and National Planning on interference of procurement for leasing of vehicles for the National Police Service.

Procurement for supply and delivery of vehicles for use by the National Police Service was conducted in May 2019 but, on account of the disputes that emanated from the tendering process, the intervention of the Public Procurement Administrative Review Board was sought, which eventually led to cancellation of the process.

Negotiations were opened irregularly on or about 3<sup>rd</sup> September 2019 after the award. Whereas the first tendering process took almost three months to finalise before the cancellations, the new process has taken an unbelievable 10 days, with the new tender process ostensibly intended to circumvent judicial and other administrative processes. This unwarranted haste seems to favour a specific bid which may have been pre-identified by the users, in view of the fact that the new bidders were called by phone to submit bids, leading to irregular award that took place on 2<sup>nd</sup> October 2019. This award is also shrouded in secrecy and possible irregularities.

The cancellation and repetition of the procurement process has caused massive inconvenience, leading to unwarranted wastage of manpower and resources that may eventually run to billions of taxpayers' money. This is essentially a matter of procurement primarily because the subject matter is not the National Police Service, for whom the procurement is being undertaken. It is on this background that I seek your indulgence in referring this matter to the Departmental Committee on Finance and National Planning and giving the Committee 21 days within which to inquire and report on:

(i) the seeming intricacies and manipulation of the procurement process by State agencies exemplified by defying decisions of the Public Procurement Administrative Review Board, the High Court and other instances of blatant disregard for procurement procedures;

(ii) whether there were any interests by State or public officers involved in the procurement process; including the National Treasury, Office of the President, Ministry officials, among others, that might have contributed to the challenges and problems encountered in the procurement process; and,

(iii) action, disciplinary or otherwise, that shall be preferred against State or public officers found culpable or exhibiting lack of professionalism and interfering with the procurement process.

**Hon. Speaker:** Hon. Sankok, what is your intervention about?

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, in supporting that Statement by Hon. Pukose...

*(Laughter)*

**Hon. Speaker:** Hon. Members, that cackling is not laughter. Do not open your mouth too much, especially after lunch because I could hear from here. I can imagine what those who are near where you are have heard.

**Hon. David ole Sankok** (Nominated, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Speaker. In support of that particular Statement by Hon. Pukose, I seek your direction because this House does not legislate in vain. I have just learnt through the Integrated Financial Management Information System (IFMIS) that the Kshs450 million that we allocated to the Ministry of Public Service, Youth and Gender for procurement of sanitary towels in the Budget has been moved to the Ministry of Education without the approval of this House. The tender has already been advertised and given to only three local manufacturers locking out tenders that are meant for the youth, women and persons with disabilities. I have evidence. I seek your direction. The Executive has moved Kshs450 million from the Ministry of Public Service, Youth and Gender without our approval. I am a Member of the Departmental Committee on Labour and Social Welfare. We had allocated that money to the Ministry of Public Service, Youth and Gender but it has been moved to the Ministry of Education and already tenders have been issued.

**Hon. Speaker:** What is the point of order about? I did not get you.

**Hon. David ole Sankok** (Nominated, JP): Hon. Speaker, the House does not legislate in vain. We went through a rigorous budget-making process in the Departmental Committee on Labour and Social Welfare, and we allocated Kshs450 million for procurement of sanitary towels in the Ministry of Public Service, Youth and Gender. That money has been moved without the approval of this House to the Ministry of Education and the tenders have already been advertised through IFMIS.

**Hon. Speaker:** What do you want me to do? How is it connected with what we are discussing because you rose on a point of order? What is the issue?

**Hon. David ole Sankok** (Nominated, JP): Is it in order for the Executive to do that?

**Hon. Speaker:** If you want to seek a Statement, please just do like what Hon. Pukose has done. Do not ride on his request for a Statement because you are now diluting and mixing his.

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker for the advice.

**Hon. Speaker:** Hon. Sankok, you cannot heap another Statement. I have not seen your Statement to approve it. You should term this as something that you felt excited about and you wanted to draw the attention of the House. If you want it to be acted on, please go and draft a proper request for a Statement about that particular aspect. It is important and it requires a response, but not in the manner that you have brought it up. It will not be responded to.

*(Hon. ole Sankok spoke off-record)*

Hon. Members, I am not too sure that I know of any Member who can be described in the term that Hon. Sankok has said, but he is the one who has described himself as a mono. I do not know whether it is a mono eye, mono-legged or monologue. Let us hear from the Leader of Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, Hon. Sankok has raised a serious matter that the Chair of the Departmental Committee on Labour and Social Welfare, where he is a Member, can call both the Cabinet Secretary for Public Service, Youth and Gender and the Cabinet Secretary for Education to deal with. He is a Member of the Departmental Committee on Labour and Social Welfare. You can call the Cabinet Secretaries, Prof. Kobia and Prof. Magoha, and ask them why they are violating what the House has passed. He should not request for a Statement because he is a Member of that Committee. Now that he has confirmed that he is in the process of learning, I want to tell him that is part of learning. Talk to your Chair and call the two Cabinet Secretaries and ask why that reallocation was done outside what the House passed.

**Hon. Mbogo Ali** (Kisauni, WDM – K): On a point of order, Hon. Speaker.

**Hon. Speaker:** Very well. Member for Kisauni, Hon. Mbogo Menza.

**Hon. Mbogo Ali** (Kisauni, WDM – K): I thank you, Hon. Speaker. I rise on a point of order regarding a Question I asked three or four months ago before the House went for recess regarding non-payment of suppliers of goods to various prisons within Kisauni Constituency. The matter was referred to the Cabinet Secretary for Interior and Coordination of National Government, but to date I have not received any response in regard to that matter.

Thank you, Hon. Speaker.

**Hon. Speaker:** The request by Hon. Pukose is directed to the Departmental Committee on Finance and National Planning. I can see the Chairperson, Hon. Limo, is here to delve into the allegations made in the request which was made by Hon. Pukose. I can see that the Deputy Chair of the Departmental Committee on Administration and National Security, Hon. Waluke, is present.

**Hon. John Waluke** (Sirisia, JP): Thank you, Hon. Speaker. The matter that the Member has raised is weighty and of national concern. Due to the amount of work that we have been having like what you witnessed yesterday, we have not managed to answer his Question. So, I am asking the Member to give us three weeks and then we will give an answer.

Thank you.

**Hon. Speaker:** I have been informed that your Committee has scheduled to have the Cabinet Secretary appear on an identified date to come and respond to all the Questions. Are you aware of that arrangement, Hon. Waluke?

**Hon. John Waluke** (Sirisia, JP): Hon. Speaker, the Questions are too many. Even if he appears before the Committee on Friday, he will not answer all the Questions. For example, today during the morning sitting, we got eight Questions. He is not a machine. He will answer a few Questions. If he is able to answer all of them, then he will do it. His Question will be one of those that the Cabinet Secretary will answer.

Thank you.

**Hon. Ali Wario** (Bura, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Very well. The question was raised some time back. Make sure that it is also included among those ones that the CS will respond to. Hon. Wario, what is your intervention?

**Hon. Ali Wario** (Bura, JP): Thank you very much, Hon. Speaker, for giving me this opportunity to contribute. During the budget-making process, there was an effort to move that money from the State Department of Gender to the Ministry of Education. It was through your intervention that money was again reallocated to the State Department for Gender. I am baffled today. We oversee the State Department of Gender. When they appear before us during the



budget-making process, they give us their strategic plan and we allocate funds to a specific department and then the Executive has sat and moved those funds to another Ministry.

As a parliamentary committee, we have raised concerns with the Cabinet Secretary concerned before our Committee. The challenge we face, as the Departmental Committee on Labour and Social Welfare, as raised by Hon. Sankok is how to oversee that Ministry. The indication is that this money will not go to the right department. There is a restricted tender which we do not seem to understand. The Ministry which is dealing with it is a different one. When they appeared before us for funding, it was a different Ministry. I am appealing for your intervention and indulgence because we are lost. How do we oversee the expenditure of this money?

**Hon. Speaker:** Hon. Wario and other Chairs of Committees, if you discover a matter similar to the one you have raised, that is misapplication of resources, you have the right to call the particular Cabinet Secretary and the accounting officer and give them directions. If they do not follow them, bring a report for sanction. That is the reason the House exists. They are overseen through your Committee and that is why the House retains the power to sanction them. You remember as long as people are misapplying the law, you can recommend to the House any method of punishment you want the House to take, including impeachment. A Cabinet Secretary cannot misapply the resolutions of the House. If you confirm what you are saying to be true, please, bring a report to the House. Your colleagues will help you deal with a particular Cabinet Secretary or whoever it may be. Do not tell me that you saw. Bring a report here so that other Members can see what you have seen. They cannot see it through your eyes. They must see it here from the records.

Today, Chairmen of Committees want to talk. Hon. Haji, what is your contribution.

**Hon. Adan Ali** (Mandera South, JP) Thank you very much, Hon. Speaker. The matter that has been raised by the Chair and also by Hon. Sankok is a weighty one. The House's attention must be drawn to the elephant in the room which is the Executive Orders that are usually issued immediately after the budget-making process is completed. We have realised that the Executive is in the habit of hiving off state departments out of certain Ministries and transferring them to others immediately after the budget-making process is completed. That makes it very difficult for Committees to oversee them. If such movements are not captured in Standing Orders, like what happened to the State Department for Irrigation in the Ministry of Agriculture, then we will have confusion like what we now have in the Department of Gender, and obviously what the departmental committee is going through at the moment. We must address the issue of Executive Orders immediately after the budget process is completed by this Hon. House. That, in my view is the elephant in the room.

Thank you.

**Hon. Speaker:** Hon. Haji, I do not see an elephant at all. This House is at liberty to designate any of its Committees to oversee any state department. Do not be worried about elephants out there. Certainly, they will not make their way into the plenary. If, in terms of our Standing Orders, a particular Committee is with an oversight authority of a particular state department, that remains until the House directs otherwise. So, Hon. Haji, do not worry. Even Hon. Wario should not worry. He must continue to exercise oversight over those particular state departments.

Hon. Members, there are very many interventions. I see Member for Mavoko, Hon. King'ola. What is your intervention about?

**Hon. Patrick Makau** (Mavoko, WDM-K): Thank you, Hon. Speaker. Indeed, I understand the pain of the Chairman of the Departmental Committee on Labour and Social Welfare and Hon. Sankok. Hon. Speaker, recently, I know you received a letter by a contractor purporting that I had tarnished their name because of...

**Hon. Speaker:** Hon. Makau, please, the Clerk of the National Assembly has appropriately responded. Let it not bother you. You can sit pretty. I am aware. Do not worry. Those are privileges of the House. Do not worry about that.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, it is important...

**Hon. Speaker:** Do not bring the matter here. It has been addressed and I am aware.

**Hon. Patrick Makau** (Mavoko, WDM-K): Hon. Speaker, I am not addressing that matter. I want to comment about the transfer of that money to the Ministry of Education.

**Hon. Speaker:** Please, let us not deal with those things. Hon. Wanga, what is your intervention about?

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM) Hon. Speaker, I just want to add to the issue raised by the Departmental Committee on Labour and Social Welfare and to state that it is a broader issue. Appropriation of monies is done by this House under Article 221 of the Constitution. It might happen to the Departmental Committee on Labour and Social Welfare and if we do not deal with it, then it is something that can be done by other Ministries as well.

In my view, Hon. Speaker, if you indulge me, before we bring the report, the House should pronounce itself on this matter of movement of monies that have already been appropriated by resolutions of this House to other state departments. I feel that some people are budgeting or appropriating behind the authority of this House. So, it may look like a Departmental Committee on Labour and Social Welfare issue when really it is not. Tomorrow we might see money moved from one state department to another one outside the Departmental Committee on Labour and Social Welfare. That is what I wanted to add.

**Hon. Speaker:** Every Government Ministry is aware of the resolutions of the House with regard to appropriations. So, if any Committee discovers any misapplication or misdirection of resources outside of what this House has resolved in passing the appropriation, then the attention of the House should be drawn to it so that it can take whatever corrective measures it deems necessary.

Hon. Members, it seems we are not going to do business. Hon. Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Hon. Speaker, thank you, for indulging. Let me make a quick comment.

I am a bit confused with the concern that has been raised. How? When we appropriate money, it is on a budget line and vote line. A Government has a voting system through which our budget is arranged and rearranged. For the first time, we did a programme-based budget. So, these monies cannot be moved from one area to another. If it is a programme that has been moved from one Ministry to another it is the work of the Executive. The Executive can reorganise itself the way it wants so long as the money remains under that particular programme. In the event that the money will be moved from one programme to another thereby interfering with our budgeting process, then the Auditor-General's office will take action. Unless that is clarified, the source of concern does not come out clearly to me.

Our Budget is now based on programmes. If the Executive wants to shift a programme from one Ministry or department to another, I do not see a problem there. So long as the money remains under that programme. But in the event the money is reallocated from a programme, then that becomes an audit query and the House can deal with it appropriately not only in a

departmental committee but even in the Public Accounts Committee. Unless the Committee that is complaining comes out clearly to explain to the House exactly the crime the Executive has committed, we may be discussing something that is really not wrong. The Executive has the leeway and a legal framework. They can shift or change programmes from one Ministry to another or from one state department to another.

**Hon. Members:** No!

**Hon. John Mbadi** (Suba South, ODM): They can. Hon. Speaker, Hon. Duale was consulting you. He has just come back and has not even listened to what I have said and yet he is already leading a troop saying no. But what I know is that we do a programme-based budget at the moment. Why would we be concerned about Government taking a programme to another department to execute or implement it? Let it be implemented where the Executive feels it should be implemented and if there is crime committed, the Auditor-General will pick it up and bring it to the House; unless there is something that the Committee is not clear about. I can see that it is the Departmental Committee on Labour and Social Welfare which is so concerned, including Hon. Sankok, who has come to confront me here. Hon. Speaker, I do not know why he has come to attack me. I am making a contribution.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Members, let us appreciate the fact that this House may be more than the Government Ministries. Sometimes, accounting officers are authorised under the Public Finance Management Act to issue Authority to Incur Expenditure (AIE). If a programme has moved from one department to another but there are resources which have been appropriated, they can be...It is just a matter of implementation but the oversight function of the House Committees does not change. For us, that is important. The oversight function does not change likewise because we are not moved by Executive Orders. Let the Committees dig deep.

The Leader of Majority Party.

#### BUSINESS FOR THE WEEK COMMENCING 15<sup>TH</sup> TO 17<sup>TH</sup> OCTOBER 2019

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, Hon. Mbadi was right. If the programme has been moved, the money can be moved. If the programme has not been moved, you cannot move the money. That is where Hon. Mbadi did not get it right.

Hon. Speaker, pursuant to the provisions of Standing Order No.42A, I rise to give a Statement on behalf of the House Business Committee following its meeting held on Tuesday, 8<sup>th</sup> October 2019. Given that tomorrow, Thursday, 10<sup>th</sup> October is a public holiday, I wish to give the Statement on the business for the coming week today.

On Tuesday next week, the House Business Committee has scheduled for consideration the Report on the Petition by the Executive for the Variation of the Boundaries of Mount Elgon Forest Reserve and the following Bills for Second Readings should we not conclude today:

- (i) The Representation of Special Interest Groups Laws (Amendment) Bill, 2019.
- (ii) The Petition to County Assemblies (Procedure) Bill (Senate Bill No.22 of 2018), and
- (iii) The County Governments (Revenue Raising Process) Bill No. 24 of 2018.

We have also scheduled the Report of the Delegated Legislation on the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Bill (Regulations) 2019, and Insurance (Motor Vehicles, Third Party Risk) (Certificate of Insurance) (Amendment) Bill, 2019 for consideration.

In accordance with the provisions of Standing Order No.42A (5) and (6), I wish to convey that the following Cabinet Secretaries will appear before committees next week:

The Cabinet Secretary for Interior and Coordination of National Government will appear before the Departmental Committee on Administration and National Security on Tuesday, 15<sup>th</sup> October 2019 to answer 17 Questions, the highest number, from the following Members:

- a) Hon. Alfa Miruka.
- b) Hon. David ole Sankok.
- c) Hon. Joseph Manje.
- d) Hon. Nasri Ibrahim.
- e) Hon. Peter Masara.
- f) Hon. Sylvanus Maritim.
- g) Hon. Moses Injendi.
- h) Hon. Halima Mucheke.
- i) Hon. Ruweida Obo.
- j) Hon. Benjamin Washiali.
- k) Hon. William Mwamkale.
- l) Hon. Kawira Mwangaza.
- m) Hon. Florence Mutua.
- n) Hon. Aduma Owuor.
- o) Hon. Leonard Yegon.
- p) Hon. John Mutunga, and
- q) Hon. Nicholas Mwale.

Hon. Speaker, I need your direction because the Chair of the Departmental Committee on Administration and National Security is here. This is the third time I am reading these Questions. I read them last week, the previous week and two weeks ago. The Chair, Hon. Koinange, must tell the House why these Questions have not been answered. He is very busy. These are 17 Questions for his Committee and this is the third week I am reading them. I do not want to read these Questions next week again. The Members will keep on increasing the Questions. He should tell the House why these Questions are not being answered before Committee.

The other Questions, which again I read last week, will go to the Cabinet Secretary for Lands, who will appear to respond to Questions from Hon. Caleb Amisi, Hon. Moses Kirima and Hon. Peter Kihara. The Chair of the Departmental Committee on Lands is here. She will tell us whether the Cabinet Secretary came and what happened. Is it that the Members did not come? I cannot be reading Questions every week.

The same applies to the Cabinet Secretary for Infrastructure and Urban Development. He will answer Questions from Charles Njagua, Hon. Peter Kihara and Hon. Joseph Kandie. I read them last week. The Chair of the Departmental Committee on Transport, Public Works and Housing is sitting next to me. He is busy with his phone. He will tell us whether the Cabinet Secretary appeared, the Chair was absent or the Members were absent. Those are the only ones. If we follow this document, it is the same Cabinet Secretaries I am calling every Thursday.

Hon. Speaker, give chances to Hon. Chair for Departmental Committee on Lands, Chair for Departmental Committee on Administration and National Security, and Hon. Chair for Departmental Committee on Transport, Public Works and Housing to tell the House when these Questions are going to be answered, why they were not answered last week and why they were not answered the previous week. My office, and I am sure the office of the Clerk, have no letters from these Cabinet Secretaries that they are not available. We cannot take the Questions of

Members for granted. Members are asking these Questions on behalf of their voters. We need to know and these Chairs must confirm today that these Cabinet Secretaries will appear next week either on Tuesday or Thursday.

**Hon. Speaker:** The point raised by the Leader of the Majority Party while giving the Chairs time to respond needs another administrative direction. Whenever the Leader of the Majority Party or his representative read out which Cabinet Secretary is to appear the following week, Chairs of Committees and the Director of Committees are hereby instructed to follow this directive. Chairs of Committees, if it is said that a Cabinet Secretary will appear next Tuesday and he does not appear for whatever reason or if you decide to adjourn that particular sitting for whatever reason, then your Clerks should file a written report to the Director of Committees so that the information is relayed to the Leader of the Majority Party, the Leader of the Minority Party and the Whips so that Members asking Questions will know why their Questions have taken so long. The Member for Kisauni has just raised a complaint that he filed a Question before the House went on recess in August. To date, it has not been responded to. It is not fair to your colleagues when you do not give them reasons why Questions or requests for statements have not been made.

The Leader of the Majority Party has said that he was reading for the third time some of the Questions to be responded to next week, and they were directed, as he said, to the Departmental Committee on Administration and National Security. Perhaps, the Chair of the Committee, Hon. Paul Koinange, could explain why the Questions are appearing three times, whether it is not possible to have them responded to. Starting today, there should be a report. Tell your Clerks to file a report that you have not been able to conclude Questions because of this and that. Maybe the answer given by the Cabinet Secretary has not satisfied the Member and you, as the Chair, directs that you need a more comprehensive answer. If that is the reason, let the Director of Committees get that information for onward transmission to the Leader of the Majority Party, Majority Whip, Leader of the Minority Party and the Minority Whip. Again, if that is the reason, get that information for onward transmission to the Leader of the Majority Party, the Majority Whip, the Leader of the Minority Party and the Minority Whip. We need to keep the membership of the House apprised of developments before Committees.

Hon. Koinange.

**Hon. Paul Koinange** (Kiambaa, JP): Thank you, Hon. Speaker. When a Question is asked by a Member here, it has to go to the Clerk of the Assembly and then to the concerned Ministries. Sometimes I am even forced to go to the Ministries myself. Sometimes I would find out that the Questions have not even arrived there. The Minister would then say that they would not answer those Questions until the due process is followed. We have a problem. Questions are being asked but they are not reaching the concerned Ministries on time, hence the Ministries cannot take action.

The second problem we have is the venue for answering those Questions. Last week, I asked my Committee Clerks severally about the time we were supposed to meet, but we could not even get a venue. Members should get a notice early enough on when they are coming to hear their Questions being answered. We cannot tell them to come tomorrow yet most of them are still up country, especially on Tuesdays. I think we need more time. Also, all of us, including the Clerks-at-the-Table and the Committee Clerks, should do what they can as fast as possible so that Questions are answered on time. The problem is not only with the Departmental Committee Chairs but also with the system that we are using now.

Thank you.

**Hon. Speaker:** But the system has not changed! The question about the Office of the Clerks dispatching Questions to Ministries has not changed. The Question by the Member for Kisauni was raised in the House before we went for recess in August. We are now in October. Also, just to encourage the Chairs of various Departmental Committees, the Leader of the Majority Party, under Standing Order No. 44 is required every Thursday or on the last sitting day, to present a Statement informing the House of the business coming before it the following Week. Requiring you to check whether there is anything in the Statement of the Leader of the Majority Party is not asking for too much. As it has been said, it will appear before your Committee. You know you are the Chair. You are in leadership and you should take time to also find out whether there is anything coming before your Committee. As a matter of fact, as the Chair of the Committee, you are required to look through draft reports as they are being made even before the other Members of the Committees have a look at them. Do not give that work to the Clerks of your Committees. It is your responsibility as the Chairperson of the Committee to look at the draft and see whether it really reflects what transpired before your Committee before it is presented to the plenary.

Hon. Rachael Nyamai, you have also been mentioned adversely.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Hon. Speaker, it is important that I respond because the Cabinet Secretary for Lands and Physical Planning has been trying as much as possible to respond to Questions. With regard to the four Questions that have been raised, they seem to be recent – about two weeks old. However, there is a matter that was raised by Hon. Amisi. I believe that Question has been answered, unless he brought a further Question. The Cabinet Secretary for Lands and Physical Planning wrote to the Departmental Committee on Lands requesting for one more week for her to be able to respond to the three Questions. About the first Question raised by Hon. Amisi, I strongly believe that it has already been responded to. Unfortunately, the Questions have not been stated. It is only the Member who has asked the Question and the number. I am not able to tell whether it is the one about compensation of people living along a certain highway that is being constructed. If that is the one, then it has already been responded to. However, I would like to seriously take the guidance that you have given us. I will follow up to ensure that by Thursday, as it has been agreed, the Questions are responded to.

Thank you.

**Hon. Speaker:** Very well. Hon. Pkosing.

**Hon. David Pkosing** (Pokot South, JP): Thank you, Hon. Speaker. I want to tell the House that all the Questions that have come to my Committee have been answered. The Minister for Roads, Transport, Infrastructure, Housing and Urban Development came here last Thursday and all the Questions that were on the Order Paper were properly answered. The ones I have seen raised by the Leader of the Majority Party look strange. However, following your directive, I will go to his office and reconcile the documentation from the Clerk's Office with that of the Leader of the Majority Party's Office. I also want to tell the House that the Ministry answers Questions as they come. We do not keep them. The Departmental Committee on Transport, Public Works and Housing has good legal representations in this House. I want to follow your directive.

*(Hon. Angwenyi spoke off record)*

**Hon. Speaker:** Very well. We can now do business. Hon. Angwenyi, do you know his name as Hon. Kipyegon or Hon. Kamuren?

Proceed, Hon. Kamuren.

**Hon. Charles Kamuren** (Baringo South, JP): Thank you, Hon. Speaker. My concern is what we are getting from the Chairman of the Committee on Administration and National Security. I asked a Question in October last year when five students were killed. Up to now, I have not got an answer. He now tells us stories about the Clerks and the procedures while Kenyans are waiting for answers. We are not asking those Questions for ourselves. We are asking them on behalf of the people we represent here. I wonder; it is like there is a failure somewhere.

**Hon. Speaker:** I absolutely agree with you. Hon. Koinange, Hon. Kamuren says that he has a Question from October last year and we are now in October 2019. Maybe, Hon. Kamuren, walk next to him. You can displace the Member for Kangema for a while so that he can give you an answer. Please, I think that is too serious. If the Question was asked in October last year, Hon. Koinange, maybe, you need to have a word with Hon. Kamuren. You might have lost his Question. I agree with him that he was not asking the Question for the sake of it but it was on behalf of the people he represents here. He deserves an answer. Surely, since October last year? Hon. Kamuren, before the Chairman walks out, take advantage of his presence and approach him quietly and maybe report later whether you have been given a satisfactory answer or not.

Hon. Gladwell Chesire, do you also have another one for last year?

**Hon. (Ms.) Gladwell Cheruiyot** (Baringo CWR, KANU): No, Hon. Speaker. Mine is so recent – It is not overdue. It is a Question I asked recently about Kabarnet School for the Deaf and the Blind. It was an urgent issue because the school has not opened to-date for third term. I actually wanted the answer to be fast-tracked so that those vulnerable children can get justice.

**Hon. Speaker:** Was the Question by a private notice?

**Hon. (Ms.) Gladwell Cheruiyot** (Baringo CWR, KANU): It was a normal Question, but I had requested that it be answered urgently.

**Hon. Speaker:** That request may not have been known. If it was not a Question by private notice, then it may be going through the normal process of being forwarded to the Ministry of Education to be responded to in the usual way.

**Hon. (Ms.) Gladwell Cheruiyot** (Baringo CWR, KANU): Hon. Speaker, please advise.

**Hon. Speaker:** Which Department was it forwarded to?

**Hon. (Ms.) Gladwell Cheruiyot** (Baringo CWR, KANU): It was forwarded to the Departmental Committee on Education and Research, Hon. Speaker.

**Hon. Speaker:** Chair of the Departmental Committee on Education and Research, Hon. Melly is not here today. That is unusual. His Vice-Chair, Hon. Kimunya. He has not yet made his way into the Chamber. The Clerk will take up the matter. You will go to the Office of the Clerk to find out whether the Question has been dispatched.

Hon. Wambugu.

*(Loud consultations)*

Hon. Members, you do not want us to do business?

**Hon. Ngunjiri Wambugu** (Nyeri Town, JP): Thank you, Hon. Speaker. I have two issues. First, as a Member of the Committee on Administration and National Security, we have a lot of Questions that come to our Committee. The problem of lack of a place to do our meetings

may be something that the House can solve for us. We have a lot of Questions and sittings nearly every week. If we could get a permanent place, so that we do not walk around, it will help.

Second, I asked a Question to the Minister for Agriculture in February this year, but I have not got an answer for it. So, there is need for Chairpersons to reconcile the Questions that we have asked and, at the very least, give us a status update of what is happening.

Thank you.

**Hon. Speaker:** Well, you will have to bear with the institution of Parliament in the first instance on permanent committee rooms. It is the desire of the Parliamentary Service Commission (PSC) for every Committee to have a permanent room. Unfortunately, until the office block is completed, we may not be able to address that with the exception of the Public Accounts Committee (PAC) and the Public Investments Committee (PIC). Those are the ones that have traditionally had a place dedicated to them.

With regard to the issue of the Question you filed in February, I saw the Chair of Agriculture. Has he finished his business for today? The Chair of Agriculture, Hon. Haji. Is that the normal place for the county?

Hon. Haji, the Member is saying that he filed a Question in February that was directed to your Departmental Committee on Agriculture and Livestock and he has not received any response. Do you have anything you wish to say about that?

**Hon. Ali Adan** (Mandera South, JP): Hon. Speaker, I was consulting loudly with my colleague, Hon. Ichung'wa. Kindly, can the questioner refresh me on the Question he is referring to, so that I can give direction?

Thank you.

*(Hon. (Ms.) Rehema Jaldesa stood next to Hon. Ali Adan)*

**Hon. Speaker:** Sorry, Hon. Members. The Member in *bui bui* around you, who is she? Is it Hon. Jaldesa? I have not been able to follow what the Chair of the Departmental Committee on Agriculture and Livestock said because...

*(Hon. (Ms.) Rehema Jaldesa spoke off record)*

No! You were not supposed to do that. It is deemed to be disorder.

**Hon. Ali Adan** (Mandera South, JP): Hon. Speaker, I am requesting the Member to repeat the nature of the Question he had asked, so that I can give some direction on it.

**Hon. Speaker:** Repeat the nature?

**Hon. Ali Adan** (Mandera South, JP): No, the Question, Hon. Speaker.

**Hon. Speaker:** The Member for Nyeri Town asked the Question in February this year and it was forwarded to your Committee. Just go and look at the Questions that have been referred to your Committee, take the Question that is from the Member for Nyeri Town...

*(Several Hon. Lady Members stood in their places)*

What is happening now? Today the Hon. Ladies do not want you to communicate. Now you can see what is happening.



**Hon. Ali Adan** (Mandera South, JP): Hon. Speaker, I beg to be given time to have a look at the concerns of the Member. Immediately after this session, I will be able to give him some directions.

**Hon. Speaker:** Please, just talk to the Member for Nyeri Town then you can give an answer. If the Question was filed in February just respond to him. Give him a response sometime next week. Hon. Haji, if the Question was filed in February, I am sure by now the answer must be with you. So, next week you will respond to the Question. If you do not have it, check in the Table Office.

Hon. Members, as we move to the next Order, I wish to draw the attention of the House to the existence of a Supplementary Order Paper. I do not know whether it has been uploaded.

It has been uploaded. So, you can check on your tablets.

Next Order!

## CONSIDERATION OF REPORT AND THIRD READING

### THE SACCO SOCIETIES (AMENDMENT) BILL

*(Hon. Jeremiah Kioni walked in the aisle  
while the Speaker was on his feet)*

**Hon. Speaker:** Order, Hon. Members! Member for Ndaragwa.

Hon. Members, debate on this Motion was concluded yesterday. What remained was for the Question to be put, which I hereby do.

*(Question put and agreed to)*

Let us have the Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move that the Sacco Societies (Amendment) Bill (National Assembly Bill No. 1 of 2018) be now read a Third Time.

I request the Chair of the Departmental Committee on Trade, Industry and Cooperatives, Hon. Kanini Kega to second.

**Hon. Speaker:** Hon. Kanini Kega.

**Hon. Kanini Kega** (Kieni, JP): I second.

**Hon. Speaker:** Order, Hon. Members! Hon. Member for Mwea, please, can you be in the House for a short while?

*(Question proposed)*

Is it the desire of the House that I put the Question?

**Hon. Members:** Yes.

**Hon. Speaker:** Very well.

*(Hon. Josphat Kabinga talked across the aisle)*

Hon. Kabinga, you can sit between the Member for Kangema and the Member for Kiambaa.

*(Laughter)*

Hon. Members, having confirmed that the House quorate, I will put the Question. Member for Baringo, please consult in low tones. I am not saying that you should not consult, but you must also allow us to transact this business.

*(Question put and agreed to)*

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

Next Order!

## CONSIDERATION OF REPORT AND THIRD READING

### SECTIONAL PROPERTIES BILL

**Hon. Speaker:** Hon. Members, again, debate on this Motion was concluded yesterday when the House was in the Committee of the whole House. What remained was for the Question to be put for agreement with the report of the Committee of the whole House and I hereby do.

*(Question put and agreed to)*

**Hon. Speaker:** Mover.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I beg to move that the Sectional Properties Bill (National Assembly Bill No. 23 of 2019) be now read a Third Time.

I am sure there are many people wondering what sectional properties are. Those of you who will own or own apartments or office blocks in an apartment building, if this law is passed, you can have your own title deed and you can have ownership. Now you have no legal document. Those of us who were here yesterday and who followed the consideration of this Bill, like Hon. Nyikal and Hon. Mbadi, know what it is about.

I beg to move and ask the Chairlady of the Departmental Committee on Lands, Hon. Nyamai, who did a lot of work on this Bill, to second.

**Hon. Speaker:** Hon. Nyamai.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Hon. Speaker, I would like to say that this Bill is extremely important and it is going to ensure that fraudsters do not continue cheating Kenyans who may not be able to understand issues to do with land and property buying. I would like to thank the House for the debate that we had. I second.

Thank you.

**Hon. Speaker:** Hon. Members, I can now see that not many of us have been reading what passes through the House. The first Sectional Properties Act was passed by Parliament in 1989. This law seeks to improve on it. Between 1989 and today, surely, a lot has happened. In fact, those of us who know the history will tell you the first building in Kenya to apply this law is a small building of red bricks below the Ministry of Health.

*(Question proposed)*

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

**Hon. Speaker:** I thought I had seen some Members who wanted to comment. Member for Suna East wants to say something. He is at liberty.

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

**Hon. Speaker:** Is it the mood of the House that I put the Question?

**Hon. Members:** Yes.

**Hon. Speaker:** Very well. I think Hon. Junet wanted to know what the section is. Having confirmed as required by the Constitution that the House is quorate, I put the Question.

*(Question put and agreed to)*

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

**Hon. Speaker:** Next Order. Sorry, let it be read out so that you can raise your point of order. I wanted to get a record of the number of Members who have contributed.

### MOTION

#### ADOPTION OF REPORT ON WELFARE OF MIGRANT KENYAN WORKERS IN SAUDI ARABIA

THAT, this House adopts the Report of the Departmental Committee on Labour and Social Welfare on the visit to Riyadh, Saudi Arabia on a Fact-Finding Mission on the Welfare of Migrant Kenyan Workers in the Kingdom of Saudi Arabia from 27<sup>th</sup> February to 3<sup>rd</sup> March 2019, laid on the Table of the House on Thursday, 8<sup>th</sup> August 2019.

*(Hon. Omboko Milemba on 3.10.2019)*

*(Resumption of Debate interrupted on 8.10.2019)*

**Hon. (Dr.) Robert Pukose** (Endebess, JP): On a point of order, Hon. Speaker.

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

**Hon. (Dr.) Robert Pukose** (Endebess, JP): Hon. Speaker, this Motion was debated yesterday. I stand under Standing Order No.95 that the Mover be called upon to reply considering the mood of the House. I think we can dispense with this matter.

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

**Hon. Speaker:** Mover.

**Hon. Ali Wario** (Bura, JP): Thank you, Hon. Speaker. Allow me to take this opportunity to register my appreciation to Members who have contributed to this particular Motion. I could have just tabled this Report like any other, but my intention was to share the same with Members so that they enrich it and we walk this walk together. As a

Committee, despite the challenges faced by Kenyan migrant workers in Saudi and the Middle East, there is an opportunity and that opportunity will address the problem of unemployment in the country.

Before 2018, there was no legal instrument. At least, today there is a bilateral agreement and the suffering will be monitored by both Kenya and Saudi Arabia. The other issue I wanted to share with Members is that before 2017, there was no labour attaché representing Kenya anywhere in the world. We have taken the first step and now there is a labour attaché, despite the challenges. One example I wanted to share with the House is that moving from Riyadh, which is the capital headquarters, to Jeddah is 1,000 kilometres. Our labour attaché has no staff. This is one man without proper resources. That is why as a Committee we have requested the Ministry concerned to fund the labour attachés in this country so that they look for more markets.

In terms of content, yes, I agree we need to improve the Report. Hon. Speaker, with your permission, I will table two documents. One is the minutes for adoption of this Report. Secondly, we have a list of accredited agents of employment of migrant workers. This will help us largely in sensitising our constituents, so that whenever anybody is going outside this country, they should go through a registered agent. Most of the problems faced by Kenyan migrant workers are because of unregistered agents. That is why I am going to table the list. It is a list of 211 companies. We have put the names of the directors, their physical addresses and the phone numbers. That will help sensitise our constituents.

Finally, I want to respond to two concerns. A Member mentioned that we are careless and casual. If I may follow that allegation, a careless and casual Chair would not table such a report. It is unfortunate for such a statement to come from an honourable Member.

With that, Hon. Speaker, I beg to reply.

**Hon. Speaker:** Order Members. The Chair of the Committee on Communication, Information and Innovation just remain where you are, you do not have to move.

*(Question put and agreed to)*

**Hon. Speaker:** Next Order.

## SPECIAL MOTION

### APPROVAL OF PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) (AMENDMENT) REGULATIONS, 2019

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR, JP): Thank you Hon. Speaker, I beg to move the following Special Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (National Government)(Amendment) Regulations, 2019, laid on the Table of the House on Wednesday, 9<sup>th</sup> October 2019, and pursuant to the provisions of Section 205(4) of the Public Finance Management Act, 2012, Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b), approves the amendments to the Public Finance Management (National Government) Regulations, 2015 (Principal Regulations) as effected through Legal Notice No.155 of 26<sup>th</sup> September 2019, as follows-

- a) in Regulation 26(1), Sub paragraph (c) by deleting the words “50 per cent of Gross Domestic Product (GDP) in net present value terms” and substituting therefor the words “nine trillion shillings”; and,
- b) in Regulation 196, Paragraph (1) by deleting the words “net present value of the total public debt that is” and substituting therefor the words “set limit”.

Hon. Speaker, the Select Committee on Delegated Legislation pursuant to Standing Order No.210 is mandated to consider all regulations that are published by the regulation-making authorities.

In this regard, the Committee held consultations with the Cabinet Secretary for the National Treasury and had a candid discussion and check to ensure that all the instruments, Acts of Parliament and the Constitution had been adhered to in the making of these regulations.

Hon. Speaker, these regulations were published on 1<sup>st</sup> October 2019 and tabled before this House on the same date as is required by the Statutory Instruments Act. The principal object of the Public Finance Management (National Government) Regulations, 2019 is to provide clarity in terms of controls and timely oversight mechanism on the growth of public debt. The reason for the latter is to ensure the monitoring of public debt as a percentage of the Gross Domestic Product makes it difficult to enforce compliance and undermine accountability. For this reason, it was preferred that we provide a numerical limit to the total public debt to Kshs9 trillion in place of the current 50 per cent of the GDP in net value terms. The regulations seek to provide adequate borrowing space to cater for potential guarantees for borrowing by county governments and State-owned enterprises.

The regulations seek to allow the Government to access concessional funding sources (multilateral financial institutions and bilateral sources) thereby facilitating Government interventions in the public sector. It also releases money that would otherwise be borrowed by Government from commercial banks to individuals and Small and Micro Enterprises (SMEs).

The rationale for the amendment is anchored on the fact that the set debt limit as currently expressed on net present value terms as a percentage of the GDP is unclear, difficult to verify compliance and thus undermines accountability. In general terms, public debt limits are necessary for safeguarding an economy from shocks and risks such as exchange risks, interest rate risk, international financial instabilities and safeguarding public debt at sustainable levels as envisaged in the Constitution, the PFM Act and in accordance with international best practice.

The ceiling is proposed at Kshs9 trillion at the moment. As at end of June 2019, public debt stood at Kshs5.8 trillion and is expected to rise to Kshs6.3 trillion by the end of the current fiscal year based on the approved Budget Policy Statement (BPS) by this Parliament. The amendment will, therefore, enable implementation of the Budget for the Financial Year 2019/20 as approved by this House.

Hon. Speaker, implementation of capital projects for the Financial Year 2019/2020 is highly dependent on the approval of these regulations before this House today. The Government is in dire need of Kshs635 billion to finance the development projects approved by the House in this year’s Budget. These regulations hold the key to the funding of these projects.

The amendment will also enable the nation to re-profile existing high cost debts through debt re-financing of facilities guaranteed by multi-lateral financial institutions and bilateral sources to enable it pay off its expensive syndicated (commercial) loans.

The amendment will also enable the country to minimise domestic borrowing and allow local SMEs and the private sector at large to access affordable credit and avoid crowding out the private sector by confining multi-lateral and bilateral creditors that have lower interest rates and

no longer repayment. The net effect is that Kenya will access loans at an interest rate of 1 per cent as opposed to the current expensive loans that have an interest rate of 9 to 11 per cent.

Hon. Speaker, the Committee appreciated the fact that the Cabinet Secretary for the National Treasury, Amb. Ukur Yattani, was very candid and forthright with the Committee. The Committee found that all regulatory steps had been followed in the making of these regulations. There was proper public participation. They consulted with the Parliamentary Budget Office, the Budget and Appropriations Committee of Parliament and the Departmental Committee on Finance and National Planning. They also undertook the mandatory step that is required by the PFM Act that the regulation-making authority consults with the Intergovernmental Budget and Economic Council (IBEC). This is in order to ensure there is sufficient stakeholder consultation which goes up to the county level, the Judiciary and other independent commissions in the country.

Therefore, the Committee is satisfied that all the requirements of the Statutory Instruments Act, other Acts of Parliament, the PFM Act and the Constitution were in fact adhered to. As I conclude, I wish to thank Members of my Committee who worked tirelessly to ensure they looked through the Regulations and ensured they were in tandem with the law.

Hon. Speaker, pursuant to Standing Order No.210(4) and having examined the Public Finance Management (National Government)(Amendment) Regulations, 2019 and Legal Notice No.155 of 2019 against the Constitution of Kenya, the Interpretation and General Provisions Act, the PFM Act 2012 and the Statutory Instruments Act 2013, the Committee recommends that the House adopts this Report and approves the said statutory instrument as published in the Gazette Notice.

Hon. Speaker, I beg to move and request Hon. Robert Mbui, Member for Kathiani Constituency and a Member of the Committee on Delegated Legislation, to second the Report. Thank you.

**Hon. Speaker:** Hon Mbui, Member for Kathiani.

**Hon. Robert Mbui** (Kathiani, WDM-K): Thank you, Hon. Speaker. I rise to second the Report by the Committee on Delegated Legislation on its consideration of the proposed amendments to the Public Finance Management (National Government) (Amendment) Regulations; Regulation 26(1)(c) on the public debts ceiling.

As a Member of the Committee on Delegated Legislation, we deal with issues to do with subsidiary legislation guided clearly by the Statutory Instruments Act. So, there are basic things we look out for whenever regulations are brought before the Committee. However, these are a little different from most of the regulations we get because not only are they anchored in the Statutory Instruments Act but also under the PFM Act.

The National Treasury is responsible for the preparation of the PFM Regulations and as a Committee, our mandate is to ascertain among others whether there was sufficient public participation. This is clearly stated in the Statutory Instruments Act. We realised that when it comes to regulations under the PFM Act, it defines who the publics are and which stakeholders are supposed to participate in public participation. In this case, we realised that Parliament is one of them and we know the National Treasury consulted with the Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning.

We also realised that the IBEC, which draws its membership from a lot of stakeholders, is also a mandatory participant. So, basically, we believe there was sufficient public participation. We got the reports showing that all these bodies were consulted. The other requirement is for us to check whether any subsidiary legislation conforms to the parent Act.

With that, a review of these regulations is provided under Section 205 of the PFM Act and Regulation 6 of the PFM (National Government) (Amendment) Regulations. This proposed amendment to the regulation is firmly anchored in the PFM Act and is consistent with the provisions of the Constitution and takes into account current and future generations. So, basically, using the Statutory Instruments Act, we feel that these regulations have passed the threshold for us to pass them.

However, allow me to go further and talk about the purpose of these proposed amendments because my Chair has ably canvassed a lot of arguments. The purpose of the proposed amendments is to provide clarity in terms of controls and timely oversight mechanisms on the growth of public debt. Monitoring public debt is something we are supposed to do. But if we talk about it as a percentage of the Gross Domestic Product, it becomes very unclear because the targets keep shifting. This is a variable and the GDP keeps changing. So, when we talk about monitoring, it is based on the GDP and 50 per cent of the set target. This means it will keep moving. Therefore, our ability to monitor consistently and continuously becomes undermined.

Secondly, the purpose is to provide a numerical limit to the total public debt in Kenya at Kshs9 trillion in place of the current public debt limit set at 50 per cent of the GDP in net present value. In June 2019, the public debt stood at Kshs5.8 trillion. Now, it is expected to grow to Kshs3.6 trillion by the end of this financial year as approved by Parliament. Already, we can see that the debt ceiling of this country is already quite high. The Government required a little bit of space.

The third thing the proposed amendment requires to do is to provide adequate borrowing space to cater for potential guarantees for borrowing by both county governments and parastatals. If the limit is set very low, it means we do not allow our parastatals and county governments to access funds because they are considered part and parcel of the public debt. This also allows the Government access to concessional funding sources. Currently, our debts are very expensive. I understand some of these debts are from commercial banks with interest rates of 9 to 11 per cent. If we can access concessional funding or cheaper rates, we will be saving money for the country in the long run.

It is important for us to support this because it gives us an opportunity to get cheaper money. I know we have issues with increasing public debt, but we also must understand that, as a country, we have set up very serious infrastructural development projects that require money. It is true, as some people have said and we have read in the media, that part of the money has been lost. But we cannot say that because there was a mistake last year or the year before, we continue fighting and complaining.

A time comes when, as Members, we must stand up to be counted. That is why I am saying in as much as I know it is a burden to the citizens, it is important that we stand up to be counted, bite the bullet and make this decision to allow the Government the opportunity to correct mistakes that were done in the past. We should borrow at lower rates and pay off the expensive loans, so that we can move on. Again, when we do that, we will shift focus from domestic debts to external debts. Whenever the Government does local borrowing, they compete with the SMEs and the private sector. Let us allow the Government to borrow externally at low and cheaper rates, so that commercial banks in the country can lend to us.

Otherwise, there is a lot I want to say, but I just want to urge the Members to rise to the occasion and save this country. All of us are beneficiaries of public finance since we have projects in our constituencies and national projects that require money. If the Cabinet Secretary

says he needs money, we have no option, but to support. Then we need to figure out how to control and ensure that the money the Government gets does not get wasted.

Hon. Speaker, I second.

*(Question proposed)*

**Hon. Speaker:** Leader of the Majority Party!

**An Hon. Member:** Put the Question.

**Hon. Aden Duale** (Garissa Township, JP): No, this is a very important matter for the country. It is not like last Thursday. The debt ceiling is the fiscal control mechanism that is designed to maintain the fiscal sustainability of any economy. It is, therefore, vital for the maintenance of a very healthy financial position of any country. The Constitution of Kenya, 2010, in Articles 201(c) and 211, has given powers to Parliament and so does Section 50(2) of the Public Finance Management (PFM) Act, 2012. The law stipulates that the national Government may borrow money not exceeding the limit set by Parliament. So, what Parliament is doing this afternoon is anchored in law because we represent the people of Kenya.

The proposal to amend the debt ceiling or limit it is in line with the National Assembly Resolution that we made through the Report on the Budget Policy Statement of 2019. So, we are doing what this House passed. In that Report, the Budget and Appropriations Committee recommended that the PFM Act should be amended to provide for a numerical debt ceiling as opposed to the current scenario where the debt is pegged on the GDP. It is very clear. In the Report on the BPS, the Committee recommended that we move away from pegging our debt level on 50 per cent of GDP and embrace specific figures like Kshs7 trillion, Kshs8 trillion or Kshs9 trillion. Therefore, we are not doing anything out of place. In fact, this afternoon we are implementing what the Budget and Appropriations Committee recommended when they tabled their Report on the BPS.

It is also important that this House fully supports the realisation of bigger and broader fiscal strategic targets and objectives as indicated under the 2019 BPS and the midterm programme given by the National Treasury. Therefore, if this Motion is approved, it will go a long way in ensuring that, for the first time, we achieve fiscal consolidation that envisages a reduction of our debt to 44 per cent budget deficit. Secondly and most fundamental, the country should know that when this House passed the Budget, we did so with a deficit of Kshs635 billion. There was a hole. We agreed that this deficit would be financed through borrowing. Borrowing is not just in the Government. Even the money used by the other arms of the Government is part of the borrowing. When we rationalise, the money that our county governments get is part of the borrowing.

Debt ceilings or limits are not peculiar to Kenya. These are utilised all over the world. A determination is made by individual countries for specific fiscal fundamentals of that economy. As I go along, I will ask the National Treasury, in their next meeting with the East African Council of Ministers for Finance to amend this law. The 50 per cent to GDP debt ceiling is also used by Burundi, Rwanda and Tanzania. We are not at the same economic level with those countries. The national budget that we passed here for Financial Year 2019/2020 was USD264 billion. The national budgets of Tanzania, Uganda, Rwanda and Burundi combined totalled USD260 billion. We are a huge economy. So, you cannot compare and peg our debt ceiling at 50 per cent like Burundi or Rwanda. It is important to know that Kenya's economic development agenda cannot be compared with the economic development agendas of those countries. It is



high time policy makers at the National Treasury reconsidered this aspect. We urge them to reconsider revisiting the macroeconomic targets that underpin the East African Community (EAC) Convergence Framework under the EAC union arrangement since, as a country, we are not at the same level with those other countries.

The national debt sustainability threshold indicates that the national debt level remains sustainable. That is very critical. As long as our country's national debt level is sustainable, we are doing very well. Why do I say so? Kenya's Financial Year 2019/2020 debt to GDP level is projected at 59 per cent against a debt ceiling threshold of 74 per cent. In present value terms, this is projected to fall to 53 per cent by 2022 and continue to decline in subsequent years. So, our debt level will keep on declining because the more we invest in serious infrastructure programmes like energy, roads, rail and airports - the drivers of the economy - the more the gains will be realised in the long term. So, we might borrow now, but in future, we will see the achievement. Those of us who were in the 10<sup>th</sup> Parliament, when retired President Kibaki and the former Prime Minister Raila Odinga were investing in the Thika Superhighway, thought that they were joking. Today, the duo is remembered for that superhighway and many key energy projects.

Why did the Government want us to move from 50 per cent of GDP to a number like Kshs9 trillion? This was necessitated by the need to have a very clear and precise threshold that can be used for decision-making and more so by Members of Parliament. The National Treasury tables the debt management strategy quarterly. We will now be in a position to collectively and individually monitor the numbers, but you cannot monitor a percentage. Therefore, going forward, the National Treasury will table a report telling us: "This is the amount of money we have so far borrowed and this is how we are managing the debt level." This is good for parliamentary oversight. The National Treasury will be providing an express threshold that the National Assembly can use to gauge the debt performance and how we are doing compared to the projects we borrow for. We can then proceed, as a House, to make the necessary applicable resolutions.

Setting the limit to a figure does not negate the consideration of the GDP in review of debt performance. When we change from a percentage of the GDP to the figure, it does not affect how we review our debt performance. That must come out clearly. This House is aware that the GDP remains fundamental in borrowing, debt performance and determination. The GDP is always important for debt performance, determination and borrowing. In fact, if we agree to go that route this afternoon, this will greatly apply during the approval of the medium-term debt strategy which makes Kenya a country with a sustainable debt level and borrowing positions.

The amendment by the Committee on Delegated Legislation, with the supporting documents from the Budget and Appropriations Committee, has been necessitated by the need to meet and create a balance between debt accumulation and the expenditure needs of our country. We are trying to balance. How much did we accumulate? What is our debt accumulation? We should balance it with the expenditure needs of our country. It is like we are doing a scale. As of today, the national debt has risen to Kshs5.8 trillion. The country still has expenditure needs which are key to ensure that the Big Four Agenda is achieved. We are at Kshs5.8 trillion today, but we have to look at the four key agenda items and projects. Some of these projects are historical. The funding by the World Bank supports projects such as the road from Meru to Kula Mawe to Isiolo to Wajir to Mandera; the road from the Mau Summit all the way to western Kenya as a dual carriage and the expansion of the Standard Gauge Railway (SGR) from

Naivasha to Kisumu to Uganda. Many other key energy projects which are key drivers of the economy are important for us to do what we are doing this afternoon.

In conclusion, it is important to know that this amendment will also ease the impact of borrowing from the domestic market by shifting the focus of the medium-term and the long-term borrowing from domestic to external borrowing. When the Government borrows domestically, it competes with the private sector and citizens. The Government stands a better chance. It gets first priority. The other sectors of the economy, the private sector and ordinary citizens, become victims. They are squeezed by the Government. If we do what we are doing this afternoon, I am sure the Government will lift the domestic borrowing and shift to external borrowing. The private sector and the citizens we represent will get favourable lending rates at the domestic level. The resulting effect is that there will be more resources available for the private sector and the SMEs, thus setting the necessary conditions not to crowd the private sector. This will spur economic growth and employment for our youth.

I would like to tell my colleagues that we are the House that represents the people. We are the House that has been given powers in Article 211 of the Constitution and Section 50(2) of the Public Finance Management (PFM) Act in making a determination on the debt borrowing of our country. I am sure it was not there before the new Constitution. I ask the Chair of the Budget and Appropriations Committee to drop his amendment, so that we can pass the Kshs9 trillion and the Report as tabled by the Committee. He is not here? I ask him to drop it, so that we can approve the Report of the Committee on Delegated Legislation as it is.

I beg to support the Motion.

**Hon. Speaker:** Let us have Hon. John Mbadi. What is your point of order, Member for Kibwezi West?

**Hon. (Dr.) Patrick Musimba** (Kibwezi West, Independent): Thank you, Hon. Speaker. I listened very intently to what has been moved.

The first issue I will pick on is that of public participation. When we commit the nation to borrowing Kshs9 trillion and increasing that debt ceiling, throughout the tradition of this House, whenever we go through the budget process or the Finance Bill, we have always brought external parties to inform our decisions as a House. Looking extensively at the Statutory Instruments Act, it is imperative and to a very large extent, it states the level of engagement that we will put out there.

Second and more importantly, we have been told in the Report - and I have read it quite extensively - about the engagement between the Budget and Appropriations Committee and the Departmental Committee on Finance and National Planning. There is no annexure to what the conclusions were from those two Committees which would inform this House on what decisions we make moving forward. I want to stand guided on those two points. I hope it does not negate my opportunity to contribute extensively to the Motion because I will be opposing it at every juncture once I get that opportunity to speak.

I know the Departmental Committee on Finance and National Planning and the Budget and Appropriations Committee were seen, but those reports are not here. Article 152 informs the functions of the Cabinet Secretary. To what level is an acting Cabinet Secretary able to execute statutory instruments in an acting capacity? In the appointment, their roles are only reduced to two. First is a role to answer Questions in Parliament, which already we have previously heard that there is a challenge. Second, is to supply reports on a regular basis to this House.

I want those things clarified and still be accorded an opportunity to contribute extensively to the Report.

**Hon. Speaker:** You should have risen when the Mover was moving the Motion with regard to the issue of public participation. You cannot define public participation in a caged way. It does not require that there will be a public *baraza* at Uhuru Park for that to amount to sufficient public participation.

On the issue of the Report, that is a matter that the Departmental Committee on Finance and National Planning and Budget and Appropriations Committee can respond to. On the issue of the acting Cabinet Secretary, just look at Article 132 to appreciate that the President can assign any member of the Cabinet to perform any function. When so assigned - whether in an acting or whatever capacity - they are answerable to the President.

Let us proceed with the Motion. Let us have Hon. John Mbadi.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Speaker. As for my brother, friend and classmate, Hon. Musimba, I request him to bring a law on public participation. We are lacking a law regulating public participation. He has a point, but we need to bring a law that will spell out how public participation needs to be conducted.

Let me now contribute to the Motion before us. First of all, we need to be very clear and understand exactly what this House is required to do this afternoon. That is very important. We owe it to the people of Kenya, as their representatives, to explain to them what the National Assembly is doing this afternoon.

Hon. Speaker, before 2015, we had a legal framework in place. Through the Public Finance Management (PFM) Act of 2012, which was borrowed heavily from the previous Constitution and statutes, we had a system where the debt ceiling for the country or the maximum that this country could borrow was set in law. This Parliament was required to continuously review it. However, in 2015, we were convinced that we should join the other East African States in defining the debt ceiling or the upper debt limit for our country in terms of percentages to the GDP. Some of us have not been very comfortable with that. I opposed the change from absolute numbers or figures. I was for an average. It is very difficult to define and for people even to understand what the GDP of a country is. Calculating the 50 per cent of it and comparing with the debt level is usually not very easy for ordinary Kenyans. It is very easy for some people, but not for many others.

We moved to a system where Parliament amended the law to define the upper limit or the debt ceiling to 50 per cent of GDP. As we speak, and let us be very candid with each other, that law has been violated by the Government of Kenya. The debt limit today of Kshs5.81 trillion is above 50 per cent of the GDP. This House needs to be very candid to Kenyans and tell them that one of the main reasons the Government has come to us to amend the law to change the upper limit or the debt ceiling is to comply with the law. We passed the budget for the Financial Year 2019/2020. In that budget, the National Assembly told the national Executive that we can allow them to borrow Kshs635 billion for the Financial Year 2019/2020. However, it is not possible to do that without amending this law. We cannot borrow Ksh635 billion. We cannot even borrow a shilling today because we have reached the limit of 50 per cent of our GDP. I agree with those who are expressing concern about our debt sustainability. I am one of them. We have borrowed money that this country is finding difficult to repay. When you tell the Government that there are projects within our budget which will be financed through borrowing and yet there is no space for that borrowing, what are you telling the Executive? You are telling them that this country will not implement those projects!

If you allow me, I will mention some of those projects. One of them is Dongo Kundu Bridge where we lost two lives the other day. It is about the transport from Kwale to the Island of

Mombasa. We cannot start that project. There is a financier to finance the project, but we cannot borrow the money because the law prohibits or stops us from doing that. There is a road from Garissa to Mandera, which is supposed to be financed through multilateral institutions. It cannot be constructed until and unless we allow the Executive, through a legislation, to borrow more money. The question that we need to address is whether we should allow the debt limit to go to Kshs9 trillion or a lower figure. That is the question the Budget and Appropriations Committee belaboured. The Departmental Committee on Finance and National Planning also handled it. As we speak, the debt level is at Kshs5.8 trillion. If we borrow this year as we have planned, then the debt limit will go to Kshs6.4 trillion. The question is whether we should put a figure and then come back after two years to review it. That is possible. That is the direction many of us wanted us to take. However, the argument from the National Treasury, which also makes sense, is that when you are dealing with a multilateral institution like the World Bank, it needs and it will be more confident. The World Bank does not give the syndicated loans that we get from commercial banks. It needs transparency and fiscal discipline. For the World Bank and the IMF to be sure there is fiscal discipline, they need a long-term projection. For us to get into serious loan engagement and negotiation with the World Bank and other institutions like the IMF, we require something that would convince them that there is sustainability. Some of us got convinced that we need to give the Government a little more space to borrow.

This also needs to come out clearly. It is not true as my classmate, Hon. Musimba, has said that we are allowing the Government to borrow Kshs9 trillion. That is not correct. Let us be clear. This is where, we, as a House, are failing. Henceforth, we must hold the Government to account every year when we are making the budget on how much they will borrow for that year. The Government has a debt ceiling of Kshs9 trillion, but the amount we have allowed them to borrow this financial year is only Kshs635 billion. If they borrow any amount in excess of that, they will violate the Appropriations Act and the laws that we pass in this House. So, we are not telling the Government to go and borrow Kshs9 trillion. When we had a meeting with the National Treasury, we were very clear that the Kshs9 trillion should take Kenyans to, at least, 2024 without asking us again to change the debt ceiling.

Let me say something about debt restructuring. It is a normal and common practice even in the private sector. It is called balance sheet restructuring in companies. This is where you can decide to ask the shareholders to come forward and buy what is owed to creditors so that you reduce the cost of doing business in the company. As a country, we have realised, and it is painful, that those who are charged with the responsibility of protecting and securing the interests of Kenyans at the National Treasury went ahead and borrowed very expensive loans for reasons that cannot be justified. They took syndicated loans from commercial institutions which charge interest rates of 7 and 9 per cent. They went ahead and borrowed domestically which crowded out the private sector. The law that Hon. Jude Njomo brought here cannot help this country because the Government is competing with the private sector in borrowing money at a minimum of 12 per cent. We have gone that route and someone has taken us there. The worst part of it is that this money has been borrowed and has been spent in projects that cannot be identified or clearly shown to us. There was a time I asked here, when we were discussing the Eurobond, why we should borrow money to sweep Kondele and make it clean. That is what we did. We borrowed Eurobond and gave it to the National Youth Service (NYS) to sweep Kondele, Kibra and other places in order to make them clean. That was a good thing, but we would have used our domestically raised revenue to do that because loans are expensive. You need to put them in a productive sector where they will pay themselves.

We have financial institutions that are credible and can give us concessionary loans at 2 per cent. They cannot give us money because we have overshot the debt ceiling. We cannot construct that Dongo Kundu Bridge, which I have just mentioned, and the ring road from Busia all the way to Migori, all of which can be financed by the World Bank at a cost of Kshs40 billion. The World Bank is pleading with us that it is ready with the money to construct that road. The Government cannot borrow Kshs40 billion to do that road, which is a very important circuit along the shores of Lake Victoria. We cannot do it because some people went to some commercial institutions, borrowed syndicated loans at 9 per cent that are very expensive to us. We have overshot the 50 per cent limit of the GDP and we are saying that because Kenyans are going to complain that we are going to increase the debt level, we cannot take action. That will be irresponsibility of the highest order.

I conclude that the Budget and Appropriations Committee, chaired by Hon. Kimani Ichung'wah, where I sit, must make sure that we keep the National Treasury on its toes, so that they borrow this money to retire and restructure the expensive loans to the country that are making us suffer as a country and making the future of this country bleak. Future generations are complaining that we are mortgaging their future. So, we need to restructure the debt. Finance matters sometimes may look simple, but they are not. Some people are arguing that if we want to retire expensive debts, then why do we increase the ceiling? Why not just borrow and pay and remain at the same level? It is not that easy because before you pay, it is still there. So, you have to borrow first.

*(Laughter)*

You have to push up the ceiling first to be able to borrow and go and pay to reduce. I do not know if I am making sense. I am now talking like I am educating my children at home. That is the way I would put it. For us to borrow to retire some debts, we have to push the ceiling up to allow us to borrow.

With those very many remarks, Hon. Speaker, allow me to sit down and ask the House to approve the debt ceiling. But the Government must know that the people of Kenya are not happy with it for putting us in this situation. We would not be where we are today if there was responsibility.

Thank you, Hon. Speaker.

*(Applause)*

**Hon. Speaker:** Member for Wajir County.

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Thank you, Hon. Speaker. I thank the Committee on Delegated Legislation, of which I am the Vice-Chair, and thank the joint Committee of the Departmental Committee on Finance and National Planning and the Budget and Appropriations Committee for knowing that this country is greater than an individual. I also want to thank the Cabinet Secretary for the National Treasury and Members for being bold and honest.

The National Treasury made the Regulations pursuant to Section 205 of the Public Finance Management Act, 2012. They have complied with the legal framework to approve the Regulations. The Intergovernmental Budget and Economic Council approved the Regulations and the Attorney-General approved them too. There was adequate and sufficient public

participation because as Members of the Committee on Delegated Legislation, our key area was public participation and we were satisfied.

The Regulations allow the Government of Kenya to access concessional funding. When the Cabinet Secretary for the National Treasury came to us, he told us that he had 40 projects that needed funding. One of the projects is the Dongo Kundu Bridge in Mombasa, the Northern Corridor and the Kenol-Marua-Nyeri Road. It is high time we approved the Regulations because as a country, it is not a crime to borrow. Many countries have done that. As long as we are going to be disciplined on how we are going to manage our public resources, borrowing is not bad. The amendments will enable this country to minimise domestic borrowing and allow SMEs and the private sector to access valuable credit.

I urge the Hon. Members of the House to, please, look at the bigger picture as a country and support the amendments to the Regulations by the Committee.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Seroney Kipkorir, you have the Floor.

**Hon. Sammy Seroney** (Nominated, WDM-K): Thank you, Hon. Speaker for allowing me to air my views on this particular Motion. I sit in the Committee on Delegated Legislation and we scrutinised the Regulations clearly. My major point of interest is public participation. I heard Hon. Musimba talking about public participation. Public participation in this Motion depends on the group or body. In that case, the public participation was well articulated and attended and we got a Report from the IBEC where the same interest body met and had results.

My objective on this is that when the Government borrows locally, SMEs are the major losers. Most banks frustrate the common *mwananchi* and the private sector and adhere to Government borrowing which is more expensive.

Without wasting a lot of time, I do not intend to talk much. The mood of the House is that they want the Question to be put. I totally support the Motion.

Thank you, Hon. Speaker.

**Hon. Speaker:** Hon. Sheikh, the Member for Wajir South, you have the Floor.

**Hon. Mohamed Mohamud** (Wajir South, JP): Thank you, Hon. Speaker. I rise to oppose this Motion. Let us debate facts and figures. Let us debate the reality in the country. This country requires to be salvaged from debt that has grown exponentially. Therefore, on that note, I oppose the Motion in the sense that the debt ceiling must be recorded accordingly and the amount of money that we borrow is always exponential.

Fiscal consolidation of our budget is critical. Budget versus expenditure is what we need to do. What I want to clearly oppose is that the debt ceiling must be fixed to a particular percentage. That is the crunch point here. If it is 50 per cent, let us remain there. Open ended does not work in any books of accounts anywhere.

Our debt percentage to our GDP is what gives the leverage to borrow. Therefore, that percentage must be clearly locked out. If we say it is 50 per cent, we should remain at that and if we set it at 100 per cent, we must remain at 100 per cent.

Let me pull out some figures. Japan had a debt level to its GDP of 238.20 by December 2018. Japan is not Kenya and Kenya is not Japan. Japan is backed up by industrialisation, modernisation, mechanisation and other factors and it borrows from itself. So are Italy, Singapore and the USA. Therefore, unless we stand to say that our debt ceiling should be this level, we will be giving a blank cheque to ourselves to the benefit of our debtors. Let me put it this way. Our GDP growth has been sluggish. I am not contradicting myself. I wonder whether our debt delinquency can sustain below the belt for whatever we borrow. Therefore, we must

have a safeguard for what our debt ceiling should be. It must be clearly spelt out in the Report. We have to say it at this level. That is where my argument comes from.

In the past, we reached 78.30 per cent debt to the GDP. Therefore, the national debt having come down to 58 per cent is in itself an achievement, but that does not necessarily mean that we can borrow the much we want. Our debt ceiling must be specified in terms of how much it is and where it will be. It must be specified. It must be clearly outlined. That is why we are debating this.

**Hon. Speaker:** There is a point of order. Hon. Shamalla, what is your point of order?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Speaker. Is it in order for the Member to mislead the House? He is saying that the debt ceiling has not been specified. The debt ceiling is specified. It is numerical as opposed to a percentage.

**Hon. Speaker:** The Member is accordingly educated. Hon. Sheikh, you may not have read what is contained in the Report. It amounts to saying things that are not there. It is just a matter of interpretation and understanding.

Proceed.

**Hon. Mohamed Mohamud** (Wajir South, JP): Thank you, Hon. Speaker. My argument is clear. I do not need to get back to it. I stand by my position. We must set the limit to the particular percentage value lest we find ourselves being bought out, as a country, anecdotally, like Zambia by China. Japan, Italy and other developed countries have bigger debts, but all of them have set their debt ceilings. I am well informed. I need not to be informed.

The balance sheet of this country seems to be going haywire. That is what makes me stand and say that we must have that particular specification. There is no debt equilibrium. So, we need to borrow more. It should not be the case that we should be doing so.

With those remarks, I rest my case and I oppose the Report until we have clear-cut information that is sufficiently debated.

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

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Speaker, I wanted to contribute to the Motion.

**Hon. Speaker:** Proceed.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Muturi Kigano Senior can come after me.

**Hon. Clement Kigano** (Kangema, JP): On a point of order, Hon. Speaker.

**Hon. Speaker:** Sorry. Hon. Kigano, what is your point of order? You know, you should not stand for long.

*(Laughter)*

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Speaker. Before my erstwhile colleague got the Floor, I was rising under Standing Order No.95(1) to ask you to close the debate. Everybody understands the implication of this Motion. We should not waste time debating it in detail. Everybody understands its implication. I am asking you to call the Mover to reply.

**Hon. Speaker:** I have heard you, but let us listen to Hon. Wanga.

**Hon. (Ms.) Gladys Wanga** (Homa Bay CWR, ODM): Hon. Speaker, since I sneaked in before he called for the Question to be put for the Mover to reply, and given the mood of the

House as at the time he was speaking, I will take a short time to make my point in support of this Motion.

No economy grows without borrowing. In fact, if you look at the data from the American economy, in 2018, American borrowing was at 77 per cent of the GDP. That is a debt that is moving towards 100 per cent of GDP. If we measure our debt by the percentage to the GDP, it grows scarier and scarier. Our GDP in 2018 stood at Kshs8.59 trillion. If you divide that by 50 per cent, you will see that borrowing was meant to be at Kshs4.3 trillion. We cannot afford to continue to measure our debt ceiling based on the GDP because, first of all, GDP is a moving target. You have to be searching for the GDP at all times to measure how much we have done. When put in simple terms, we will know that our debt ceiling is, for instance, Kshs9 trillion. We will know that we cannot borrow beyond that amount. So, we can monitor it at all times.

The useful point that has been raised is the fact that if our debt ceiling is not raised, it does not mean that we are not borrowing. We are borrowing domestically. We are competing in the local market. When we were speaking about Jude Njomo's Bill the other day, we made it clear that it had become very difficult for SMEs to get loans from commercial banks because they had to compete with the Government in terms of borrowing. Lenders will give you credit, as an individual, and leave the Government, which is more stable and reliable borrower.

The most important thing, even as we do this today, is to look forward to prudent use of the money that is borrowed. We have developed confidence because we have seen the fight against corruption that has been going on. We are confident that the President will continue to crack down on corruption. That way, Kenyans will be confident that their money, if borrowed, will be put to correct use. We are seeing the people who have put us in this place are already paying for it. If that continues, then there is no cause for alarm.

With those few remarks, I beg to support.

**Hon. Speaker:** Let me hear the Chair of the Budget and Appropriations Committee. Next time it is reported that you have not carried your card with you, you will not speak, but this debate is very important.

**Hon. Kimani Ichung'wah (Kikuyu, JP):** Thank you, Hon. Speaker. I forgot my card in the coat I was wearing yesterday. I stand to support the Motion by the Committee on Delegated Legislation.

A number of issues have been raised. I do not know whether to call one of them an allegation or contention that we are moving our debt ceiling from 50 per cent of GDP to what the Member for Wajir South was saying, unspecified figure. It is specified. It is Kshs9 trillion. When you are being called upon to move the ceiling to Kshs9 trillion, what are you being asked to do? We are not giving the Government a blank cheque to borrow Kshs9 trillion. The Leader of the Minority Party said that every year, the Government comes to this House to ask it to approve how much we shall borrow in that particular year. Therefore, the ceiling does what the ceiling to this building does. We have been walking into these chambers for very many years and we have never touched that ceiling.

Hon. Speaker, anytime the Government wants to borrow - even in the 2019/2020 Financial Year - it submits estimates before this House, which are considered by the Budget and Appropriations Committee. As a House, we approved and gave the Government permission to borrow Kshs635 billion because we cannot raise such an amount of money from our tax revenues.

Not allowing the Government to open this ceiling today is asking us to go back to the Finance Bill that we passed last week and levy more taxation on Kenyans to raise more revenues



to finance the development projects that we want in our neighborhood. Projects have been mentioned like the Dongo Kundu, Likoni Bridge, and Marua-Sagana-Nyeri-Isiolo Road that will cost almost Kshs28 billion. We cannot raise this money from our revenue unless we borrow.

As we speak, I think the Government has just been honest to say that, indeed, we have burst our debt ceiling. This means that even the budget that we passed in June 2019 is not implementable without opening this debt ceiling. The current Acting Cabinet Secretary and the Permanent Secretary for the National Treasury today cannot negotiate to borrow even a shilling since we already exhausted the debt ceiling that was put in law. It is, therefore, important that we understand the situation as it is. Emotionally and politically, I know it is good to say what will excite the public out there, but as leaders, we are being called upon to do that which is right for the nation.

*(Applause)*

Hon. Speaker, as leaders, we must be the ones showing our people the way. We have been told that our people are complaining that the economy is bad. Yes it is, but it is not because we are borrowing or we have exceeded the debt ceiling, but because there is no liquidity in the economy because the Government is not spending. Since when did you see in this country a situation where almost on the 10<sup>th</sup> October, not even a single shilling for development expenditure has been sent out to Government ministries? Even for the Constituency Development Fund. Those who have been here long enough can tell us that by now, we would be having money for bursary funds, at least, the first Kshs20 billion. Today, not a shilling of our bursary has been disbursed. Those are the issues that we are confronted with and we must make decisions, not what is politically expedient and what is exciting to the public out there, but on what would be right to do for the country.

I want to finish by giving you a story. Ten years ago, I borrowed Kshs5 million from one of the commercial banks. I was repaying at about Kshs185,000 for a period of three years. After about two years, I bought a property in Kikuyu. I borrowed another Kshs3 million, which I was to repay Kshs154,000 for a period of three years. Every month, I would pay about Kshs335,000. I moved to one of the other banks to restructure my debt like what the Leader of the Majority Party was talking about. I took a loan of about Kshs10 million which I repaid in over ten years and ended up paying installments of about Kshs144,000 every month. What that did was to allow me to grow my wealth over time. Today, the property I bought for that Kshs3 million is worth close to about Kshs150 million. And my wealth has grown that way.

I was also left with more cash in hand. So, when you see me donating money on a weekend you should know how wealth is grown. It is by managing and restructuring your debt to be able to do what the Government is asking you to do today. We have gone out of that. At least the Acting Cabinet Secretary has been bold enough to come before committees of this House and say, yes, in the last few years, we have made a few mistakes. We have gone out and taken commercial debts at 6, 7, and 8 per cent. It is a very expensive credit and we are paying very huge outlays, which if we restructure the debt, we can negotiate with our multilateral institutions, restructure our debt, pay off some of the loans, release more money into development projects that would spike economic growth and, therefore, reduce the amount of suffering and unemployment of our people. Therefore, I want to beg and plead with Members to rise to the occasion and show leadership to this nation. Yes, mistakes have been made in the past, but we cannot continue making those mistakes.

Hon. Speaker, lastly, it is about the issues that have been raised on domestic debt. We have crowded completely our SMEs and the private sector from borrowing from the domestic market. One of the perfect solutions to stop the Government from borrowing from the domestic market is to externalise most of our debt. We shall do that through the opening up of the ceiling to externalise most of our debt, borrow cheaply from outside and allow the domestic financial market to lend to our SMEs and the private sector. That will put money in *Wanjiku's* pocket. When we go back to our villages, we will showcase the Dongo Kundu Bridge, the dualing of the Sagana-Marua Road and other projects including the road to Mandera. I heard that it will be the first highway going all the way to Mandera.

**Hon. (Ms.) Rachael Nyamai** (Kitui South, JP): Kitui-Kibwezi Road!

**Hon. Kimani Ichung'wah** (Kikuyu, JP): And the Kitui-Kibwezi Road that Hon. Nyamai is speaking about. I, therefore, want to beg and plead with the Members of this House.

Lastly, let me speak to something that transpired yesterday. I am aware that there are those Members who have asked about the amendment that is here and we have had consultations. Because of what we said that there ought to be certainty and a good timeline, what had informed that particular amendment was to cascade about Kshs7.5 trillion to June 2022. But the National Treasury has explained that they want certainty as they negotiate with multilateral institutions. Therefore, all that we are being asked to do is for everybody to understand that the Kshs9 trillion is just a ceiling up to June 2024. Otherwise, with that, I think the amendment stands withdrawn and I beg that we support this Motion as it is.

Thank you, Hon. Speaker.

**Hon. Speaker:** The Member for Suna East, the Floor is yours.

**An Hon. Member:** They are all convinced now.

**Hon. Junet Nuh** (Suna East, ODM): Hon. Speaker, I rise to support this Motion. When people from the National Treasury appeared before this House for the past four years, they kept talking about percentages. When you asked them about the country's debt, they told you we were at 48 per cent of the GDP. Many laymen do not even understand what 48 and 47 per cent of the GDP means. But when you give someone a figure and tell him that our figure of debt is Kshs5 trillion and our ceiling is Kshs9 trillion, as a layman, they can understand what the country's debt is. When Mr. Kamau Thugge and Mr. Henry Rotich appear before the Public Accounts Committee and told us that our percentage was at 48 per cent of the GDP, who knew what GDP meant? First, they had to explain what GDP is to the people of Kenya. Second, that the GDP changes; it mutates. Today it is at this and next year it is at that. However, when you talk about a figure, people understand what it is about.

*(An Hon. Member spoke off record)*

People who came here with small parties should not talk when a Whip is talking.

*(Laughter)*

Hon. Speaker, debts have been used in the world to revamp economies. When the World War II happened, the international bank invested a lot of money in Europe and revamped it to what it is today through debts. As much as we want to do our duty as a House to set the debt ceiling and to make this painful decision today, we must also accept the mistakes that have been committed before. Our use of this debt was not prudent in this country for the last few years and

we must admit it. We have borrowed heavily and sometimes spent money in a very awkward manner to the extent where we almost committed some economic genocide in this country. What has convinced me to support his debt ceiling today is the war on corruption.

When I realised that the war on corruption has serious political support, all the way from the President to the Speaker, I was convinced that this money will be spent in a good manner. All the money that was borrowed for Kimwarer and Aror went down the drain. It went into people's pockets. If we are going to borrow for the same reasons, I will not support this. But now I know the war on corruption is on course and the money will be used in a prudent manner. That is why I am supporting.

I sit in the House Committee on Mortgages and Loans and when we approve loans for Members, I realise that some of their pay-slips read zero. I do not know who is going to increase their ceiling. Some of them are earning as low as Kshs1,000.

*(Loud consultations)*

Having said that, I want to ask Members to support this Motion. It is in the interest of the country. The National Treasury should use the borrowed money to retire all the expensive loans that were borrowed for special purpose vehicles of stealing. I have been told that some of the borrowings we will do under this new ceiling will be used to retire the expensive loans that we have. That is what the Cabinet Secretary for the National Treasury told Parliament in the Budget and Appropriations Committee. Some of those loans were borrowed for special purpose vehicles to loot. Now, as a country, we have no option, but to retire those expensive loans, so that we can borrow new loans that are cheaper.

For the last two years, we have only been paying interest on loans and not the loans. The Cabinet Secretary for the National Treasury, through the Leader of the Majority Party, has been bringing to this House the status of our debt management and guarantees, but the Budget and Appropriations Committee has been sleeping on the job. The Chairperson is here talking about...

*(A Member spoke off record)*

No! I cannot talk about Hon. Mbadi. The Chairman of the Budget and Appropriations Committee is not doing his job. He is sleeping on the job. He is supposed to oversee and make sure that these debts are used prudently. We have failed in our oversight responsibility. This House must hold the Cabinet Secretary for the National Treasury to account for every shilling that we borrow on behalf of the Kenyan people. It is our responsibility. That is why we were elected to come to this House. However, the Chairman has been performing rituals over the years in budget-making. This year, he gave them Ksh635 billion to borrow. Next year, he will want to give them Kshs1 trillion.

**An Hon. Member:** No, Kshs500 billion!

**Hon. Junet Nuh** (Suna East, ODM): Okay, Kshs500 billion and it is through the Budget and Appropriation Committee Chairperson who is aspiring to be the Minister for Finance in the *Tangataka* government in 2022. I am very annoyed, but I support the Motion.

Thank you.

*(Laughter)*

**Hon. Speaker:** Hon. Members, the issue we are discussing is not a light one. I must do what I must do. I want to hear the Chairperson of the Departmental Committee on Finance and National Planning. All these matters are finance related.

Hon. Limo, you have the Floor.

**Hon. Joseph Limo** (Kipkelion East, JP): Thank you, Hon. Speaker. What we are discussing today is an issue of national importance. It is important for Members to understand the genesis of all this and the best ways of giving solutions. I am sure most of the Members are hearing for the first time the level at which this country has gone into debt. It may be very difficult to come out of it if we do not address it. These issues have affected various sectors of the economy, including and not limited to the SMEs. In fact, the issue we have been talking about in terms of interest rates has been caused majorly by the way we have been taking debts as a country. To avoid repeating myself, I want to dwell on the issue of restructuring our loans.

Currently, the loan balance from commercial sectors is very high. For the benefit of Members, when you talk about commercial loans, they are expensive loans from commercial banks, agencies and other institutions that charge high interest of up to 10 per cent depending with the negotiations. But there are multilateral and bilateral loans that are given with low concessional interest. The International Monetary Fund (IMF) and the World Bank lend at between 1 to 3 per cent interest rate. That is low. They also give a long period to pay back. They consider a country such as ours to be sustainable. Indeed, Kenya has been placed well.

I must state that we have had several meetings with the Acting Cabinet Secretary for the National Treasury and he seems to be understanding. I hope he will not fall into the trap of mandarins who will show him how to go to the deep end where the country will go deeper into debt. The way to go is for the National Treasury, led by the Acting Cabinet Secretary, to take the issue of restructuring our loans seriously. He must retire all commercial loans.

In the year 2012, the commercial loans were at 8 per cent. Right now, they are at over 36 per cent. That is serious. I want the Members to understand that the scenario is similar to having a loan in a commercial bank like the Kenya Commercial Bank (KCB), Equity Bank or Co-operative Bank. You can retire them by borrowing a loan from, say, a Sacco, at a low interest rate. You will be relieved. If you were paying a loan by remitting, say, Kshs200,000 and you go to a Sacco which can give you a loan that you would be making payments of Kshs150,000; certainly your payslip will improve. That is a simple example of how the Government can relieve this country from repaying a lot of expensive loans. By restructuring and ensuring that all these commercial loans are retired by borrowing from the IMF and repaying all of them, the Government will not have the urge of borrowing up to Kshs600 billion in a year. It can borrow Kshs400 billion and we will get a relief of Kshs200 billion. That is a good example.

I want to clarify that when we borrow from multilateral agencies, we stop borrowing from the local market. That will release funding to our SMEs. This will stop the urge to release interest capping in the market. Let us support this and give a chance to the National Treasury to negotiate for better loans. That will bring back the country to where it is supposed to be. I urge this House to support this Motion and help the country to go back to its track.

Thank you.

**Hon. Speaker:** Hon. Members, I hear you. The Member for Kangema rose in his place and claimed that the Mover be called upon to reply. Some of you are finding it difficult to sit!

Hon. Members, in the usual way, it is you to decide whether the Mover should reply or not. It is you, as Members, who are going to decide.

**Hon. Members:** Yes!

**Hon. Speaker:** Hon. Members, as we always say, it is you to decide whether you want to debate. Remember you can debate up to 7.00 p.m. This is one Motion. There is more business. This is not the only business in the Order Paper. So, let me find out what it is that the House desires.

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

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

**Hon. (Ms.) Gladys Boss Shollei** (Uasin Gishu CWR, JP): Hon. Speaker, I beg to reply. I will just make two points. The most important point is that public participation was undertaken and proof of that was provided to the Committee. Advertisements were done in the media and conducted in compliance with Sections 5 and 5A of the Statutory Instruments Act.

Point number two is that the Committee was persuaded that setting numerical figures to the debt ceiling is better for accountability than putting the GDP, because Kenya is an oil-producing country.

*(Loud consultations)*

Hon. Speaker, you should protect me. They are not giving me an opportunity to complete this. I beg to reply.

*(Question put and agreed to)*

*(Several Members walked out of the Chamber)*

**Hon. Speaker:** Next Order!

## MOTION

### ADOPTION OF REPORT ON VARIATION OF BOUNDARIES OF MT. ELGON FOREST RESERVE

**Hon. Kareke Mbiuki** (Maara, JP): Thank you, Hon. Speaker. I beg to move the following Motion...

*(Loud consultations)*

**Hon. Speaker:** Order, Members! There is still business. We are still in business. There is still the Motion on variation of the boundaries of Mt. Elgon Forest Reserve.

**Hon. Kareke Mbiuki** (Maara, JP): Thank you, Hon. Speaker. I beg to move the following Motion on the report on the consideration of a Petition by the Executive regarding variation of the boundaries of Mt. Elgon Forest Reserve, laid on the Table of the House on Thursday, 4<sup>th</sup> July 2019, pursuant to the provisions of Section 34(5)(b) of the Forest (Conservation and Management) Act, 2016.

The Petition was signed by the CSs for Environment, Forestry Lands and Physical Planning. The House, pursuant to Standing Order 227, referred the Petition jointly to the Departmental Committee on Environment and Natural Resources and the Departmental Committee on Lands for consideration. The joint committees received the Petition on Thursday, 5<sup>th</sup> July 2018 and set out a procedure for its consideration and to report to the House as set out under Standing Order 227(2).

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

*[Hon. Temporary Deputy Speaker  
(Hon. Christopher Omulele) took the Chair]*

Mt. Elgon Forest Reserve was gazetted on 30<sup>th</sup> April 1932. It covered an area of 91,890 hectares. Since then, various amendments have been made on the forest boundaries as follows:

(a) The 1939 Ordinance changed the boundaries of the Kavirondo Native Land Unit and created Elgon Native Land Unit known as Chepkitale, comprising of 17,000 hectares.

(b) In 1973, the Government agreed to resettle the Elgonyi Dorobo from the Elgon Native Land Unit because of the cold weather to an area covering 3,686 hectares that is located on the lower slopes of the mountain, through Legal Notice No.51 of 1974. The area is currently known as Chepyuk.

(c) In mid-1992, Chepyuk Settlement Scheme, Phases II and III, were surveyed. The two schemes comprised of 5,252 hectares and 2,576 plots. 80 per cent of occupancy is by the Dorobo of Mosop community while 20 per cent is by Soy or Sabaots. Chepyuk Phase III covers an area of 2,865.42 hectares or 1,893 plots while Phase II covers 1,741.99 hectares, which is equivalent to 683 plots. The boundaries of Chepyuk Settlement Scheme Phases II and III were later regularised to cover 4,607 hectares as per the approved boundary plan No. 175/419.

(d) In 2000, Chepkitale area was gazetted as Mt. Elgon National Reserve. The Reserve is managed by the Kenya Wildlife Service (KWS), but it is still occupied by members of Elgonyi Dorobo community.

The then Minister for Provincial Administration and Internal Security formed an Inter-ministerial Taskforce in 2008 via Kenya Gazette No.11411 of 4<sup>th</sup> December 2008 to coordinate and oversee the settlement of persons displaced from Chepyuk Phase III due to inter-communal conflict. The taskforce undertook the following:

- (a) Coordinated resettlement of 1,735 beneficiaries in Chepyuk Phase III Settlement Scheme.
- (b) Supervised a planning and survey exercise which resulted in 1,776 plots being demarcated.
- (c) Allocated 1,735 plots of approximately 2.5 acres each to beneficiaries through a secret ballot.
- (d) Reserved 41 plots for public use.

Processing of title deeds for Chepyuk Phases II and III could not commence since the Scheme was still part of Mt. Elgon Forest Reserve and had not been de-gazetted. The KFS Board approved the request to de-gazette the Chepyuk Settlement Scheme during the 17<sup>th</sup> meeting held on 14<sup>th</sup> November 2017. Equally, NEMA issued an environmental impact assessment licence approving the settlement on 14<sup>th</sup> January, 2017.

The Executive conducted public participation and stakeholder engagement at various levels prior to submission of the Petition to the National Assembly as follows:

- (a) The grassroots consultation carried out by the then Provincial Administration through several public *barazas* within Chepatia Sub-County.
- (b) Local leaders, the District Commissioners and District Settlers Selection Committees held meetings, vetted and identified plot beneficiaries.
- (c) During the EIA process, public consultations were carried out by NEMA and other stakeholders.
- (d) The village land committee members, elected through public *barazas*, and the Ministry of Lands and Physical Planning undertook ground verification and captured results in the Ministry's records.
- (e) At the national level, the KFS Board, before granting its approval, undertook public participation through engaging community forest associations and forest conservation committees.
- (f) Chebyuk Settlement Scheme Inter-ministerial Task Force established vide Kenya Gazette No.11411 of 4<sup>th</sup> December 2008 in execution of its mandate also engaged the public through public *barazas* and leaders consultative meetings. The de-gazettment of Chebyuk Phase II and III would provide the beneficiaries with secure land tenure which would minimise poor land use, land speculation and encroachment in the forest reserve. It would also lead to the improvement of the security situation in the area as well as offer development and contribute to livelihoods.

Hon. Temporary Deputy Speaker, in considering the Petition, the Joint Committees held a meeting with the CS Ministry of Land and Physical Planning and the Chief Administrative Secretary, Ministry of Environment and Forestry. The Joint Committee also took a field visit to Bungoma County from Friday 21<sup>st</sup> to Saturday 22<sup>nd</sup> September 2018 and held meetings with interested groups. Further, the joint committee received submissions from the following stakeholders following an advertisement that was placed in the *Daily Nation* Newspaper on the 26<sup>th</sup> July 2018 in line with Article 118 of the Constitution.

- (a) The Ogiek/Dorobo council of elders.
- (b) Mr. Elijah Kipkorir Kaibei.
- (c) Mr. Peter Kemei.
- (d) Mr. Benson M. Motwoi, and others.
- (e) Chepkitale Indigenous People Development Project.

Hon. Speaker, the purpose of this Report is to respond to prayers made by the Executive in the said Petition. The Joint Committees having considered all the views collected and observed that the approval of a legal notice to effect variation of the boundary or revocation of State or local authority forests is vested on a resolution of Parliament upon a recommendation by the Kenya Forest Services Board, pursuant to Section 34 of the Forest Conservation and Management Act, 2016. The recommendations by the Kenya Forest Service Board would be guided by the following:

- (a) Intent of variation must be approved by the Forest Conservation Committee for the area.
- (b) Rare or threatened species should not be endangered.
- (c) Value of the forest for water catchment should not be affected.
- (d) Biodiversity conservation, cultural site protection, educational, research and recreational roles are not prejudiced.
- (e) Independent environmental impact assessment should be carried out.

(f) Public participation should be carried out as per the Third Schedule of the Forest Conservation and Management Act No. 34 of 2016).

Hon. Speaker, further, the Joint Committees noted that all the submissions it received regarding the Petition, apart from the submissions made by Mr. Peter Kemei, supported the de-gazettement of Chepyuk Phases II and III. The Committee also noted that the residents of Chepkitale disagreed with the assertions made by the Executive in the Petition that Chepyuk Phase II and III was intended to be an exchange for Chepkitale and were not ready to discuss the relocation from Chepkitale.

Hon. Speaker, the Joint Committees further noted that the Government had facilitated due process for the de-gazettement of Chepyuk Phases II and III; which included conducting public participation, seeking approval from the KFS and conducting the Environmental Impact Assessment (EIA) to ascertain that the de-gazettement would not endanger the biodiversity.

The Committee further observed that the Petition discloses adequate grounds for variation of the boundaries of Mt. Elgon Forest Reserve by 4,607 hectares, given the security challenges associated with the land in Chepyuk.

However, mechanisms should be put in place by the Government to ensure that only deserving persons benefitted, in case the request for de-gazettement is approved by the National Assembly.

Hon. Speaker, in response to the prayers by the Petitioners, the Joint Committees urge that pursuant to Section 34 of the Forest Conservation and Management Act, 2016, the National Assembly approves the variation of the boundaries of Mt. Elgon Forest Reserve to exclude Chepyuk Phases II and III comprising of 4,607 hectares.

Further, the Joint Committees urge the House to resolve that the Government should properly secure the remaining forest area within Mt. Elgon Forest Reserve particularly the Chepkitale area, considering the need to achieve the United Nations recommended 10 per cent forest cover in the country.

I thank you Hon. Temporary Deputy Speaker and I beg to move. I now call upon the Vice-Chair of Committee on Environment and Natural Resources, Hon. (Ms.) Sophia Abdi Noor, to second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Member for Ijara, you have the Floor.

**Hon. (Ms.) Sophia Noor** (Ijara, PDR): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to second this Motion. As the Joint Committee, we were very sensitive and alive to the fact that Kenya meets the United Nations forest cover threshold. So, being alive to the fact we are doing a thorough campaign as a Departmental Committee on Environment and Natural Resources with our sister Departmental Committee of Lands, we went into thorough discussions and went through various stages before we reached the decisions that we are asking this House to adopt and approve.

Hon. Temporary Deputy Speaker, in considering the Petition, the Joint Committees held various meetings. We had a meeting with the Cabinet Secretary (CS), Ministry of Lands and Physical Planning and we deliberated on the issue in depth with the CS and experts from the Ministry. We also had a meeting with the Chief Administrative Secretary of the Ministry of Environment and Forestry. We talked and were very open and, in particular, in discussing the forest cover of this country. As a country, we need to meet the demands and the standards of forest cover.



So, we engaged and interacted with the Chief Administrative Secretary (CAS). The Joint Committees also undertook a field trip to Bungoma County. We held a two-day meeting with several stakeholders, including the Ogiek and Dhorobo community council of elders. These are the hunters and gatherers who live in that forest. We wanted to understand what they thought about the proposals we were fronting as a Joint Committee. We also meet other groups and received submission from various stakeholders following an advertisement we placed in the daily newspapers on 26<sup>th</sup> July 2018 in line with Article 118 of the Constitution.

The purpose of this Report is to respond to a prayer made by the Executive. The Joint Committee having considered all the views collected observed that the approval of a legal notice to effect the variation of the boundaries of Mt. Elgon Forest Reserve was passed as a Resolution of Parliament upon recommendation by the Kenya Forest Service (KFS) Board pursuant to Section 34 of the Forest Conservation and Management Act 2018. We discussed that the recommendations by the KFS Board should be guided by the following when considering the variation of the boundaries of Mt. Elgon Forest Reserve.

One, the intent of variation must be approved by the Forest Conservation Committee (FCC) of that area. Every area with a forest has a FCC except my area where we have Boni Forest. But everywhere else, there is a FCC that is consulted to give their approval. Another important thing which is supposed to be looked into before approval is if rare species are found in some particular forests so that they are not endangered. If this forest is curved to resettle people yet we have endangered species, this will not be approved. We looked into this to avoid violating it.

Another very critical and important issue when talking about forests - like we are addressing Mau Forest issues - is the water catchment area. When we went to Mt. Elgon, the Committee looked at the value of the forest as a water catchment area so that the springs and lakes in the forest are not affected in terms of resettling people.

Also, the Committee was expected to carry out an independent environmental impact assessment test to ascertain whether the points we are raising are varied. So, it is clear in our minds that what we are doing is right and we are bringing to the House a very crucial and important decision which has gone through various stages.

Another important aspect was public participation. As I stated earlier, we met several interest groups in Mt. Elgon Forest like the Ogiek and Dhorobo council of elders because they are important stakeholders.

Further, the Joint Committee noted that all the submissions supported degazettement and it is only the Chepkitale area which disagreed. Their fear was that people would be resettled in their area and not that they were refusing on the major substance and principle of degazettement of the forest.

The Joint Committee further noted that the Government facilitated the whole process of degazettement. They did what was required by the law. There was proper public participation and approval by the KFS that conducted their independent environmental impact assessment test. We further observed that the Petition disclosed adequate grounds for variation of the boundary of Mt. Elgon Forest Reserve by 4,607 hectares. Given the security challenges associated with the area, we felt it was adequate enough to give the Government what it required from us.

With those remarks, I second the Motion for adoption and approval by this House on the variation of the boundaries of Mt. Elgon Forest Reserve. Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon Members, allow me to propose the Question.

*(Question proposed)*

Hon. Washiali, you will have the first go at this.

**Hon. Benjamin Washiali** (Mumias East, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Motion as moved by the Chair and seconded by the Vice-Chair of the Departmental Committee on Environment and Natural Resources.

I will start by admitting that I am a ranking Member of this Committee. This is the only Departmental Committee I appear in, other than the other position in the House. First, may I inform Members that this is a very special Petition. As you know, many petitions are never debated in this House, according to our Standing Orders. However, because this is a Petition that is for degazettement of a forest reserve area, it was prudent. I thank you for allowing us to debate this Petition because it is important that the House gives its opinion on degazettement of the forest area.

There is another reason why this Petition is important. This is my 13<sup>th</sup> year in this House. It is very rare to find a Cabinet Sitting to bring a Petition to this House. This is one of the rare Petitions that we have received from the Cabinet in terms of wishing that there will be a correction to a forest reserve. You should know that it is the same Government that is struggling to protect Mau and other encroached forest reserve gazetted areas.

I want to use very few words to support this Petition. For us to have received a Petition from the Cabinet or Government actually means a lot. For those of us who come from Western, year-in, year-out, we have seen many of our brothers and sisters fight in the mountain. At this time, we have the Ogiek against Chepkitale and the Dorobo against the Sabaots. Some of the reasons for this fighting, other than the issue of land, are that we as politicians have taken advantage of this and incited one community against the other.

*[The Temporary Deputy Speaker  
(Hon. Christopher Omulele) left the Chair]*

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

Therefore, I think through the noble idea that has come from the Cabinet, the Departmental Committee on Environment and Natural Resources and the Departmental Committee on Lands sat down and did due diligence as required by law. They went for public participation. Unfortunately, I was not part of it but we shared the report that we received as a Committee. Actually, the essence of us, as a Committee, to oversee the Executive is to help it to maintain the environment. We would have actually declined this, but we had to compare matters on environment against matters of security and also the management of forests. I was surprised that the Vice-Chair did not mention this. We were even told that Dorobos are natural inhabitants of forests and they have maintained the forest where they have lived. Therefore, this will not affect the environment.

I just urge my colleagues that we do not make this story very complicated. Let us support this so that we can have peace in Mount Elgon. I wish to support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We shall have Hon. Wafula Wamunyinyi.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to also contribute to this Report by the Committee in regard to the degazettement of a section of the forest in Mount Elgon.

At the outset, I would like to state that I am, indeed, sensitive to the matter of the forest in Mount Elgon because, as you are aware, Mount Elgon is found in Bungoma and I am a major stakeholder in Bungoma - apart from being one of the Members of Parliament. The issue before the House attempts to resolve various historical problems ranging from security, deforestation, abuse and so on. It is some idea which the Government came up with through the Ministry. Like the Whip, Hon. Washiali, has said, this is a unique matter. It is very rare for the Government to petition the House. It is not normally easy. This is one of the rare cases where a Petition has been filed by a Government Ministry and Department.

I have looked at the recommendations that have been made by the Committee. I have had to look at the Report and, because of time, I want to narrow down to the recommendations that have been made. First, you will note that this Report does not clearly - although the content and submissions are there - provide the findings. As a resident of Bungoma, I am aware that there has been serious destruction of the forest and particularly the indigenous trees. In many parts, particularly Cheptais Sub-County, through the infamous politically instigated *shamba* system, there has been serious destruction of indigenous trees. The Elgon Teak has been cut down. People have had to grow food and various crops within the forest and, in return, they have been asked to plant cypress trees. Hon. Temporary Deputy Speaker, you and I know cypress trees cannot be a replacement for indigenous trees. This has continued. They are not even talking about it in this Report. I agree with Recommendation (2). It says: "The Government should properly secure the remaining forest area within Mount Elgon Forest Reserve particularly in Chepkitale; considering the need to achieve the United Nation's recommended 10 per cent forest cover in the country."

The first recommendation is talking about 4,607 hectares. In the second recommendation, there is no mention of the size of the forest to be secured. It becomes ambiguous. This is where I have a problem. If you look at what has been provided... I thought, maybe, I should propose some amendments to this Report so that it covers specific actions to be undertaken so as to protect the forest. It should have even come up with a recommendation that in all areas where indigenous trees have been cut down, they need to be planted and the *shamba* system be done away with. As we speak, some rivers are drying downstream. The levels of water in the rivers from Mount Elgon are diminishing and, if there is no effort to take care of the forest, we are going to lose out so much.

The Committee has acted on a Petition. It has done its work to bring a Report to the House. If we are not careful, this will be another Mau Summit conflict that we are trying to create in Bungoma. I can tell you that the area we are talking about of Chepkitale is about 20,000 hectares, which is not mentioned in the recommendations. Hon. Washiali attempted to explain how this will be covered. It was previously occupied by the Dorobo. It ought to have been a community forest held in trust for the Dorobos of Mt. Elgon. You are not solving the problem by degazetting it. There are people called the Dorobo currently living in that forest. You are not doing this for the Sabaot Land Defense Forces (SLDF). The SLDF are also in the forest. If you think by degazetting you are solving the problem, you might even be aggravating it further.

I call for caution as we deal with this issue. It is a very emotive issue, particularly for the communities in Mt. Elgon. Unfortunately, my brother, Hon. Kapondi, is not here. This is a very

sensitive matter and we must be alive to that fact. If we are not careful, we will create another Mau Summit problem.

Chepkitale was lawfully held as trust land by the Bungoma County Council since Independence on behalf of the Ogiek or Dorobo community. It needs to be noted that Chepkitale is unregistered community land and, therefore, ought to have been held as trust land - in trust of the people - the Dorobos themselves. Changing it will cause problems because the Dorobos are there. You cannot take them out of the forest. If you want to hold it in trust, provide alternatives. The measures that we are putting in place to solve the problem may lead us to not solving it. This is provided in Article 63 (2) of the Constitution of Kenya. That community land ought to have been vested as Ogiek community land. I am not a member of that community, but as a major stakeholder in Bungoma. I am aware there is bound to be a problem unless this matter is handled properly.

There is also bound to be a problem of deforestation. The forest, which is not mentioned here, has been destroyed. Thousands and thousands of hectares have been destroyed through the *shamba* system. There should be a clear demarcation of boundaries between Mt. Elgon gazetted forest and Chepkitale community land. Unless this is provided for, we expect that there will still be conflict between the communities, the forest and the general population in Bungoma. The county government where Chepkitale land falls, pursuant to Section 12 and 13 (3) (d) of the Community Land Act No.27 of 2016, should facilitate proper and sustainable management of the land with the Ogiek community involvement. They have to be involved in this.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Wafula Wamunyinyi, your time is up. You have clearly made your point. Hon. Wafula Wamunyinyi, you may not get that one minute. If I give you one more minute, Hon. Sankok, who is next, will also ask for a minute. Let us give him 30 seconds to finish that bit. You have one minute, Hon. Wafula Wamunyinyi. I do not know why you said you are a serious stakeholder in Bungoma.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD – K): Why do you doubt that, Hon. Temporary Deputy Speaker?

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I do not doubt that, Hon. Wafula Wamunyinyi.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD – K): Hon. Temporary Deputy Speaker, I am. The point I am driving at is that the people in Mt. Elgon - the Dorobo - ought to have been involved. It should be acknowledged that this is a matter that touches on the Constitution. It touches on existing law. These recommendations are good but, given the need to involve the other stakeholders who I recognise, I will be introducing - at some point - amendments to this Report so that it ensures that we first protect the interests of the community and the Constitution is respected.

With those few remarks, I support the attempt to resolve the dispute in Mt. Elgon, Bungoma County.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. ole Sankok.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker for allowing me to speak to such a very important matter in this House.

At the outset, I oppose this Report. For the first time, I am ashamed to be a Member of the Jubilee administration. There is no way we can have all these problems of drought in the North, South, East and West of our country and the same Government, which is supposed to protect that forest, is now purporting to petition this House to degazette part of the forest under the guise that Dorobos and Ogiek have always been living inside the forest. If they have been

living inside the forest, why degazette it in the first place? Let them live in the forest while it is still a forest. It is another way for the Government to try and grab forest land because it has become the highest grabber of forest land.

If not for the Government, we would not be fighting in Mau. It is because of the Government that we have problems of deforestation in this country. Because of the same Government, our forest cover is now at 1.7 per cent against the required 10 per cent forest cover for us to be, at least, comfortable at the minimum. It is because of the Government encroaching into Mau Forest that people have followed the Government into Mau Forest. If there were no roads in Mau Forest, no citizen of this country would buy land in Mau Forest because they will know it is forest land.

The Government must first of all explain how Government schools sponsored by the National Government Constituencies-Development Fund (NGCDF) are found inside Mau Forest. The Government must first of all explain how Teachers Service Commission (TSC) teachers - duly paid by Government - are teaching in Mau Forest. I doubt monkeys need some lessons or classes. Before bringing any petition to grab more forest land, the Government must first of all explain how chiefs are inside Mau Forest and how electricity was connected in our forest.

We are facing drought and our people are dying. We are beggars literally on 80 per cent of our land mass, in the arid and semi-arid areas. As pastoralists, we are tired of borrowing and begging from the Government and other quarters. The urgent job now for the Red Cross is to feed some of our masses due to failed rains and deforestation. We are tired of individuals - including people like Akothee - donating food stuff to people who can be self-reliant if our forest cover was at a minimum of 10 per cent. We are at 1.7 per cent and they want to grab the forest to take us to zero per cent. We cannot allow this to happen. This House must stand on its feet and reject this Report. We should not allow the Government to grab an inch of any forest. We urge the Government to come up with ways of increasing our forest cover by planting trees in all our public institutions, including schools, chief camps, health centres, road reserves and riparian areas. Let the Government plant more trees to increase our forest cover but not grab even an inch of our forest whether we have conflict or not.

Those people who die because of those conflicts are not better than the millions who die of thirst and hunger. Our rivers are drying up. For the first time in history, when I was in Narok County, Ewaso Nyiro River, Mara River, Siabei River and Sondu Miriu River have dried up. The water level of Sontu River has reduced. The electricity which was generated from Sondu Miriu has reduced. We should get petitions from this Government to alienate part of our holding grounds into forests and to go and conserve Boni Forest. We should get petitions from this Government to ask for funds from this House to fence Mau Forest, Mt. Longonot, Boni Forest and other forests. We should also get petitions from the Government on how they can develop forests in the middle of arid areas, including Marsabit, Mandera and part of Narok County and Kajiado County. If this House allows an inch of any of our forest to be allocated to people while our forest cover is at 1.7 per cent, it will be in history books. If we were at 15 or 20 per cent, we would negotiate. If the forest cover is below 10 per cent, all our forests must be conserved.

It beats logic that those whom we have put in power - which is the Ministry of Environment and Forestry - who are supposed to conserve our environment and protect our water towers, are the same ones that have come with a Petition here. They say they want to grab part of our forest so that they can settle some people whom they purport have always been living in the forest. If Ogieks are experts in living in the forest, let the forest remain and then they live there. I still repeat my statement that our forests are for monkeys and other animals, but not

human beings who only need 10 per cent of our land mass. That translates to 14 million acres. All the rest, which is 126 million acres of the land mass of Kenya, is for human settlement. Please *mtosheke na hiyo. Wachaneni na misitu.*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Sankok.

**Hon. David ole Sankok** (Nominated, JP): Sorry, Hon. Temporary Deputy Speaker. It is in quotes.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): It cannot be in quotes Hon. Sankok. Do not try to circumvent the Standing Orders.

**Hon. David ole Sankok** (Nominated, JP): Sorry, Hon. Temporary Deputy Speaker.

As I finish, we need to conserve our forest. The least we expect from the Ministry of Environment and Forestry is not to grab part of the forest, but to tell us how we can conserve it. I urge this House to stand in the right side of history because we will be judged in future, if we allow an inch of our forest to be grabbed. As a resident of Narok County, I have faced dramatic drought. I have seen people and animals dying. I have seen our tourism almost collapsing. I have seen children suffering from communicable diseases because of dirty water. Long are the days when we used to drink clean water from springs. This country must go back to where it was in terms of environment in the 1980s. It cannot go back there when it is the same Government that wants to grab our forest. The Government must stop grabbing our forest.

With those many remarks, I oppose this Motion.

*(Applause)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Shall we have Hon. Ganya Chachu?

**Hon. Chachu Ganya** (North Horr, FAP): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to support this Motion on the Petition by the Executive for the Variation of the Boundaries of Mount Elgon Forest Reserve. At the outset, I support the Motion. I am a Member of this Committee. Conservation must have human face. If we need to have sustainable conservation in this country, we must realise that human beings are part of that ecosystem and habitat. If we want to conserve our forest and environment in a way that is sustainable and effective in use, it is critical that we look at all issues holistically.

It is important to realise that human beings are part of that ecosystem. The forest is the home of the Dorobo people who live there. We made a field visit to this region. This variation will basically enable the people who have lived in that ecosystem for almost the last 50 years to have a home. Whether we set this land aside for them or not, they will still live and utilise that forest and we will not have sustainable land use practice because they will not call that land their home because they do not have title deeds. They will not develop it. If this is regularised, we will have a sustainable land use practice. The relevant Government authorities like the Ministry of Land and Physical Planning, National Environment Management Authority (NEMA), Kenya Forest Service (KFS) and all the other stakeholders have looked at this issue critically and eventually made a decision to petition Parliament, so that we can vary those boundaries and enable those people to access that land and settle.

This has come to us simply because as Parliament, we are the only ones with the constitutional mandate to vary boundaries of forests or national parks. This can only be done through Parliament. That is why this Motion is before this House. Two Departmental Committees of this House - the Departmental Committee on Lands and Departmental Committee

on Environment and Natural Resources- jointly assessed this Petition. We all concurred that there is need to agree with the Government on their request for this Petition. If you look at our Report, we were all in agreement. There is no single dissenting view. Two Departmental Committees of this House were given a task and they did it well. I am sure they will guide this House to do what is right. An environmental impact assessment was done. Varying the boundaries of Mt. Elgon Forest Reserve will not add any degrading impact on the ecosystem and ecology of that environment. We also feel that if this process is done well and people are settled and we conserve the rest of the forest, then we will have a very good land use system in place. We will conserve the water towers and the entire ecosystem of the Mt. Elgon Forest. People will leave the forest and live where they will be given land. We also have to appreciate that this Petition is from the Executive arm of our Government. They are saying that it is time we varied the boundaries and give squatters, the people who have lived in the land for the last 50 years or so, a space and a home so that they can use that land effectively knowing that it is theirs. Once they have title deeds, they will develop the land and make use of it and boost the local economy and the entire economy of Bungoma County.

From our consideration, it will not have any negative impact on the entire ecosystem of Mt Elgon Forest Reserve or the entire biodiversity. This has been done by the Kenya Forest Services who have done a very elaborate environment and social impact assessment.

Having said that, the issue at hand is the implementation of the recommendations. We may pass a resolution in this House, as we have done in the past. I still remember in the 11<sup>th</sup> Parliament, the Departmental Committee on Environment and Natural Resources, which I was a member, passed a resolution to enable the Bangale and Bangale Forest Reserve in Tana River County to be set aside to enable people who had lived there for many years to own the land. Five years down the line, nothing has been implemented. It is as if we debate in vain and yet this is a constitutional mandate we have been given. So, we may even pass a resolution today but, five years down the line, nothing would have been implemented. This could be different because this has come from the Executive. Maybe, it is in their interest to implement this particular one! But petitions that were brought by people through us and resolutions passed in the House, I can tell you for sure that to date, we are told by Members of Parliament from counties that they are yet to be implemented. So, at times you wonder why we pass resolutions if they are not acted upon by the Executive. But that is something for the Committee on Implementation to ensure that whatever we pass in the House is not in vain and is implemented.

As I conclude, I hope that once the House decides in one way or the other on this matter, and I hope they will agree with the two joint Committees and pass this resolution positively, I hope it will be implemented and the poor people - the Dorobos - who have lived there for all those years will have a place to call home.

I support the Motion.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Before I get to my left, let us have the Hon. Deputy Speaker.

**Hon. Moses Cheboi** (Kuresoi North, JP): Thank you, Hon. Temporary Deputy Speaker. I will be very brief. I support the resolution arising from this Petition.

First, this is a very new phenomenon which arises from our Constitution. It is something that is very good. I support this particular one because I know the difficulties communities in the Mt Elgon area have gone through in the last, probably, 10 or 15 years.

There is something that must be made very clear. First, there must be a symbiotic relationship between the forest and human beings or human race. It should be known that the

people in Mt Elgon have taken care of the forest for a long time. It is only that issues have changed over time. It is now that you cannot utilise your land properly without proper documentation. So, we must be sensitive. This is one thing if it is done well, we will be able to assist those people so that they can also benefit like other Kenyans. There are going to be a few other petitions coming of a similar nature. For example, in Kuresoi North Constituency, we have brought a Petition of a similar nature but different in dimension; where we are asking the Government to give us only 10 acres of land which is already occupied by the Government. The petitioners are petitioning the Ministry of Environment to help them de-gazette 10 acres of land that is already occupied by Government itself. So, it is Government to Government. So, when I see Members like I saw Nominee 001vehemently opposing and saying that Government is grabbing, I thought it was a bit insensitive. Where he comes, for example, he will be very happy to say: Let us take care of Mau. If you go to his land, he has absolutely no tree that he has planted; not a single one. We must learn to be honest with each other. Everybody must participate in the conservation of forests. It should not be left to some specific communities or areas. It cannot be left to the people of Mt Elgon to take care of forests on behalf of the rest of us

...

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Wamunyinyi, what is the intervention for? You look quite agitated.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): Hon. Temporary Deputy Speaker, nobody can believe that the Member the Hon. Deputy Speaker is referring to has never planted a tree. I have been to his home and I have seen trees. He has planted trees on his land, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Wamunyinyi, you cannot be sure that he is the one who planted the trees you saw.

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): He is the one who planted the trees, Hon. Temporary Deputy Speaker.

**Hon. Moses Cheboi** (Kuresoi North, JP): I have no reason at all to have a problem with a very senior Member of this House. I know that he has actually been to a place called Osim or Nosim, where my good colleague here lives. I have been there myself. I am a conservator. I know about trees. I have lived in forests. I know trees that are planted and those that grow on their own. What my Hon. colleague has done is to build a house on top of a tree by utilising trees. That is the benefit. He gets a tree that has grown over a long period of time and builds a honeymoon house up there using the tree. That is what I am saying. We must benefit from trees so that, as human beings, we are also tempted to protect that particular tree. So, when Hon. Wamunyinyi says that he has been there, I have also been there and eaten some very nice meat in his house. He is my friend and he knows it and we are very close. When I say that he has not planted trees, I know what I am saying. What I know is that in his compound, there are some trees that grew and he has managed them. But he did not plant them.

On a more serious note, forests must be of use to human beings in terms of when you conserve them. You know there is some benefit. In Kuresoi North where I come from, we plant trees. Therefore, trees are as good as our cash crop. So, we harvest them when they are mature. Otherwise, they will go for nothing. So, we harvest. Unfortunately, most of the time, it is not the locals who harvest those trees. The licences are given to people from distant areas. But that is not a story for today; it is for another day. The people of Mt Elgon have suffered for a long time and



my good friend Hon. Wamunyinyi knows that in that area, there have been security issues. Remember there is one time there was deployment of the military personnel to take care of them. It is about the conservation of their own land which they have conserved over a long period of time and managed. Therefore, we should allow them to enjoy the benefits and toil of their sweat. This is even biblical. Even for nothing else, it is biblical. When you plant something, you harvest it. That is in the Bible. I did not write the Bible. I found it there.

As we castigate the people who have conserved forests for a long time, we must also be sensitive that they are humans and are supposed to benefit in terms of direct use of that land so that they can grow economically like everyone else in Kenya. I do not think that the Government or any other institution compensates them for conserving the forest. The Government of Kenya can be compensated by being given carbon credit. But carbon credit does not go to individual farmers and individual human beings who live in the forests. These are the things we need to consider so that when I have land, like I have some land, I am given an opportunity to plant trees for taking care of the environment on behalf of humanity. That is critical. This is the Ministry of Environment. This is the Government. This is Executive saying these citizens deserve this. That is a key thing. It is good. It is a constitutional phenomenon that came out of the 2010 Constitution. Therefore, they have taken that advantage. In Kuresoi, we were not very greedy. We were asked: Is 10 acres sufficient? We said we did not need more. Nineteen acres has been cleared. Government is already occupying it. We do not want the entire 19 acres. We want to help the Government to plan for 9 acres. We do not want to use another amount from Government to go and buy land far from where it is. It is in a town called Kuresoi. We want to build DO's office, DC's office, county offices and agriculture offices in only 10 acres.

Somebody will come here and say we should not give them and yet, we are not even the ones who participated in clearing that forest. That is why I am saying what those people have done is good. What the people of Kuresoi have done is good by not asking for 1,000 acres to settle some of the other people who are landless. We have said first, before we even go to settlement issues that we need to consider, let us first take advantage and have Government come close to the people so that we are able to speak to the Government and tell them there is something more we require.

Those are the kinds of things we are saying are good. I beg to wind up my contribution and beseech Members to allow Mt. Elgon people of a very small community, the Ogiek, very few people, to benefit. If we want to get 15 per cent by stopping the Mt. Elgon people from utilising that small land, it does not give us the percentage that we require. We probably would be taking... I do not even know what kind of decimal to use –an extremely, negligible decimal. Let us see ways of trying to conserve environment. We want this environment to benefit human beings. Therefore, we want to plant trees. We want to conserve areas that are supposed to be conserved, but those ones which the human beings are supposed to utilise, let them benefit from them.

Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let us have Hon. Mabongah Mwambu.

**Hon. Mwambu Mabongah** (Bumula, Independent): Thank you, Hon. Temporary Deputy Speaker. This is a nice Report based on the recommendation of the United Nations; that each country has to have at least 10 per cent of forest cover. However, I have some reservations on some of the recommendations that have been submitted in this Report. It is important. You have listened to my senior from the same county, that is, Bungoma County.

I do not think a problem solves a problem. That has been the challenge with this Government. It is very quick to molest its own people without even proper plans in place. I am a resident of Bungoma County where Mt. Elgon is. I have looked at the Report keenly. You can see clearly dissenting voices from the local community. In Mt. Elgon, you are allowing one community to remain in the forest because it is calling the forest their ancestral land and, at the same time, you are displacing a portion of another community. This will bring conflict. It is important before the Government thinks of recovering the forest space that they want to recover, to have proper implementation plan. If anything, if the Government is serious to acquire the 10 per cent, they know very well where the forest was by the time of Independence. Interestingly, you will find people who have issued title deeds in offices with promotions.

Hon. Speaker, this one raises a lot of reservations. It is our duty that before we actually begin to evict people out of the forest, we know the acreage that the Departmental Committee on Environment and Natural Resources is talking about. How many people are going to be affected? We do not want to see a scenario like the one we are seeing in Mau Forest today. Children are crying on the road and the same Government is watching. Schools are being brought down and the same Government that used money to build them is watching. So, what kind of investment are we doing? The best thing they could have done as a Committee was to come here and tell us how many acres of land they are going to recover and what percentage it is going to contribute to the 10 per cent that they want. Lastly, they need to tell us where they are going to take those people. If you settle one community in Mt. Elgon and leave the other one in the forest, you are creating a problem. Being a neighbor to Mt. Elgon, I know that this problem will definitely spill even to my constituency. I have a lot of reservations on this. Yes, we need to conserve the forest and our water towers. It is very important but the Government must take its responsibility by ensuring that the people who are evicted from the forest are resettled. We do not want to sit here and see Kenyan children suffering on the roads just because the Government wants to implement its policies.

I have realised that many directives are being issued by the cabinet secretaries in charge of various ministries. Interestingly, reports come here and we discuss them. But there is no proper follow up on what they are doing. We want to see proper monitoring of policies of whatever they are implementing. At least, we want to see that we have recovered this-and-that from the Mau Forest, or it has increased its percentage acreage up to a certain level. This is so that, as we move to the next water tower or the next forest, we know what we are going to achieve. However, as it is now, it is not clear. That is why when we ask for the acreage, they go to one place and leave the other places empty.

When the Deputy Speaker and the Member for Kuresoi North said that there are people who have been in charge of this forest, I agree. They have even raised their voices on this submission that, that is their ancestral land. Where are you going to take them? Before you do any kind of implementation, we need to know where you are going to take those people to because we know the kind of people they are. You cannot just wake up one day and tell the people who live in the forest that you are evicting them. You do not care where they will take their children and animals. You will be creating a problem. That is why we are concerned as stakeholders from Bungoma. In fact, some of us ought to have been called to appear before this Committee to raise our issues. I hope we still have some space to do so.

I want to register my reservations on this Report. We need more time to engage the community and the leadership. In Mt. Elgon, we have different sub-tribes that need to be involved before this kind of programme takes off.

I oppose this Report.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Jeremiah Kioni, the Floor is yours.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Motion. At the outset, I want to recognise that we are able to discuss this Motion because the Government has been faithful, at least, on this issue, to the requirements of the Constitution. These are the gains that we gave ourselves in the 2010 Constitution. Before, the Executive would just have gone ahead and grabbed the land in whichever way that they deemed necessary and then give it to the people who, perhaps, sang to their tune. However, with the provisions in the new Constitution, we are able to go through this Motion so that we can hear the views such as the ones we have heard.

A little earlier in the day, we saw the Constitution at play, where Parliament was requested to do what many of us did not know is the responsibility of Parliament, that is setting the debt ceiling for ourselves as a country and allowing the Executive to borrow only to a given extent. A third issue has arisen now; listening to Mheshimiwa Wamunyinyi and the Member from Bungoma who has just spoken. This is the issue of public participation. When we have been called to do public participation, I think we take it for granted. I was asking the Vice-Chair of the Committee that has tabled this good Report whether there was an opportunity for the members to inform the report before it came to the Floor and she is telling me the opportunity was available. Their sentiments are crucial. They come from this area. We cannot pretend to be solving problems when we are this far, while the people who are near there have not quite bought into what we are saying. The fact that there was an opportunity to do it at the right time takes it away from them. They cannot come and try to shoot it at this late stage. They should have done it a little bit earlier. It tells you so much because, even as I am saying this, they are in the House, but they cannot tell that I am actually hitting at them. I can only wish them a nice evening. They were very eloquent in saying what they should have said a little bit earlier.

Before I say anything on this report, I want to weigh in on an issue that was discussed a little bit earlier. We had the issue of debt ceiling and the Member for Wajir South, Dr. Sheikh Mohamed, had a dissenting position. What horrified me was that, as Members of this Parliament, we could not give him an opportunity to debate. We got to a point of heckling him. I think for lack of a better word that is a bit primitive. It is not what we expect from Members. It is good to let people say what they want to say. He really had points that he was raising. As to whether he was able to convince people to his side, that is why we are here to debate. One of the best hecklers was the man you call 001, this nominated Member...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Kioni. I am not sure you want to go that route. That is because the Member is not here. I am sure he is not that very strange name you are referring to.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Hon. Temporary Deputy Speaker, the last thing I would want to do is to argue with you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): That you cannot.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Mheshimiwa Sonkok or Sankok is not a stranger to this. He has chosen not to be here.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): What is it, Hon. Wafula Wamunyinyi?

**Hon. Wafula Wamunyinyi** (Kanduyi, FORD-K): On a point of order, Hon. Temporary Deputy Speaker. You cannot allow Hon. Kioni to get away with that kind of statement. He has

made reference to a Member who has contributed in the House, to the extent that he was heckling in the House. Members do not heckle. Hon. Kioni should withdraw that remark of heckling. The Member was contributing and he made some constructive contribution. He should withdraw and apologise.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Hon. Temporary Deputy Speaker, yet another case of a person who did not listen. I did not say that Mheshimiwa Sankok in his contribution was heckling. Just pay attention to what I am saying and you will see I have a point. In fact, eventually, you will be happy with what I want to say.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well, Hon. Kioni. Do not take that tangent. I am sure you are moving away from that tangent.

**Hon. Jeremiah Kioni** (Ndaragwa, JP): Yes, I am, by saying this: When we have different views from what is perhaps popular on the Floor, our colleagues should be careful not to heckle or to shout you down. Just a few minutes ago, nominated Member Sankok opposed this Motion, just like Hon. Sheikh had opposed the earlier one, but he was not heckled. That is the point I am making.

*(Applause)*

Mheshimiwa Wamunyinyi made very good reservations about the report. He was not heckled. What I am unhappy about is the way we heckled that Member. He was very eloquent and making some very useful points. Kenyans want to hear both sides of the divide. And Parliament is about debating. It is not about whipping people emotionally to one side. I do not even need to bother talking about this. In any case, I know what I wanted to say, Mheshimiwa Charles Kilonzo has said. We were with him in Mt. Elgon during the 10th Parliament.

Hon. Temporary Deputy Speaker, this is a very old issue. If it is not given a solution to the problem we identified then, then there is a problem. However, I want to say this as I conclude: The Kenya Forest Services Board (KFSB) is not to deny us an opportunity to live in this world. It is to manage the environment so that we can also benefit from the existing forests. I think they are missing a point. We said we need 10 per cent forest cover in this country, but they cannot just sit there and not help us build on the 10 per cent.

As they tell us what we have to do when we want to cut a piece of the forest so that people can be accommodated, they should also account for what they have done to conserve the endangered species and ensure that the forest cover is being increased. When you drive from Nairobi towards Nyeri and Mt. Kenya region, you will see a lot of land covered by trees and people are in that forest. But before it was clean shaven. But people have planted trees and there is forest cover in settled areas. This forest cover cannot only be in the forest.

Hon. Temporary Deputy Speaker, I know you are not a stranger to Nyandarua because, in any case, before you get to Laikipia, you go through Nyahururu - the town that you took away from us. I want to remind you that Ndaragwa borders the Aberdare Forest. We in Ndaragwa have taken care of the Aberdare Forest very well for the reason that we have the elephant fence that was done. We need to do similar fences elsewhere but, as I said, we also want as Members of Ndaragwa Constituency to benefit from the Aberdare Forest. We cannot just take care of it and there are no benefits coming forth. That is part of the mandate of the KFSB, not just to sit there and earn some sweet allowances.

I thank you Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We shall have Hon. Oyula Maero.

**Hon. Joseph Oyula** (Butula, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this chance to contribute to this Report.

I support this Report. Although I would not encourage deforestation of our forests, there are circumstances that contribute to such issues that are presented in this Report. We know very well that we have had a lot of fighting between the two clans mentioned in this Report in Mt. Elgon Forest. Insecurity in Mt. Elgon has been very high because of land and the settlement of squatters. Those squatters have stayed in the forest without any title deeds to the land. So, it is only fair to listen to their cries and give them the opportunity to own land. It is because of this that they have stayed in that land and done a lot of deforestation.

So, whatever comes up is obvious that they must be settled. The Government is taking the right direction by requesting Parliament or the National Assembly to give approval for de-gazettement of this portion of land. This will help solve a lot of quarrels that have existed in those areas.

Hon. Temporary Deputy Speaker, you have heard people fighting because of land in those areas

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Maero, I am afraid it is now 7.00 p.m. That is not to say that your time has lapsed. When this item is scheduled in the Order Paper, you shall have seven minutes to finish your submissions.

#### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, the time being 7.00 p.m., this House stands adjourned until Tuesday, 15<sup>th</sup> October 2019, at 2.30 p.m.

The House rose at 7.00 p.m.