

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Thursday, 3rd February 2022**

The House met at 2.30 p.m.

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

Hon. Speaker: We do not have the requisite numbers. I, therefore, order that the Quorum Bell be rung.

*(The Quorum Bell was rung)***MESSAGE****THE KENYA DEPOSIT INSURANCE (AMENDMENT) BILL, 2021**

Hon. Speaker: Hon. Members, you may recall that, towards the end of the last Session, the National Assembly passed the Kenya Deposit Insurance (Amendment) Bill (National Assembly Bill No.43 of 2020). The Bill was sponsored by the Member for North Imenti Constituency, Hon. Abdul Rahim Dawood, MP. Following its passage, I presented the Bill for Assent to H.E. the President in accordance with the provisions of the Constitution and our Standing Orders. However, in exercise of the powers conferred under Article 115(1)(b) of the Constitution, H.E. the President, by way of a Memorandum, has referred the Bill back to the National Assembly for reconsideration.

Hon. Members, in his Memorandum, the President has expressed reservations to Clause 2 of the Bill which seeks to amend Section 28 of the Kenya Deposit Insurance Act by deleting sub-section (2) and introducing a new provision to prescribe six months as the waiting period for payment of compensation to a customer in respect of a protected deposit.

Hon. Members, the President notes that the proposed new sub-section is inconsistent with Section 33(6) of the Act, which provides as follows –

“(6) Where the Corporation is obliged to commence payment under sub-section (1) in respect of any insured deposits, the Corporation shall, unless there are extraneous circumstances hindering the Corporation, within thirty days after being appointed liquidator, make payment based on the records of the institution and the opinion of the Corporation as regards to the entitlement of the amount claimed.”

The President also objects the proposal on grounds that the provision is in conflict with paragraph 15 of the International Association of Deposit Insurance's core principles for effective deposit insurance systems which provide as follows –

“The deposit insurance system should reimburse depositor's insured funds promptly, in order to contribute to financial stability. There should be a clear and unequivocal trigger for insured depositor reimbursement.”

Hon. Members, the President has, therefore, recommended that the proposed amendment be deleted. He has also expressed reservations to the introduction of a new sub-section (3) of Clause 2 which imposes a fine not exceeding Kshs1 million, or imprisonment for a term not exceeding three years, or both, for contravention of the impugned provision. In his Memorandum, the President notes that this new provision fails to provide for offences committed by corporate persons. He, therefore, recommends that the proposed sub-section be amended to include sanctions for offences committed by a body corporate. His recommended text is contained in the Memorandum to the House.

Standing Order No. 154(2) requires the House to consider the President's Reservations within 21 days upon receipt of the Memorandum. In this regard, the reservations of the President, as contained in his Memorandum, now stand committed to the Departmental Committee on Finance and National Planning for consideration. The Committee should table its report soon to allow the House to consider the President's reservations within the said timelines.

Hon. Members, the consideration of the President's reservations will be done in accordance with the provisions of Article 115 of the Constitution, as well as the Speaker's Communication which was made on 28th July 2015 relating to the consideration of the President's reservations to a Bill and amendments thereto.

I now direct the Clerk to circulate the Memorandum of His Excellency the President on the said Bill to all Members, so that they can familiarise themselves with its contents.

I thank you, Hon. Members.

(Several Hon. Members walked into the Chamber)

Those Members who are making their way into the Chamber, take your seats. You can take a seat near you. It is not harmful, Hon. Wangari.

PETITION

ENVIRONMENTAL DEGRADATION ALONG SONDU MIRIU DAM

Hon. Speaker: Hon. Members, Standing Order No.225(2)(b) requires the Speaker to report to the House any petition other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation.

In this regard, I wish to report to the House a Petition by members of Mwangaza Abunya Community Development Group, on behalf of communities living around Sondu Miriu Dam in Nyakach Constituency regarding the degradation of the environment along Sondu Miriu Dam due to the failure by the Kenya Electricity Generation Company (KenGen) to fully comply with the Environmental Impact Assessment of 1995. The Petitioners lament that since the completion of

the Dam in 2009, KenGen's reluctance to comply with the recommendations of the Environmental Impact Assessment Report has exposed them to numerous environmental hazards.

The Petitioners state that KenGen has left weeds to sprawl and cover the surface of the dam water, consequently rendering the water unfit for domestic use, hampering water transportation and creating a breeding ground for mosquitoes and other dangerous animals like snakes. The petitioners also claim that KenGen reneged on executing the mitigation measures for containing malaria and other waterborne diseases, hence increasing chances of disease and mortality in the region. In addition, siltation at the Dam has compromised the quality of water and occasioned loss of livestock due to infestation of liver flukes and fluke worms.

The Petitioners further state that following the construction of the Dam, vital access roads were blocked, particularly the access road to Kabondo Sub-County Hospital, which hinders emergency medical response. KenGen is yet to open up alternative routes or construct a bridge across Sondu Miriu River which hinders transportation and commercial activities between Kisumu and Homa Bay counties.

Finally, the Petitioners are disillusioned that in spite of the fact that Sondu Miriu Power Generation Plant is hosted within their region, the local community is yet to be connected to electricity.

The Petitioners, therefore, pray that the National Assembly:

(i) Investigates the issues raised regarding the current state of Sondu Miriu Dam and its effects on the residents' right to clean water and safe environment with a view to recommending appropriate mitigation measures;

(ii) Investigates the extent to which KenGen has failed to implement the Environmental Impact Assessment of 1995 and recommend its full implementation, including opening up blocked access roads; maintain existing murrum roads, construct drainage culverts and bridges at Wath Karoko Point to link Kisumu and Homa Bay counties and another one to link St. Anthony's Secondary School and Abuoye Primary School;

(iii) Recommends to KenGen to construct a health centre at Mamboleo Grounds to serve the local communities which are exposed to high prevalence of waterborne diseases due to the stagnant dam water;

(iv) Find out the projects that KenGen has implemented under Corporate Social Responsibility (CSR) to the affected communities living majorly in Kodhoch West and Kawuor Locations since inception to date and recommend to KenGen to link with Last Mile Connectivity Project to supply electricity to the affected communities, so that they gain advantage of hosting the Dam;

(v) Recommends to KenGen to initiate infrastructure facelift and provision of learning materials in schools within the region, especially Abuoye, Nyandolo and Ogeka primary schools as part of CSR programme;

(vi) Recommends to KenGen to release all the title deeds that have been held at their offices since 2005 when the construction of the Dam began and help the community in processing of title deeds for the parcels of land which had not been finalised; and,

Makes any other recommendations deemed necessary in addressing the circumstances of the Petitioners.

Hon. Members, having determined that the matters raised by the Petitioner are well within the authority of this House, I order and direct that pursuant to the provisions of Standing Order No.227(1), this Petition be committed to the Departmental Committee on Energy. It is required to

consider the Petition and report its findings to the House and Petitioners in accordance with Standing Order No.227(2).

I thank you, Members. I may allow a few questions on the Petition.

The first person is Hon. Sankok. You have decided that this Sixth Session you are going to be exceptionally smart. This is unusual.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Speaker. Being smart is my weakness. Hon. Speaker, you remember there was a day that you were not around and my crutches were snatched. I decided to camouflage so that I confuse the enemy.

The Petitioners have a very valid point because very big companies sometimes disregard advice from the National Environmental Management Authority (NEMA). As much as we need those mega projects, we need human lives first. You know whenever you have such a big project and there is stagnant water especially in those areas of Nyanza which are malaria zones, there will be waterborne diseases and malaria. Roads have been closed because of that major project and they have not constructed other roads or given residents an alternative especially when it comes to health. So, I do support the Petitioners and I think the Committee can make sure that it has dealt with it very quickly considering that we are going towards the elections. This is so that we can solve those issues once and for all. I support.

Hon. Speaker: Member for Mumias East.

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Speaker. Let me quickly join my brother, Hon. Sankok, in supporting the Petitioners for bringing this Petition. This Petition is similar to the Question I asked last year to the Department of Roads where after excavation of murrum, they leave open holes which are usually filled with water and they have become a breeding ground for mosquitoes. In Mumias, three people have lost their lives. Even this morning, I was following what was happening on Mulembe Radio. You know Mulembe is a radio that covers our place. In Kakamega that open sewer has become a dumping place for foetuses. I think going forward, we need to include filing up of those holes whenever a contract is done so that we do not just leave it to the mercy of the contractor to come and recover the place. This is a matter that needs to be looked into in detail. I wish the Departmental Committee on Energy moves fast and save the people of Sondu Miriu.

Hon. Speaker: Member for Endebess.

Hon. (Dr.) Robert Pukose (Endebess, JP): Thank you, Hon. Speaker, for allowing me to contribute to this Petition by the people of Nyakach. Sondu Miriu is actually built on River Nzoia and the source of River Nzoia is Endebess. It comes from Kimoson all the way through Namanjalala and it goes all the way to River Nzoia. It is a tributary of River Nzoia. It is for those who know geography. Leave alone *Mzee* who does not know geography. All those areas supply water. KenGen built the Sondu Miriu. They also have the Turkwel Gorge which is supplying hydro-electric power to this country and supplying the western region. I think when the Committee is looking into issues of corporate social responsibility, KenGen should be able to distribute it evenly to the source of the water even for those Seven Forks Dams like Masinga Dam and all the rest. I think it will be good for them to have a programme that they can distribute all over the country. With those few remarks, I support it.

Hon. Speaker: Member for Gilgil.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Speaker. I also rise to support this Petition. I think the issue of KenGen is widespread especially in the areas where they are operating, including my own constituency in Eburu area. The emissions from those plants have a detrimental effect not only to the plants, but also to the people who live around it. This should be

looked at holistically so that we know exactly how we deal with those emissions. Just recently, we had iron sheets being corroded by the effects of those emissions. This has not been addressed properly. The issues of CSR and employment are very critical. I think it should be by policy that in every area they are operating, the locals are entitled to about 70 per cent of the employment activities around that area. That way, they can be able to fend for their families even when the initial primary activities like farming are affected.

With those few remarks, I support.

Hon. Speaker: Member for Kitui Central.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Speaker. It is unbelievable to hear that such a big project did not consider the Environmental Impact Assessment Report. I must thank the Petitioners for raising this matter in this House because if it is the question of investment, as the Committee deliberates on this matter, it will be very important that they consider what the Petitioners are saying. This is because we have seen in the past in this country where omission of consideration of the Environmental Impact Assessment Report has actually led to deaths. So, it is important and urgent that this matter is considered and reported to this House. I thank you.

Hon. Speaker: Member for Nyaribari Chache.

Hon. Richard Tong’i (Nyaribari Chache, JP): Thank you, Hon. Speaker. I stand to support the Petition. I was whispering to the former Leader of the Majority Party that the company which did the project is very close to my heart. It is a very professional company from Japan. I was telling him that my first million profit ever on earth I made from that company supplying them legitimately. They are very professional people. They do a good job. This must have been an omission.

Having said that, I want to agree with the Petitioner that KenGen and Kenya Power need to style up and up their game. Where I come from in Nyaribari Chache, the way the wayleaves have been fixed is actually hindering development. We have a shortage of land and when we have wayleaves all over without following any order, it affects the way of life of the population. We need to have it fixed and have a better structure of fixing that. I support the Petition and I hope they will do something to ensure that the quality of life of the people of Nyakach is not affected by that mega project.

I support.

Hon. Speaker: Member for Mandera West.

Hon. Yussuf Adan (Mandera West, EFP): Thank you, Hon. Speaker. I also stand to support this Petition. I have a personal experience where the effect of KenGen causes disastrous damages. A good example is that when the Masinga Dam and those other dams are full, they release a lot of water downstream from Garissa up to the Tana Delta. All the farms are flooded, families are displaced and some houses are water logged once or twice every year. The destruction is just too much and nobody is there to compensate those families. They do their farming and establish their perennial crops. All over a sudden, this water comes and washes everything away. Their families become destitute. In some places, they become refugees and then after a while, they come back again to do the same thing. I think legislation has to be put in place so that such families are given notices and also they are compensated.

Thank you.

Hon. Speaker: Member for Yatta.

Hon. Charles Kilonzo (Yatta, Independent): Thank you, Hon. Speaker. I also wish to support this Petition. Mega projects should not be a curse to local communities. It is unfortunate

that people in Sondu Miriu do not benefit from the project. They do not have electricity. This has happened elsewhere. In Machakos County, there is Masinga Dam, Gitaru Dam and Kiambere Dam and yet, when you go to Masinga Constituency, Yatta Constituency and most constituencies within the county, there is no electricity connectivity.

Likewise, another mega project that has affected the local community negatively is a project which was funded by the African Development Bank (AfDB) in Kimira-Oluch at the shores of Lake Victoria, an area which was not infested by mosquitoes. It was an area which had good roads and never experienced flooding.

It is important that Government looks at proper implementation when doing projects and make sure that local communities benefit and do not suffer.

Thank you, Hon. Speaker.

Hon. Speaker: Finally, let us have the Member for Emurua Dikirr.

Hon. Kipyegon Ng'eno (Emurua Dikirr): Thank you, Hon. Speaker. I too wish to support the Petitioners on this idea of dams and projects which are causing environmental degradation in our areas. When we are doing many projects in this country, there is always an environmental assessment which is done by National Environment Management Authority (NEMA) which approves whether the project should proceed and if it proceeds, what regulations the contractors should follow so that they do not degrade the environment. I say this because there is a project around the area where I come from which I visited – Itare Dam – that has a lot of environmental degradation. Most of the people who live around there have been hospitalised because of the products from drilling of that dam. Therefore, whenever we are doing any construction like dams or other major projects, NEMA themselves should give the contractors conditions. If these conditions are not met, NEMA or the people who live in those areas should sue the contractors. There should be a way where NEMA themselves can deal with those projects rather than leaving it to the ordinary *wananchi*.

Thank you, Hon. Speaker.

Hon. Speaker: Very well. That concludes the comments on that Petition.
Next Order.

PAPERS LAID

Hon. Speaker: Leader of the Majority Party.

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House today Thursday, 3rd February, 2022:

Legal Notice No. 263 relating to the Data Protection (General) Regulations, 2021 and the Explanatory Memorandum from the Ministry of ICT, Innovation and Youth Affairs.

Legal Notice No. 264 relating to the Data Protection (Complaints Handling and Enforcement Procedures) Regulations, 2021 and the Explanatory Memorandum Ministry of ICT, Innovation and Youth Affairs.

Legal Notice No. 265 relating to the Data Protection (Registration of Data Controllers and Data Processors) Regulations, 2021 and the Explanatory Memorandum from the Ministry of ICT, Innovation and Youth Affairs.

Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2021, and the certificates therein:

- a) Mombasa-Nairobi-Addis Ababa Road Corridor Project Phase II - Kenya National Highways Authority;

- b) Global Fund HIV/AIDS Project Grant – National Aids Control Council;
- c) Health Sector Support Project – Kenya Medical Suppliers Authority (KEMSA);
- d) Global Fund Tuberculosis Grant Programme - Ministry of Health;
- e) Kenya Youth Employment and Opportunities Project – State Department for Youth Affairs;
- f) Thwake Multi-Purpose Development Program Phase I;
- g) Ewaso Ng’iro South Development Authority;
- h) Emergency Locusts Response Project – State Department for Crop Development and Agricultural Research;
- i) Regional Pastoral Livelihood Resilience Project – Ministry of Agriculture, Livestock, Fisheries and Cooperatives;
- j) Enable Youth Kenya Program – State Department for Crop Development and Agricultural; Research;
- k) Kenya Youth Employment and Opportunities Project – Micro and Small Finance Enterprise Authority;
- l) Timboroa-Eldoret Road Rehabilitation Project – Kenya National Highways Authority;
- m) Port-Reitz/Moi International Airport Access Road – Kenya National Highways Authority;
- n) Nairobi Southern Bypass Project – Kenya National Highways Authority;
- o) Northern Corridor Rehabilitation Programme Phase III – Kenya National Highways Authority;
- p) Kenya Transport Sector Support Project – Kenya Civil Aviation Authority;
- q) Nuno-Modogashe Road Project – Kenya National Highways Authority;
- r) Transforming Health Systems Universal Care Project Grant – Ministry of Health.

Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June, 2020, and the certificates therein:

- a) Kenya Institute of Mass Communication;
- b) Numerical Machining Complex Limited;
- c) LAPSSSET Corridor Development Authority;
- d) Kirinyaga University;
- e) Kenya Roads Board – Operations;
- f) Kenya Road Boards Fund – State Department of Infrastructure;
- g) Kenya Marine and Fisheries Research;
- h) Kenya National Shipping Line Limited;
- i) Kenya Citizens and Foreign Nationals Management Service;
- j) President’s Awards Scheme;
- k) National Research Fund;
- l) Universities Fund;
- m) Karen Technical Training Institute for the Deaf; and,
- n) Kenya Law Reform Commission.

Thank you, Hon. Speaker.

Hon. Speaker: Very well, let us get these other documents tabled. The Chairperson, Departmental Committee on Finance and National Planning. Hon. Angwenyi, are you the acting Chair?

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House today, Thursday, 3rd February 2022:

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A Report of the Departmental Committee on Finance and National Planning on the vetting of Ms. Elizabeth Wangui Muchiri, nominee for appointment as a member of the Salaries and Remuneration Commission representing the National Police Service Commission.

Thank you, Hon. Speaker.

Hon. Speaker: Next Order.

NOTICES OF MOTIONS

CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES, 2021

Hon. Speaker: Hon. Kamket.

Hon. Kassait Kamket (Tiaty, KAU): Thank you, Hon. Speaker. I beg to give notice of the following Motions:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Sinking Fund) Guidelines, 2021 (Gazette Notice No. 5085 of 2021); laid on the Table of the House on Tuesday, 21st September 2021, and pursuant to the provisions of section 13 of the Statutory Instruments Act, 2013, annuls the Public Finance Management (Sinking Fund) Guidelines, 2021 published as Gazette Notice No. 5085 of 2021.

CONSIDERATION OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION IMPACT ASSESSMENT AND AUDIT (AMENDMENT) REGULATIONS 2016

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations 2016; laid on the Table of the House on Wednesday, 10th November 2021, and pursuant to the provisions of section 18 of the Statutory Instruments Act, 2013 and Standing Order No.210(4) b, annuls in entirety the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations 2016, published as Legal Notice No. 149 of 2016.

I thank you.

Hon. Speaker: Hon. Angwenyi.

APPOINTMENT OF A MEMBER TO THE SALARIES AND REMUNERATION COMMISSION

Hon. Jimmy Angwenyi (Kitutu Chache North): Hon. Speaker, I beg to give notice of the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Finance and National Planning on the vetting of Ms. Elizabeth Wangui Muchiri, nominee for appointment as a member of the Salaries and Remuneration Commission representing the National Police Service Commission laid on the Table of the House on Thursday, 3rd February 2022 and, pursuant to the provisions of Article 250(2)(b) of the Constitution, Section 7 of the Salaries and Remuneration Commission Act, 2010 and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Ms. Elizabeth Wangui Muchiri as a member of the Salaries and Remuneration Commission.

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, on Tuesday, the Government tabled loans for the month of September to December.

(An Hon. Member spoke on the phone)

Hon. Speaker: Order! Order! Order! The Member there, if you want to speak on your phone, you get out! We cannot even follow the language you are using. It is just noise. If you do that, the next thing is that you will be out of this place for a long time. If you want to talk to villagers, just go out. You can tell them you are in the Chamber! Can you not? I know this is a very difficult and trying time. You think everyone calling is... Please, tell them to allow you to participate here.

Proceed, Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, the new loans contracted by the Government between the month of September and December 2021 were tabled by the Leader of the Majority Party on Tuesday. In accordance with Parliament, as an independent institution, I want to ask of you two things.

One, that the Report, if available in soft copy, should be publicised and put on the parliamentary website for the people of Kenya to see the level of borrowing.

Second, in the last nine years, the Budget and Appropriations Committee has been presenting to the House the debt report as part of the Budget Policy Statement. That has been the tradition. I ask that this year, in line with the advice given by the Parliamentary Budget Office, the Budget and Appropriations Committee tables a report on the debt separate before we discuss the Budget Policy Statement in its Report.

Finally, I do not want to speak for him because he is in the House. This is the last Session and we will be very happy, as you directed earlier, if we can discuss Hon. Bunyasi's Bill on the establishment of an independent institution that will deal with debt in our country.

Hon. Speaker: This advice by the Parliamentary Budget Office has not... I have not been... Who are they advising?

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, they have been advising the Budget and Appropriations Committee. The Chair seated here can confirm. They had been advising even the previous Chairs of the Budget and Appropriations Committee. It is an advice they have been giving and it is in the *Hansard*. I am sure the Chair of Budget and Appropriations Committee can confirm that the advice has been given. I can confirm that. We need to discuss the debt as a separate report before we discuss the Budget Policy Statement. That is the only thing I ask.

Hon. Speaker: *(Technical hitch)* ... I am informed it is in the parliamentary website. Hon. Kanini, do you want to say something about this? Welcome back to the House.

Hon. Kanini Kega (Kieni, JP): Thank you, Hon. Speaker. I do not understand why my good friend, the emeritus Leader of the Majority Party is jumping the gun. Next week, hopefully, we will have the Budget Policy Statement with us and if there is any departure, he will raise it at that point. I beseech him to wait until next week because I believe that by Tuesday or Wednesday, we will table the report.

Hon. Speaker: Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I am not waiting for the Budget Policy Statement to be tabled. It has timelines. I am only asking that before Tuesday... In the

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previous nine years, the Budget and Appropriations Committee used to lump together the debt report and the Budget Policy Statement as a one document. If they can give an opportunity to this House, we can have a separate Report for the debt and a separate Report for the Budget Policy Statement so that this House can discuss the debt. It has been tabled and every time such a document is tabled, you usually send it to the relevant Committee. There are a number of reports including even the Controller of Budget Report. Going forward, even if we are at the tail end, the Report on the debt is very critical.

Hon. Speaker: I am also informed that indeed, those Reports are brought quarterly and so, the Budget and Appropriations Committee could very well do a report on each of them and, perhaps, do a composite one.

(Applause)

(An Hon. Member spoke off-record)

You do not just shout “point of order”. You know I look at the screen. I see the Member for Alego-Usonga.

Hon. Samuel Atandi (Alego-Usonga, ODM): Hon. Speaker, thank you very much. It is refreshing to see the former Leader of the Majority Party doing his job as far as Parliament is concerned; something he was not able to do when he was the Leader of the Majority Party.

I have a piece of legislation which is pending somewhere, in which I seek to amend the Public Finance Management (PFM) Act to allow sector committees to scrutinise medium term public debt reports every time they scrutinise the Budget Policy Statement. As at now, I have gone through the law, the PFM Act and what Hon. Duale is asking does not exist. There is no law that forces the Budget and Appropriations Committee to discuss that report because it is not there. If my amendment is passed, it will compel sector committees to go through the medium term debt report alongside the Budget Policy Statement. If that is done, it will be possible, but what Hon. Duale has asked of the Chair to table the Report before the Budget Policy Statement is untenable.

Thank you, Hon. Speaker.

Hon. Speaker: Save for the fact that you wanted the people of Alego-Usonga to know that you have proposed a Bill, the rest, Hon. Atandi, once the document has been tabled here, obviously, it is referred to the relevant Committee of the House. Those ones to do with debt are normally brought every quarter, including the reports from the Controller of Budget. If you look at all of them, I always put a note for the Clerk to forward them to the relevant committees for consideration. When they consider, they have to bring a report to the House. They cannot consider and stay with the reports. The committees have either been considering and sleeping or something like that. Since they have been tabled, they must be reported on.

Hon. Makali Mulu.

Hon. (Dr.) Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Speaker. It is important that we put the record straight. Every time the Budget Policy Statement (BPS) is tabled in this House, it is done together with what we call “The Medium Term Debt Management Strategy.” These two documents come together. As a Committee on Budget and Appropriation, we discuss them together. So, unless Hon. Duale is saying that he wants a special report which will specifically talk about debt management, the report that is presented by the Budget and Appropriations Committee always has a component on debt management. Why do we do that? If you look at the current BPS, it is proposing a Budget of Kshs3.3 trillion. The money which is going

to be released locally is Kshs2.4 trillion, meaning that the country is expected to borrow about Kshs860 billion. So, because we are going to borrow, the Medium Term Debt Management Strategy is important and we must discuss it. Otherwise, we will have unfunded Budget. I can assure Hon. Duale that the Report that will be presented next week by our Chairman, Hon. Kanini Kega, will discuss that particular issue because as it is, there is a deficit.

Hon. Speaker, you have also raised an important point, that that is what we have not been doing as a House. Every quarter, we get an update on how our public debt is doing in the country. However, we do not take time, as a House, to interrogate the quarterly reports that come. Usually, you mark them to the relevant committees. They discuss them but they do not come back to the House to update Members on what is happening. We need to get that clear. The quarterly reports should become part of our debates in this House. When the quarterly reports are prepared and brought to this House, committees will have a look at them and table a report that we will then debate. That should be the way.

Thank you.

Hon. Speaker: Very well. Hon. Kamket.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Speaker. I want to appreciate what Hon. Duale has requested. It took too long for Hon. Duale to... He is turning out to be a good opposition leader. He spent a lot of time in the seat of the Leader of the Majority Party. He is turning out to be an activist from the points he is raising now.

Like it has been said earlier, this document is already with the Committee. I want to tell Hon. Duale that there is no amount of activism that will help him and his preferred party to win back the Government. They are headed directly to the opposition however much activism he tries to bring to the House.

Hon. Speaker: Order, Members! Hon. Kamket, please, the issue of public debt is a serious matter. If you introduce village issues, it is not going to be good. Let me hear from the Member for Nambale.

Hon. Sakwa Bunyasi (Nambale, ANC): Thank you, Hon. Speaker. Indeed, this is a serious matter and it should not be cheapened the way Hon. Kamket is trying to do. Many documents are brought and tabled in this House and we forget about them. Being able to debate them will be a step forward for the purpose of a more substantive and structured engagement on the debt question, such as what I have proposed in the Bill. It will be important for us to take stock of where we are, how we are doing and how the debt will affect our future borrowing activities. This is not a partisanship matter in politics but a matter of sound economic management. For those who think that they are protecting any side by resisting discussion on this, they are doing a disservice to them. You cannot light a fire under your mattress and feel safe because you do not feel the heat. That will be a big mistake. So, I hope that in line with the instruction that you gave, this Bill will be tabled. I know that we may not have enough time to finish it, but let us debate it. It will give us a broader insight of where we are and what is happening. Then we can give guidance from whichever position to support and improve the management of the economy. There is nothing sinister about that. I find that defensiveness to be counter-productive.

Hon. Speaker: Hon. Members, I notice that a number of you have pressed for intervention. Hon. Abdisalan, hold on a bit. For the convenience of the House, I will step down those interventions. Do not remove your cards. You will be given a chance. I have just noticed that quite a number of Members have completed their Afternoon Sitting. Let me rearrange business so that we go to Orders number eight and nine.

BILLS*Second Reading*THE PUBLIC PROCUREMENT AND ASSET DISPOSAL (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO. 32 OF 2021)*(Hon. Amos Kimunya on 2.2.2022)**(Debate concluded on 2.2.2022)*

Hon. Speaker: Hon. Members, debate on this Bill was concluded when the House last debated it. What remained was for the Question to be put for the Second Reading, which I hereby do.

*(Question put and agreed to)**(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

Next Order.

*Second Reading*THE SUSTAINABLE WASTE MANAGEMENT BILL (NATIONAL
ASSEMBLY BILL NO. 22 OF 2021)*(Hon. Amos Kimunya on 2.2.2022)**(Debate concluded on 2.2.2022)*

Hon. Speaker: Again, Hon. Members, debate on this Bill was concluded yesterday and what remained was for the Question to be put, which I hereby do.

*(Question put and agreed to)**(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

Go to the next Order. Order No. 10.

*First Reading*THE FOREST CONSERVATION AND MANAGEMENT (AMENDMENT)
BILL (NATIONAL ASSEMBLY BILL NO. 53 OF 2021)*(Order for First Reading read – Read the First Time and ordered to be referred to the relevant Departmental Committee)*

Hon. Speaker: Very well. We now go back to the interventions. Please make them brief and to the point. Do not engage in unnecessary shenanigans which can cause excitement. Hon. Sankok.

Hon. David ole Sankok (Nominated, JP): Thank you, Hon. Speaker. I think we are all saying the same thing in different styles depending on where you were born and brought up. What Hon. Duale has requested is that we need to see the debt first before we go to the BPS, so that we can understand, compare the two and see where we are. So, what is wrong with asking for that? Hon. Kanini Kega has confirmed that he has received recommendations from the Budget Office.

(An. Hon. Member spoke off-record)

I have not said “she”. Sometimes, depending with how you talk, I may confuse whether you are a he or a she. He has received recommendations from the Budget Office that we separate the two reports so that we understand and internalise it, and control the debt ceiling in this country. We are all saying the same thing apart from Hon. Atandi He is used to WhatsApp. This is a serious matter, Hon. Atandi.

Thank you.

Hon. Speaker: Member for Endeless, what is your intervention?

Hon. (Dr.) Robert Pukose (Endeless, JP): Thank you, Hon. Speaker. Having listened to Hon. Bunyasi, one of the most intelligent Members in this House and who has worked with World Bank as an economist, it is that kind of experience that we need in this House. Having an independent body to manage debt is what we need. We should give the Bill due attention and make sure that it is debated in this House so that we have a way forward.

On the issue of submission of a debt report as was raised by Hon. Duale, Hon. Makali has confirmed that they always receive mid-term reports from the Controller of Budget. It is important that we debate this matter. As much as the Budget and Appropriations Committee will bring both reports, we need to look at the debt situation. Where are we as a country? How do we move forward? How do we bridge the gap? Hon. Duale has raised a very important matter although Hon. Kamket was trying to trivialise it. Hon. Duale is raising the issue as the Member for Garissa Township. We should respect each other in this House and appreciate Members’ contributions. With due respect, Hon. Kamket - you know we come from the same region and I know you! Let us not trivialise this matter. You are a serious legislator although you are a cattle rustler as well.

(Laughter)

Hon. Speaker: Now, if you mix the matter of debt with cattle rustling, it becomes hectic. The Member for Tharaka, do you also want to weigh in?

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. The issue of debt in the country is actually becoming quite emotive. Everywhere we go, including the rural constituencies, you hear people talking about escalating debt. Therefore, it is vitally important that we separate other reports from other items on the country’s debt. We are not happy to hear what is happening in Zambia and other countries where debt is spiralling into unmanageable levels. Let us quickly debate and regularise what we are able to and inform the country where we stand. Everybody thinks the country is over-borrowing and soon we will be in the red. The point raised is important.

Let us have the report separately and debate it and tell the country exactly where we are in terms of debt matters.

Hon. Speaker: There is an explanation which was given by Hon. Makali Mulu, which I think many of you may not have taken note of. What is going to come from the Budget and Appropriations Committee for this period has to be together with the report on debt. But the point raised by Hon. Duale still remains valid. There are other reports on debt that have been tabled and they need to be reported on as well. It is good for Members to separate the two.

Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Speaker. What we are discussing is extremely important, the fact that Hon. Duale is raising the point now but he did not raise it before notwithstanding. Having been in the BAC before, I know that it is always part and parcel of the report, except it is not always flagged down and discussed in detail. Whereas at this point there is no requirement that the report comes separately, I think we do ourselves a lot of good if Hon. Kanini can flag down the report within the Committee report. Hon. Duale will then take the opportunity to pick the matter up from there and lobby everybody else to look at the issues separately. I do not think it is something we should argue about too much. There are two Members who have already brought Bills on the matter. And they are people experienced in finance. I request Hon. Kanini to flag down the matter, even if there are not two separate reports, bring historical elements out and inform us. Many times we do not get involved because we are not adequately informed during debate. If the two Bills are passed, they will make it mandatory that we have the two reports.

Thank you, Hon. Speaker.

Hon. Speaker: The Chairman of the Budget and Appropriations Committee, conclude this matter. Remember there is no Motion before us.

Hon. Kanini Kega (Kieni, JP): Hon. Hon. Speaker, I can confirm to you that this morning, the Budget and Appropriations Committee had a meeting and this is one of the issues we discussed. So, I beseech this House to wait for our report that we will present by next week. We will be able to canvass the issues after that. I want to confirm that this issue is live with us and we will make sure that we bring a report alongside the report on the Budget Policy Statement (BPS).

Thank you, Hon. Speaker.

Hon. Speaker: Hon. Members, you may notice that sometimes I have to ignore you even when you press for intervention because we tend to lose what is in the Order Paper, which follows what is in your own Standing Orders. Let us go to Order No. 7.

QUESTIONS AND STATEMENTS

Hon. Speaker: The first Question is by the Member for Lugari.

Question No.003/2022

PAYMENT BY CEMENT FACTORIES TO KENYA POWER

Hon. Ayub Angatia (Lugari, ANC): Thank you, Hon. Speaker. I rise to ask Question No.003 of 2022 directed to the Cabinet Secretary for Energy:

- (i) Could the Cabinet Secretary provide details of the amount of money paid to Kenya Power by each of the cement-manufacturing firms in the country per month for electricity power consumption in 2020 and 2021?
- (ii) Could the Cabinet Secretary also provide details of outstanding electricity bills attributed to each of the cement firms?
- (iii) Could the Cabinet Secretary explain reasons which have led to the decline in financial performance by Kenya Power?
- (iv) What specific measures has the Government initiated to return the company to profitability?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Energy. Next Question is by the Member for Tharaka.

Question No.004/2022

NON-ISSUANCE OF APPOINTMENT LETTERS TO SENIOR TEACHERS

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Speaker. I rise to ask Question No.004 of 2022 to the Teachers Service Commission:

- (i) Could the Commission explain why Mr. Kamui Joshua Munene (TSC No. 505757), Mr. Mutiiria Aron Mutugi (TSC No. 480686), Mr. Japhet Kirimi Muthwe (TSC No. 535767), Ms. Hellen K. Njagi (TSC No. 392191), Ms. Nyaga Priscilla Kagendo (TSC No. 366144), Mr. Peter Ntoiti Ngoci (TSC No. 508176), Ms. Rose Gatwiri Njeru (TSC No. 423450) and Ms. Purity N. Gideon (TSC No. 345212) who were appointed as Senior Teachers in 2017 are yet to be issued with letters of appointment as per the provisions of the Teachers Service Commission's policy on human resource?
- (ii) Could the Commission provide the timelines within which the said teachers shall be issued with their respective letters of appointment?

Thank you, Hon. Speaker.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Education and Research. Next question is by the Member for West Mugirango, Hon. Kemosi Mogaka. He has written to me requesting deferment. I have acceded to the request, so the question is deferred to Tuesday next week.

Question 014/2022

NON-DISBURSEMENT OF FUNDS TO MAINTAIN RURAL ROADS

(Question deferred)

The last question is by the Member for North Imenti, Hon. Abdul Rahim.

Question 018/2022

STATUS OF INVESTIGATIONS INTO THE ABDUCTION OF MR. LEWIS MUTHURI

Hon. Rahim Dawood (North Imenti, JP): Thank you, Hon. Speaker. I want to ask Question No. 18 of 2022 to the Cabinet Secretary for Interior and Coordination of National Government:

- (i) What steps has the Ministry taken to ensure that Mr. Lewis Muthuri (ID No. 26369584), who was allegedly abducted by security officers on 11th October 2021 near Mulathankari Chief's Camp in Kibachia Village, Kiamwitari Division in Imenti North Constituency, has been traced and re-united with his family?
- (ii) What is the status of investigations into the abduction of the named person, which was reported at Meru Police Station on 13th October 2021 vide OB. No. 98/13/10/2021?
- (iii) What measures has the Ministry put in place to address increased cases of mysterious forced disappearances of persons across the country?

Hon. Speaker, this is the same Question that I asked in December. The Chair had promised to give me an answer during the break because it was a serious issue; but up to date, I have not received any response. One of my constituents has been found in River Yala. Can you imagine the distance from Meru to Yala? This is another case, and I hope one of the politicians who was taken along the road last year, Mr. Mbijiwe, will not be found in River Yala as well.

Hon. Speaker, we need to know more about this issue. Thank you.

Hon. Speaker: The Question will be replied to before the Departmental Committee on Administration and National Security.

The next segment is on Statements. We have a request for Statements by Hon. Duale.

REQUEST FOR STATEMENT

THE STATUS OF CONTRACTS AWARDED TO FOREIGN COMPANIES IN THE INFRASTRUCTURE SECTOR

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(c), I rise to request for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the status of contracts awarded to foreign companies in the Energy, Infrastructure and ICT sectors.

Hon. Speaker, the status of public debt as at 31st September, 2021, indicates that the gross public debt increased by Kshs.875.7 billion to Kshs.7,996.3 billion compared to Kshs.7,120.6 billion as at end of September, 2020. The gross public debt comprised 50.8 per cent external debt and 49.2 per cent domestic debt. The National Treasury attributes the increase in the public debt during the period to external loan disbursements, exchange rate fluctuations and uptake of domestic debt during the period.

Hon. Speaker, the pending bills are mainly in the roads and energy sectors. Roads had pending bills of Kshs.71 billion in the FY 2018/19, which dropped slightly to Kshs.41 billion in the FY 2019/2020, before doubling up to Kshs.88 billion in the FY 2020/21.

Hon. Speaker, the government paid approximately Kshs.645 billion or 65 per cent of the total actual expenditure of Kshs.975.2 billion in the Energy, Infrastructure & ICT sector to companies that were linked to China or which were Chinese state-owned companies, among other foreign enterprises. The high borrowing from foreign nations and awards of contracts to foreign or foreign-owned companies has created a vicious cycle of borrowing from foreigners to pay foreigners. This is very sad because we borrow from them and then pay them again.

Hon. Speaker, it is against this background that I seek for a Statement from the Chairperson, Departmental Committee on Transport, Public Works and Housing that addresses the following issues:-

- (i) What is the identity of local directors/and or representatives of all foreign-owned companies awarded contracts by the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works, including a breakdown of contracts awarded by all the state agencies in the Ministry from the FY 2013/2014 to date?
- (ii) What is the total amount of contracts awarded to foreign companies undertaking projects in the Ministry, including a breakdown for each company and the total amount paid so far from the FY 2013/2014 to date?
- (iii) Can the Ministry provide the identity of directors and local representatives of foreign-owned or foreign-linked companies awarded contracts for construction, rehabilitation, maintenance and design of roads and bridges; and construction of affordable housing from the FY 2018/2019 to FY 2021/2022, including a breakdown of contracts awarded?
- (iv) Could the Ministry provide a breakdown of the total number of professional Kenyan engineering graduates employed by foreign-owned or foreign-linked companies from the FY 2018/2019 to FY 2021/2022?
- (v) Provide the names of local companies and amounts of sub-contracts that the foreign-owned or foreign-linked companies have awarded local contractors as a way of capacity building and technology transfer from the FY 2013/14 to date?
- (vi) Provide technical and financial verifiable measures that the Government has put in place to support local contractors in effectively competing against state-backed companies from other nations like China?

Hon. Speaker, thank you for giving me an opportunity to ask this Statement

Hon. Speaker: Chair, Departmental Committee on Transport, Public Works and Housing. Does he have a Vice-Chair? Anyway, the request will be channelled through the Office of the Leader of the Majority Party and he will communicate.

The next segment is a Statement by the Leader of the Majority Party.

STATEMENT

BUSINESS FOR THE WEEK COMMENCING
8TH FEBRUARY TO 10TH FEBRUARY 2022

Hon. Amos Kimunya (Kipipiri, JP): Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(a), I rise to give the following Statement on behalf of the House Business Committee (HBC) which met on Tuesday, 1st February, 2022, to prioritise the business for consideration.

Hon. Speaker, let me take this opportunity to officially welcome Members back from the long recess and into this new Session. It is my hope that we have all had a chance to rest and rejuvenate, while also interacting with our families and constituents. I also trust that we are re-energised and ready for the coming weeks, considering that we will have quite a lot of business to dispense with in a short time.

I also wish to take this chance to urge the Committees to expedite any time-sensitive business before them to give room for consideration and substantive debate by the House. As we

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are all aware, time is of the essence at this juncture, and there is need to ensure that we fast-track consideration of all urgent business in this Sixth Session of the 12th Parliament. In fact, this Session is akin to the final lap of a long-distance race. Collectively, as a House, we have achieved a lot thus far, and in retrospect, we have contributed significantly to the development and advancement of our laws. But it is not over yet; the bell has just rung and this is the last lap, so we need to make every moment count.

Hon. Speaker, for the sitting of Tuesday, 8th February, 2022, the following business will continue at Second Reading:

1. The Coffee Bill (Senate Bills No. 22 of 2020);
2. The Children Bill, 2021; and,
3. The Health Laws (Amendment) Bill, 2021;

Hon. Speaker, I am reliably informed that there are no questions scheduled to be responded to by Cabinet Secretaries (CSs), so this gives Committees ample time to consider their pending business, especially any budget-related items. The HBC will reconvene on Tuesday, 8th February, 2022, to schedule the business for the rest of the week.

Hon. Speaker, I now wish to lay this Statement on the Table of the House.
Thank You.

(Hon. Amos Kimunya laid the Statement on the Table)

Hon. Speaker: Very well. Next Order!

MOTION

ADOPTION OF REPORT ON PFM (BIASHARA KENYA FUND) REGULATIONS AND OTHER RELATED REGULATIONS

Hon. Speaker: Let us have Hon. Kamket.

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

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Biashara Kenya Fund) Regulations, 2021; the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2021; the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2021; and the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2021, laid on the Table of the House on Tuesday, 21st September, 2021, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013, annuls in entirety:

- (i) the Public Finance Management (Biashara Kenya Fund) Regulations, 2021 published as Legal Notice No. 55 of 2021;
- (ii) the Public Finance Management (Uwezo Fund) (Revocation) Regulations published as Legal Notice No. 56 of 2021;
- (iii) the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2021, published as Legal Notice No. 57 of 2021; and,
- (iv) the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, published as Legal Notice No. 58 of 2021.

The Biashara Kenya Fund Regulations were made by the Cabinet Secretary (CS) of the National Treasury and Planning pursuant to Section 24(4) of the PFM Act, 2012. These regulations were submitted for scrutiny on 13th May, 2021, and subsequently tabled before the House on the same day.

These regulations seek to collapse the provisions of the Uwezo Fund, the Women Enterprise Fund and the Youth Enterprise Development Fund together into what is called the Biashara Kenya Fund. The justification given for this merger is that the establishment of a new fund will operationalise Articles 27, 55(b) and (c); and 56(b) and (c) of the Constitution of Kenya which provide for affirmative actions, programmes and other resources in respect of disadvantaged groups and youth aimed at ensuring equitable development of State resources.

These regulations also intended to operationalise the Presidential Taskforce on Parastatal Reform Report of 2014, which recommended the merger of the existing affirmative action funds. The source of the fund would be an initial capital of Kshs2.5 billion appropriated by this House.

The Committee held several meetings with the CS for the National Treasury and Planning with respect to the draft regulations. During these meetings, the CS made submissions to the Committee on the regulations on 1st February, 2021, at Sarova Whitesands Beach Resort & Spa Mombasa. On Thursday, the CS came back and made presentations to the Committee. During this meeting, pertinent issues were raised concerning the proposed merger. Pursuant to Section 13(q) of the Statutory Instruments Act, the Committee made a resolution with the National Treasury and raised the following concerns:

(i) On the Statutory Instruments Act, 2013, the Committee noted that the new regulation seeks to deliberately revoke the role of Members of Parliament and other political offices involved during the disbursement of funds for purposes of oversight and monitoring. In short, it seeks to render the Member of Parliament irrelevant in the disbursement of funds.

(ii) That, the requirement for disbursement of funds through financial intermediaries as stipulated in the Regulations is in contravention of Section 13(l) of the Statutory Instruments Act, 2013, as it makes rights, liberties or obligations of the potential and intended beneficiaries from the Fund unduly dependent on insufficiently defined administrative powers.

(iii) That, it may be imperative that the regulation-making authority consider reducing the stipulated maximum amount proposed lent to the beneficiaries to allow for more citizens falling within the affirmative action bracket to benefit from the Fund.

(iv) That, the provision on Investment of Idle Funds would offend Section 13(g) of the Statutory Instruments Act, 2013, as it imposes direct expenditure from the Consolidated Fund or other public revenues.

(v) That, pursuant to Section 13(c) of the Statutory Instruments Act, 2013, the Regulations contain a subject matter that is incidental or ancillary to the constitutional economic rights of a section of Kenyans. In the opinion of the Committee, this matter should be properly dealt with in an Act of Parliament through a more vigorous parliamentary process;

(vi) That, the National Treasury and other stakeholders ought to review the monetary qualifications of various categories of enterprises in a way that is more considerate than what is contained in the Regulations.

(vii) That, there ought to be use of percentage or ratios in lending out the monies to the beneficiaries or a more rational approach be employed.

At a further consultative meeting with the regulation-making authority, the Committee made these presentations to the CS. However, the Committee noted that all these considerations were not taken into account. Looking at the Regulatory Impact Assessment, the Committee

scrutinised the Regulations in accordance with the Constitution and other relevant laws and the National Assembly Standing Orders. It observed further that the Regulations contravene Sections 6, 7, and 8 of the Statutory Instruments Act, 2013, which require the regulation-making authority to carry out a Regulatory Impact Assessment and submit the same to Parliament.

The Public Finance Management (Biashara Kenya Fund) Regulations, 2021, in all its aspects have a huge impact on the community, especially the youth, women, persons with disabilities and small and medium business enterprises. The regulation-making authority, therefore, in failing to conduct, gazette and submit a Regulatory Impact Statement with an attendant certificate as required by the Act contravened Section 6 of the Statutory Instruments Act, 2013.

On consultation/public participation, these Regulations contravene Articles 10 and 118 of the Constitution, Sections 5, 5A, 13(a) and (m) of the Statutory Instruments Act, which require that the regulation-making authority conducts public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulations.

The annexed memorandum to the Regulations which was given to us indicates that several stakeholders were consulted, including the Committee on Delegated Legislation. However, on further scrutiny, the Committee noted that the sections as stated above were not adhered to by the regulatory-making body. The Biashara Kenya Fund Regulations, 2021, created an offence without attendant penalties and references to any provisions of the Act, making it un-implementable.

Hon. Speaker, in conclusion, pursuant to Standing Order No.210(4) and having examined the Public Finance Management (Biashara Kenya Fund) Regulations, in accordance with the Constitution of Kenya, the Interpretations and General Provisions Act (Cap. 2), the Public Finance Act (No.18 of 2012) pursuant to which they were made and the Statutory Instruments Act, the Committee recommends that the House annuls the said statutory instruments in accordance with Section 24(2A) of the Public Finance Management Act (No.18 of 2012).

Hon. Speaker, I beg to move and ask my Vice Chairman, Hon Njagagua, to second.
Thank you.

Hon Speaker: Hon Njagagua.

Hon Charles Njagagua (Mbeere North, JP): Thank you, Hon Speaker. I would not have put it any better than what my Chairman has said. The gist of this Motion is the Biashara Fund that the Government wanted to create to amalgamate the Uwezo Fund, the Women Enterprise Fund and the Youth Enterprise Fund. You will appreciate that these are Funds that are meant to cater for the ordinary *mwananchi* in the village. The Uwezo Fund is overseen by the Members of Parliament, but the Executive in its wisdom or lack of it, desired to collapse these three Funds into one known as the Biashara Fund. The reasoning for this amalgamation was that they wanted to cut down on cost given that these three Funds simultaneously lend in different offices, have different staff and therefore incur a lot of expenses and cost for purposes of running them.

The CS in charge of these Funds, Ukur Yatani from the National Treasury; and Prof. Margaret Kobia from Public Service, Youth and Gender Affairs appeared before us with their respective Permanent Secretaries. They outrightly ignored questions by Members. They evaded responding to our questions and, in some instances, they would take down the notes saying that they would come back to us with substantive answers. As of the date we met to annul these Regulations, they had not given us the answers.

In our submissions, we thought that they were outrightly either ignoring the Committee and Parliament for that matter, or they were actually not interested in pertinent issues raised by Members. In short, we realised that there was minimal public participation. The only body that

they quoted having consulted was the Committee on Delegated Legislation. These are Funds that will impact on many Kenyans; Women, Youth and Persons with Disabilities (PWD), yet they did not care to consult them. This is a clear contravention of the Constitution, which behooves that anybody making regulations must particularly consult the people who will be affected by them; but they found it unnecessary to consult or get input from these people.

Having come to that conclusion, we found out that the Executive really wanted to cut out Members of Parliament from running these Funds. Therefore, without having consulted widely, they misled the Committee and refused to answer our questions. So, we felt these Regulations must be annulled in entirety.

Hon. Speaker, with those few remarks, I second. Thank you.

(Question proposed)

Hon. Speaker: Hon. Gitonga Murugara.

Hon. George Gitonga (Tharaka, DP): Thank you, very much, Hon. Speaker. I rise to support the adoption of the Report of the Committee on Delegated Legislation regarding this particular piece of legislation that was brought before it. Both the Chairman and the Vice-Chairman have actually elucidated why we have to annul these particular Regulations setting up a new Fund known as Biashara Kenya Fund, and also annul the proposed revocations of the other three Funds which have been in existence in the country. Hence, meaning we actually revert to the position we were before these pieces of legislation were actually published and gazetted.

The position is when the Committee looked at the Biashara Kenya Fund, it appears to be a new type of a Fund created where government revenue will actually be taken to certain banks and financial institutions and anyone can walk in and borrow the money for purposes of development. This is in contrast with what Uwezo Fund is, as we very well know and how it was created. Today, we have a form of a revolving fund in the constituencies where vulnerable people in the society borrow for purposes of their own self-development. The same applies to the Women Enterprise Fund, which was created in the same manner. It has been working very well especially in the rural constituencies where money is scarce.

The Youth Enterprise Development Fund is not very well endowed; I think it does not work very well. The government needs to relook at it so that we know why we have such a Fund, yet most of the time the youth are unable to access this money and use it in their own businesses or whatever else they want to do. The Youth Enterprise Fund, the Women Enterprise Fund and the Uwezo Fund are examples of how we can uplift the standards of living of people who are down the ladder; the downtrodden, the hustlers down there who do not have the capacity to go into a bank and borrow money. They are assessed in a manner that is lenient and friendly so as to access funds for whatever development they want. The Biashara Fund essentially introduced another one of the numerous trickledown ways of lending, especially through banks. This was done so that whoever had money or the capacity and was qualified would go to the banks and draw money meant for the development of the vulnerable.

Having looked at the reasons given in our Report, it is clear that the Biashara Fund may not be friendly to those who are supposed to benefit from the Uwezo Fund, the Women Enterprise Fund and the Youth Enterprise Fund. This is one of the reasons that drove us to annul those regulations and the other proposed revocations so that we revert to the *status quo*; whereby we have the Uwezo Fund, the Women Enterprise Fund and the Youth Enterprise Fund, which we, as Members of Parliament, have some control over and can ensure are disbursed in a manner similar

to how we disburse the National Government Constituencies Development Fund (NG-CDF) bursaries.

With those remarks, I beg that we support this Report.

Hon. Speaker: Let us have the Member for Nambale.

Hon. Sakwa Bunyasi (Nambale, ANC): I will pass, Hon. Speaker.

Hon. Speaker: Let us have Hon. Sankok.

Hon. David ole Sankok (Nominated, JP) Hon. Speaker, I rise to oppose this Motion by Hon. Kamket and his Committee. I thought the Chairman was a bit egocentric and selfish in annulling the Biashara Kenya Fund because the Committee was ignored by the CS or because Members of Parliament will not be directly involved in disbursement of the fund. We should be looking at the benefit of collapsing four funds into one for efficiency and to have a lean board that will save us from the wage bill that we are currently struggling with as a country.

We have more than 300 State corporations and semi-autonomous Government agencies in this country. Each State corporation and Semi-Autonomous Government Agencies (SAGAs) has a board of directors with nine to 11 members and sometimes even more. It has a chief executive officer and the secretariat. If you calculate the amounts spent in remuneration to the boards, the chief executive officers and staff of each State corporation, you will find that there is massive wastage of funds. Sometimes the SAGA is doing the same job as the State Corporation. You will find the Women Enterprise Fund, the Uwezo Fund and the Youth Enterprise Fund are all targeting the same population and spending money doing civic education at separate locations.

I was the Chairman of a State corporation called the National Council for Persons with Disabilities (NCPWD). There is also the National Development Fund for Persons with Disabilities (NDFPWD), which does the same job as the NCPWD, but with two boards. The NCPWD even has two other boards - the Board of Trustees and the Board of Directors.

Hon. Temporary Deputy Speaker, you end up spending more than 50 per cent of the money in these SAGAs for remuneration and administrative costs against the World Bank requirement that you can only use not more than 15 per cent for administration. In my view, if you collapse most of these SAGAs into one, then the administrative cost will be less and the efficiency will be more---

Hon. George Gitonga (Tharaka, DP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon ole Sankok, we have an intervention by Hon. Murugara Gitonga.

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

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Is it a point of information or a point of order?

Hon. George Gitonga (Tharaka, DP): It is a point of information, especially on relevance. One, I think the Member---

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Hon. Murugara. You should be clear so that we are able to rule well. Hon. Murugara, is it a point of order or a point of information?

Hon. George Gitonga (Tharaka, DP): It is a point of information.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us deal with the point of information first.

Hon. George Gitonga (Tharaka, DP): Yes.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): With that, Hon. Sankok, would you wish to be informed by Hon. Murugara?

Hon. David ole Sankok (Nominated, JP): Sir George is a renowned lawyer and I wish to be informed by him.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Murugara Gitonga, can you inform the Member?

Hon. George Gitonga (Tharaka, DP): Thank you. I wish to inform Hon. Sankok that while he is relevant on the issue of parastatals and SAGAs, the three Funds, namely Uwezo Fund, the Women Enterprise Fund and the Youth Fund are actually not run independently. They are actually run by one officer known as the Youth Officer. They have one secretariat, one office and everything is done together. Therefore, the issue of collapsing them to save on cost may not be entirely correct. Therefore, I would like to inform him that we are not doing anything new. We are not making any savings because this is purely for purposes of convenience and articulation of what we are doing in these Regulations.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Hon Member, are you okay with that information? Unless you have a different opinion, please carry on with your debate.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. However, for the first time, Hon. Sir George Murugara is wrong because I sit in the Departmental Committee on Labor and Social Welfare. Today, we were reviewing our Budget Policy Statement (BPS) and I met the Chief Executive Officers (CEOs) of the Women Enterprise Fund, Youth Enterprise Fund and the Uwezo Fund. I can even give you their names. The CEO of Uwezo Fund is actually a colleague of mine and from my own community, Ole Ngapiani. Hon. Murugara, I am talking from a---

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. You are indicating that you are not in acceptance with the information provided. Hon. Murugara, you have heard from the Member that he is not convinced by your information and, therefore, it is always important for you to research.

Hon. Sankok, please carry on with your debate.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, before I was intelligently interrupted by my colleague, I was saying that we will save on cost if we collapse these SAGAs into one. This is because some of them do the same job – they target the same people. They give loans to the youth and women to jumpstart their businesses. In short, they all give loans to the vulnerable members of our society, namely women, youth and persons with disabilities. The administrative cost in this country are huge and that is why our wage bill is way beyond what is acceptable worldwide and by the World Bank

Hon. Temporary Deputy Speaker, these boards have also become conduits of appreciating political friends who are appointed without considering the ripple effect it will have on our economy. I have just given an example of the National Council for Persons with Disabilities (NCPWD), which has two boards, namely the Board of Directors and the Board of Trustees. There is also another hidden one called the National Fund for the Disabled of Kenya (NFDK) with a hidden board, which receives government allocation and it is not under the Ministry of Labour. I have heard it is under the Office of the President (OP) and I do not know why. They have buildings like Rehema House in Westlands, others in the Central Business District (CBD) and along Ngong Road. I have heard sometimes their patron is the President of this Republic, and it has always been like this. The board is who is who in this society, including the late Nicholas Biwott.

So, you can imagine some of these Funds are hidden so political friends can be appreciated and compensated when they lose in elections. For efficiency purposes, I oppose these regulations. We should collapse as many SAGAs as possible and State Corporations so that we can have a lean budget and secretariat that will be efficient to ensure that money is used for the intended purposes. Hon. Nyikal was a Permanent Secretary (PS) and my boss. He can confirm that almost Kshs.5 billion is used for administration in the cash transfer program. But if we used mobile money transfer through the Public Private Partnership (PPP) with Safaricom or Airtel, it would cost one per cent less, that is Kshs500 million to transfer money to all the beneficiaries in this country. Instead, we are creating boards and having directors, therefore, creating a huge source of eaters – a huge group of potential eaters who eat money intended for beneficiaries.

Lastly, Hon. Temporary Deputy Speaker, I can confirm without fear of contradiction that this is what we are saying when we talk about the bottom-up economic model. We want this money to go to the bottom of the economic pyramid so that it can assist the intended beneficiaries, who are the lower people in our economic pyramid. But now it is benefiting boards of directors who are political failures, and at the apex of leadership. Bottom-up is through this.

I oppose.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Members, let us have the Member for Navakholo, Hon. Wangwe Ngeno, you have the floor.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I wanted to speak on another Bill, which is the next one – the Coffee Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The next one?

Hon. Emmanuel Wangwe (Navakholo, JP): Yes. Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Then on this matter, the Member for Kitui Central, Dr. Makali Mulu?

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I want to support the Report of the Committee. I have listened to some Members who are confusing the Report of the Committee which is proposing nullification of the regulations and the merit of facts.

The Committee has said it looked at the proposed regulations and realised some gaps in terms of the process. It is on this basis that they are proposing to this House to nullify these regulations. We have a situation whereby the key stakeholders affected by this legislation have not been consulted to give their input. So, as the regulations were being finalised, they would have said what is good for them or what they think might challenge implementation of these regulations. This is a strong point and actually is what we call public participation. In a situation where the public is not involved automatically and, as a House, we have a reason to support the Committee.

The other point is the issue where the Chair of the Committee has reported that Members of Parliament are being left out of the whole arrangement completely, as patrons and the issue of oversight, yet this is public money being sent out there so that Kenyans can improve their lives. I think as representatives of the people, we might not need to sit in those boards and be there day today. But we have a big duty to ensure that we are aware of what is happening and report to the rest of Kenyans. That is why I am saying that the whole idea of Biashara Fund was a very good idea. This is because what we are doing is bringing four different funds under one umbrella, and what will this do? In a situation where we have four headquarters for these funds, we will have one; where we have four CEOs, we will have one; and where we have several directors, they will be merged to only one set of directors. To some extent, there is no way we can say in such a

situation, there will be no savings. We know how much it costs to hire space in this city. I know that the Youth Enterprise Development Fund is at Lonrho House, which is not a government structure but a private one. So, if you consider the rent being paid for this house alone, it will be a huge saving.

If we are serious about bottom-up economics, then this is the time we should merge these Funds so that this money can reach Kenyans who are down there. But the challenges have been many and that is why we are saying, to some extent, when people talk about bottom-up economics, they have to be very careful. These Funds have been in this country for many years and have been going direct to the local *mwananchi*, who has not been paying. So, for me the challenge is we want to give money to *wananchi* without preparing them adequately through capacity building. So, anybody who talks about bottom-up economics without capacity building is going to fail from the word go. This is not debatable.

So, the thing is, we need to prepare Kenyans for this. You know Kenyans have this attitude that when you get Government money; it is free money. So, you do not have to pay anything. I seriously think for these regulations, and I want to urge the Chair Hon. Kamket that Biashara Kenya Fund is very important for this country. So, he should sit down again with the National Treasury to see how these regulations can be improved so that we can give Kenyans a chance to access these funds in a better way. Before releasing the money, we should not forget capacity building for those who will benefit.

Thank you, Hon. Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms) Jessica Mbalu): Very well. Thank you, Hon. Makali Mulu for the very informed debate. This brings us back to the point of concern by Hon. Murugara on relevance.

Hon. Members, for those who have just come in, we are in Motion No.11 on the Report on Annulment of the Public Finance Management (Biashara Kenya Fund) Regulations, 2021, and other Related Regulations. It is good for us to debate from an informed point and let us also look at the issue of relevance to the Report.

Let us have the Member for Emurua Dikirr, Hon. Kipyegon.

Hon. Kipyegon Ng'eno (Emurua Dikirr, KANU): Thank you, Hon. Temporary Deputy Speaker, for allowing me this opportunity to make myself heard on this particular issue.

I think the introduction of Uwezo Fund, Biashara Kenya Fund, Women Enterprise Fund and Youth Enterprise Development Fund was specifically meant to look at how our youths could access funds without using very stringent means, but through means which would obviously enable them access this money without necessarily having to produce many things as banks normally ask for. Remember, if you want to borrow a loan from any bank in this country you must either have a title deed, a log book or a very huge and good bank statement that can allow you to be monitored. Banks have to understand if you are to borrow or be given money you will be able to repay. Of course, the interest charged on the money borrowed is so high. So, this informed the introduction of the Youth Enterprise Development Fund, Uwezo Fund and Women Enterprise Fund. Actually, the greatest idea of introducing the Biashara Kenya Fund was so that we could collapse all these others and was geared towards assisting the youths without bank accounts, title deeds or maybe log books to access this money and do business.

Hon. temporary Deputy Speaker, it is unfortunate, that after exhaustion of about Kshs6 billion which was meant for a run-off some years back, there was no more allocations by the National Treasury to the Uwezo Fund Account, the youth and all that. Our youth had understood that there was Uwezo Fund. They have tried accessing the money but they cannot. This Fund was

run at the Constituency level and they claim that some people have taken it. It is good to know or make it clear that there have never been more allocations to this Fund.

The introduction of Biashara Fund was intended to collapse the Youth Fund, Women Fund and the Uwezo Fund into one entity so that we can be served from the same quarter. I supported the collapsing of all these Funds to make one entity so that we can have one central point where this money can be dispersed. However in the regulations, there is a part where, if it is going to be on the Biashara Fund, then you have to meet regulations like those of a bank. With the introduction of these regulations, that if a youth wants to get money, he has to have a title deed, logbook and a very good bank statement, then we are reverting back to the bank issues. I support the annulment of these regulations; and it is not that we do not want to collapse these Funds, but the introduction of the fact that you must have particular, documents to be allowed these monies, then we are reverting back to the banks.

I support the Committee, and I would wish other Committees, other than the Committee on Delegated Legislation, to look at the regulations which are introduced by other Arms of Government. There were regulations which were introduced by the Ministry of Education on opening of new schools. Those regulations must come to this House because they have very big impetus in the society. There are regulations which were also introduced by Kenya Water Towers Agency, whose regulations are acting like laws themselves. Those regulations must come to this House so that we pass them because they are going to have a very serious impetus on the people.

I support the annulment of these regulations and any other to be brought to this House.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. You support. The Member for Seme, Hon. Nyikal Wambura.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I rise to support the Report of the Committee.

The main object of the regulations was to merge Uwezo Fund, Women Enterprise Fund and Youth Fund into a Biashara Fund. The rationale was sound – to reduce the administrative cost – that is extremely sound. However, I think it missed a very important point, which is that all these were Affirmative Action Funds that were meant to support people who have difficulty meeting bank requirements. That was the basic thing. However, if the Biashara Fund was going to be run through banks, then we are not going to meet that objective. I know this because I was involved in the implementation up to formation of the Women Enterprise Fund, which are two components. There was a component that was to be managed through the structure of the Fund itself, and another which was to be managed through the banks. We had a problem with the component that was being managed through the banks because as much as the Women Enterprise Fund had money in those banks, when women went to get the money, and somehow they could not get it, and they were discouraged. That component did not work. If we then merge this and take it to the banks, all of them will have difficulties. In my mind, that is the main issue that we should look at again. However, the desire to merge them and reduce their administrative cost is real and acceptable. However, even if we reduce that and not achieve the objective for which it was started, which is the affirmative action for these people who would, otherwise, not have been bankable so to speak, then, we lose out on all that. So, we should look at that.

The other issue, that hon. Members were ignored in their administration, is also important. This is because it is easier to mobilise the youth, women and PWDs at the constituency level to participate in this. However, of all these Funds, the one that has worked best is the Women Enterprise Fund. The Uwezo Fund had a problem with its capacity building component, because instead of it being taken to the ground to be managed by the officers, it was left at the headquarters

where they appointed consultants who never appeared on the ground to do the capacity building. So, the money, to a large extent, was a loss. And because there was no capacity building, the youth and women who got the money were not able to pay back. When it was brought in, it was seen as a gift from the Government for money that was not used when it was supposed to for a run-off. The basic failure, therefore, was capacity building and appropriate information.

They also talked of irrational lending process and the fact that the Minister ignored the Committee's recommendations. However, the most important thing is that if we merge this, then we must protect the people we wanted to get to through affirmative action. We must also look at how, be it Biashara Fund and it goes through the bank, how then, will the people be protected by the requirements of the banks that are always prohibitive.

With that, I support the Committee's recommendations and the Motion on this. However, we must look back and see how we can make these three Funds work because they are of enormous potential in empowering people on the ground.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Member for Mathare, Hon. Oluoch Tom. You have the Floor.

Hon. Anthony Oluoch (Mathare, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Motion on the ground that the idea of collapsing the Uwezo Fund, the Women Enterprise Fund and the Youth Fund is a welcome idea, taking into account the Wage Bill, various bloated boards and secretariats that have to run these three funds at a time when the country is facing a serious economic crunch. To this extent, the Committee was spot on, and this requires to be supported.

I also look at it from the perspective of Articles 43 and 55 of the Constitution. I reiterate what my colleague, Hon. (Dr.) Nyikal said, and which I think the Committee ought to have looked at. What was the philosophical justification and anchoring of a fund such as this? It is affirmative in nature. Article 43 says that the State shall take all steps, including affirmative action, to ensure that young people have access to economic and social opportunities to training and other facilities. So, to merge them again and take it to a commercial entity as a bank, where they have to take the money as a loan, then defeats the whole purpose for which this was required to be, which is affirmative in nature, and which must be compared to other affirmative actions that have been taken for disabilities, women and other things.

Imagine if there was a requirement for women to have seats where they run on their own, but have to go the extra mile again to face hurdles which, in the first place, you were trying to remove. The same applies to the persons living with disabilities.

Secondly, whereas, I support in principle the merger of this, I have a concern about the anchorage. Where should we anchor this Fund? Being anchored in a piece of delegated legislation, which can be de-gazetted or annulled by the cabinet secretary or an amendment, put into serious question the commitment of this House and the country on our economic, social and cultural rights. We take into account that more prominence has traditionally been given to civil and political rights. Under Article 43 of the Constitution, we have the right to water, health and education. We have affirmative actions which revolve around Article 43 of the Constitution. I suggest that we seriously re-look at where to anchor it. This calls for a radical re-look and possibly consider anchoring this Fund either in a statute or the Constitution.

The third point is the question of Kshs2.5 billion which is set aside, and which I support. However, let us look at the discretion it places on the cabinet secretary. Compare it with other funds that we have, like National Government-Constituency Development Fund (NG-CDF), which

is a similar amount of money. However, we do not realise the total allocation per financial year in any budget. This is left to the discretion of the cabinet secretary. Look at the Political Parties' Fund. I am on record in this House for pursuing the reason we have in excess of Kshs3 billion owed to political parties despite the existence of an Act of Parliament that says they should get not less than the requirement. When you look at other provisions where the Constitution or an Act of Parliament says "not less than", there is a requirement that we give not less than the amount stated and perhaps consider giving more.

My last point is on whether this Fund should be a loan or a grant. If you make it as a loan, the persons at the bottom of the pyramid - who are the intended beneficiaries - will not benefit. My people in Mathare and Mukuru do not have securities like title deeds and motor vehicle logbooks. For the four and a half years that I have been a Member of Parliament, there are only 10 groups that consistently benefit from the Uwezo Fund, the Youth Enterprise Development Fund and other funds. Unless we change this Fund to a grant in the model of the NG-CDF of build-and-handover, it will never achieve the same progress.

I support the Motion only to the extent of it being in principle a good idea to collapse the Funds. There is need to radically re-look and see how to anchor it. Lastly, we need to put an umbrella legislation that talks about all...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Members, you have five minutes to make your contribution. It is important to note this for planning. Can we have the Member for Dagoretti South, Hon. Waweru Kiarie?

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Temporary Deputy Speaker. I strongly support this Motion by the Committee on Delegated Legislation as presented by Hon. Kamket, that, we annul in entirety the Regulations which form the Biashara Fund and throw out the revocations of the Uwezo Fund, the Women Enterprise Fund and the Youth Enterprise Development Fund.

The gracious lady who is seated on the Speaker's seat at the moment agrees with me that I am totally associated with the matters that have been presented to this House today. While I was in the youth movement, I was intricately and intimately involved in the formation of the Youth Enterprise Development Fund. When we presented ourselves to the Principal Secretary, Mr. Murugu, back then, we were very clear in our mind on what needed to happen. Our entire youth movement was geared towards getting three things. At that time, we clamoured for a youth ministry, youth representation and unbanked hustlers, who were the youth, to get credit to develop themselves. We achieved that. To reverse all those gains with the stroke of a pen will be a tragedy.

I support the annulment of these Regulations on three grounds. One, we, who are seated in this House, understand the important role of oversight that is played by the Member of Parliament in the administration of these funds. Members of Parliament do not want to be the executive administrators of these funds. They need to lobby for these funds and ultimately oversee them.

Secondly, we needed the Youth Enterprise Development Fund because we knew that there are people who cannot access credit because of their backgrounds. The women, who are disenfranchised and unable to bank in commercial banks, and the young people, who cannot get credit because they do not have collateral, had found a landing base in these affirmative action funds. When the Head of State delivered the State of the Nation Address, his intention of collapsing the Funds into the Biashara Fund was a good idea. However, how they were collapsed into a commercial entity negates the very essence of why the President was keen on collapsing them with the intent of rationalising the staffing and investment that is put in these Funds.

The third reason why I support the Motion, which is very important, is that the recommendations are unconstitutional. The Constitution requires that we do sufficient public participation before we pass anything for this country. On that count alone, the Regulations do not stand the test of constitutionality. The long and short of it is that the intent of collapsing the three Funds into one administrative unit is right. However, if we go about the business in the way it has been proposed, our people will lose in a big way.

I support the annulment in entirety of these Regulations and the formation of the Biashara Fund as proposed by these Regulations.

Thank you very much, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well, Hon. Kiarie. I am seated on the Speaker's seat. How will I confirm that we were in the youth movement together? I confirm that we were there. Member for Kwanza, Hon. Wanyonyi Kevin, you have the Floor.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Hon. Temporary Deputy Speaker, thank you very much for giving me an opportunity to contribute. I heard the presentation of this Motion. I agree that it is the right thing to do.

One, what happened in the other committees is very interesting. When you ask a relevant question, some of the Members of the Executive cannot answer. When the Chairman of the Committee was moving the Motion, he said that when they asked the cabinet secretaries questions, they ignored them because they did not have answers. I agree with what you have done. First of all, the Uwezo Fund, the Youth Enterprise Development Fund and the Women Enterprise Fund are overseen by Members of Parliament. We know where we are. We know how these people work. For you to come from nowhere and say that we collapse the Funds to form the Biashara Fund and, again, put conditions that the youth cannot meet, is not acceptable. That is why they have problems. All that you need to access the Uwezo Fund is a certificate of a youth group whose members have come together with a common agenda and then they pay back without any problem. That is the same thing with the Women Enterprise Fund and the Youth Enterprise Development Fund.

Therefore, I agree with the Committee. I think this nullification is quite good. Tell me why those in the Executive are doing this. I can tell you that it is because they know that Members of Parliament are involved. They do not want Members of Parliament to be involved. There is no reason. By the way, I am told there was no public participation. How do you nullify these Funds and collapse them into whatever enterprise? If you do that, I am sure the conditions will be so difficult for women and the youth to benefit. For example, if you want to do even a simple project of making bricks, they will need you to have a title deed for the same. There are no title deeds. Therefore, I agree with the Committee. I think you did something good. Do not even go ahead. Do not take it seriously because the people who appeared before you do not know what is happening out there. They sit in Nairobi 100 per cent of the time. They do not know what they are doing.

Of course, collapsing will mean reducing jobs. The establishment of these Funds is one way of creating jobs. I know some youths who have come together in my area, and their chairman has a master's degree, but they have no jobs. They are doing a very good job. I support the Committee. Let us do other business and forget about their presentation because they cannot even pass the test of the day.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Kiharu, Hon. Nyoro Ndindi.

Hon. Ndindi Nyoro (Kiharu, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity. I rise to support the Committee. The *status quo* is that the Women Enterprise Fund, the Uwezo Fund and the Youth Enterprise Development Fund operate independently. If you look at the three singularly, the Women Enterprise Fund is the most efficient. I think amalgamating the three will be infiltrating inefficiencies into the Funds that are already efficient. The issue of the operation costs is neither here nor there because that is a secondary matter. The primary matter in so far as the three Funds are concerned is on lending money to the vulnerable, especially to the categories that are targeted by the three Funds.

Therefore, I support the Committee's position that these Funds should operate as they do; independently, and we try to bring about efficiencies into those that are not as efficient. Also, amalgamating them and taking their functions to private banks is taking the money into swamps because the people who are targeted by these Funds are people who are un-bankable. Banks would ordinarily never touch or lend money to these people. Therefore, the way they operate is much better, especially if we can develop some regulations in so far as increasing efficiencies and funding is concerned. I want to speak on a broader matter because these Funds operate in the space of finance and the space of giving credit, especially to groups. One, we need to give more independence to these Funds so that they can concentrate most of these resources into groups. It is very hard, especially in a group set up, to find people who are homogeneous in their thinking and, therefore, when they are given money, they most likely use it in a manner that is in tandem with all of them. Therefore, we need to encourage individual borrowing and individual lending by these Funds because it is much more efficient and versatile.

Hon. Temporary Deputy Speaker, when we talk about finance and lending, we need to look at this matter broadly, especially by giving these three Funds more weight and more roles. In Kenya, in many cases, we rely on the traditional sources of finance: That is, you go to a bank and get credit or you go to the Women Enterprise Fund and when you show the ability to pay, you are given credit. However, we need to give these three Funds the ability to be versatile to explore something called private equity (PE). Across the world, another big source of finance is private equity, where money is invested in going concerns and the people who avail the money are given stakes in those enterprises. The other one is VC that gives money especially to ideas and incubating them into becoming real businesses. I say so because the economy of the world is gravitating towards modernity and we cannot afford to remain in slumber land of yester years' businesses and yester years' modes of finance. Majority of the big companies in the world actually got their money from VC and PE, and not necessarily in the traditional manner of getting finance. If you go to a country like Nigeria, by drawing into those kinds of finances, there are like three unicorns, namely, start-ups that are valued more than one billion dollars or more than tier-one banks in Kenya and these are start-ups. They are able to draw money and finances from people who would later get a stake in the companies and, therefore, they will be coming to the same business together.

Hon. Temporary Deputy Speaker, as I wind up, if you look at even the big companies in the US currently and especially the big tech, they started as ideas but within that idea setup, they got people who...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, I have already communicated and said that you need to plan for your five minutes.

Member for Masinga, Hon. Mwalyo Mbithi.

Hon. Joshua Mwalyo (Masinga, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Committee for the findings that it was not possible to amalgamate these Funds together and put them in the biashara bag. The reason is that, looking at my constituency, the ladies

who sell tomatoes and vegetables have no bank accounts. They borrow the money and straight away run to the market to buy their products so that they can sell. However, when you put them in a bank, we know the bureaucracy in banks. You are told to bring registration certificates and practising licenses yet the people who are meant to benefit from these Funds do not have those things. So, we will have killed the whole idea of helping the *mama mboga* who sells vegetables at a kiosk and market stall. I think we are going back to where we came from. Those who came up with the idea of forming these Funds must have found a gap they wanted filled. There is a group of people who are un-bankable and are not able to access finances because they have no security, identity or certificates, but they are Kenyans who need to grow so that they can have some money with which to educate their children and provide for their homesteads. That was a very good idea.

If we take this money back to banks, we will have killed them and they will have nothing to do. Even markets that have been built by the NG-CDF will have to be closed because those women rely on the funds. For example, with the *Uwezo* Fund, some groups comprising of 10 women get Kshs100,000, which they share among themselves and each woman trades on her own. So, there is in no way they will get the money to repay the loans. This needs to be properly structured so that there are regulations and controls for the money to be paid back every month. These Funds, especially the *Uwezo* Fund, is like free money as there is no interest charged on the principal amount. The other thing is that there are people who tell them that it is Government money and once you get it, you do not need to repay it. What will happen is that the Funds will die and other people will not benefit from them if they do not pay back. They are revolving funds where you borrow, trade and pay back. That way, many people benefit from it.

The idea of bringing them together to form one *Biashara* Kenya Fund is not a good one. No one in that category will be access that money. Even some of us who are working are unable to fulfil all the requirements put in place by banks. If you do not fulfil one requirement, your loan application is declined. I support the Committee's view that we do not consolidate the three Funds.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Member for Kitutu Masaba, are you on a point of order? Do you want to speak to the same or you are on a point of order?

Hon. Ezekiel Ombaki (Nyaribari Masaba, NAPK): Hon. Temporary Deputy Speaker, I want to speak to the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You may have the Floor. You have both a request and an intervention. Carry on with your contribution.

Hon. Ezekiel Ombaki (Nyaribari Masaba, NAPK): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Committee in their findings.

We should not consolidate the *Uwezo* Fund, the Women Enterprise Fund and other Funds to form the *Biashara* Kenya Fund.

To begin with, it is crystal clear that to access financial credit from the mainstream financial institutions like banks, there are several conditions that you are required to fulfil. In fact, it is very difficult even for the working class, those on payroll, to access these facilities. For starters, you are required to have some security or collateral for you to access these facilities. Therefore, consolidating the *Uwezo* Fund, the Women Enterprise Fund and the other Funds to a financial institution will make it very difficult for majority of Kenyans, who fall within the lowest cadre like *mama mboga's*, *boda boda* taxi operators and even motorcar taxi businesses, to benefit from the facilities.

The *Uwezo* Fund is about people forming groups and seeking funding together, not necessarily people with the kind of securities that are required by banks. They register a group and it becomes very easy for them to access money from the Funds. As a result, they keep on rotating the money they receive, in the small businesses that they do, and they are able to gradually grow together. A group of beneficiaries is collectively given Kshs50,000 or Kshs100,000 and they are obligated to pay back the money for onward lending to another group. At the end of the day, they will pay back and go for even a higher credit amount. That way, this money enables the low cadre members of our society to grow their small businesses and it becomes very easy for us to offer them help in their businesses.

As I have said, if you go to a bank, you require some security, property and guarantors, which is a bureaucratic process. This would not help the ordinary *mwanachi* whom, with funds like the *Uwezo* fund, do not require to fulfil many conditions for them to benefit.

Therefore, I thank the Committee for finding that they should not consolidate the Funds. The only thing is that those who receive the money under the *Uwezo* Fund should be well aware that at the end of the day, they should repay it so that they can create a revolving fund that would enable many others to benefit as well.

With those remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Nominated Member, Hon. Cecily Mbarire.

Hon. Cecily Mbarire (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Report by the Committee on Delegated Legislation.

Being a Member of that Committee, let me appreciate the hard work that takes place in that Committee behind the scenes in meeting rooms and board rooms. This is a Committee that is led by a hardworking leadership. It is a Committee that is very cohesive across the party divide. We have done so much since I joined the Committee last year. I would really like to support what they have done, especially in relation to these Regulations of forming the *Biashara* Kenya Fund.

As a Committee, we have come up with this decision because we realised that amalgamating all these Funds into one major fund, which would then be managed through commercial banks, would create the bureaucracy we were running away from the beginning when the Funds were created. We know that commercial banks want to make profit. The minute you put these Funds under the management of commercial banks, the banks will create bureaucracies. They will start asking for collateral. They will make it very difficult for the intended persons to access the funds. I can tell you out of experience back in Embu and Runyenjes where I was a Member of Parliament, that women do not have time to go to banking halls for paper work. They need a Fund that is easy to access without a lot of bureaucracies and qualifications to get the money on the table. This will definitely make the Fund very expensive.

Hon. Temporary Deputy Speaker, I am doing this from the knowledge that the first time the WEF was formed, even before it became a formal enterprise fund, women in this House then, Hon. Millie will agree with me, visited the then President, His Excellency Mwai Kibaki, led by the Chair of the Kenya Women Parliamentary Association (KEWOPA), Hon. Betty Tett, and it was in that meeting that we told him that we needed to create a credit facility for women to access and borrow money without much bureaucracy. It was to be cheap and accessible.

I remember in the subsequent budget, the Women Enterprise Fund was formed, followed by the Youth Enterprise Fund. Under the Jubilee Party, we got the *Uwezo* Fund. It is important that we do not lose the original purpose for which these Funds were formed. If anything, I am only too excited that going forward under the bottom-up economic model that we, on the hustler side

of the political divide are aligned to, we will allocate even more money to reach the *mama mboga* and *boda boda* taxi operators, the *kinyozi* boys and others in every sector of the country, so that we can build the economy right from the bottom, empower people at the bottom and expand the tax bracket so that we are able to tax more people less. That way, we will build the economy knowing that we are not in a very good place presently.

I support the Report and ask the Government technocrats to avoid coming up with very unrealistic and unpopular proposals that do not respond to the needs of *wananchi*. This particular proposal was certainly not responding to the needs of the people at the grassroots. It was a few technocrats who just thought of amalgamating these Funds for some reason. Going forward, we really need to look into this matter. The Women Enterprise Fund is one of the biggest Funds in the country presently. The women pay back the money better than any of the other Funds beneficiaries. Therefore, women only want more money to be accessible to them and not the Women Enterprise Fund being amalgamated with other Funds.

With those few remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I give the Floor to the Member for Kirinyaga Central, Hon. Wambugu Munene.

Hon. Munene Wambugu (Kirinyaga Central, JP): Thank you Hon. Temporary Deputy Speaker for giving me a chance to add my voice to this Motion.

From the outset, I strongly support it for the obvious reason that even the Biashara Kenya Fund Regulations were meant to collapse three existing funds, namely, the Youth Enterprise Fund, the Uwezo Fund and the Women Enterprise Fund. There was an argument that it was necessary to collapse them so that they can be managed efficiently, but we know that the Women Enterprise Fund, since its inception, has been managed very efficiently. We cannot punish it because the Uwezo Fund and the Youth Funds were not efficiently managed. The best thing is to ensure that the Youth Enterprise Fund and the Uwezo Fund are brought to an efficient level of management.

Most importantly, as Members of the Committee, we looked at our mandate and the most important one was public participation for purposes of enough consultations. It came out very clearly that there was not enough public participation because of the impact. The impact of these Regulations required extensive consultations with the affected people, especially women, youth and other stakeholders. So, on account of public participation alone, we were forced to annul the Regulations because without proper and efficient...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Kirinyaga Central, may I disrupt you a bit? I have noticed that some Members have not worn face masks. It is a critical time for us to be safe. From tomorrow, you will be going to the constituencies and you will be back. Please, let us wear our masks.

Hon. Member, please, carry on.

Hon. Munene Wambugu (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Speaker. I was assuming I am in a safe distance.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): On this matter, I was not referring to you alone. It is for all Members.

Hon. Munene Wambugu (Kirinyaga Central, JP): I am guided. Thank you. Without sufficient public participation, the Committee did not have any option than to annul these Regulations. There was no regulatory impact assessment, which is a requirement. It is obvious that these Regulations would have a huge impact both cost-wise and impact-wise on the Women Enterprise Fund, the Uwezo Fund and the Youth Enterprise Fund. Without that report, the law is clear that we need to annul. That is the decision the Committee reached.

What came out very clearly is that the Regulations came up with intermediary financial institutions where they provided that the funds can be disbursed through other financial intermediaries. It was very interesting to see the kind of interest that the intermediaries were to get from the funds and how much they were to make and how much they were to give.

Bringing the four Funds together was to make a very monolithic and big financial institution, which was not the intention of the existing arrangement. The Funds are supposed to reach the consumers very easily. The Regulations were coming up with some offences without corresponding penalties, something which offends the law.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you. We have the Member for Juja, Hon. Koimbui George.

Hon. George Koimburi (Juja, Jubilee): Thank you, Hon. Temporary Deputy Speaker. I rise on a point of order under Standing Order No.95 to move that the Mover be now called upon to reply because we are repeating ourselves. Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, the Member for Juja is right in rising under Standing Order No.95 to ask for the Mover to be called upon to reply.

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

The Mover, reply.

Hon. Kassait Kamket (Tiaty, KANU): Thank you very much, Hon. Temporary Deputy Speaker. I appreciate the Members who have overwhelmingly supported the Report of the Committee for the annulment of the Bishara Kenya Fund Regulations. I appreciate all the Members, including those who opposed, like Hon. ole Sankok, who did so without having enough knowledge of the Report. I have taken note of all the matters raised by the Members as they supported the Report and annulment of the Regulations.

(Loud consultations)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Do I hear some noise? I cannot see any intervention on my screen. Members, please, let us follow the procedures of the House. Proceed. The system is not working. Hon. Millie Odhiambo, I can hear some noise from you. Please, can you put your card on intervention?

(Hon. Ms. Odhiambo-Mabona spoke off-record)

Can you move to another chip? Hon. Kamket, please, carry on.

Hon. Kassait Kamket (Tiaty, KANU): If it is noise, Hon. Temporary Deputy Speaker, you are at liberty to ignore.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Kamket, carry on.

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

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): What is out of order, Hon. Millie Odhiambo?

Hon. Ms. Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. It is not fair for you to say that you were hearing some noise. I am a very senior and honourable Member. I do not come to the House to make noise. I come to the House to contribute. The systems are not working and I have already given notice to the ICT people to come and assist. When a Member raises an issue, even when you are not able to see them in the system... We are not mental to raise issues, especially now when Members are campaigning.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Hon. Millie! As you continue, allow me to give guidance. You are on a point of order and not intervention. Now that the system is working, can you put your card for a point of order? Give Hon. Millie the microphone.

(Hon. Kassait Kamket spoke off-record)

No! She has a point. Let me get it from her. In fact, she is near a Sergeant-at-Arms officer, who has helped her. Hon. Millie, use the next chip. Yes, the chip behind you. You are being assisted.

Hon. Ms. Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. First of all, thank you for giving me the opportunity. Now, Hon. Kamket has raised a further point of order by implying that I am admiring him. I do not think he is taking after Hon. Duale in the list of the Members who claim that I am admiring them. I do not think he understands that I left Kenya and went all the way to the south of Africa. I have an import. How can I be admiring him when I have an import?

Having said that, my original point of order was to the Leader of the Majority Party. As a lawyer, I am being careful with the way I am phrasing it. In these difficult times, Members have different challenges. The ones who are committed to specific issues are the ones who stay in the House. I want to encourage the Member that he will discover that even as he intervenes that the Mover be called upon to reply, there could be one or two Members who want to speak. We have serious commitments and engagements. I was here because of the Biashara Kenya Fund issue and the Children's Bill that Hon. Gladys is asking me to support. We are having multiple tasks. Could the Leader of the Majority Party at this moment learn to balance and know who his foot soldiers are, so that he does not discourage Members? Otherwise, he will find himself moving and seconding Bills alone.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You have made your point, Hon. Millie. However it should not take you so long to put your point across. You contradict yourself when you say that your initial point of order was not about the system. I can confirm that, indeed, the system is now working.

Hon. Kamket, carry on with the debate.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Temporary Deputy Speaker. In short...

(Hon. (Ms.) Gladys Wanga consulted loudly)

Can you protect me from Hon. Gladys Wanga?

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You are protected. We do not want another one to say she is admiring you. Carry on. You are protected.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Temporary Deputy Speaker. I do not know why ladies are all over me today.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I can confirm that she is now consulting in a low tone. Proceed.

Hon. Kassait Kamket (Tiaty, KANU): Hon. Temporary Deputy Speaker, I was saying - if I can collapse what the Members were saying in support of this Report - that the word “affirmative action” which was the original intention of these Funds, cannot be mixed with the Biashara Kenya Fund. The idea of the Biashara Kenya Fund is of a profit making organisation. Therefore, it cannot go hand-in-hand with the intention of affirmative action, which was the basis of creating the original Uwezo Fund, the Youth Enterprise Fund and the Women Enterprise Fund. As we have stated clearly in the observations of the Committee’s Report, the Biashara Kenya Fund Regulations contravened the Constitution and the Statutory Instruments Act. Therefore, there was only one fate awaiting the Regulations, which is that they had to fall. I have heard Members suggesting that there is need to come up with a substantive legislation in order to protect these Funds. What I noticed is that the Cabinet Secretary for the National Treasury had chosen an easier way of creating Funds because of the provisions of the Public Finance Management (PFM) Act, which allows him to create such Funds. However, as legislators, we are at liberty to come up with substantive legislation to buttress whatever we think needs buttressing through substantive legislation.

I want to appreciate the Members of the Committee who put in a lot of work, together with the secretariat, and came up with this fantastic Report. I also want to appreciate the idea of having this Committee on Delegated Legislation. Our citizens would be suffering a lot of injustices if we had regulations like these coming up without the scrutiny of Parliament. I am sure that is why the Committee was created in the first place.

With those few remarks, I beg to reply, Madam Speaker, Sir.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You know, previously, Parliament used to have a different notion. You have just referred to me as “Madam Speaker, Sir.”

(Laughter)

I still appreciate the “Sir” part of it.

The Member, having replied to the Motion under Order No.11, which is on the Report on annulment of the Public Finance Management (Biashara Kenya Fund) Regulations, 2021 and other related Regulations, I order that the putting of the Question on the same be deferred.

(Putting of the Question deferred)

Let us go to the next Order.

MOTION

ADOPTION OF REPORT ON ANNULMENT OF THE CROPS
(FIBRE CROPS) REGULATIONS, 2020

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Can we have the Chairperson of the Committee on Delegated Legislation to move the Motion listed as Order No.12?

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

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Crops (Fibre Crops) Regulations, 2020 laid on the Table of the House on Tuesday, 17th November 2020, and pursuant to the provisions of section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b) annuls in entirety the Crops (Fibre Crops) Regulations, 2020 published as Legal Notice No.120 of 2020.

At the risk of being branded an “annulment Committee”, this is another Report calling for annulment of Regulations. The Cabinet Secretary for Agriculture, Livestock and Fisheries, in consultation with the Agriculture and Food Authority, published these Regulations via Legal Notice No.120 of 18th July 2020. The Regulations were submitted to the House, tabled and subsequently referred to the Committee on Delegated Legislation. These Regulations provide for guidelines on the development and promotion of fibre crops. Fibre crops include sisal and cotton.

Pursuant to Section 16 of the Statutory Instruments Act, 2013, the Committee held prepublication and post-publication consultations with the Regulation-making authority. As stated earlier, these Regulations provide for application, processing, procedures and forms for fibre crops by setting procedures and conditions for registration and licensing of fibre crops dealers. These Regulations further seek to consolidate Regulations that relate to sisal and cotton, which were previously regulated by different Regulations. The Ministry indicated that the Regulations were to protect consumers in the fibre crops industry by setting standards for fair trading and marketing of fibre crops and fibre products in Kenya.

Having examined the Regulations against the Constitution, the Interpretation and General Provisions Act and the Statutory Instruments Act, we made the following observations:

(i) The Regulations were published in the Gazette on 18th July 2020, submitted to the National Assembly on 5th August 2020 and laid on the Table of the House on the same day, being within the requisite statutory timelines under Section 11 of the Act.

(ii) Under Section 5 of the Statutory Instruments Act, the regulation-making authority attached copies of stakeholder forums held between themselves and stakeholders in the cotton and sisal industry. These include Lower Eastern Forum, estates and marketing agents and sisal fibre processors, the Coast Forum, Lower Nyanza Forum, Kenya Plant Health Inspectorate Service, Pest Control Products Board and the National Biosafety Authority. However, the Committee observed that most of the engagement forums were conducted in 2014, raising concern that such information may have been rendered irrelevant and inapplicable due to time. The Committee was also concerned that the Coastal and Rift Valley fibre growing regions, including Nakuru and Baringo counties, were not adequately consulted. The extent of the public participation did not, therefore, meet the requisite standard set out in Articles 10 and 118 of the Constitution and Sections 5 and 5A of the Statutory Instruments Act.

Therefore, pursuant to Standing Order 210 (4), and having examined the Regulations against the Constitution, the Interpretation and General Provisions Act, the Crops Act and the Statutory Instruments Act, the Committee recommends that the House annuls in entirety the said statutory instrument for failing to demonstrate that sufficient public participation was undertaken, contrary to Articles 10 and 118 of the Constitution and Sections 5, 5A and the Schedule of the Statutory Instruments Act.

With those remarks, Hon. Temporary Deputy Speaker, I beg to move and ask Hon. Njagagua to second.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): The Vice-Chairperson, Hon. Njagagua.

Hon. Charles Njagagua (Mbeere North, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second the Committee's Report on its consideration of the Crops (Fibre Crops) Regulations, 2020 (Legal Notice No.120 of 2020). The main purpose of this Committee is to check the excesses of the Executive. Once we pass general pieces of legislation in this House, the Executive is given the work to prepare Regulations, but in many occasions, you find that whatever regulations are prepared are contrary to the mother Acts and the Constitution. You will appreciate that there is a constitutional provision that says that any regulation-making authority must consult the public. That is a cardinal principle of the Constitution. In this case, the regulation-making authority was selective on who they consulted. As you have heard from the Mover of the Motion, the authority selectively left out other parts of the country that deal with fibre crops, including the Rift Valley and parts of the Coast. We must appreciate that Mogotio in the Rift Valley and Vipingo at the Coast are known for sisal growing. These areas were specifically, and with no reasons given to the Committee, left out of the public participation processes. On that ground alone, which is a constitutional requirement, we thought that these Regulations do not meet the test of time and are due for annulment.

Hon. Temporary Deputy Speaker, I do not think I need to belabour the point. If one part of the Constitution is not met, then the regulation-making authority has not met the constitutional test. These Regulations must be annulled in their entirety.

I second.

The Temporary Deputy Speaker (Hon.(Ms.) Jessica Mbalu): Very well but you forgot to mention that areas like Kibwezi also undertake sisal growing.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. I stand here as a Member of the Committee on Delegated Legislation. I am also a Member from Busia County, one of the biggest cotton growing regions of this country, and which for many years used to grow a lot of sisal.

When the Regulations were presented before the Committee, we were taken aback on two or three issues. The way the Regulations were drafted seems to have favoured cartels in the industry and have actually killed the industry. More tellingly, the Regulations were presented to us last year yet public participation was undertaken in 2014 and 2015. When I looked at the list of the so-called "attendees" to the public participation forum for Busia County, I could not recall any. One name that I could recall, unfortunately, had left this world to go and stay with the maker wherever he is.

You cannot make such fundamental Regulations that are going to affect the life of the ordinary farmer at the bottom of the pyramid and basically imagine, without consulting them, without even making any attempt to consult and update them. For the past few years, the Jubilee Government, through President Uhuru Kenyatta, has invested heavily in the textile industry. You cannot, therefore, purport to use things we were told in 2013/2014 to pass current Regulations.

Over the years, we have heard of Bt cotton, hybrid cotton, online marketing, warehousing receipts system and all these new technologies and new legislative frameworks have come on

board. You cannot tell us that we are going to pass regulations that were drafted in 2014 and you want them to be superimposed and apply to the modern Kenya in 2022.

As we annul these Regulations, we need to send a very clear message to the regulation-making authorities that this House or the Committee on Delegated Legislation is not a rubberstamp. We have a right, a moral obligation and a constitutional right to protect the interests of Kenyans of whatever shades of life.

Therefore, as you prepare any regulations, you must be alive to the provisions of the Constitution concerning public participation and more importantly, what is provided for in the Statutory Instruments Act. Failure to comply with any of the relevant rules and laws will not give any reason to listen to you. We will simply annul so that we send you back to the drawing board.

We need to make laws that are progressive and laws that will stand the test of time. The Statutory Instrument Act indicates that the validity period of an Instrument is ten years. So, if we are making Regulations based on 2014 consultations in 2022, are you not out of time and tune? We must, therefore, have Regulations that address current issues and project what will happen in future. That is why we require a regulatory statement to confirm that all is well.

With those few remarks, I support the annulment with a very clear message. Do your work properly or otherwise all the Regulations that come to the Committee on Delegation Legislation and this House without complying with the law are dead on arrival.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Member for Kirinyaga, do you want to speak to this one?

Hon. Munene Wambugu (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Speaker for giving me a chance to speak to this important Motion. I support the Committee's Report.

As a Committee, we did not have an option. As it has been said by the Chairman, and the Member for Funyula, there was no explanation as to why it took over seven years to present these Regulations to this House from the time the consultations were done. It is clear that what was done six or seven years ago may not be addressing the current situation as per the time when the Regulations were tabled in this House. Apart from that, it was also clear that the consultations were done in limited areas. Crucial areas like cotton and sisal growing areas in this country were left out and no one could explain why, and why after doing public participation for six to seven years, they took that long to bring the Regulations to the House. Based on that, the Committee was satisfied that there was no public participation before the Regulations were brought on board. If my memory serves me right, we have a pending Bill on public participation. Public participation is a constitutional requirement but the Constitution only sets out the principles. Sometimes you do not know the limit and you are left to subjective analysis instead of being objective. If there is an existing rule, it can say how wide a nature of this kind of legislation we cover. Do we do a half or a third of the county, and is it good enough? We will stand indicted for having not moved with speed to come up with a very comprehensive role on extent of public participation.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Tharaka Nithi, do you want to say something?

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

I also support the Committee's Report on annulment of the Regulations because there was no sufficient public participation. A vital component is constitutional and is also provided for by the parent Act, the Statutory Instruments Act. Most importantly, even though I am a Member of the Committee, I still remain the Member for Tharaka, where these fibre crops used to do very

well in the 1960s and 1970s, but afterwards, suddenly, everything went down and the crops became almost extinct. They were not being produced anymore.

Since the advent of colonialism, sisal was grown widely and was a source of revenue for the country. We had the East African Bag and Cordage Company Ltd in Juja, which used to process sisal for the country for export purposes. However, because of polythene and other substandard materials that crept into the market, the sisal sector was “killed” and farming of the crop went down. We also had cotton and sisal, which used to do very well in Tharaka. Again, substandard materials like polythene, polyester and other carbons that were brought in from abroad killed a very illustrious industry. We no longer have what used to be called the Cotton Lint and Seed Marketing Board, which was dealing with cotton. When these Regulations came, we wanted them to go down to our people in the constituencies for the relevant authority to explain to them that with the law coming into force, they were reviving agriculture in terms of sisal, cotton and other fibre crops. Unfortunately, that was not done. So, we felt it right that we should do away with the proposed Regulations so that the regulation-making authority can go back to the drawing board, draw up a calendar where they would visit the constituencies where these crops are grown, take the views of the citizens and assure them that this is a good law which will help them to revive their agriculture and to a great extent, revive their economy in terms of agriculture. Agriculture is the backbone of this country’s economy. It is the one we are targeting. Every campaign slogan and presidential candidate is talking about growing the people from the bottom, growing farmers, putting money into their pockets, ensuring that they are taken care of with subsidies and whatever else.

This is the right time for the Ministry of Agriculture and the various agencies that are under it to go to the farmers to assure them that there is hope left in agriculture, and that agriculture is not a ‘dirty profession’ as people used to call it. It is a muddy profession. You have to dirt yourself to earn your money. It will be a clean industry now, where you earn your money; you get money in your pockets. Farmers will feel proud to be associated with farming. Let this regulations-making authority go back to the drawing board and come up with good regulations. Let us listen to everybody. If they suit this House, we will approve them.

With those remarks, I support the Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Member for Seme, Hon. Nyikal Wambura.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I will not say much. I support the Report of the Committee basically on the issue that you cannot bring to this House work that was done in 2014. One wonders whether the officers pulled these regulations from a drawer somewhere and dusted them up. I do not know whether the Cabinet Secretary was properly briefed on this matter. We are dealing with crops.

I went to primary school. The school fees was paid from proceeds of cotton farming, which died completely in Nyanza. If you want to bring cotton farming back, you first need to know why it died. The people need to know the reason. We have brought many issues but people are not convinced that anything will revive it. So, you should start by dealing with the people on that one. Very many regulations which are brought to the House are annulled on sound grounds. What is the competence level of officers in the ministries? Are there legal departments that advise cabinet secretaries on what the law is and its processes? That is important.

With those remarks, I support the Report of the Committee.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Kipyegon, Member for Emurua Dikirr! I can see that he is consulting. Hon. Millie Odhiambo, Member for Suba North!

I can see that she is also consulting. Hon. Members, there is no other Member willing to contribute to Order No. 12. I, therefore, call upon the Mover to reply.

Hon. Kamket.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Temporary Deputy Speaker. I want to echo what Dr. Nyikal said. It seems like some of the State Departments do not take their work seriously. Bringing to the Committee Regulations that were made in 2014 and expecting us to take them seriously is the biggest joke.

I am a very proud Chairperson of the Committee on Delegated Legislation. We handle such matters ruthlessly. I want to assure Kenyans that as their representatives, we are well-versed with the law. We will do our job as required. As we go to the constituencies to campaign, I urge members of the public to kindly return the Hon. Members of this Committee back to Parliament.

With those few remarks, I beg to reply.

(Laughter)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): We appreciate the good job that you do. Hon. Members, the Mover has replied with regard to Order No. 12. I order that the putting of the Question be deferred.

(Putting of Question deferred)

Next Order!

BILLS

Second Reading

THE COFFEE BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Chairperson, Departmental Committee on Agriculture and Livestock, to move the Bill. What is it, Leader of the Majority Party?

Hon. Amos Kimunya (Kipipiri, JP): Hon. Temporary Deputy Speaker, I consulted with the Chairperson of the Departmental Committee on Agriculture and Livestock. I would like to ask that we step down this Bill to give them more time to consider it. There is harmonisation which is going on concerning the Coffee Bill by the Senate and the Coffee Bill that I have sponsored. For the House to get full benefit of that harmonisation, we should give them until Tuesday. We will step down this Bill until Tuesday and then we can benefit the House from a more harmonised position.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. With that communication from the Leader of the Majority Party on the consultation with the Chairperson of the Departmental Committee on Agriculture and Livestock, I am convinced that the Committee needs more time. I order that the Coffee Bill (Senate Bill No. 22 of 2020) which appears in our Order Paper as Order No. 13 be stepped down or deferred.

(Bill Deferred)

Next Order!

THE COPYRIGHT (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Can we have the Chairperson, Departmental Committee on Finance and National Planning to move Second Reading? Hon. Gladys Wanga.

Hon. Gladys Wanga (Homa Bay (CWR), ODM): Hon. Temporary Deputy Speaker, I beg to move that the Copyright (Amendment) Bill (National Assembly Bill No.44 of 2021) be now read a Second Time.

I want to give an overview of this Bill. It was published on 6th October 2021. It was read the First Time on the Floor of this House on 4th November 2021. This Bill seeks to deal with the injustices that have been meted on our artists. One of the major resources that we, as a country, have is the creative industry. Our artists spend a lot of time and energy. They are splendid and world-class. They have won awards on the international stage. There are counties in this country such as Murang'a where you will be told that their "cash crop" is music. Think of all the artists who have come from there, including the late De Mathew and others. If one county has coffee and another one, say, Homa Bay County has fish, then Murang'a County has music artists as its major "cash crop".

Artists are outstanding, but the paradox is whether they get to earn what they deserve from the music or the art that they put out there. This is what this Copyright (Amendment) Bill seeks to deal with. We need, as a country, to put our artists where they belong. Sadly, many artists are celebrities by name. They will tell you when you meet them out there that they are celebrities. Indeed, they look good, but back home they live from hand to mouth. There are artists who have said that in the evening when they come back home from the big stages where they perform, they want to hide because they do not want their neighbours to know 'this big person that I see' actually lives with me in this same plot. This is what this Bill is seeking to deal with to a certain extent.

Hon. Temporary Deputy Speaker, last year, this House joined hands together and ensured that taxes on the monies that were being paid on *skiza* tunes were removed. It was so that artists could earn more from the *skiza* tunes. I want to congratulate the Members who supported it. However, that is just one element. This amendment seeks to take it further. This amendment seeks to create a digital national registry where artists can register their content voluntarily. If you want to register your content, you will do so there. You will volunteer to register it. Once you register it, for any use of that content, there will be a prescribed fee that has to be paid. For example, Awiko, a young artist who originally comes from Homa Bay and plays Afrobenga, will register his music. If I want to play his music at my wedding, in my car, or wherever I play it, any time I access it there will be a fee that is automatically deducted from me. What does that do? That expands the base from which artists are going to make earnings.

Right now, the Copyright Board and the institutions that go round to collect money on behalf of the artists only target *matatus* and hotels, but you will agree that these are not the only places where music is played. For example, I play a song all the time in my campaigns which says, "Jesus is working", but I am just quiet! I play it all the time but the artist does not necessarily earn from that. Once we have this registry, any time and wherever I play that song I will have to be charged. Part of that money will also be paid to the artist in question. Therefore, this is going to be revolutionary for the creative industry. This is going to be a game changer for our artists. However,

I must note that the registration is not compulsory, rather it is voluntary. If you want to earn from your content, you may register it. Note that it is not a must that you register it.

Apart from the creation of the national registry, this Bill goes ahead to deal with the issue of *skiza* tunes. We made amendments to the Finance Bill, now the Finance Act, and artists benefited from that amendment. We have now brought the question of sharing of revenue not just for *skiza* tunes but for any ring back tunes. We have now brought it into the Copyright Act. What we are saying is this:

The principal Act is amended by inserting a new section immediately after Section 30(b)

“Without prejudice to Section 30(b), in the case of ring back tunes, the parties shall share the net revenue from the sale of the ring back tunes as follows:

- (a) the premium rate service provider at 7 per cent.
- (b) The telecommunication operator at 16 per cent.
- (c) The artist or the copyright holder at 52 per cent.”

The reason for it lies in the question: why does anybody put a ring back tune? Is it because you like the service provider? The reason we put our ring back tunes is that a particular artist is appealing to us and therefore we would like people to listen to that song when they call us. We are of a strong belief that the person who should earn the most from a ring back tune is the artist. The current situation is such that the artist is put at a lower rate than the service provider. This Bill has been put out there in the newspapers for feedback to be brought by the public. I want to stress that the principle of public participation is key. There are people I have read in newspaper articles saying that they do not agree with certain sections of this Bill. What we would like to say is that this is an open House and we conduct public participation as is required. So any views that are taken and processed by the Committee will be executed here during the Third Reading and if there are any amendments that need to be taken so that the Bill carries along everybody, that is going to be done during the Committee Stage of the Bill.

There are those who keep saying out there that they want to support those who are very low in the society. They walk everywhere saying so, but right now if you look inside this Chamber they are not present! At this time, when the most important amendment is being made that can actually bring up the artists who sing for them in rallies, they are not here. So people must get serious. We should not pay lip service to the people we represent. We must be here when it matters the most. That is when it can be said that we are not paying lip service but entrenching in legislation what is likely to change the lives of our people.

In this regard, I would like to thank His Excellency the President because he has stepped out there and gone out of his way to ensure that our artists have a better life. So has the Right Honourable Raila Amolo Odinga. He has gone out of his way to make sure that he pushes this agenda. I thank the one person who has brought artists together so that their welfare can be looked at. I am talking about the chairman of the Royal Media Services, S. K. Macharia. These things must be said in open light because, as a country, a time has come for us to tell each other the truth. We cannot have a platform such as the Floor of this House and not use it and instead go to rallies to pay lip service to our constituents. If you really believe in something... In fact, there are legislators who have been elected to this House on the platform of artists. They are not here present to talk for those very artists they are supposed to represent here. They would rather be distributing wheelbarrows on the street!

Hon. Temporary Deputy Speaker, I would like to say that what is going to change the lives of our artists are amendments such as these ones. This is what is going to make a difference plus others that can be brought by other Members of this House. With those very many remarks, I would like to say that we are moving forward. We are making a very fundamental change to how our artists are going to earn. I hope that this will ensure that our artists such as those who have sang even for this country do not die poor. Any nation will be judged by how it treats its heroes. If we take care of our artists and ensure they earn their rightful place, then we will be putting Kenya in the place where it belongs. This not only applies to artists; our sportsmen must be regarded in the same way. I hope that other Members will find an opportunity to introduce legislation that will ensure that everybody gets what they deserve in terms of earnings.

Hon. Temporary Deputy Speaker, with those many remarks, I beg to move and I call upon our Leader of Majority... As I call upon him, I thank him because he and other Members of Parliament such as Hon. Sabina Chege, Hon. Nduati Ngugi and Hon. Kanini Kega stood here for their people, when we first started with the artists.

With those many remarks, I call upon Hon. Amos Kimunya, the Leader of Majority to second.

(Laughter)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. I am glad that I am the one chairing the debate on the same. Hon. Amos Kimunya for seconding.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second this important piece of legislation. I want to thank the Chairlady of the Departmental Committee on Finance and National Planning for the singular honor she has given me to second it. Indeed, it is rare that I am called upon to second any Bill. I am the one who calls upon people to second my Bills.

It is quite an honour particularly because this is an issue that has been troubling this nation. We have talented young Kenyans who are innovative through writing pieces of music. They have done everything. However, we have heard of their frustration whereby all their proceeds of music are taken by people who then intervene on their behalf. A typical musician will enrol *skiza* tunes that we all hear at the other end of our phone calls, but when you look at who takes what in that arithmetic, you realise that they have been taking home less than 12 per cent of the proceeds while 88 per cent goes to other people! They do everything but get the least percentage.

One of the proposals in this Bill, in Clause 3, is that that artist will now receive 52 per cent of the profit. At least, they should get more than 50 per cent of the profit. This should energise them to become more creative and to sort out their livelihoods, so that it is not just the telecommunication operator who ends up receiving everything. Now the telecommunication operator will be limited to 16 per cent and the premium rate service provider will get 7 per cent. At 52 per cent, the artists and their corporate holders will receive the lion's share of the amount.

The second reason as to why I am excited to second this Bill is that a couple of years back, when I was at the National Treasury, I met several artists who said that they were suffering because of taxes like Value Added Tax (VAT) and all those other taxes that were imposed on them. There were some who were performing at the Phoenix Theatre which has since collapsed. Young artists like the Member of Parliament for Dagoretti - at that time he was just fresh from university with the *Redykulas* show - got some exemptions so that they could at least perform without being harassed by Kenya Revenue Authority (KRA). They did not have to worry. They did not even

have an idea on where to file returns. We removed all those taxes and let them use their talent and energy in entertaining people and getting accepted.

I am glad when I see people like Hon. Kiarie here in Parliament and realizing what they did to revolutionise the entertainment industry. Comedy and many other things are arts that people can earn from. When I look at these things, I now realise the real empowerment our people need. It is not in terms of the promises about money that we make on political platforms, but the tangible things like laws that we make here. As a result, they can have an operative framework that is conducive and favourable to them. Everyone will feel that if they come up with something, then they will reap the real benefit of it. That is what the developed world has done. For example, it is what the Silicon Valley chaps in the United States of America (USA) are doing. They are succeeding with the unicorns that Hon. Ndindi Nyoro was talking about. In fact, I would have loved to see him here.

Murang'a is the production centre of these artists although Nyandarua has since overtaken them with musicians like Jose Gatutura, DJ Fatso and others. Those who enjoy the Mugithi type of music know who I am taking about. Even gospel musicians like Waiganjo come from Nyandarua. I am now in safe territory competing with people from Murang'a who thought that music was their "cash crop". We have since taken over. I am glad that these guys know that the more they sing, the more they get innovative and the more money they will make. Before this Bill gets passed, the more they sing, the more they get frustrated and the more money other people make as they end up in abject poverty. We have come out to reduce the pain of that ordinary musician. I believe that this House will come to the rescue of artists unanimously, regardless of our own issues. Like we have seen in the past, there are some things that should actually bind us because we all believe in empowerment of our youth.

I hope that we will give this Bill a quick passage so that even as we go on our campaign trails and play songs from artists, we will be the first ones to show the country that we are prepared to pay. That will empower our youths. The last thing we want is to keep doing harambees for artists when they cannot sing anymore because they have fallen sick and they have nothing to hold onto, yet we have all been enjoying their art and others benefiting from it. The telecom providers report huge profits courtesy of the *skiza* tunes, but the musicians are languishing in poverty!

Therefore, I want to thank Hon. Gladys Wanga and her Committee for processing this Bill and for daring to bring it. As Hon. Wanga singled out, the President has been very keen on this matter. When we went for the burial of one of the musicians from Kikuyuland, Joseph Kamaru - he revolutionised music in this country - the President promised to do something for the music industry, including some recording studios. When the Rt. Hon. Former Prime Minister Raila Odinga visited the same people, he also agreed to help the musicians. There are some governors who have gone ahead to put some money aside, in their various counties, to be used to set up creative centres so that people can grow talent at that level. For those who helped, this Bill is a special tribute to all their efforts. Our musicians can now enjoy the fruits of their labour.

We would like to see similar innovations happening not just in music, but also in telecommunication and so on. Dr. Oundo and Godfrey Osotsi always talk about these innovativeness. I look forward to their support not just on this one, but also other Bills concerning protection of innovators and the industry itself. I could go on and on because I am passionate about this matter. I know our musicians will be protected and our youth will now use their brains to make money rather than wake up thinking that the only way to make money is by handling some tools that remind us of enslavement through physical labour. We want people to use their brains, not

manual labour, to better their lives. Nobody goes for manual labour by choice. They go their because they do not have a choice.

There is technology. Let us encourage our youth by taking them to school. Let innovation be what will save this country rather than confining the youth to manual labour. It is not that the only hope they have is pushing hand carts and wheelbarrows. That is not the right way to give hope to our youth. So much time has been spent on them and parents have even sold their pieces of land to take them to school. So, why should we confine them to what they would have done even without going to school?

Once again, I thank Members and ask for support for this Bill. With those few remarks, I beg to second.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): This is a House of procedure. The Leader of the Majority Party as the seconder is limited by time. He had whispered to me how much time he would take to mention musicians from Ukambani like Tunyo, Maima, Mashimo, and Kagongo Boys, but since this is a House of procedure, we are limited by time.

(Question proposed)

Member for Tharaka, Hon. Murugara Gitonga.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill and I have my reason. There were some unfortunate remarks that were made when the Bill was being moved and seconded and I will also make unfortunate remarks to the contrary.

I belong to the hustler movement. We have made a resolve that we will support all pro-hustler legislations and this is one of them. Artists are the downtrodden; they are down there with their nice music which everybody enjoys but nobody wants to pay anything for it. So, unless there is a piece of legislation that makes it compulsory that we pay for it... This Bill is timely. We are trying to establish that our musicians and other artists get some royalties from their own works. Those royalties include payments for their music and payments for their performances whether in studios, theatres, or out there on tracks while trying to mobilise crowds to attend political rallies.

It is important that we give them a bigger percentage of the rates, say, 52 per cent. It is very important that we actually set up a registry where they can walk in voluntarily, register their music and earn some money when the music is played.

Why do I say that this is a pro-hustler legislation? I agree with the Mover and the Secunder that His Excellency the President has done a lot to try to boost the welfare of musicians. I say this cautiously because I come from Tharaka. It is part of the Ameru Community, but we are not famous for singing. Absolutely! They always laugh at us saying that the Ameru Community rants or hums instead of singing but we are coming up now. I have observed young musicians coming up with very nice hits which they put on YouTube. They are supposed to be marketed. There is a likelihood that royalties are being drawn from such performances.

While His Excellency the President has done a lot, we cannot fail to single out the work of his Deputy who has been moving around. The Deputy President, His Excellency, William Ruto, has been moving around the country supporting hustlers whether with money or in kind. This has happened and nobody can deny it. Believe me, I have seen Hon. Raila Odinga in track tops and meeting Kikuyu musicians in Central Kenya, but purely to attract crowds to his rallies, nothing else. At the end of the day, I am sure those people are given paltry payments, nothing to talk about. This only happens in Central Kenya because in Nyanza, especially Homa Bay where the Mover

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comes from, I have not seen him on tracks, I have not seen him with musicians. So, I am bound to conclude that the only reason Hon. Raila Odinga has Kikuyu musicians on tracks is purely to attract crowds to his rallies because if he does not do so, nobody will attend the rallies and he would be embarrassed. We must move away from that. We do not want to hear this being said. We need to support our musicians otherwise it is actually pure exploitation. You are trying to exploit a poor person so that you achieve your own goals! That cannot be said to be support. As politicians and Members of Parliament, we have people singing for us nice hits regarding development we initiate. I agree it is across the divide; it is not just about hustler MPs. Madam Temporary Deputy Speaker, the other side of the House is empty and yet they are saying that they are here to talk for sufferers, people who are downtrodden while actually there is nobody here to speak for them!

However, with all that, we say that this is good legislation. Let us support it and let us ensure that our people and musicians... We are not as highly developed as the Western countries where musicians are dollar billionaires. Here you do one or two songs, you go bankrupt and we have to fundraise for you. Today, if we pass this legislation and we make it compulsory that anybody who plays music, including radio stations... The Hon. Mover singled out Royal Media Services. They are also well known to play music that is pirated knowing to well that pirating is a hazard to the music industry. They play pirated music, but pay nothing for it! We should now be working on anti-piracy so that we have laws that protect our musicians from pirates who go out there to steal their music, play it for free and later boast that their radios and television stations are the most popular.

With those very many remarks, let us pass this legislation. Let every leader genuinely support the people who make music. They are down trodden. We should ensure their rights are protected so that they can also come up. That is why we talk about bottom-up, that is, rising from the bottom coming upwards in order to lead a decent life like those other people who live decent lives. Most of the guys who say that they speak for the poor are the advocates of the trickle-down economic model in which riches trickle from up there down into the hands of the poor. We have been with this model for the last 60 or 100 years, but it has never worked! It is high time we supported the bottom-up economic model. For the first time, we need to see whether taking resources down to the base of the pyramid will be able to expand the tax base thereby improving the economy. We will be able to collect more taxes and pay our debts that are spiralling. We will do everything, including development. We will go to the poor person down there and bring him up so that he is able to join the upper class. Therefore, this is a bottom-up piece of legislation. As a supporter of the hustler movement, I wholeheartedly support it.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Let us have the Member for Kisumu County, Hon. Buyu Akinyi.

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. First of all, I want to align myself with the thinking of the Mover of this amendment Bill, Hon. Gladys Wanga. It is not political rhetoric on the streets that is going to improve the plight of young people in this country; it is not even the rhetoric screaming of bottom-up that will improve the plight of young people who make up more than 75 per cent of our population. It is the how. What this Bill seeks to do is to give us the how on how we can improve the plight of the young people. Most of our artists fall in the age bracket of youth. This is the age bracket that suffers a high percentage of unemployment rate. We know that there are no opportunities to incorporate these young people in our employment sphere. So, the Government has put all its effort in

encouraging young people to be creative to fend for themselves. Many of these young people have taken to being part of the creational music. These young artists spend long hours coming up with entertainment items like songs. They also spend a lot of energy on the same but in the end what they get in return is peanuts.

The Mover highlighted how pathetic the status of these artists is after they perform and make us and politicians happy, and help us to release our stress. When they go back home, many of them sometimes sleep hungry because they make nothing out of their effort. What I like about this amendment Bill is that it seeks to improve the earnings of these young people's sweat. Elevating their earnings to 52 per cent shows appreciation of their hard work, energy and long hours that they put in this industry. This percentage is an increase from 16 per cent. Indeed, this should be applauded. It is not by one saying that they are coming up with a hustlers' movement to better the lives of young people, but it is by taking a bold step, like what we saw the President and Rt. Hon. Raila Odinga do, in improving the lives of these young people. That is what we must applaud.

Before I joined Parliament, I had a business and it was a shame to watch – at times I could cry – young people who looked hungry, walking and knocking on doors of businesses. If you had a television or a radio playing music, they would ask you to pay them something small. What this amendment Bill seeks is to put an end to that so that they do not have to walk all over the place looking for people who are playing their music to pay them to make a living. The introduction of the national registry will take care of that. I encourage artists to be members of the national registry despite the fact that it is voluntary. That will take care of their earnings. What we need to do as Members of this House is to support this Bill. I know as politicians we cannot do our campaigns without music. Most of us do not pay anything for the music we use running around campaigning. We and our supporters dance, we get votes for making people happy but the artists of the music we use make nothing out of it.

So, this Bill will streamline and bring discipline among politicians who keep crying that young people need to get employment. When politicians use their music, they should also pay for it. This amendment Bill seeks to ensure that we all pay for the sweat of these young people. With those few remarks, I beg to support.

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Member for Chepalungu.

Hon. Gideon Koske (Chepalungu, CCM): Hon. Temporary Deputy Speaker, from the outset I support the Bill. It will come in handy. We are going to assist our artists across Kenya get their rightful share from their performances and the creativity that they showcase in the industry. Lack of fair compensation of artists by broadcasters has destroyed the creative industry in this country.

Many of our young talented Kenyans have resorted to the entertainment industry where they create music so that they can earn a living. Unemployment in Kenya has become a pandemic and that has made many young Kenyans to resort to music. Most broadcasters are the biggest users of creative content yet they do not pay royalties, which are a right for our artists. What they get is not commensurate to the revenue that they generate from their work! Research shows that in 2020 alone, radio and television broadcasters earned Ksh22.3 billion yet our artists did not get any share of that. Raising payment from 16 per cent to 52 per cent is a great improvement for a progressive Kenya. Artists will be getting 52 per cent of all revenue that is generated through their works.

In Chepalungu Constituency, we have a big number of artists who earn their living through creative arts. For example, we have Sweetstar, Makiche, Isimba, Labwes, Koros, and Mika Maritim also known as Kesit. They all earn a living from creative arts.

I support this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. I see a lot of interest in this Bill. Let us have the Member for Suba North, Hon. Millie Odhiambo. Member for Seme, you will have the Floor after the Member for Suba North.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. Let me take this opportunity to thank Hon. Gladys Wanga for bringing this amendment Bill that supports artists. At heart, I am an artist. If I were not a Member of Parliament, I would probably be a musician and dancer, especially dancing to *Nyambita*. I know one of my opponents went to report me to one of the churches that I am dancing and one week later I saw him dancing to *Nyambita* as well. Having said that...

(Hon. Rozaah Buyu spoke off-record)

Yes, *Nyambita* is *Nyundo*.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Just for us to be clear: What is *Nyambita* ?

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): *Nyundo*, Hon. Temporary Deputy Speaker. *Nyambita* is basically a song that says that, "You dance this way, you dance that way then you hit it with a hammer." The musician is talking about a person who is hardworking and uses a hammer.

(Laughter)

I want to thank my party and the coalition for being realistic. We are involved in everyday lives of people. We know how to campaign whether on trailers or with musicians. We reach out to artists and meet them at their points of engagement. I do not want say at their points of need because it is God who meets us at our points of need. That is why Raila Odinga is able to dance with artists from Central Kenya who my lawyer friend talked about, but he also dances with *Nyambita* in Nyanza. He is the most down to earth politician that I have ever seen. He is one of the people who have used the strategy that they are now calling bottom-up. Even if you were to name me Mwendu, I am still Millie Odhiambo. They took up the agenda that Hon. Raila Amolo Odinga has used all his life, which is a pro-poor and pro-people policy. That is why he came up with devolution. What is devolution? Devolution is not top-up. It is down-up. I do not want to say bottom-up because they are misusing the terminology. Hon. Raila Odinga is the father of devolution in this country. He is the one who has managed to bring money down to people. And he has hit where the rubber meets the road. I was embarrassed listening to my colleague saying that we want to thank you for bringing a bottom-up Bill because you are concerned about us. Maybe I am the one getting a bit unwired or I am unwired. How can you thank Azimio la Umoja for bringing you a policy and you are in the same House? What were you doing in the same House? Why can you not also move a Bill that purportedly deals with hustlers instead of jumping and dancing saying you are pro-hustlers? The Floor of the House is where hustlers' issues are dealt with.

The Temporary Deputy Speaker (Hon. Jessica Mbalu): Hon. Millie, I know you have much to say, but let us stick to the object of the Bill.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. The object of the Bill is artists. And the speaker on the other side said artists are hustlers. So I am within the framework of the Bill. I want to indicate that devolution touches on artists by bringing money down. We are being realistic by dealing with pro-poor approaches, which Azimio la Umoja is all about. That is what Raila Amolo Odinga believes in. In fact, his middle name is pro-poor. If you translate the name Raila, it means pro-poor. If you are not sure, go and ask the old men in Luoland. Like my name Akoth means rain, Raila means pro-poor. Anybody who wants to challenge me can ask the translators. I want to encourage those who are saying they are hustlers to come and enact policies that relate to people that they claim to represent.

The other day when we were dealing with the Tea Bill... I am a fisherperson and yet we are the ones who brought amendments dealing with tea farmers. The other day when we were dealing with the Waqf Bill, Hon. Duale had an issue with me bringing amendments yet he is out there saying he is concerned about his people. I want to thank Hon. Gladys for being mindful of artists. In a real way, we are multiplying money. We are moving the amount to more than Ksh50. More than 50 per cent will go to the person that is actually struggling to get money. They are struggling to get more than 50 per cent. Those are the people we represent as Azimio la Umoja, which is pro-poor. I want to encourage the other people to first of all get their policy right on what they actually mean by bottom-up. When my good friend and lawyer who wants to be Deputy President, Alice Wahome, was asked what bottom-up is, she said it is bottom-up, sideways, then bottom-up, then sideways and up. She has no clue about what their policy is about! So, you cannot come here and speak to us with authority.

I also want to encourage the Leader of the Majority Party to know that I have been in this House for long and, sometimes, I understand the dynamics. If you see me moving, please, understand that I know. You may want me to do two minutes but I understand why I am going beyond. I just want to tell fake hustlers that how can the bottom go up? Let us do real things that affect people.

Next week we are debating the Coffee Bill. Please, be in the House. Do not only come here to defeat and frustrate Government business and then immediately walk out when the Coffee Bill is being debated. You normally leave us here dealing with issues that affect the common *mwananchi* until 7.00 p.m. Where are your fake numbers that you always bring here to defeat Bills? They are now nowhere to be seen. We are the ones who are here. Where are your bottom-up people? We are the ones working for the poor people in this country by making sure they put food on the table. Hon. Raila Amolo Odinga has already started implementing his pro-poor policies through amendments like these. We are also bringing more next week while you are there dancing, complaining about Hon. Raila Amolo Odinga, and 'bottom-upping'.

(Hon. (Ms.) Beatrice Nkatha raised her hand)

Hon. Temporary Deputy Speaker, the Hon. Member needs to know that there is nothing out of order. This is not a class where you carry your hand up. I am saying sensible things which are getting her a bit worried.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, we do not raise hands here. I keep saying that is noise. We have machines and if you have a point of order, please, press the intervention button.

(An Hon. Member spoke off-record)

Hon. Millie.

Hon. (Ms.) Odhiambo Mabona (Suba North, ODM): When you make a point and it gets to the bone marrow, it will unsettle people. I can see my Hon. colleague lawyer and friend, Member for Tharaka Nithi. There is no game of Tharaka Nithi here. We just want to encourage you to get ready to hand over gracefully, peacefully and lower your bottom.

With those few remarks, I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Members, let us make this House a place of debate. Let us be relevant to the object in replying to each Member. Please, make your point. The object of the Bill, for example, is to amend the Corporate Act to provide for a fair sharing formula of revenue with regard to artists, copyright holders and telecommunication companies. It is good for us to be relevant.

Let me have the Member for Funyula.

(An Hon. Member spoke off-record)

Hon. Nyikal was next because his chip was captured. Member for Funyula, since I had already said it...

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker.

After entertainment from the good lady from Mbita, it is now time to make a few comments.

The amendment to the Copyright Act is timely. Our young people, who have been very innovative in music and other things, have been mistreated, exploited and undermined.

Many of us love music. However gloomy you are, when a nice song is sung or hummed, you will certainly nod in appreciation.

I come from a constituency where there are budding musicians and artists. When you walk around or invite them for functions, you feel sorry for them because they entertain people but whatever they take home is so meagre. At times we feel ashamed.

We have artists like Amos; Faith Anyango, the gospel artist; John Siyo; and also, old and fabled artists like Marios and Angelina who have entertained people all the years. We must find a way of rewarding talent. We must find a way of compensating efforts.

Hon. Temporary Deputy Speaker, many of us who are professionals earn a living from what we do, which is what we went through in school. We compensate many people who masquerade as tenderpreneurs and hustlers, and yet they are thieves. They are corrupt. Artists are hard-working and talented. It is such a shame that senior politicians cheat young people with stories akin to pyramid schemes and yet they cannot even afford to support the young artists to better their lives.

When we, as legislators, get the opportunity, we must legislate. Legislation is done here. It is not done in the streets by giving people wheelbarrows and stories on how they will get rich from stealing as opposed to doing something. It is time this country appreciated the good work and efforts of people who are talented and mean well for this country.

With those few remarks, Hon. Temporary Deputy Speaker, I support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Nyikal.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Bill. Its object is to provide a framework that will ensure that our artists get appropriate earnings for their creativity and performance thus ending the misery which many of them find themselves in.

The most important thing is the creation of a registry. There are two most important things that the registry will do: media monitoring of registered copyrights; tracking; and dissemination of data or logs which are related because that is where they actually lose out. It further broadens the areas that can bring remuneration. They will move away from the traditional cassettes, discs and MP3s and then go to adverts, use of audio and visual media, public performance in weddings, and telephone ringtones. The Bill also sets a sharing formula which is very important. The political cake has been added to it. I do not need to have that.

I support this Bill. Thank you.

Hon. David Mboni (Kitui Rural, CCU): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): There is an intervention by the Member for Kitui Rural.

Hon. David Mboni (Kitui Rural, CCU): Hon. Temporary Deputy Speaker, we have done justice to this Bill. We all agree that...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Is that your point of order?

Hon. David Mboni (Kitui Rural, CCU): Yes. Hon. Temporary Deputy Speaker. It is important that you call upon the Mover to reply under Standing Order No. 95.

Thank you very much.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Members, we must follow the procedures of the House. He is on a point of order on Standing Order No. 95, which requires the Mover to be called upon to reply. Hon. Members, from where I sit, I have no vote. I will put the Question.

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

Mover.

Hon. (Ms.) Gladys Wanga (Homa Bay (CWR), ODM): Thank you, Hon. Temporary Deputy Speaker. I know that there are Members who are here and they have some interests. I would like to use this opportunity to donate a minute to...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): No, Hon. Wang. I must follow the procedure. Relax! Our Standing Orders do not allow us to donate minutes, especially when the debate has been completed prematurely because of a point of order. I am sure that your Members will understand.

Hon. (Ms.) Gladys Wanga (Homa Bay CWR, ODM): Allow me to thank the Member for Emurua Dikirr who has sat here the whole time. I know that he is here because he supports artists. The same goes for Hon. Munene, Member for Kirinyaga Central and Hon. Manje, Member for Kajiado North who have all been here to give great support to this Bill. I also thank the Members who have contributed, that is, Hon. Rozzah, Hon. Millie, Hon. Nyikal, the Leader of the Majority Party, who seconded, Hon. Oundo, and Hon. Mboni. They have been here the whole time. I really would like to thank them for standing with the artists of Kenya. I think today it has been determined who is really standing with the artists of Kenya. The Members who have been here can stand to be

counted. We will go the whole hog. We will stand with our artists to the end not just by lip service but we will stand with them by legislation.

With those many remarks, I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You did not thank me and yet I chaired. Just continue.

Hon. Gladys Wanga (Homa Bay CWR, ODM): I must really thank the Speaker, Hon. Jessica Mbalu, because she has stood firm. I know she is one of the legislators who have always been on the side of Kenyan artists. I know that the people of Kibwezi East are seeing you. I know that even the people of Makueni County, generally, know the hard work that you have put in not just for your constituents but for this nation. You sit here late hours. When nobody else is here, you sit here as the Speaker and you guide us in deliberation. I am sure that *mbele iko sawa*. Thank you, Hon. Temporary Deputy Speaker, for the effort that you have always made.

Let me restate that there are those who may not agree with everything in this Bill. There is a big opportunity for public participation. There is a big opportunity to submit amendments so long as they are not against the spirit of the Bill. There is a big opportunity for amendments to be submitted so that we can make the Bill better. I thank you immeasurably, Hon. Temporary Deputy Speaker. I thank the Leader of the Majority Party for providing leadership and thank the Hon. Members. Once again, I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): I am sure the Members understand the rules concerning where there can be donation of time and where there is supposed to be none. I really also want to appreciate the Members who were willing and those were able to contribute to the Copyright (Amendment) Bill (National Assembly Bill No. 44 of 2021). The Member for Kajiado North, we appreciate you. The Member for Emurua Dikirr has been appreciated and the others who are present in the House. I was asked to follow procedure for posterity.

Hon. Members, the Copyright (Amendment) Bill (National Assembly Bill No. 44 of 2021), having been replied to by the Mover, Hon. Wanga, I order that the putting of its Question be deferred to the next sitting.

(Putting of Question deferred)

Hon. Members, we only have a few seconds to 7.00 p.m. Allow me to appreciate Members who have been here this afternoon to debate very important motions.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time now being 7.00 p.m., this House stands adjourned until Tuesday, 8th February 2022, at 2.30 p.m. I thank you all.

The House rose at 7.00 p.m.