REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

VOL. II NO. 7

THE HANSARD

Wednesday, 22nd February 2023

The House met at 2.30 p.m.

[The Deputy Speaker (Hon. Gladys Boss) in the Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: I now direct that the Quorum Bell be rung for 10 minutes.

(The Quorum Bell was rung)

Order. I now see we have quorum.

PETITION

DELAYED SETTLEMENT OF SQUATTERS IN NYATIKE

Hon. Deputy Speaker: Hon. Tom Odege, Member for Nyatike Constituency, you have a Petition.

Hon. Tom Odege (Nyatike, ODM): Thank you, Hon. Deputy Speaker. I rise to present a Petition on delayed adjudication and settlement of squatters after the expiry of lease of Macalder Mines Limited land.

I, the undersigned, on behalf of the residents of Nyatike Constituency draw the attention of the House to the following:

THAT, Macalder area which is approximately 3000 acres is among the ancestral land belonging to the people of Nyatike Constituency which was given up through a mining lease to the Macalder mines Limited in 1935 and conducted mining in the land until 1966;

THAT, the leasing of the land made the rightful owners landless and squatters despite Macalder Mines Limited segregating portions of the land for residential and open mines. The locals became compound managers, domestic workers and guards in the segregated land that the Macalder Mines Limited established;

THAT, upon the exit of the Macalder Mines Limited from Kenya in 1970, the land was not fully developed except the residential areas inhabited by gold miners and servant quarters inhabited by local workers;

THAT, most landless citizens who had given up their land to Macalder Mines Limited began settling back and farming in the underdeveloped land;

THAT, the number of people settling in the land increased between 1970's and 1990's when the local chiefs allocated people the said land;

THAT, the people who have settled in the land have put it into good economic use, constructed residential houses and commercial centres which are earning them income but the Government has neither adjudicated the land nor issued title deeds;

THAT, records held at the Department of Land Adjudication, Land Registrar and Department of Survey are allegedly erroneous hence causing uncertainty among affected families and land owners;

THAT, the alleged reluctance of the Migori County and national Government to adjudicate the land and issue title deeds amounts to denial of fair administrative action for the residents.

THAT, the issues in respect of which this Petition is raised are not pending before any court of law, constitutional or any legal body.

Therefore, your humble Petitioner prays:

1. THAT, the National Assembly through the Public Petitions Committee engages the Ministry of Lands to ensure that the Macalder land is re-adjudicated to allow the owners to acquire title deeds and save the residents from alleged erroneous records and missing parcels.
2. Makes any other recommendation of action it deems fit in addressing the plight of the Petitioners.

And your Petitioner will ever pray.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: I will allow a few Members to make some comments on this Petition. Hon. Gonzi Rai, Member for Kinango. I will give Hon. Lillian Gogo, Member for Rangwe a chance.

Hon. (Dr) Lilian Gogo (Rangwe, ODM): Thank you very much, Hon. Deputy Speaker. This is a matter that is sensitive because it is touching on land. We have the Macalder Goldmines in Migori and in Rangwe we have small goldmines that engage our people and they get income from doing small time processing.

In our country, people are thirsty for land that even what would benefit the common man - the man at the lowest point or bottom - people still want to get it. It is important that this august House looks at sensitive issues affecting land and the common man. This Petition has been brought on time by Hon. Odege of Nyatike and as a House it is important, we support it. Therefore, it has been referred to the relevant committee so they can look into what is affecting the common man.

Hon, Deputy Speaker, I support what Odege has brought to the House. It is also important to look at the small pieces of land across the country where *wananchi* eke a living to take their children to school, get some food and have a roof over their heads. This is a matter that needs our attention as a House and even by the relevant Committee. In so doing, it will be for posterity and for the benefit of all Kenyans

I support. Thank you.

Hon. Deputy Speaker: Hon. Wilberforce Oundo

Hon. (Dr) Ojiambo Oundo (Funyula, ODM): Thank you, Hon. Deputy Speaker. I stand to comment on the Petition filed by the Member for Nyatike Constituency. The issue of land matters is emotive and we seem to have lived with it from time immemorial. It is emotive because land has got various facets; socio-economic, legal, and at times political aspect. Indeed, when a lease expires naturally it is expected the land will revert back to the people who are the original owners. I expect it will take intervention for the matter to be resolved immediately and be concluded. Therefore, this is a call to the National Land Commission (NLC) and the relevant concerned organs to move with speed and reinstate the land to the rightful owners as the law requires.

Hon. Deputy Speaker, I support the Petition. I hope the Public Petitions Committee will move with speed to resolve this matter and set precedence on other pending matters of similar nature.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Lelmengit, Member for Emgwen. Hon. George Murugara, Member for Tharaka. I am looking for Members who are on intervention.

Hon. George Murugara (Tharaka, UDA): Thank you, Hon. Deputy Speaker. I wish to comment on the Petition by Hon. Tom Odege. I think it is timely in view of the fact that the land in issue was left behind in the 1970s and those who have rightfully occupied are without titles. The issue of title deeds in the country is very important to land owners. As we press for the people of Nyatike, we will also be pressing for the people of Tharaka Constituency because they are in dire need of title deeds. This is despite the fact that they have a land registry. Therefore, as the Public Petitions Committee moves with speed, I think the issue of title deeds in the country needs to be looked into expeditiously.

I support. Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Lastly, on this Petition is Hon. Majimbo Kalasinga, Member for Kabuchai.

Hon. Majimbo Kalasinga (Kabuchai, FORD-K): Thank you very much, Hon. Deputy Speaker. Before I give my opinion on this, I want to join my friends in congratulating you for your elegant choice of wardrobe. Hon. Deputy Speaker, after this you might inbox me your designer so my wife can also look like you.

On the Petition by the Member for Nyatike, in Kenya land is very emotive. This is just a test in case. We have too many areas in this country where people were moved those days and leases given. When they expire let us expedite and do diligent allocations so that the people who lost land gain and get their livelihoods back. Some families are languishing in poverty. Apart from this case, we have land in Bungoma and Trans-Nzoia which follows the same suit.

Thank you, Hon. Deputy Speaker. I beg to support.

Hon. Deputy Speaker: Okay. Next Order!

PAPERS

Hon. Deputy Speaker: The Leader of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Hon. Deputy Speaker, I beg to lay the following papers on the Table:

1. Legal Notice No. 8 of 2023 relating to Tax Procedures (Common Reporting Standards) Regulations, 2023 and the Explanatory Memorandum from the National Treasury and Economic Planning (to be referred to the Committee on Delegated Legislation).
2. Sessional Paper No.1 of 2023 on Kenya National Population Policy for Sustainable Development from the National Treasury and Economic Planning.
3. Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the Financial Year ended 30th June 2019 and the certificates therein:
   (a) Narok West Technical Training Institute; and
   (b) Maasai Mara Technical and Vocational College.
4. Reports of the Auditor-General and Financial Statements in respect to the following Institutions for the Financial Year ended 30th June 2020 and the certificates therein:
   (a) Belgut Technical Training Institute; and
   (b) Ugunja Technical and Vocational College.
5. Reports of the Auditor-General and Financial Statements of National Government Constituencies Development Fund (NG-CDF) in respect of the

following constituencies for the Financial Year ended 30th June 2021 and the certificates therein:

(a) Moiben - I see the Member for Moiben is behind me;
(b) Kisumu East;
(c) Ugunja - represented by the Leader of Minority Party;
(d) Kipkelion West;
(e) Keiyo South;
(f) Kuresoi South;
(g) Lugari;
(h) Matungu;
(i) Bumula;
(j) Likuyani; and
(k) Ol Kalou.

Lastly, reports of the Auditor-General and financial statements in respect of the following institutions for the financial year ended 30th June 2022 and the certificates therein:

1. East African Portland Cement PLC;
2. Kenya Industrial and Entrepreneurship project Credit No IDA6268KE; and
3. Centre of Excellence in Sustainable Agriculture and Agri-business management Credit No 5798-KE.

Thank you, Hon. Deputy Speaker.

NOTICE OF MOTION

DEVELOPMENT OF COMPREHENSIVE JUNIOR SECONDARY SCHOOL POLICY

Hon Deputy Speaker: Hon. Geoffrey Ruku, Member for Mbeere North.

Hon Ruku GK (Mbeere North, DP): Hon. Deputy Speaker, I beg to give Notice of the following Motion:

> THAT, aware that communities have continuously established learning institutions within their localities to address the inadequate physical facilities to support the attainment of universal access to education. Noting that the Kenya Vision 2030 envisioned progressive establishment of more schools, expansion and rehabilitation of the existing ones in order to improve access to education. Further noting that huge sums of fund particularly under the National government Constituency Development Fund (NG-CDF) have been invested in improving infrastructure in primary schools.

Acknowledging that in the recently introduced Competency Based Curriculum education system, pupils will transition from primary schools at class six and not class eight as was the case under 8-4-4 system; concerned that basing Junior Secondary Schools in selected primary schools will render classroom facilities that previously housed classes seven and eight redundant and that the arrangement would compel students to travel for longer distances to access institutions where Junior Secondary School are based; further concerned that the guidelines recently issued by the Government directed that Junior Secondary Schools be domiciled in the existing primary schools, yet most primary schools lack the capacity to accommodate and effectively offer Junior Secondary Schools curriculum; deeply concerned that the guidelines were hurriedly developed and operationalised; this House urges the Ministry of Education to –

1. Urgently develop a comprehensive Junior Secondary Schools Policy in order to regularise and anchor the guidelines under the Basic Education Act, 2012

to ensure that Junior Secondary Schools are established and operated in every primary school; and

2. Develop a clear implementation framework for the Competency- Based Curriculum at the Junior Secondary School level and provide for a funding plan for successful implementation of the Curriculum.

Thank you, Hon. Deputy Speaker.

Hon Deputy Speaker: Next Order. I think because Members are not ready, we will rearrange the order, so we shall come back to Order No. 7.

MOTION

Hon. Deputy Speaker: Hon. Chepkonga, before you proceed allow me to recognise some schools.

I wish to recognise the presence, in the Speaker's Gallery, of Kabaare Girls' High School from Gichugu Constituency, Kirinyaga County. We must note that it is the former school of Hon. Njeri Maina, County Member of Parliament for Kirinyaga, also known as Gacheri. I also wish to recognise, in the Public Gallery, the presence of Molo Boys Academy from Molo Constituency, Nakuru County. You are welcome to the National Assembly.

Hon. Chepkonga you may proceed.

ANNULMENT OF CROPS (COFFEE) (GENERAL) (AMENDMENT) REGULATIONS, 2022

Hon Samwel Chepkonga (Ainabkoi, UDA): Thank you, Hon. Deputy Speaker. I recognise the presence of Hon. Opiyo Wandayi. As you know, they had prayers today morning and afternoon. We hope that they also prayed for Parliament. I would like to thank them very much for praying. You know it is important to pray.

(Loud Consultations)

No, no, no… a point of order against God? It is just about the prayer.

Hon. 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 (Coffee) (General) (Amendment) Regulations, 2022, laid on the Table of the House on Tuesday, 21st February 2023, 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 (Coffee) (General) (Amendment) Regulations, 2022 published as Legal Notice No. 102 of 2022.

The regulations were tabled in Parliament and referred to the Committee on Delegated Legislation. The committee examined the Regulations which were intended to do the following:

1. Transfer the authority of issuing milling licenses from the county government to the Agriculture and Food Authority (AFA).
2. Was to provide for the obligations of license holders and service providers and the protection and regulations of their interests along the value chain.
3. To recognise the coffee grower as the owner of the coffee until it is sold and to provide for their rights along the value chain.
4. Was to provide for a transparent and timely clearing and settlement of coffee sales proceeds to the growers and service providers.

5. Was to provide for the various forms to be used for applications, collection and maintenance of data in compliance with the regulations.
6. To ensure improvement of coffee standards and increase production and support.

The Committee considered these Regulations as published on the 9th of June 2022, vide Legal Notice No. 102 of 2022 that was submitted to the Clerk of the National Assembly on the 9th of June 2022 during the time of elections. That is the reason why these Regulations were not considered immediately because the House thereafter proceeded on *Sine Die* recess because of the General Elections. These Regulations were laid in the House on the 4th October 2022 within the statutory timeline set out in Section 11(1) of the Statutory Instruments Act.

Under Articles 10 and 118 of the Constitution as read together with Section 5(a) of the Schedule and the Statutory Instruments Act, together with the Standing Order 210 requires that every Regulation making Authority and persons to conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulations.

The Committee noted with concern that contrary to the requirements that regulation making authorities or bodies conduct public participation and sufficient consultation with the stakeholders and persons likely to be affected by the Regulation, public participation was not sufficiently conducted with those that have been affected by these Regulations.

The Council of Governors vide a letter dated the 12th May 2022, addressed to the Cabinet Secretary for Agriculture, Livestock, Fisheries and Co-operatives, raised concerns that the Regulations as published by the Minister then was contrary to the provisions of Section 1(2) of the Fourth Schedule of the Constitution for failure by the Ministry to consult the Council of Governors. As you know, this is a devolved function, so it was expected that the Minister for Agriculture consults the Council of Governors or Governors themselves because this is a function that has been devolved.

The fifth thing that we noted is that coffee farmers, in a letter that was addressed to the Clerk of the National Assembly and copied to the Chair of the Committee Delegated Legislation, also expresses concerns on the failure by the Ministry to incorporate or consider their proposals in the published Regulations.

These Regulations, if approved, will adversely affect coffee farmers as they have already stated as areas in which they suspect or they think will adversely affect them and those who were pointed out to the Ministry of Agriculture and there was no sufficient stakeholder participation as required by Article 118 of the Constitution. These Regulations have, therefore, infringed on the Constitution.

The sixth thing that we noted is that these Regulations were supposed to give farmers an opportunity to grow, mill and sell their own coffee. The main effect being that these amendments would lead to extending the licences of previous players in the coffee value chain industry, and continue to exclude coffee farmers and millers from the trade of their produce.

The Capital Markets Authority policy is that all commodity exchange is regulated through Capital Market Coffee Exchange Regulation, 2021. If these Regulations are approved, they will be in contravention of these particular Regulations that have curtailed the presence of cartels in the coffee industry.

As you know, there are people who have several companies and licences for milling and marketing. The same persons with two different licenses have indeed made the coffee industry to be perverted with cartels and brokers to the detriment of coffee farmers who are suffering because there have been too many deductions along the value chain and so the money that goes to the farmer at the bottom, is very minimal and therefore, discouraging to the coffee farmers. This is why you see most coffee farmers are saying they would rather cut down the coffee trees instead of continuing to grow them because they neither benefit nor see value for it. These Regulations are going to infringe on the rights of coffee farmers.

The eighth thing that we noted is that this is a devolved function as I have just stated in which the counties have a regulatory role to play as per Part 2(1) of the Fourth Schedule of the Constitution.

The Crops Act No.16 of 2013 (40) provides that the Cabinet Secretary may make Regulations for the better carrying into effect of the provisions of the Act in consultation with the Authority and county governments. This was not done and, therefore, contravenes Article 259(11) of the Constitution as read together with Section 13(a) of the Statutory Instrument Act of 2013. The Crops Regulations of 2019, therefore, sought to decentralise the Regulatory role of the various players in the coffee chain industry which was initially under the Ministry of Agriculture. The implication of approving the Crops and Coffee Regulations, 2022, will be to contravene these express provisions of the Constitution and the various statutes.

Finally, in addition to the need to undertake Public Participation, Sections 6, 7 and 8 of the Statutory Instruments Act that guides the operations and the consideration of Regulations in the Committee of Delegated Legislation requires that the statutory making body undertakes regulatory impact assessment prior to making a regulatory instrument if the proposed instrument is likely to impose significant economic implication on the community or part of the community.

The Committee has observed, upon scrutiny, that the Regulations by their very nature...

(Hon. Mpuru Aburi spoke off-record)

Do you have a problem with Hon. Melly or Hon. Njoki my year mate? Your honour, he has not been... Let me continue, Hon. Speaker.

Hon. Deputy Speaker: Proceed, Hon. Chepkonga. As long as he continues to raise his voice as opposed to wait for the intervention, I can see you over here but you cannot shout.

Hon. Samuel Chepkonga (Ainabkoi, UDA): Thank you, Hon. Deputy Speaker. He is used to television, so there is no problem. He thinks this is part of it or an extension. But you know, I used to regulate their operations and so there is no problem; he can continue to do so.

Hon. Deputy Speaker: And in any case, Members are going to have a chance to contribute to this Motion. So, let him finish Moving, let the Seconder second and then it will be open to Members because I know it is a very important topic.

Hon. Samuel Chepkonga (Ainabkoi, UDA): The importance of what I am saying is that the Regulation making authority did not conduct regulatory impact assessment as required by the law and so we found this as being in contravention of the Statutory Instrument Act and, therefore, we are proposing that this particular Regulation be annulled in entirety. We do not seek to delete any part thereof. We think they are unconstitutional and I, therefore, pursuant to Section 15(1) of the Statutory Instrument Act read together with Section 40 of the Crops Act No.18 of 2013 and Standing Order 210 4(b), the Committee recommends to this House to annul in entirety the Legal Notice on Crops Coffee (General) (Amendment) Regulations 2022 on the basis of their aforementioned reasons.

Therefore, I would like to request the Vice-Chair, Hon. Gichimu, to Second.

I thank you.

Hon. Deputy Speaker: What is your intervention before the seconder, Member for Tigania East, Hon. Mpuru Aburi?

Hon. Mpuru Aburi (Tigania East, NOPEU)**:** Hon. Deputy Speaker, I am sorry I cannot recognise who is on the Chair because she looks more beautiful than yesterday. Is there a stranger?

(Laughter)

Hon. Deputy Speaker: I will take that as a compliment even though it is mischievously brought. The Vice-Chairperson, Committee on Delegated Legislation.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you Hon. Deputy Speaker. Before I second the Motion, I would also like to associate myself with the students at the Speaker's Gallery, Kabare Girls High School, one of the best national schools in my constituency. They are most welcome although, Hon. Deputy Speaker, you had welcomed them.

I rise to second this Motion. It is a requirement by the Statutory Instruments Act that every regulatory making authority must adhere to various requirements that are enlisted under the Statutory Instruments Act. One of the basic and most important requirements is that, a body must always conduct adequate or sufficient public participation. In this case, as the Chair of the Committee has correctly indicated, these Regulations fell short of that requirement. It is also suspicious that these Regulations were brought to Parliament when this Parliament was just about to adjourn *sine die* and Members were very busy in their campaign trails.

These Regulations seek to amend the 2019 Regulations which were seeking to make the market for coffee, especially at the Nairobi Coffee Exchange transparent. A regulation had been introduced where the Capital Markets Authority (CMA) was supposed to be overseeing the trading of the commodity that is coffee. These Regulations were removing the CMA, so the farmer was left bare with no one to watch over what was happening at the NCE.

Again, the Regulations were also seeking to remove the farmer from directly selling their coffee through the co-operatives. This has been a problem for many years. Farmers have been fighting to be given an opportunity to sell their coffee at the Exchange without many limitations. Remember that one of the requirements under the previous Regulations was that a farmer or a cooperative society had to raise over Ksh100 million in order to be licensed to sell off directly at the exchange. The 2019 Regulations which were to be amended by the 2022 Regulations were removing the aspect of the farmer having direct access and having a miller market license. They were restoring the previous problem that was there, that the current multi-national millers were now being restored to be the only people who were licensed to sell coffee at the auction.

The other aspect of these regulations is that there is no regulatory impact assessment report, which is a main requirement. Looking at the impact of regulations, they affected hundreds of thousands of farmers in this country. That is a very serious issue that would have required a regulatory impact assessment to be given to the Committee.

Hon. Deputy Speaker, in the interest of time because I can see I am almost exhausting my time, I must say that coffee farmers are happy about whatever we are doing because the law was not followed and we will have to stick to protect the coffee farmers in this country.

I second.

Hon. Deputy Speaker: Give him one minute.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Deputy Speaker. It was very important for the last part to be captured.

I second the Motion for annulment of the Regulations so that we can liberate coffee farmers in this country.

Thank you, Hon. Deputy Speaker.

(Question proposed)

Hon. Deputy Speaker: Hon. Members, we shall each have five minutes, including the leadership, to contribute to this Motion.

While I am on my feet, I wish to again recognise the presence of Kabare Girls High School, from Gichugu Constituency, Kirinyaga County, which is not only the former school of Hon. Njeri Maina, County Member of Parliament for Kirinyaga, but also the former school for

Hon. Mary Maingi, Member of Parliament for Mwea Constituency in Kirinyaga County. If you want your daughters to be formidable women leaders, you probably need to send them to Kabare Girls High School.

Thank you.

The Leader of Majority of the Majority Party.

Hon. Kimani Ichung'wah (Kikuyu, UDA): Thank you, Hon. Deputy Speaker. I was just restraining myself from speaking about schools, but let me also take this opportunity to welcome the indomitable Kabare Girls High School and also the boys' school. There has been a lot of accolades to the girls from Kabare Girls High School, but there is also Molo Academy Boys Secondary School (MABS), in Molo Constituency. I am sure the Member of Parliament for Molo Constituency may not have attended the school, but it is indeed a great school just like Michinda Secondary School is in Elburgon, but of course, following the Alliance High School where I attended.

(Laughter)

Hon. Deputy Speaker, I hear Hon. Adan Keynan saying the Alliance High School; it is not Alliance Boys High School. It is called The Alliance High School.

Hon. Deputy Speaker, I arise to support the Report and the recommendations by the Committee on Delegated Legislation to nullify in entirety those Regulations. I must take this opportunity to commend the Committee on Delegated Legislation under their able leadership of Hon. Samwel Chepkonga. You remember at the beginning of the last session, I think it is Hon. Samwel Chepkonga or Hon. George Murugara who rose on a point of order on the question of how Ministries and the Executive treat the subject of delegated legislation.

Indeed, in the last regime, there was gross abuse of delegated legislation and regulations were being enacted and given the force of law without having the force of law because they were effecting regulations and harassing Kenyans all over on regulations that had neither been approved nor tabled before this House. People were being fought to follow such regulations.

Therefore, it behoves on us to commend the Committee on Delegated Legislation. They have risen to the occasion to ensure that nobody ignores the legislative role of Members of Parliament and what this House has been established to do under the Constitution. It is only this House that has the power to legislate and even those who have been given powers to legislate through delegated legislation must follow the Statutory Instruments Act and the Constitution of Kenya, and ensure all such regulations are scrutinised by the people's representatives for them to enjoy the force of all.

If you look at those Regulations, they sought to extend licenses to people who are both millers and marketers. We do not need to be neuroscientists to know the cartels that have ensured coffee farmers in this country do not enjoy the sweat of their labour. Members may wish to visit Sheria House and check the shareholders of the New Kenya Planters Cooperative Union (New KPCU). You will be shocked that the former Cabinet Secretary—the author of these regulations—Hon. Peter Munya, had registered himself as a shareholder of the New KPCU; not as the Cabinet Secretary for Agriculture. Ordinarily, if the ministry is to hold shares, it is the Principal Secretary's office and not the Principal Secretary in person who should hold such shares.

Therefore, let me commend this Committee because it has acted to save the Kenyan coffee farmer. When the regulations are done, I hope they will not be done for the benefit of cartels or a few people. These are the people behaving as millers, marketers, brokers and crooks at the same time. It should be for the benefit of the man and woman who sweat it out to grow coffee across our country—from Mt. Elgon to Kiambu to Githunguri to Kirinyaga. That is so that our farmers enjoy the real sweat of their farming. We commend our very good coffee farmers, especially those that we have seen in Kirinyaga in the recent past. They are earning close to Ksh90,000 for a 50Kg bag. That is what we meant when we said "bottom up". That money goes back to people's pocket and the farmer.

I support.

Hon. Deputy Speaker: Let us have the Member for Mwea, Hon. Mary Maingi. She is not in the House. Let us then have Hon. John Waweru, Member for Dagoretti South.

Hon. John Kiarie (Dagoretti South, UDA): Hon. Deputy Speaker, I am going to be very brief on this. In fact, I stand to support the annulment of these regulations in their entirety. The case has been made by the Mover of the Motion. The Seconder rubberstamped what needs to be done.

Coffee should be seen as gold in this country. Coffee is the heritage of this country. When you go out there, you are told of how high the quality of Kenyan coffee is. It is so high that it is not even used in its raw form. It is used as a blend for coffees from around the world. The blood, sweat and tears of farmers have gone unrewarded for over 60 years. This is because this was a colonial crop. The new Africans who took power after the colonialists left wanted to be black colonialists. They wanted to be a black white man. They perpetrated the laws, rules and all the things that were governing the coffee sector. Today as we speak, coffee in Kenya has not moved an inch from where the colonialists left us in terms of its development and enterprise. In fact, it is worse off.

When you go to the county where the constituency I represent is hived from - our constituency was hived off Kiambu County in 1969 - you will find that it has got to a point where farmers are opting to uproot coffee to put up apartments so that they can get rent. They do not have any commercial meaning of the beans they harvest. What we are doing here this afternoon is righting the wrongs perpetrated by people who are supposed to be superintending the sector. If there is any important business that this House will conduct is righting the wrongs by supporting the annulment of these coffee regulations in their entirety. We shall be curing a big mischief occasioned by people who, in the first place, should have been curing it. The coffee farmer out there is keen to see if the new administration is concerned about the planter of coffee. The likes of Starbucks Corporation process and brand the coffee taken in New York and other places. They want to get a benefit out of it. One way of making sure the farmer gets benefit is by first getting the policies, legislation and regulations that govern this sector right. The coffee industry needs to rower back into life. It cannot do that if we do not get the regulations, policies and legislations right.

I support the annulment in its entirety. Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, kindly press your intervention button if you want to contribute to this Motion. I can see the first one was Hon. John Gitonga, MP for Manyatta Constituency.

Hon. Gitonga Mukunji (Manyatta, UDA): Thank you, Hon. Deputy Speaker.

I get very happy when coffee is mentioned in this House. My Manyatta Constituency has depended on coffee all our lives. We have closed factories since the 1990's. Some areas used to be very rich. These days people are languishing in poverty because of lack of good prices for coffee. I welcome with open arms the annulment of this draconian law that passed in 2022. It is a shame and we, as the 13th Parliament, have to redeem ourselves on laws passed. I am one of the persons who keenly follows the Office of the Deputy President on issues we have to work with to redeem our farmers that do coffee farming. As we speaking on the coffee caucus, we have realised that everything from the start to the end of coffee trading is opaque. We have to call it out as it is because farmers out there depend on it. The Nairobi Coffee Exchange as constituted has almost zero representation of small-scale traders and farmers. We need to review that and ensure that our farmers are well represented in this coffee trade.

While doing the new regulations, we need to remove the taxes that come with value addition of our coffee. If you want to package your coffee here, it is a shame that it is almost 40 to 50 per cent more expensive than when it is packaged elsewhere. As a House, we have to look at those things and put them right. I am hoping the new regulations will empower our farmers. We need to know that this crop is for our farmers. We need to protect the small-scale farmer that takes his or her coffee to a marketing society.

I saw a video just a few days ago. It was a young lady from this country presenting a beautiful presentation to the Shark Tank. She got close to Ksh44 million when describing Kenyan coffee. As government, we have to market our coffee. We have to put it out there that we have good coffee and market our Kenyan coffee as Kenyan coffee. I know that our coffee can fetch better prices. I support this Motion. We need to annul those regulations and make it right for the best of our farmers in this country.

Thank you.

Hon. Deputy Speaker: Thank you. Hon. Dr. Makali Mulu, Member for Kitui Central.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you, Hon. Deputy Speaker. I support the Committee in annulling the regulations. I just want to raise two issues which to me are critical and even if the other reasons were not there, these two would kill these regulations. One of them is the issue of public participation. The Constitution is very clear that if you want to do anything which will benefit the public you must involve them. The Chairperson already indicated that there was no public participation. On that basis, these regulations become a non-starter.

The second issue which is critical in this country is that through the new Constitution, we have two levels of government – the national Government and the county governments. Anything which touches on devolution where we have devolved functions, the counties must be involved. This is another case where we are doing regulations which at the end of the day will be used at the lower level and we are not involving those who will be applying them. On that basis, we should not even waste time discussing this. We just need to support the Committee by annulling these regulations and if there will be need in future, they can re-submit them to this House.

I support the Committee’s position. Thank you.

Hon. Deputy Speaker: The Hon. Member for Emuhaya, Hon. Omboko Milemba.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you, Hon. Deputy Speaker, for this chance. I want to support the Committee and also laud what it has done. It has given its reasons clearly on why it has annulled these regulations.

It is good you gave me this chance. I had a chance to travel with you to a meeting of governors and they were very cynical and concerned about certain Bills which concern the county governments. One of them happens to have been the Coffee Bill and the other one was the Sugarcane Bill, among others. You remember the real complaint they had is that these are devolved functions which somewhat the national Government under the Ministries has taken over and sometime obtains laws and proceeds to make regulations without even consulting them. We have seen such a case study on the Floor of the House as annulled by this Committee and I want to congratulate them because the key stakeholders in the coffee and all other agricultural-related issues are the county governments. The fact that they were not consulted makes it very difficult to proceed with such a type of law. Also, the regulatory authority did not do the impact assessment which should have brought in the farmers to give their opinion on how they want their own coffee to be regulated. Therefore, I totally support the annulment.

In this country, this is not only happening in the coffee sector or the agricultural sector, but somewhat very many cabinet secretaries, and independent commissions are now making laws and getting away with it. These laws are either made as regulations, and in fact I am studying one from an independent commission, or are simply made as circulars and they start operating. There are a number of laws and regulations that are affecting people but have not been looked into. Therefore, I would wish that the Committee goes ahead to ask for all those regulations and circulars that are operating as laws without going through the committees of Parliament where they should get the authority to become laws, and annul them. Such a case is what we are dealing with at the Teachers Service Commission. When I see so many Motions here about education, I am reminded of the many regulations and circulars that are operating as laws in this country yet they never went through this Parliament and they are affecting not only the teachers but people in general.

I laud the Committee. Thank you.

Hon. Deputy Speaker: Hon. Member for Bonchari Constituency, Charles Onchoke.

Hon. Charles Onchoke (Bonchari, UPA): Thank you, Hon. Deputy Speaker. I would be remiss if I did not take notice and appreciate your splendid attire and, indeed, of all the hon. ladies who have adorned the African wear. As men…

(A Member spoke off the record)

I repeat? Hon. Deputy Speaker, you got that.

The Coffee Regulations is just one among the many regulations that the bodies making those regulations have flouted the law in making them. I am a Member of the Committee on Delegated Legislation and a lot of those regulations have come to our notice. It is very sad that it has gone on for a long time unabated. It is time Parliament cracked the whip and annulled all those regulations so that the law can be followed.

Just yesterday, I had the privilege and honour to accompany some of my colleagues to the Nairobi Coffee Exchange and it was very interesting. A number of questions were asked but there was this particular question about the ownership and the nature of the Nairobi Coffee Exchange as an organisation. We saw the person taking us around go round about it and did not want to face it. I think this is just an indication that this a mischief that should be corrected and should not be allowed to continue as it is going to affect many farmers particularly where I come from in Bonchari. I have suffered because of these kinds of legal frameworks that disadvantage and do not benefit them or support them to grow the crops that ordinarily should be earning Kenya a lot of money, and whose proceeds should be going to farmers who sweat while growing coffee.

My own family grows coffee but over the years we have been victims of these poor legal frameworks. This disadvantaged us, and has made us not to earn the money that we should be earning from coffee growing. I want to support these regulations alongside others that have been made in the same manner which contravene the Statutory Instruments Act and other laws we annulled so that we can be a country of law, order, and reward those who do well, particularly our farmers. I support.

Hon. Deputy Speaker: Hon. Timothy Toroitich, Member for Marakwet West.

Hon. Timothy Kipchumba (Marakwet West, Independent): Thank you, Hon. Deputy Speaker, for this opportunity to contribute on this very important Motion. I join my colleagues in supporting the annulment of the regulations, but be that as it may, we have to critically look because we are annulling the regulations. So, what next? The problem lies in the Statutory Instruments Act of 2013. The way that law was written purports to take away the powers of this House to make law. That law provides only two instances: it provides that the Committee that looks at a statutory instrument, such as regulations, can either assent or annul it. That leaves the committee with very few choices, that is, to either accept the regulations as they are from the Ministry or annul them.

If the Committee does not agree with a particular provision in a particular regulation or a statutory instrument, then that means the Committee has no choice but to annul that particular statutory instrument. I call upon the Committee to relook at the Statutory Instruments Act of 2013 together with our Standing Orders and propose amendments so that when the Committee does not agree with any regulations, it can have the option of proposing amendments to those particular regulations. The current law leaves the Committee with its hands tied. It cannot look at regulations in a substantive manner.

Secondly, this House has been given the power to make law. That power has purportedly been taken by Ministries. Proposed legislations come to the House and go through First, Second and Third Readings before being passed. The question is why we cannot adopt a procedure that allows the House to review a regulation. Why are we limiting the scrutiny of a legal document? Going forward, we must be able to relook at proposed regulations in their totality so that we have laws that this House has properly approved. I support the Motion as moved. It is my prayer that this House will be able to look at the legal framework in so far as statutory instruments are concerned with a view of reviewing the same.

Thank you, Hon. Deputy Speaker, for the chance to contribute.

Hon. Deputy Speaker: Thank you. Next is Hon. Dorice Donya.

Hon. Dorice Donya (Kisii County, WDM): Thank you, Hon. Deputy Speaker. For Members who were not here in the morning, we were congratulating our dear Deputy Speaker. She and other women who are dressed in African attire look beautiful. Please, stand up and clap for yourselves.

Thank you.

I was part of a Kenyan delegation of scouts to Korea. When we arrived in Korea, they did not only call us Kenyans. They said we come from the best land and they enjoy our coffee. Kenyan coffee is loved. It is very expensive out there. We should make sure that our farmers enjoy their hard work by regulating coffee prices. Prices of farm inputs should be looked at.

When I was a young girl, our grandfathers used to pay our school fees from the proceeds of coffee. One day my grandfather told that me he loved planting coffee because it prevented soil erosion. Some of the challenges we have, like not having sufficient food, may be because we are not taking care of our soil. By undertaking more coffee farming, we will definitely improve the fertility of our soil.

Thank you very much, Hon. Deputy Speaker.

Hon. Deputy Speaker: Next is Hon. Duncan Mathenge.

Hon. Duncan Mathenge (Nyeri Town, UDA): Thank you, Hon. Deputy Speaker. I support the annulment of the Coffee Regulations. The House cannot celebrate annulment of those regulations. What is the status quo that we would be resorting to? If the status quo had been good and benefitted coffee farmers, there would never have been need to introduce new regulations. Therefore, this House must move with speed to ensure that the intention behind the first step to introduce new regulations is achieved.

Nobody is willing to reveal to Kenyans the people who own the Nairobi Coffee Exchange. We have a commodity worth billions of shillings being traded by people we do not know their stake in the coffee trade and value chain. We do not know what kind of control and interventions they are able to make in the back office of the coffee trade. These regulations assist cartels who exploit coffee farmers. They extended the licences of 11 marketers who have mutated from being millers to auctioneers at the Nairobi Coffee Exchange.

I support this Motion but I urge the House to move with speed and ensure that the Kenyan coffee farmers are given back the power to sell and mill the produce that they labour for. Why do Kenyan farmers need a licence to sell their coffee? Why do Kenyan farmers need a licence to mill their coffee? Why do Kenyan farmers need a guarantee to directly sell their coffee in the international market? These are barriers that are used to ensure that the Kenyan coffee farmer is made a slave of cartels and brokers in the coffee chain.

With those remarks, I support the Motion.

Hon. Deputy Speaker: Hon. Richard Yegon, what is your intervention?

Hon. Richard Yegon (Bomet East, UDA): Thank you, Hon. Deputy Speaker. I rise under Standing Order 95 to request that the Mover be called upon to reply. Members have adequately canvassed the issue. We are all in support of the Motion. We can conclude it now and move to the next business.

Thank you, Hon. Deputy Speaker.

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

Hon. Deputy Speaker: Next is Hon. Rosa Buyu, Member for Kisumu West.

Hon. Rozaah Buyu (Kisumu West, ODM): Thank you, Hon. Deputy Speaker, for this opportunity. I do not come from a coffee-growing area but I love the smell and taste of coffee. It is true that Parliament has a responsibility and the leeway to look at these regulations. If they do not work for the common *wananchi*, Parliament has the power to nullify them. However, listening to the Leader of the Majority Party, it seems that his sole reason for wanting to nullify these regulations is the fact that Hon. Munya was the one who spearheaded the introduction of regulations.

I want to emphatically say that if we want to relook at these regulations, it must be in the interest of Kenyans because Kenya belongs to Kenyans. We know that some quarters think that Kenya belongs to just a certain segment of Kenyans. I want to say that if we are going to nullify these regulations, that decision must be driven by the benefit it is going to have on all Kenyan coffee farmers.

[The Deputy Speaker (Hon. Gladys Boss) left the Chair]

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

Hon. Temporary Speaker, I would like to emphatically say that the Leader of the Majority Party needs to be well informed that this country called “Kenya” is not a company with specific shareholders. It is for all Kenyans and whatever we do in this House, like relooking at these regulations, must be for the benefit of all Kenyans.

I thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): The next chance goes to Hon. Cynthia Muge.

Hon. Cynthia Muge (Nandi County, UDA): Thank you, Hon. Temporary Speaker, for giving me an opportunity to contribute to this Motion. I want to say that I support the Motion as moved by Hon. Chepkonga in entirety. The issue of coffee is very important in this country. Coffee is also one of the very good crops that the people of Kenya grow for them to survive economically and financially.

I share the same feeling with the Committee on Delegated Legislation that went through these regulations. The decision to annul these regulations is informed by the fact that they are trying to address issues that are pertinent to the Kenyan coffee farmers. We have issues to do with lack of money for people to make their farms better in terms of infrastructure.

The other issue that is facing coffee farmers is labour shortage. Any person who is a coffee farmer knows how hard it is to get adequate labour during the harvesting season for one to be able to pick berries.

We also have diseases that affect coffee farms, including but not limited to the berry disease and leaf rust that is actually disturbing so many farmers. For a regulation to be brought here to amend other things while it does not address any of the mentioned issues is actually an insult to the farmers of this country.

I want to appreciate this Committee because it did its job diligently. It ensured that it looked at the pertinent issues that are affecting coffee farmers in Kenya. In their wisdom, they have resorted to annulling it in its entirety.

Hon. Temporary Speaker, mismanagement of the cooperative societies is a big issue. It is a problem that is even making coffee farmers not to receive their pay in good time. As we speak, many people have actually taken their coffee berries to cooperative societies but they have not been paid because of mismanagement.

I want to say that the Committee has also raised very pertinent issues. How are you going to amend a regulation that touches on the Fourth Schedule of the Constitution of Kenya, which talks about separation of functions between the county governments and the national Government? If you look at the amendment to this particular regulation keenly, you will note that it intended to amend issues that actually touch on county governments in terms of their functions without sufficiently involving those stakeholders, who include but not limited to county Governors.

Hon. Temporary Speaker, I want to be on record that I support this Motion in entirety. I would like to ask the Committee, and especially the Departmental Committee on Agriculture to move a step further to look at these regulations so as to help the coffee farmers in Kenya. I am also one of the coffee farmers.

The other issue that these particular regulations were supposed to address is uniform prices for coffee. We cannot be having a different coffee price for farmers in central Kenya or any other part of the country from those in the Rift Valley. Coffee is coffee. It is only the grading that makes the difference. The regions should not be making the difference. These are issues that are supposed to be sorted out through proper regulations, and not these other ones that do not making any sense.

Therefore, I support the annulment of these regulations in entirety for non-compliance with the Constitution and other statutory instruments.

The Temporary Speaker (Hon. Farah Maalim): Hon. Abraham Kirwa, Member for Mosop.

Hon. Abraham Kirwa (Mosop, UDA): Thank you, Hon. Temporary Speaker, for giving me an opportunity to support the Motion, which seeks to nullify these regulations. Coffee is considered the second most traded commodity in the world after oil. Coffee is nicknamed "green gold" and should truly be able to help our farmers in a very big way. Kenyan coffee is considered one of the top five coffees in the world. It is one of the commodities that many people look forward to having. However, the unfortunate part is that the cartels made their way into this House and passed regulations that were going against the coffee farmers.

Therefore, we have to be very careful as law makers so that we look out for the interests of the farmers. The regulations did not give farmers the freedom to sell their coffee to whoever they want. A few individuals were going to be given the responsibility to market and sell coffee. The farmer was only left with the task of growing coffee and selling it at the price that is set.

I support this Motion and moving forward, a taskforce should be established to relook at the issue of coffee. Kenya has been growing coffee for the last century, since 1893. It has contributed to the Gross Domestic Product (GDP) and the economy of this country in a very big way. That is why we need to take serious actions to make sure that coffee farmers continue to earn. We should also ensure that coffee becomes a cash crop that will help the nation to bring in foreign exchange. At the moment, we are struggling, as a country, on foreign exchange and this is because our imports are more than the exports. We are not exporting enough of coffee to allow us get enough foreign exchange.

Therefore, I support the nullification of these regulations. Further, I request the Committee on Delegated Legislation to go back and look for some ways to make sure that we protect farmers not only in one area but in the whole country. As we look at what is ailing the coffee subsector, we should also look at what is happening in other subsectors of agriculture as our country is currently struggling because of food insecurity.

I thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): Hon. Abdul Haro. He is not in the House. Hon. Martha Wangari.

Hon. Martha Wangari (Gilgil, UDA): Thank you, Hon. Temporary Speaker. I also rise to support the Committee on Delegated Legislation on the annulment of these regulations. More importantly, in the last Parliament, I served in this Committee headed by the now Deputy Speaker. I think we did a very good job. One thing that is grossly abused in this House is the issue of making laws through the backdoor for the convenience of the national Government. First of all, Government agencies bring their draft regulations at a time when the House is almost going for recess or when we are approaching a general election. The House then passes very serious regulations, some of which have timelines within which to become operational on their own.

Apart from just the coffee issue, I want to support the Committee and encourage them to do their work. They should scrutinise all legislations so that we do not get Government agencies that get over-enthusiastic and pass laws without coming to this House.

Hon. Temporary Speaker, I also want to join the coffee growers. I grew up in coffee growing areas. I have been educated with proceeds of coffee and tea from Murang'a before I got to university. Maybe, I would not have gone to Gilgil if I did not leave that village. It is through coffee that we have found ourselves here.

Currently, in the American media, there is a programme called "*Shark Tank*" where a young lady called Margaret Nyamumbo has been able to pitch for funding for her coffee called Kahawa 1893. I think if we need more marketing, this is the right time to protect our coffee and do the same for all our cash crops, including tea, pyrethrum and cotton where possible. This will ensure that the bottom-up economic model that we are talking about is realised, more importantly for the actual farmers who pluck the coffee, who are almost 90 per cent women. I hope we can get the right people to get the money and not just the owners of the land. This is so that we make this a statement and improve the earnings of the small-scale farmers and protect them from the cartels in the factories so that they can reap from their sweat.

I do not want to say much but to support the Committee and their Report.

The Temporary Speaker (Hon. Farah Maalim): Next is Hon. Beatrice Elachi, who will be followed by Hon. Bisau.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Temporary Speaker. First, I thank the Committee and appreciate them. During the 12th Parliament, there was a lot of toxicity up to the time amendments were being brought to the Floor of the House. It was like the Executive had run over every Committee. Looking at these regulations, the sad part is that you realise that all the powers of the farmers have been transferred to the authority. The authority has the function of dealing with imports and even development of nurseries. Within these regulations, if you want to have a coffee nursery, you are supposed to get a permit and also get registered by your county government yet those who have undertaken coffee farming in this country started as regular farmers. They saw that this is a strategic cash crop that can support them. Even as we come to look at the regulations and indeed appreciate that the Committee agrees that there is need for public participation, we must ensure that the farmer is the person who sees how to benefit in this sector.

Hon. Temporary Speaker, as many of the Members have said, it is important to look at the many regulations that were passed between 2019 and 2020. The regulations within the various sectors of the economy affect the Small and Medium Enterprises (SMEs), who are our traders. As *Mwalimu* said, they also affect teachers and workers in the health sector of this country. It is time we looked at every devolved function and see how we can work closely with the national Government, which is supposed to develop policies for the counties to implement. The most unfortunate part is the imbalance that we have – not just in the coffee subsector but also in the tea and sugar subsectors – between the farmer and the middleman. The middleman becomes the cartel who exports the crop and purports to do the farming.

Looking at how coffee auction is done, it is extremely sad. The farmer who does everything until we have the finished product, is paid peanuts while the middleman makes double profit and moves on. As Members of this House, we must support the Committee on Delegated Legislation to ensure that all the regulations that affect Kenyans come back to this House either to be approved or revised. We must ensure that we have public participation by every Kenyan within their sectors. This is to ensure that the stakeholders participate, appreciate and agree that the regulations can transform their sector and give them profit.

With those few remarks, I support the Committee. We should, indeed, restart the process and have it done in the right way. Let us not look at it for the sake of others. Let us look at this process as the 13th Parliament that is serving every Kenyan.

I thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): Next is Hon. Bisau.

Hon. Bisau Kakai (Kiminini, DAP-K): I thank you, Hon. Temporary Speaker. I take this opportunity to thank the Committee for the timely nullification of these regulations as published under Legal Notice No.102 of 2022. These regulations had actually shattered the aspirations of coffee farmers, denied them a livelihood and reduced them to paupers. As much as we support the nullification, the question is what next? The cartels that rushed through these regulations still exist. We know that most of them are actually foreign cartels but they are well rooted within the country. You find that a broker, using a different name, is the one buying and milling coffee. As much as we support to have these regulations nullified, we should address the root cause of this problem. We need to have clear mechanisms for addressing the root cause, which is by fixing the cartels problem.

Secondly, as regards these particular regulations, if I may give an example of my own backyard of Trans Nzoia, back then, we were contributing about 5 per cent of the total coffee produced in the country. However, today we are at one per cent. Farmers have cleared coffee bushes from their farms because they no longer add value to their livelihoods. Coffee is our main export earner. What we are saying is that we need to quickly fix this issue even as much as we have regulations. We need to do away with cartels. As they always say, it is the wearer of the shoe who knows where it pinches most. We would also like to involve the counties that grow coffee. As we do that, we should try to motivate them. I will give an example of the Cherry Advance Revolving Fund, which stood at about Kshs3 billion. The same group that had crafted these regulations always ignored counties like Trans Nzoia, Bungoma and Mount Elgon when they distributed these funds yet there is a lot of coffee being produced in those counties. We would like to fix the cartel issue and develop good regulations through a process that will involve the county governments of the counties that grow coffee because agriculture is devolved. That way, we will move forward.

Hon Temporary Speaker, I support the nullification of Legal Notice No. 102 of 2022 as proposed by the Committee on Delegated Legislation.

Thank you very much.

The Temporary Speaker (Hon. Farah Maalim): Next is the Member for Taita Taveta, Hon. Lydia Mizighi but before you rise, I have one announcement to make.

Hon. Members I want to introduce to the House students from St Andrews Tarabete Secondary School from Gilgil. I hope the Member for Gilgil, Hon. Martha Wangari is here. She has kindly corrected my pronunciation of the name. Are they boys and girls? It is a mixed secondary school. You have the pleasure to witness not only the proceedings of this House, which is a lifetime experience that you can relay to your children and siblings, but you also have the opportunity to witness your Member of Parliament preside over this House shortly.

(Applause)

So, you can be proud of the Member of Parliament for Gilgil – none other than my friend and colleague who is serving her second term.

(An Hon. Member spoke off-record)

Is this her third term? A rare feat in this House. You are welcome. Thank you, Hon. Member for Gilgil.

Proceed, Member for Taita Taveta County.

Hon. Haika Mizighi (Taita Taveta County, UDA): Thank you, Hon. Temporary Speaker, for giving me this opportunity.

I applaud the Committee for a job well done. I support the nullification of the regulations because they are clearly not serving the intended purpose. The regulations are not helping the targeted group, which is the farmers. Since these regulations are not helping the farmer, who struggles and does all the donkey work in the farms, I support their nullification. I support all my colleagues who have risen to say that the regulations should be nullified because, as Parliament, we make laws and approve regulations for the purpose of helping our people. If any law or regulations do not do that, I will support their nullification.

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

The Temporary Speaker (Hon. Farah Maalim): Dr. Nyikal, I am trying to remember which constituency you represent.

Hon. (Dr) James Nyikal (Seme, ODM): I represent Seme, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Farah Maalim): Seme? How do you represent a clan?

Hon. (Dr) James Nyikal (Seme, ODM): It is not a clan, Hon. Temporary Speaker. It is a constituency.

(Laughter)

The Temporary Speaker (Hon. Farah Maalim): Proceed.

Hon. (Dr) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity. I was not here when the Motion was moved but what is clear is that this annulment is supported almost unanimously.

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

[The Temporary Speaker (Hon. Martha Wangari) took the Chair]

The basis on which Members are annulling these regulations is very fundamental and constitutional. Firstly, there was no public participation. Secondly, there was no involvement of the counties. How could regulations that deal with a devolved function like agriculture be made without involving the counties? That is a gross violation of the supreme law.

Since the last Parliament, many regulations that have come to this House have been annulled on very serious and basic considerations. Regulations are made by Cabinet Secretaries or State officers who are expected to understand the legal framework of legislation and regulation-making. How is it that almost every time they come up with draft regulations they are annulled? They are supposed to understand our laws and the Constitution. Many of the ministries or departments have legal officers. They have the support of the Office of the Attorney-General. Why do they bring to this House draft regulations that are unconstitutional? Members have even indicated that there may be some collusion with stakeholders.

If the Chair of the Committee on Delegated Legislation is here, the point I want to make is that if a Cabinet Secretary brings draft regulations that are unconstitutional and do not conform to the statute that provides for the making of the specific regulations, we need to sanction such person. In reality, regulations should only be annulled once in a while. If they are annulled every time they come to the House, it only shows that Cabinet Secretaries and other State officers are not serious and, therefore, we need to do something about them, particularly where there are allegations of collusion. That is the point I wanted to raise. If people who are expected to know what to do go ahead and do things that go beyond the standards, they need to be sanctioned. If draft regulations are annulled on basic grounds, there is need to put the particular State officer or Cabinet Secretary to task. What was their intention?

With those remarks, I support the annulment of the regulations on the basis that many Members have given good reasons for these regulations to be annulled.

The Temporary Speaker (Hon. Martha Wangari): Thank you, Member for Seme. I now give this opportunity to the Member for Butula, Hon. Joseph Oyula.

Hon. Maero Oyula (Butula, ODM): Thank you, Hon. Temporary Speaker. I stand to support the annulment of the regulations on the coffee industry.

The coffee industry in Kenya has gone through many rough stages. Farmers have been left without any information and middlemen have taken over the role of farmers. It is important that if regulations are being made for an organisation, the people concerned are involved. It looks like farmers were left out when these regulations were being made, resulting in their suffering in terms of not getting the correct payments and ruining of the market.

The coffee market in Kenya was very good in the past but because of middlemen, a lot of interference came up and farmers lost ground. Farmers have turned to leasing their land for activities other than coffee farming yet coffee was one of the best foreign currency earner for this country. It is important that we go back, support farmers and make sure that Kenyan coffee once again earns the glory that it had in the past.

I support this annulment and request that when the next regulations are being prepared, farmers should be included. Farmers should be made to know. Where possible, farmers' views should also be incorporated into the regulations instead of leaving them out and letting them suffer because of middlemen's interference with coffee-growing.

Thank you, Hon. Temporary Speaker. I support the annulment.

The Temporary Speaker (Hon. Martha Wangari): Thank you, Member for Butula. I confirm that we are giving chances to Members who have put their cards in the intervention slots as had been directed.

Next will be the Member for Baringo North, Hon. Joseph Makilap.

Hon. Joseph Makilap (Baringo North, UDA): Thank you, Hon. Temporary Speaker. Many Members will wonder whether coffee is grown in parts of Baringo or we just deal with bandits. Some of the best coffee being consumed in Korea comes from my constituency through a partnership between Cha Bo Yong in Seoul, Korea and Baringo Coffee. The people who were able to engage in business and become rich in this country were coffee farmers.

When we were young, we were taught that the best cash crops and foreign exchange earners in Kenya were coffee, pyrethrum, cotton and tea. All of a sudden, the coffee industry was captured by cartels and run down to the ground until many farmers turned their coffee trees into firewood. The nullification of these regulations as recommended by the Committee should serve as an eye-opener to the current Government, and more so the Ministry officials who propose subjective regulations to favour their stay in office or enhance their cartels.

What are regulations? Regulations are subsidiary laws that help in operationalization of Acts of Parliament. However, it does not mean in any way that a set of draft regulations emanating from a Ministry should contradict its mother Act of Parliament or the Constitution. The draft regulations that were approved by this House in the wee hours of the last Parliament contradict its mother Act of Parliament as well as the Constitution of Kenya.

Hon. Temporary Speaker, I support the annulment of these kinds of punitive regulations. This should serve as a warning to ministries which propose changes in an Act of Parliament through regulations. The same caution goes to independent commissions such as the Salaries and Remuneration Commission (SRC) and many other constitutional offices. They change the rule of the game at the wee hours of Parliament to ensure that they run away with regulations that do not favour the citizens of this country. Farmers, most of whom constitute the bottom layer of our society, and the have-nots, are trying to grow their coffee so that they can send their children to school. The school fees of the children who are outside this House, and those who are currently seated in the galleries, are paid by farmers. The 13th Parliament must actually rise to the occasion to defend the voiceless farmers who grow coffee and other crops. Baringo County has the best coffee in the world. It is grown in Kipsaraman, Kabartonjo and Kituro. This is the game changer. It fetches the highest prices across the world. As I support this particular Motion, I want these regulations to be the last subsidiary law to be fronted by Government officials who punish the ordinary citizens who are trying to grow their economies.

With those remarks, I support the nullification of these regulations.

The Temporary Speaker (Hon. Martha Wangari): Thank you. We will hear the Member for Tetu, Hon. Geoffrey Mwangi.

Hon. Geoffrey Wandeto (Tetu, UDA): Thank you, Hon. Temporary Speaker for giving me an opportunity to also contribute to this Motion. I rise to support the annulment of these regulations. I come from a coffee growing area. Some of us were brought up and educated with proceeds of coffee. I say without fear of contradiction that as we speak, the bulk of coffee farmers in Tetu have either altogether cut down their coffee trees or the few who are maintaining them cannot break even. Most of them have become impoverished. It is now upon this House to come to the rescue of the millions of the long-suffering coffee farmers not only from Tetu and Nyeri but also from all the counties within the Republic of Kenya.

We know that from the1980s through to the 1990s, the coffee industry became gradually repurposed to serve the interests of very few people, excluding the farmers, which is in other words called "state capture." It is very important for this House, being the 13th Parliament, to now rise to the occasion to basically break down these cartels once and for all. Any draft regulations that take the coffee farmer back, impoverish him or give power to a centralized authority even when we know that agriculture is a devolved function, are basically retrogressive and, therefore, should not be allowed to become law in this country.

Hon. Temporary Speaker, many times, we are told that our farmers are paid low prices because the price of coffee at the international market is low. However, I have had a chance to look at what is happening at the international market. A few weeks ago, a 50-kilogramme bag of Double "A" coffee from Ethiopia was retailing at about USD480 in the international market. In Kenya, a similar quantity of coffee of superior quality was retailing at USD250. You can see that there is clear manipulation of the market dynamics by cartels to ensure that the farmer remains impoverished. Over and above, we all know that the same people who stand on one side as marketers also stand on the other side as auctioneers. They also operate as buyers, sellers and millers using different names. We know that this sector is under the total stranglehold of these cartels. It is very important for this House to rise to the occasion and address these issues once and for all.

With those remarks, I support in totality the immediate annulment of these regulations to pave way for a new set of regulations that will benefit all coffee farmers in Kenya.

Thank you, Hon. Temporary Speaker.

[The Temporary Speaker (Hon. Martha Wangari) left the Chair]

[The Temporary Speaker (Hon. Omboko Milemba) took the Chair]

The Temporary Speaker (Hon. Omboko Milemba): Very well. Can we have Hon. Christine Ombaka, Member for Siaya County?

Hon. (Dr) Christine Ombaka (Siaya County, ODM): Thank you, Hon. Temporary Speaker for giving me an opportunity to contribute. I just want to support the nullification of these coffee regulations because they do not support farmers. We are an agricultural society in this country. Most of our products do not go far. They always collapse. Tea is collapsing. Cotton collapsed in Nyanza. Cashew nuts collapsed. We kill our industries by not supporting farmers and actually working against them.

This House should come up with laws that protect farmers and anybody else. Bad ones are also supposed to be addressed in this House. Therefore, the nullification of these bad laws that demean or rob the farmer is what we will do because it is our responsibility. Just like most of us in this House, I support the nullification of the law that makes it difficult for farmers to benefit from their sweat. In my view, this should go on and on with other crops because they have collapsed. Farmers have wept and complained because the laws are so bad that they do not empower or benefit them in any way. I support this Motion. I hope the Committee will look at other laws that affect other crops that have really made this country lose so much resources from what used to be in the past very beneficial.

Thank you for giving me this opportunity to contribute.

The Temporary Speaker (Hon. Omboko Milemba): Hon. Emmanuel Wangwe, Member for Navakholo.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you, Hon. Temporary Speaker. I rise to support the Committee on Delegated Legislation on annulment of these regulations. I want to recall that in the last Parliament, we made a very difficult decision to approve regulations for the sugar industry. The regulations were partially acceptable in the name of coming back to the House for us to effectively give the sugar industry proper regulations. However, to-date, we have neither given the sugar industry a proper Act nor regulations. I, therefore, want to commend the Committee for taking up this matter very strongly so that we annul these regulations, which do not support the development of the coffee sector, so that we all have a conversation on this matter with a view to come up with very good regulations for the coffee industry in Kenya.

Moreover, we are dealing regulations which purport to be superior to its mother Act itself, which is in itself a very serious misnomer that should not be allowed. This is similar to a situation where a Cabinet Secretary passes his own regulations without bringing them to the House. Therefore, in this regard, I support the Committee. In future, this country must rely on laws made by this House.

I support.

The Temporary Speaker (Hon. Omboko Milemba): Hon. Peter Opondo Kaluma, Member for Homa Bay Town.

Hon. Peter Kaluma (Homa Bay Town, ODM): Thank you, Hon. Temporary Speaker. I stand to oppose the recommendations by the Committee on Delegated Legislation to nullify this illegal statutory instrument. We call them delegated legislations because the authority to legislate is vested in this House and not in anybody outside there.

I can confirm that Article 94 of the Constitution says that nobody, no entity and no authority can make any provision having the force of law other than Parliament. So, Parliament delegates to Cabinet Secretaries and other State officers the authority of making subsidiary legislations in the form of regulations but we continue to check whether the power to legislate that has been donated is being applied properly.

Parliament does this through the Committee on Delegated Legislation. So, to that extent, the Committee is right to bring its Report before this House recommending nullification or approval of the regulations. My problem, having looked at these regulations, is that there is a bare recommendation for nullification without clearly pointing out to the House what provisions of the draft regulations are inconsistent with provisions of the Constitution, the Act of Parliament or public policy position.

We are barely being told that the regulatory-making authority sat and confirmed before the Committee that they did public participation. I have read the Report well and some people have said they appeared but their views were not taken into account. That does not take away the fact that public participation was done. In any event, what law defines to what extent the regulatory-making authority should engage in public participation?

So, as a House, we cannot just say we are agreeing with the Committee even though very rarely should we go against a Report of a Committee. Without clear reasons, we should reject such report because we do not know what informs the recommendations by the Committee. What if it is just being rejected because it was brought by a previous regime? They are just nullifying without clear reasons. We may have a situation where the same regulations are brought again. So, this should be made clear. I am saying this because I am a founding Member of the Committee on Delegated Legislation.

Hon. Ruku GK (Mbeere North, DP): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): Let us hear the point of order by the Hon. Member.

Hon. Ruku GK (Mbeere North, DP): Thank you, Hon. Temporary Speaker. I think my friend, Hon. Kaluma, came to the House late. He came after the mover of the Motion had indicated to this House clearly the provisions that the draft regulations had contradicted in the Statutory Instruments Act. If you allow me, I can read so that the Member can be properly informed.

The Temporary Speaker (Hon. Omboko Milemba): No, you have already put your point forward. It is true that Hon. Kaluma might not have listened to the mover. Hon. Kaluma, you may proceed.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Speaker, reports are published and laid in the House before the mover initiates debate on the Floor of the House. I do not have to listen to him because I read the Report. The reference made to the Statutory Instruments Act is about a process and not a constitutional or legislative inadequacy or inconsistency. The legislation we are talking about, in the context of the regulation-making authority, is the law donating power to make regulations. As somebody who founded the making of regulations, I want a situation…

Hon. Temporary Speaker, I do not know whether my time is being chopped off because of the Standing Orders. I have barely spoken.

The Temporary Speaker (Hon. Omboko Milemba): Proceed, Hon. Kaluma. I am giving you one more minute since you were interrupted a little.

Hon. Peter Kaluma (Homa Bay Town, ODM): Hon. Temporary Speaker, what we are telling the Committee is that in future they should have well tabulated reasons for nullifying regulations. If the provisions are unconstitutional or unlawful, do not just come here with bare opaque recommendations or hot air ones as we are seeing here and say that Parliament should proceed and oppose.

Hon. Temporary Speaker, with those reasons, I oppose these regulations as hot air and a wild goose chase. They should not be upheld by this House.

I thank you.

The Temporary Speaker (Hon. Omboko Milemba): Very well. Hon. Thuku Kwenya.

Hon. Kwenya Thuku (Kinangop, JP): Hon. Temporary Speaker, I rise under Standing Order 95. Based on the mood of the House, it is like we have exhausted this debate. Since there is another very urgent matter that needs to be discussed, I request you to call upon the mover to reply.

The Temporary Speaker (Hon. Omboko Milemba): Hon. Members, is it the mood of the House that the mover be called upon to reply?

Hon. Members: Yes!

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

The Temporary Speaker (Hon. Omboko Milemba): The "Ayes" have it and the mover is hereby called upon to reply.

Hon. Ruku, proceed to reply.

Hon. Ruku GK (Mbeere North, DP): Thank you, Hon. Temporary Speaker. The Committee on Delegated Legislation, to which I am a Member, listened to the cries of the coffee farmers in this country. It is true that over the years cartels have termed them as not actual coffee farmers and yet they are.

As a House of the people, we want to ensure that a coffee farmer is the owner of the coffee from the time he plants it all the way to the time he sells it. We have to restore the dignity of all the farmers in this country, and more so coffee farmers. There is a big number of cartels who sit in very expensive hotels in this city and other countries waiting for the coffee grown by very poor farmers so that they can reap where they never sowed. That is why the Committee on Delegated Legislation came up with this Report so that the House can nullify these regulations.

Hon. Temporary Speaker, it is high time that the Parliament of Kenya rose to the occasion and restored dignity to the farmers of this country. We have been poor and have been taken advantage of for many years. The 13th Parliament must take care of those who are at the bottom of the socio-economic pyramid. That is exactly why the Committee on Delegated Legislation came up with these recommendations.

I beg to reply and with your permission, I want to donate two minutes to the Member for Molo.

The Temporary Speaker (Hon. Omboko Milemba): No. We have other business to transact. Just reply and take your place.

Hon Ruku GK (Mbeere North, DP): I beg to reply.

The Temporary Speaker (Hon. Omboko Milemba): Very well. Given that we do not have sufficient numbers, we shall put the Question later.

(Putting of the Question deferred)

Next Order!

ADOPTION OF REPORT ON CONSOLIDATED FUND SERVICES EXPENDITURES FOR SUPPLEMENTARY ESTIMATES FOR FY 2022/2023

The Temporary Speaker (Hon. Omboko Milemba) Chairperson of the Public Debt and Privatisation Committee, proceed.

Hon. Abdi Shurie (Balamabala, JP): Thank you, Hon. Temporary Speaker. I would like to begin by appreciating the Committee Members of the Public Debt and Privatisation Committee for working effortlessly in the execution of their mandate and tabling of this Report. Article 206 of the Constitution establishes the Consolidated Fund into which is paid all monies raised or received by or on behalf of the national Government.

The Temporary Speaker (Hon. Omboko Milemba): Hon. Chairperson, please, move the Report as it is documented on the Order Paper. If he does not have the Order Paper, supply him with one.

Hon. Speaker, I beg to move that this House adopts the Report of the Public Debt and Privatisation Committee on its consideration of… That is how you should begin, Hon. Committee Chair.

Hon. Abdi Shurie (Balamabala, JP): Hon. Temporary Speaker, I stand guided.

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

> THAT, this House adopts the Report of the Public Debt and Privatization Committee on its consideration of the Consolidated Fund Services Expenditures for the Supplementary Estimates No. 1 of 2022/2023, laid on the Table of the House on Tuesday, 21st February 2023.

I would like to begin by appreciating the Members of the Public Debt and Privatization Committee for working effortlessly in the execution of their mandate and tabling of this Report.

Article 206 of the Kenyan Constitution establishes the Consolidated Fund into which is paid all money raised or received by or on behalf of the national Government. According to the Article, one of the three ways that money may be withdrawn from the Consolidated Fund is if it is a charge against the Fund as authorised by the Constitution. Consolidated Fund Services expenditures therefore is a compilation of these expenditures that are direct charge to the Consolidated Fund and are not included in the Appropriation Bill in Article 221 (7). These expenditures include: Public debt servicing expenditures, pension payments, salaries and allowances for constitutional and independent office holders, among other expenditures.

A review of the First Supplementary Estimates for the Financial Year 2022/2023 indicate that the Consolidated Fund Services expenditure will amount to Ksh1.55 trillion having reduced from Ksh1.57 trillion. The specific changes include:

1. Public debt servicing expenditure will reduce from Ksh1.39 trillion to Ksh.I.36 trillion on account of reduced interest payments for cancelled loans;
2. Pension expenditures will increase from Ksh171.8 billion to Ksh172.6 billion on account of increased allocation to the Public Service Superannuation Scheme; and,
3. Guaranteed debt will increase from Ksh2.3 billion to Ksh14.7 billion on account of the principal payment meant for Kenya Airways guaranteed debt.

Hon. Temporary Speaker, the largest expenditure under the Consolidated Fund Services are interest payments of Kenya's public stock of debt that has grown due to sustained fiscal deficit. As of December 2022, the public debt stock in Kenya stood at Ksh9.15 trillion.

According to the four Supplementary Estimates, public debt servicing will require Ksh1.36 trillion to service its interest and redemption payments by June 2023. Of primary concern is the cost of domestic debt servicing, which accounts for 73 per cent of the total public debt servicing expenditure amounting to Ksh998.7 billion. The Committee notes that Consolidated Funds Services expenditures have remained relatively unchecked and have received minimal oversight in the past.

Hon. Temporary Speaker, apart from this being the inaugural Report of this Committee, it is also the first one dedicated to the oversight of the Consolidated Fund Services to be tabled in the House of Parliament in Kenya. It points out the existence of critical gaps and concerns which will require multiple oversight reports and pioneering policy proposals to address.

Some of these gaps relate to re-engineering the pensions management system, and the management information system to address the integrity issues raised by the Office of the Auditor General such as:

1. Irregular enrolment of pension arrears, payment of lumpsum before officers' date of exit, shared identification numbers and irregular identification cards and tax personal identification numbers, among others;
2. Use of cash accounting that has led to lack of uniform financial statements across entities that record public debt and led to a possible underestimation of government financial obligation such as pending bills, undisbursed loans, among others;
3. Lack of proof of life certification to identify deceased pensioners and dependants leading to payment of deceased pensioners from one month to seven years; and,
4. Lack of proper mechanisms to enable absorption of the committed loans within the agreed timeframe, leading to piling up of undisbursed loans totalling to Ksh1.79 trillion today and payment of commitment fees of Ksh1.49 billion incurred in the Financial year 2021/2022.

Hon. Temporary Speaker, in general, given the gaps pointed out, there is need for enactment of legislation to regulate the management of Consolidated Fund Services expenditure. The Committee has recommended that a Bill should be submitted to the National Assembly within 90 days to ensure that the allocations to the Consolidated Fund Services are regulated and overseen. The Committee made specific recommendations that are geared towards enhancing transparency and accountability.

On public debt, the National Treasury should submit alongside the Annual Budget Estimates, a statement indicating all obligations of the National Government, including but not limited to:

1. Guaranteed loans;
2. Loans and overdrafts; and,
3. Other Government liabilities or obligations such as pending bills, accounts payable, pension arrears and non-performing loans.

Hon. Temporary Speaker, in order to guard against exchange rate fluctuations, the National Treasury should consider hedging mechanisms on foreign exchange risks, negotiating lending agreements in Kenya Shillings or fixing the exchange rates at the time of loan negotiation.

The National Treasury should table an amendment to the Public Finance Management Act, 2012 that will enable the enactment of an Annual Loan Financing Bill within the Public

Finance Management Framework to enable the National Assembly review and approve the debt financing intended to finance the fiscal deficit of the Annual Budget.

On commitment fees, the Committee recommends implementing agencies should put proper mechanisms in place to enable absorption of the committed credit within the agreed timeframes and avoid payments of commitment fee.

The National Treasury should involve an entity that is intended to benefit from a loan during the pre-loaning stages. This will enable such entities to be cognisant of the significance of some of the processes, and importance of adhering to the agreed loan conditions.

Hon. Temporary Speaker, the National Treasury should submit an amendment to the Public Finance Management Act (PFM Act) to ensure that budgeted counterpart funding is re-enforced by law and to provide appropriate sanctions for its contraventions within six months of tabling this Report.

The latter will guarantee that in-year re-allocation does not affect counterpart funding to promote full and timely disbursement of loans.

The National Treasury should, within the six months, re-engineer the Pensions Management Information Systems to address the integrity issues raised by the Office of the Auditor-General and interface the system with the Government integrated personnel and payroll database to ensure tracking of Government employees in the payroll.

In conclusion, the Committee notes and appreciates the stakeholders whose contributions are contained in this Report. They include:

1. The Controller of Budget
2. The Auditor-General (AG)
3. The National Treasury
4. The Central Bank of Kenya (CBK)

Their submissions raise critical issues and pointed to the importance of institutionalising of Kenya's financial management sector.

I beg to move this Motion, and call upon the Committee's Vice-Chairperson, Hon. (Dr) Makali Mulu, to second.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): Thank you very much, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): Who is seconding? Very well. Proceed, Hon. Makali Mulu.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): I take this opportunity to appreciate my Chairman for moving the Motion, and all the Members of the Committee.

I also take this opportunity and more sincerely, thank Parliament. The wisdom behind creating this Committee must be appreciated. Public debt has become a contentious issue in this country and because of that, the creation of the Public Data and Privatisation Committee has enabled Members to look into issues of public debt in detail.

If you look at Container Freight Station (CFS) expenditures, you realise that out of the total amount which has been spent, 88 per cent is actually being taken by public debt repayments. This means that it is a matter that we as a House, must seriously discuss and make appropriate recommendations, so that we can help Kenyans and our future generations.

I only have five minutes, and I want to talk about figures so that we can help Kenyans appreciate this matter. If you look at the amount we are paying in terms of repayments, our loans and more so, external borrowing, is dominated in foreign currency. It is worth noting that as a result of the exchange rate fluctuations, in the 2021/2022 Financial Year, this country paid a total Ksh5.4 billion as a result of fluctuations of the exchange rate. Half of this year, we have paid Ksh2.05 billion as a result of the changes in the exchange rate. For purposes of managing our public debt properly and more so external debt, as a country, it is important we do two things. We should either negotiate our local loans in local currency so that whatever we are negotiating for, comes in shillings or we agree during negotiating so that we can fix the rate at that point so that if it in US$, we can say we are borrowing at a rate of one US$ to Ksh120 and should remain so for the remainder time of the loan repayment and processing.

The second matter which is critical and it is important to mention so that the Members get to know, is the issue of non-performing loans. Currently, we are reporting non-performing loans of Ksh218.8 billion as of 30th June 2022. These are loans which the country has signed for and has already committed itself, but we are not using them. Non-performing loans are the ones which we have issues with in terms of repayment. They are worth a certain amount, but we are unable to repay. The major components of this loan is the one of Kenya Airways (KQ) and the Kenya Power Limited Company (KPLC).

My Chairman has said that the amount payable through the Kenya Airways has moved from Ksh2.3 billion to Ksh14.7 billion because the Government guaranteed the said loan and is now expected to pay the loan on behalf of Kenya Airways because it has defaulted.

As a House, we need to look at the issue of guaranteeing loans because if the institution which is taking the loan is unable to repay it at the end, the Government will pay from the Consolidated Fund.

The other issue is on the commitment fee. This is the one that I was explaining. They are loans which we have taken, signed for and we are not drawing the loans to use as a country. If you look at the Financial Year 2021/2022, we spent Ksh1.49 trillion as commitment fee just for loans which we took, but not spending. Half of this year, we have spent about Ksh680 million. It does not make sense to take loans and not use them. It is good to negotiate for these loans when we are ready to use them.

As I conclude, we are expected to pay the sinking fund. It is important that we establish a sinking fund so that when the time for repayment comes, we are ready to repay without having to strain the Consolidated Fund. This will be proper management of our public debt.

The last one is on the issue of total debt stock. We have reported a total of Ksh9.15 trillion.

The Temporary Speaker (Hon. Omboko Milemba): Just give him a minute for him to complete his last point.

Hon. (Dr) Makali Mulu (Kitui Central, WDM): In our interaction with the other stakeholders like the Controller of Budget and the Central Bank of Kenya (CBK), we have discovered that we have Ksh1.179 trillion which is not officially reported and where we have not got disbursements.

In reality, if we were to factor this into our debt stock, we have already gone beyond the Ksh10 trillion mark which was approved by this House. It is important we have this Committee because it will help this House unearth most of the things that we did not have information on. Hon. Temporary Speaker, once more, I want to thank you, and the House for creating this Committee.

As I conclude, it is important that we appreciate our ladies, the Members who are today dressed in our African attire. You all look beautiful and smart. I wish we had an African attire for the male Hon. Members.

(Question proposed)

The Temporary Speaker (Hon. Omboko Milemba): The first Member to weigh in on this matter is Hon. Njeri Maina, Kirinyaga County Representative.

Hon. Njeri Maina (Kirinyaga County, UDA): Apologies, Hon. Temporary Speaker. Thank you for this opportunity. I was catching up with my good friend and mentor in this House, Hon. Kuria Kimani, the Member for Molo Constituency. I believe this country needs to have a conversation on the issue of public debt. We ran on the notion that we were going to cut down the cost of living and perform as per the mandate of the Kenya Kwanza Government.

I know the ladies in the House are looking lovely. I also want to touch on the textile industry in Kenya. It is something that we need to invest in as a Government. It is also a conversation that we need to have because this industry has a huge capacity to create employment for the young people. If you allow me, this lovely coat I am wearing is made by a tailor in Kirinyaga County. We have the capacity. We only need to ensure that as a Government we invest in the right places and curtail the high cost of living. The previous Government placed Kenyans under huge public debt, and we will rectify that.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): Next is Hon. Aden Daudi, the Member for Wajir East Constituency.

Hon. Aden Mohammed (Wajir East, JP): Thank you, Hon. Temporary Speaker for giving me this opportunity. We have heard a lot of statements in this country. A few days ago, our Cabinet Secretary in charge of the National Treasury said that this country is broke. One of the reasons statements like that are made is because of the stock of public debt. Although we are discussing the Consolidated Fund Service (CFS), it is important to note that public debt is the first charge on the Consolidated Fund. That is why we keep on talking about public debt in addition to the CFS.

Hon. Temporary Speaker, my Chair and the Vice-Chairperson have ably moved this Motion, but I would like to stress on a few things. One way of hiding the extent of debt from the Kenyan public is the use of accrual or cash accounting. You have heard that our undisbursed loans are up to Ksh1.17 trillion. This is not information that the Kenyan public is privy to. The reason is because we use cash accounting and once the loans are undisbursed, they are not shown as loans that we have taken. The import of hiding that big figure of Ksh1.l7 trillion is that it increases our stock of debt which is reported to be at Ksh9.15 trillion. You will note that every agency has a different figure. The Controller of Budget said that our stock of debt is at Ksh9.17 trillion while the National Treasury says that it is at Ksh9.15 trillion. Be that as it may, if you add the stock of debt and the undisbursed loans which we pay commitment fees for of Ksh1.17 trillion - the Vice-Chairperson talked about this - then we are above the statutory debt limit of Ksh10 trillion. This is a House where the people’s representatives are yet the Executive has breached the Ksh10 trillion mark and this is the first time a report like this is coming to Parliament. It is unfortunate that we have very few Members of Parliament listening to this very important Report from the Committee.

We have been told about the effect of the foreign exchange fluctuations on our stock of national debt. If you note, even real estate developers are hedging and using US dollars to sell their houses. You cannot rent a house in some places in Nairobi unless you use US dollars. We have brilliant minds both in the National Treasury and at the Central Bank of Kenya (CBK). Why are we not able to hedge our loans? Why we leave the vagaries of foreign exchange fluctuations to hurt Kenyan taxpayers boggles my mind. I do not know why we use that and why we are not able to hedge. Part of the recommendations of this Report is that hedging must be used so that we protect the taxpayers.

The other recommendation of this Report is that we have to amend the Public Finance Management (PFM) Act so as to ring-fence the counterpart funding.

Hon. Temporary Speaker, can I have one more minute?

The Temporary Speaker (Hon. Omboko Milemba): I give you one minute.

Hon. Aden Mohammed (Wajir East, JP): Thank you. We are in the midst of a famine right now. The Government might call it drought, but according to me, it is a famine. There is the Hunger Safety Net Program (HSNP) and we cannot disburse this money because the counterpart funding by Kenya has been used for other things. If the PFM Act is amended and we ring-fence such funds, our people from the north and Kenyans suffering from drought will be get the Hunger Safety Net funds.

With those many remarks, I support the Report. Thank you very much.

The Temporary Speaker (Hon. Omboko Milemba): Hon. Abraham Kirwa, the Member of Parliament for Mosop Constituency.

Hon. Abraham Kirwa (Mosop, UDA): Once again, thank you Hon. Temporary Speaker for giving me this opportunity to contribute on this Report of the Public Debt and Privatisation Committee. This is a very crucial topic for us as a nation. I wish that all Members were present. I thank the Chairman and the Vice-Chairperson for the great presentation.

At the moment, the country is going through a huge debt crisis. As of December 2022, the public debt stock in Kenya was at Ksh9.15 trillion. We are talking of Ksh1.3 trillion to service the loans. This puts this country above the debt ceiling. This will force this House to come back and renegotiate or maybe increase our debt ceiling. As I speak, the highest expense on public debt is servicing the domestic debts that we have already incurred. About 73 per cent of all the expenses in this next financial year is going towards servicing domestic debts. I know we have also incurred foreign debts, but the cost of domestic debt is extremely high for us as a nation. We need to sit down and reconsider where we are going as a country. Our public debt continues to be our biggest expense. At the same time, our foreign exchange is dwindling. We have a crisis on foreign exchange. We do not have enough dollars in the country because we are not producing enough exports. As such, we keep getting into debt. By just coming up with the Public Debt and Privatisation Committee, that will review the public debt the Government owes and we did the right thing.

The National Treasury needs to sit down and review some of the issues that need to be addressed so that we can lower the debt of this country. If we continue at this same rate of borrowing and getting into debt, this country might end up as Ghana which had to declare bankruptcy for them to remain afloat. However, as a nation, we have to address the issue of debt so that we do not plunge into deeper and deeper commitments.

There are few recommendations that I believe will help us to come out of the debt crisis and for us not to get deeper into debt. One is to increase our exports. Two, we need to critically look at our expenses like the pension. We are paying a lot of money in some pensions. The National Treasury should ensure that the Pensions Departments undertakes proof of life certification and to identify deceased pensioners and dependents within six months. This is to ensure that payments are to legitimate people. We are making payments or pensions to people who have died. We are not really verifying whether these individuals are still alive.

The other issue we are running into is the National Treasury paying pension to Asian and European pensioners who retired due to Africanisation of the public sector after Independence in 1963 and paid through the Crown Agent Organisation in the UK. The process is paying people we do not know whether they really exist, from 1963 up to this time. Very few people are still alive. But the cost of pension continues to go up. Nobody is saying we should go to this country and verify whether the people we are paying still exist. A few agents continue to take this money and we do not know where the money is going. There are so many expenses we continue incurring as a nation without thinking what to do to reduce our national debt.

Hon. Temporary Speaker, I support this Report. We really need to sit down as a nation, reconsider our debt situation, and make sure that we are responding appropriately.

The Temporary Speaker (Hon. Omboko Milemba): Very well. Hon. Kuria Kimani, Molo Constituency.

Hon. Kuria Kimani (Molo, UDA): Thank you very much for giving me this opportunity to contribute to this Report on public debt. From the outset, I congratulate the Public Debt and Privatisation Committee for a Report well done. When the Chairperson of the

Committee and I spoke before we started this conversation and I looked at the Report, I realised that I have the solution to one of the recommendations the Committee is making.

I have taken time to ask myself why we continue talking about pending bills and how these pending bills come. I will try to explain this without being very technical. Next week, we are starting to process the Budget Policy Statement (BPS). Immediately after that, we will start processing the Estimates for the 2023/2024 Financial Year. After that, we will do the Finance Bill. The Finance Bill proposes tax revenue measures to raise revenue to finance the budget. You will realise that by the time we are passing the Finance Bill, we will have passed the Budget. Later, once the State Departments and MDAs get their approved estimates or budgets, they will do their procurement plans. They will say what the ministries want to do and they have their plans. However, when making these plans for the said departments for ministries, they do not have the Exchequer. They do not have money in the accounts, but they have plans. The performance of even the officers is based on the execution of the plans. So, they start spending money that they do not have, money not disbursed to them.

Towards the end of the year, that is when they realise they spent this much, but they have only received this much. Therefore, there is a difference. Around that time, that is when most governments resort to borrowing. They say, "because we have a fiscal deficit of Ksh300 billion, we go and borrow." It creates a debt problem. Most importantly, it creates an unpaid bill.

When reported in the financial statements of that year, the Government of Kenya has adopted an Accrual Reporting System. An Accrual Reporting System means that we record expenses and income when they are received. When the MDAs and State departments do the financial reports, the issue of pending bills is nowhere on the actual report or the actual statement. It is just an observation that this ministry or this particular department has a pending bill of this much. It is not in the financial statement of that MDA or State department. That is why the Constitution in its wisdom, and this Parliament passed the Public Finance Management Act establishing the Public Sector Accounting Standards Board. The Public Sector Accounting Standards Board has recommended. I say I have a solution to this problem because the Public Sector Accounting Standards Board is one of the MDAs under the Departmental Committee on Finance and National Planning. They are tasked to come up with an Accrual Reporting System and not the Cash Reporting System. What the Government is using is the Cash Reporting System. What is reported in the financial statements is the amount actually collected or expenses paid for.

However, with that plan, remember there are commitments already made, but not reported because we use the Cash Reporting System. That is why it is my mandate here, and my Committee's, to make sure that within the shortest time possible, we come up with that amendment and have the Government of Kenya adopt an Accrual Reporting System, so that all these expenses are properly reflected on the financial statements, not just a note that a particular MDA or State department had a pending bill of amount X.

If you could just get me a minute, I would weigh in a little on pensions. What Hon. Kirwa said about pensions is very painful. Hon. Makilap, one of my friends and a Member of my Committee, was telling me that when this Committee was doing the Report, they realised there are pensioners from Asian and Indian countries who were born in 1924. Somehow, they have never died.

The Temporary Speaker (Hon. Omboko Milemba): Very well. That is a very good contribution. Let us have the next Member of Parliament. Is Hon. Charles Onchoke in the House? Proceed.

Hon. Charles Onchoke (Bonchari, UPA): Thank you, Hon. Temporary Speaker. I rise to make my contribution to this very important Motion or Report.

The key principles of public financial management are transparency, openness, accountability, and prudence or frugality. They are well underscored or underlined in Article 201 of our Constitution. However, our Consolidated Fund Services Management is quite the antithesis of these two principles. We are going to see many inefficiencies and rot in this part of public finance management. Article 95(4)(c) of the Constitution gives this House power of oversight over national revenue and expenditure. For all this to have gone on without oversight is a big failure on this House. Oversight was not exercised. This Committee was created at the right time to correct some of those wrongs. I stand here as someone who worked in the Ministry of Finance, and in this department, I have some insight of what goes on there.

The contribution of pending bills or non-performing loans is contributed by guarantees and actual expenditures incurred. However, they are not reflected in our books because of the cash method of accounting. In other words, what we are reporting as our expenditures in our books is grossly understated. Therefore, I think the measures recommended by this Committee are to enable us correct this anomaly, so that we can deal with accounting officers who authorise expenditures when they do not have budget lines. They hold money for pensioners who have worked for a long time and wait for their money yet it is deducted and remitted every month. How come they do not receive this money at the time they are due for pension payment? I think it is wrong. It is immoral. It should not happen in this country. Whether we have inefficiencies or whatever is happening in the Pensions Department, I think they should have corrected it by this time and stage of development. I do not think we have taken an accurate inventory of our debt stock. On the manner in which we incur public debt, Parliament has not exercised its oversight role properly. The accounting officers find themselves in a situation where they go to the market to borrow without seeking the approval of Parliament. Therefore, they have put us in this situation. In addition to what has been recommended in the Report, there should be something to the effect of sanctioning the officers who put us in this situation because this happens year in year out and we dig ourselves deeper into debt.

The report that we receive from the Government every year does not show the accurate financial position of Government books because of the manner in which the accounting systems have been adopted by the Government. Therefore, as a matter of urgency, we should move and require that the Treasury adopts an accrual basis of accounting because that will give us an accurate position of where we are at as far as our finances are concerned.

When we have agreements where we incur external debt and work takes a long time before it starts, in the meantime, the debts cannot be disbursed because the counterpart funds have not been made available to start incurring penalties if the contract has been awarded. We incur costs which we should not be incurring in the first place because of our inefficiencies. A case in point is where I come from in Bonchari, the Ahero-Isebania Road…

Please, can I have a minute, Hon. Temporary Speaker?

The Temporary Speaker (Hon. Omboko Milemba): Well, your contribution is good. I will add you one minute.

Hon. Charles Onchoke (Bonchari, UPA): Thank you, Hon. Temporary Speaker. The Ahero-Isebania Road is financed by the African Development Bank and serves many constituencies. Because the Government does not have money for its component part in the contract, the work has stalled. What happens when work stalls is that the contractor keeps sending us an invoice and the debt gap keeps building up. We, therefore, find ourselves getting in a worse situation. We need to get to a better position, so that we can make the money available from the time we negotiated for the loan.

Thank you.

The Temporary Speaker (Hon. Omboko Milemba): Hon. Lilian Gogo, Member for Rangwe.

Hon. (Dr) Lilian Gogo (Rangwe, ODM): Thank you, Hon. Temporary Speaker. I rise to also give my contribution on the Report on the Consolidated Fund Services expenditures for the Supplementary Estimates for the Financial Year 2022/2023. I support this Report by the Select Committee on Public Debts and Privatisation. The Committee has done a good job. I have gone through the Report and I want to appreciate the work the Committee has done, especially given the situation that we find ourselves in as a nation that is enslaved in serious debt. We live on borrowed time and money. The largest expenditures under the Consolidated Fund Service expenditures are interest and principle payments of Kenya's public stock of debt that has grown because of sustained fiscal debts. Of course, we get fiscal debts and go for more. Because there are people who are willing to give us money, we keep borrowing money without thinking of the interest that will accrue from the borrowing and how we are going to repay it. So, we get into debts, after getting into them, we do not know how we will pay and even if we pay, we do not pay regularly.

The Consolidated Fund has remained relatively unchecked and it has received minimal oversight. Other than representation and making laws, the main role of Parliament is oversight. We are supposed to oversee the work of the Government. I want to appreciate this Committee for coming out strong. I also want to appreciate the current Parliament for coming up with this particular Committee because it was not there in the 12th Parliament. I have seen the Chair of this Committee has done a good fast forward. He has not stopped just at that, but has also come up with very serious recommendations to mitigate what is going on, especially in terms of minimising our public debt.

The stock of public debt that we owe as a country is running to almost Kshs10 trillion. It requires about Kshs1.3 trillion to service it. Honestly, when we run a budget of about Kshs4 trillion and we are using about Kshs1.3 trillion to service the debts that we took, then we really have to question ourselves as a country if we are financially smart. When you find out about this huge debt, what are the fiscal structures on the ground that you see for the debts that we owe? Where is this money? Our education sector is reeling in unpaid debt. We cannot afford basic things like food and we say we owe Kshs9.3 trillion. I want to ask the nation called Kenya: Where is this money that you owe as a nation? If it is found in your pockets, may you be cursed because our children are not able to go to school. As we keep money in form of debt, we are supposed to pay Kshs1.3 trillion to service it yet we cannot do our basic responsibilities as a nation. It is a shame.

I thank you.

The Temporary Speaker (Hon. Omboko Milemba): Very well. The Hon. Odege cannot be seen in his usual place. Let us have Hon. Abdul Haro, Member for Mandera.

An Hon. Member: He is not there.

The Temporary Speaker (Hon. Omboko Milemba): He is not there. Then we will have Hon. Daniel Manduku, Member of Parliament for Nyaribari Masaba.

Hon. Daniel Manduku (Nyaribari Masaba, ODM): Thank you, Hon. Temporary Speaker, for giving me the opportunity to make my contribution to this important Report. It is only in Kenya where we spend Kshs1.5 trillion on account of the Consolidated Fund Services Expenditures. If you look at it critically, they are more than 100 per cent of our recurrent expenditure and more than two-and-a-half times our development expenditure. Under these circumstances, the country cannot develop. Furthermore, with a debt ceiling of about Kshs10 trillion, currently running more than Kshs9 trillion in debt and growing, this country faces a huge task to ensure that we get adequate resources for development. The national debt when borrowed carelessly - as it is clearly evident - becomes a generational curse. The National Treasury is using unorthodox methods in trying to raise this ceiling by purporting to advise this House that future borrowing should be pegged as a percentage of the Gross Domestic Product (GDP). They will tell you that in Japan and the USA, the debt-to-GDP ratio is more than 100 per cent and they will not tell you that those countries are owed billions of dollars by developing nations. They will also not tell you that those countries borrow and lend in their currencies. So, they are not affected by fluctuations in currencies. Reading through this Report, I want to emphasise the need for legislation. We need to develop an Annual Loans Bill. This should be done with utmost care and expedited as soon as possible. Furthermore, there is need to amend the Public Finance Management Act of 2012 for three reasons:

1. To establish the Sinking Fund.
2. To ring-fence the *counterpart* funding where we have funding from international lenders like the World Bank.
3. To sanction officers who do not adhere to laid down procedures in committing this country to borrowing and hence forcing this country to pay commitment fee where there is no money that has been drawn.

This Committee should have its scope expanded to include other obligations like pending bills. The Chairperson of the Departmental Committee on Finance and National Planning put it very well that it is time that pending bills are brought before the Committee.

Secondly, we are aware that this country has got a lot of unpaid court awards. Kenya has not paid billions of shillings in court awards. This should also be part of the Committee's mandate because it forms part and parcel of our obligations. We need to look at Kenya Airways critically. We have been told that Kenya Airways is a strategic parastatal and a strategic investment, but I think the problem with Kenya Airways is that the Government owns part of it. I am one of the people who believe that the Government cannot do business. The involvement of the Government in Kenya Airways should be relooked at. We were told that Telkom was very strategic and could not be privatised. See what happened when we liberalised the telecommunications sector. It is time we restructured Kenya Airways, and sold it to a strategic investor or close it down.

Lastly, allow me to contribute to the issue of retired pensioners. A simple calculation will tell you that the youngest existing retired pensioner should be about 115 years having retired in 1963 at the age of 55. I think the National Treasury should be serious about this matter.

The Temporary Speaker (Hon. Omboko Milemba): Please bring out that mathematics in one minute.

Daniel Manduku (Nyaribari Masaba, ODM): Thank you, Hon. Temporary Speaker. I am very good at mathematics. You can be sure about that. Having retired in 1963 at the age of 55, 60 years later puts the youngest pensioner at 115 years. Looking at the *Guinness Book of Records,* there are not many people who live beyond 100 years. According to our records, this year we are paying a whooping Ksh150 billion to retired pensioners. This House needs to recommend that these pensioners are physically identified using our facilities abroad, including the High Commission in London.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Omboko Milemba): Hon. Joseph Makilap of Baringo North.

Hon. Joseph Makilap (Baringo North, UDA): Thank you, Hon. Temporary Speaker. I want to declare that I am a Member of this Committee. This country is living on borrowed time unless we implement the recommendations of the Committee. We are operating between fiction and reality. The fiction in Kenya is that the dollar exchange rate is Ksh126, but when you go to a bureau, the dollar retails at around Ksh130. Loan agreements were made in United States dollars and it was not agreed that the loans shall be paid at the exchange rate existing at the time of their taking. As the rate of the dollar rises, loans become very expensive. Therefore, we agreed that if we have to borrow in US$, then we must fix the rate of repayment. This is why we are saying that we either negotiate using our currency or fix the rate of the dollar or any other foreign currency at the time of borrowing.

This country should know that we are paying our colonial masters who retired a long time ago. One of them was born in 1924. Our civil servants who retire wait for more than three years to receive their pension while foreigners who colonised this country are promptly paid every month through Crown Agent. This is why the Committee recommends amending the Pensions Act so that employers in Kenya can notify employees of their retirement time one year before retirement. For example, the TSC does not prepare teachers' dues until they retire. Retired teachers then wait for their pension till death. There are a lot of cartels in the Pensions Department. There is need to streamline the Pensions Department through the proposals that we have made so that pensioners can get their dues promptly. I agree with my colleagues that the list of foreigners need to be scrutinised, because we are paying pension to persons who are close to 120 years old.

The last Parliament raised the debt ceiling to around Ksh10 billion. As at 30th December 2022, our debt stock was reported to be Ksh9.15 trillion. For us to complete this particular financial year, we require an additional Ksh1.36 trillion. What does that tell you? We shall surpass our debt limit and we shall be unable to finance our programmes. There is a monster called pending bills. The bills are created by people and cartels in the Government, so that they can use Article 223 of the Constitution to pay for projects and programs whose budgets were not provided for. In the end, they get kickbacks.

The Temporary Speaker (Hon. Omboko Milemba): Your point is well made. Let us hear from Hon. Kwenya Thuku, Member for Kinangop.

Hon. Kwenya Thuku (Kinangop, JP): Thank you, Hon. Temporary Speaker, for this opportunity to contribute to this maiden Report of the Committee. From the outset, I must convey my gratitude to the previous House which, in its wisdom, decided to create this Committee to look into issues of debt and privatisation.

I support this Report. This is a well thought out Report. If the people who are supposed to implement this see the wisdom in it, we might address issues that would cure problems in the Consolidated Fund Services expenditure to the tune that is manageable. The CFS expenditures are just well stipulated. It is about pensions, public debt payments, the president's and the commissioners' salaries. From the foregoing, we have seen that the biggest share of CFS spending is coming from public debt. This is becoming an issue not just in Kenya but in Africa. I want to confine myself within my jurisdiction because we need to address this issue before it gets out of hand. Having a public debt that is consuming 88 per cent of our CFS expenditure is a cause for alarm. In fact, when we engaged a few agencies like the Office of the Auditor-General, we were able to gather that what has been reported might not be the total debt in this country. We realised that there is a lot of money that is committed or paid in terms of commitment fee of money that has been availed as debt that has not been absorbed.

In this Report, there is a serious recommendation that within two weeks, the National Treasury files a report to apprise this House as to the tune of public debt. The issue of debt emanates from our budgeting system from budget formulation, budget making, budget appropriation and budget financing. That is where we incur serious debts. We have always put the cart before the horse. Just as my brother the Member for Molo has said, we need to relook into to the issue of the Budget Cycle so that we do not put the cart before the horse. We must think about where we are going to get the funding before we start appropriating any money. We will be making a huge mistake if at all we will take the route of appropriation and then the Finance Bill so that we can commit the taxes that need to be collected by this country. We will be left with a deficit that the Committee on Public Debt is trying to address. We will always be on a journey of wanton borrowing.

The Committee has also recommended that as the Departmental Committee on Finance and National Planning brings the Finance Bill to this House for every year's expenditure and the Appropriation Act is passed, we also submit a Public Debt Financing Bill capping the amount of money that can be borrowed within one financial year. This issue of leaving an open end borrowing where the National Treasury can borrow at will, is something that we must scrutinise. As a Committee and a House, we must adopt a situation where we submit a Public Debt Financing Act for every financial year.

Hon. Temporary Speaker, because of time, I want to request that this Report is adopted as it is. As a Committee, we are going to follow through to see that if this Report is going to…

Hon. Temporary Speaker (Hon. Omboko Milemba): Hon. Beatrice Elachi, Member for Dagoretti North.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Temporary Speaker. At the outset, I want to thank you and the Committee. It was one of those committees I really tried to be part of, but I was told that I did not deserve. Having said that, I have been privileged to work in the Senate, Government and counties and looking at where our country is, the Report comes at a time when the country and the world is facing an economic crisis.

Hon. Temporary Speaker, we need to thank the 12th Parliament for establishing the Committee. We have all the powers to ensure that this country can be stopped from going into a crisis that the Executive would wish it goes to. Parliament should decide to stop and start managing public debt by looking for solutions in terms of paying our debts.

In this Report, since the new Constitution came into place, the National Treasury is mandated to ensure the budget that is brought to Parliament is an itemised budget - a budget that speaks to itself. To date, they have never attempted to do that. They have failed the country and that is why we are in this crisis. We have so many gaps and people just take advantage of the country and we end up in crisis. The worst-case scenario is when within the Executive, the cabinet secretaries just go and sign up for loans. You are not given the loan, you are not using, but we are servicing it. Why can we not have a recommendation that provides that any loan that we have never spent or never received, the money is sent back? We would rather have a painful situation where you pay, but let it go because we are not using it. We have not even started spending it, but you have started paying the principal on the same date. When you look at that, you will realise that in Kenya, we collect revenue, put it together and spend again. It finds itself in a very, very dicey situation where in as much as you would speak to the Treasury, the problem and the culture that we are in is in the Treasury.

Hon. Temporary Speaker, the other thing is that within the National Treasury, we need to penalise people on pending bills. How can you have pending bills in the National Government–Constituencies Development Fund (NG-CDF)? People are saying that I still have a pending bill yet it was a budget that was done knowing very well that there was money for that project. What happened to the money? This is happening because we do not have a mechanism of penalising some of these things. You cannot tell me that you can initiate a project when you know there is no money. It is either a Public Private Partnership or the Government or the county has money to do a project. We have to hold accountable those who decide to change a whole budget and take the money that was meant for a project. It is time we came up with mechanisms and that is why this Committee was formed. We must put up mechanisms to ensure that we also penalise officers in the Government who just decide to take loans. If you are being forced by the Executive to take the loan, then it is important for you to come to Parliament to get approval so that we do not end up with the same questions that we are now asking.

The other day, the Auditor-General said something very interesting that we now need to assist those who have taken money to invest in our country. As I finalise, the worst is on our own pension. A pension that has an interest rate where you are told that you must pay before you take it, but it is not profitable. We must start with our own pension so that if Members come in, they are able to pay back and just enjoy.

[The Temporary Speaker (Hon. Omboko Milemba) left the Chair]

[The Temporary Speaker (Hon. Peter Kaluma) took the Chair]

Hon. Temporary Speaker (Hon. Peter Kaluma): I will add Hon. Beatrice Elachi two minutes. I like the points she is making.

Hon. Beatrice Elachi (Dagoretti North, ODM): Thank you, Hon. Temporary Speaker. The issue of pension is for us in this House. When we were in Mombasa, we were presented with a pension and we were told it has an interest that you must pay. I was just wondering whether it is a profitable pension. Does it do business? So, why would you pay yet it is not profitable?

Hon. Temporary Speaker, the first amendment should be about our own pension as we look at others. We must ensure that pension of every Kenyan, especially in the counties is secure. Otherwise, Kenyans will suffer because of these issues of pension. We have so many bodies that deal with Kenyans' pension money which we must harmonise and have one pension scheme. Let every Kenyan know at the end of the year, the status of their pension.

Thank you, Hon. Temporary Speaker, I support the report.

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much. Is Hon. Tom Odege in the House? The gentleman representing the people of Nyatike Constituency? He is not in. Let us have Hon. Caroli Omondi, Member for Suba South constituency.

Hon. Caroli Omondi (Suba South, ODM): Thank you very much, Hon. Temporary Speaker for the opportunity to add my voice in support of this Report by the Select Committee on Public Debt and Privatisation. In my former life, not very far from here across the road, my job was to issue what we called legal opinions on foreign loans confirming that that loan, when added to the total national cumulative loans, would not exceed the national ceiling on debt. We realised we were working in darkness because we could not find the correct data whether at the National Treasury or here. I think the history of our debt problem is much longer than we think. I think it is time we learnt from history and the bad practices that we witnessed in the 1990s and some of which are prevalent until now. We need to order a proper forensic audit on our foreign debt.

In particular, if you remember in the old days when we had the Foreign Exchange Control Act, bureaucrats and politicians were adept at creating fake debts, especially on commercial paper for purposes of transferring foreign currency. I strongly suspect that part of the Kenyan debt is composed of fake debts that actually exist between individuals. It is time this House and this Committee ordered a proper forensic audit of our foreign debt to see what is authentic and what is ineligible for purpose of being fake. Secondly, it is tied in international commercial dealings, but debts and projects tainted with corruption are not enforceable. I think you remember the case of duty-free where the claimant admitted before the International Centre for Investment Dispute (ICSID) that he had bribed a former head of State here. Although the termination of his contract was found to be irregular, ICSID ruled that he could not be compensated because of the tainted nature of that particular transaction.

It is the same with a lot of our debt where commercial debt is being used by bureaucrats and politicians to finance infrastructure projects other than using long-term concessional loans for multilateral agencies. The Standard Gauge Railway (SGR) is a good example that we should investigate because there is no reason why the Kenyan SGR, which is even electric, but runs on diesel, would cost twice the SGR in Morocco between Tangiers and Casablanca and which was financed by the French Train "A Grande Vitesse" (TGV) at $1.7 billion and ours is $3.8 billion. This is one of the reasons why I think it is now time to have an ad-hoc committee of this House of State capture. Commercial debt has been one of the areas where politicians and bureaucrats have literally captured the State.

To make matters worse, our history of debt, if you drew a map of Kenya and you put pins on where the projects that have been financed by foreign debt are concentrated, you will see the nature of our politics and how skewed it is in terms of those in power favouring certain regions. It is time to be bold and order a forensic audit of all these debts to determine which ones are fake, which ones are tainted with corruption and which ones cannot be enforced in a court of law. Thank you very much, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much for the informative position. Do we have Hon. Paul Biego in House, the Member for Chesumei Constituency? He has stepped out. Hon. Joshua Kimilu, Member for Kaiti?

Hon. Members: He has gone out.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Joseph Oyula.

Hon. Maero Oyula (Butula, ODM): Thank you, Hon. Temporary Speaker for giving me this opportunity to also comment on this Report by the Select Committee on Public Debt. This Report brings out all that Parliament needs to know as far as debt position is concerned. The Committee has done very well and brought out the situation of the debt as it is in Kenya today. I think more time should be given to the Committee to continue unearthing some of the issues that this House has been pondering and particularly when it comes to the control of expenditure.

Hon. Temporary Speaker, debt is not a bad thing, what is bad is how the debt is utilised. External debt should be reflected or seen on the ground and should be related to the development of the country. The worst part is that some of these debts are used on recurrent expenditures. That creates a bad situation as far as debt is concerned. The worst area here is the domestic debt, which is so high and I think that is why the expenditure on debt repayment has grown very high. Something should be done to ensure that the domestic debt and interest rates are controlled so that we do not have banks…

The Temporary Speaker (Hon. Peter Kaluma): Order, Hon. Joseph Oyula. Hon. Mathenge, you wanted to contribute to this Motion? Because you are somehow very close, if you have keyed in to contribute, I have noted you have been sitting for a long time, you would sacrifice for a few more minutes. Hon. Oyula, you may continue.

Hon. Maero Oyula (Butula, ODM): Thank you, Hon. Temporary Speaker. Domestic debt is a big burden to this nation. The interest rate is high, at approximately 12–13 per cent and this encourages banks not to lend out money to the private sector, but to lend to the Government because they are assured of earning a lot of interest from government lending. So, this Committee has come up with a good Report and recommendations which I think if adopted, the House should move very fast. Particularly, there is a recommendation that the National Treasury comes with regulations on how to manage the debt expenditure. This is very important and I suggest that the Committee should follow up on this to ensure that the National Treasury comes up with regulations.

In fact, the Committee should take these recommendations upon itself to ensure that we have an Act that will enable this House to monitor the debt repayment and the debt records particularly when we are budgeting on payment of debt. So, the recommendations here should be implemented. The House should adopt this Report and more research should be done to ensure that we get the exact position of the Kenyan debt and come up with a proper position for the repayment of this debt.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Thank you, Hon. Oyula. Let us have Hon. David Mboni, the Member for Kitui Rural.

Hon. David Mwalika (Kitui Rural, WDP): Thank you, Hon. Temporary Speaker. At the outset, I want to support this Report and thank the last Parliament for coming up with this Committee on Public Debt and Privatisation. This is the first report where Parliament is looking at public debt. As the earlier speaker said, debt is not a bad thing. It becomes bad if it is not utilised for its intended purpose. With the debt which we have taken for the last 10 years amounting to around Ksh8 trillion, we should be seeing a lot of development in this country. Unfortunately, we do not see it. I start wondering where that money goes to. Is it being used in particular areas other than those that the debt should be used for?

In economics, there is the law of diminishing returns. If you used debts in one area and you realised that there is no development… For example, I was a consultant on the Lamu Port-South Sudan-Ethiopia Transport (LAPSSET) Project. The expected outcome was that if we developed LAPSSET, we would increase the country's Gross Domestic Product (GDP) by 2 per cent, which amounts to around Ksh250 billion every year from that investment.

There is no country which can develop without debts. In fact, most developed countries have high levels of debt. Japan's debt is 256 per cent of its GDP. For the United States of America (USA), it is 133 per cent, while Sudan is at 210 per cent. Those figures are as per a Report done by the World Bank in 2021. At that time, Kenya's debt was 7 per cent of its GDP. Kenya's debt has increased to Ksh9.15 trillion. That is an alarming situation when you think about the Ksh1.36 trillion that is needed to service the debt. We only collect around Ksh1.8 trillion or Ksh2 trillion in taxes. If we remove Ksh1.3 trillion, we remain with around Ksh600 billion to run the country. Recurrent expenditure alone in this country is around Ksh600 billion. We barely have anything left for development. In that kind of a situation, I do not think this country can develop. Apart from the recommendations that are proposed in the Report, I would like to propose the following:

First, we need to reform our tax system so that we raise more revenue. We have been over-taxing three sectors of the economy – manufacturing, information, communication and technology (ICT); finance and insurance. We have realised that taxes from those sectors are actually going down because they comprise 17 per cent of GDP, but contribute 52 per cent of tax revenue. So, we need to expand the tax base so that we can get more revenue and go for more concessional loans, which are cheaper and have a longer repayment period. We also need to enhance local savings, such as the National Social Security Fund (NSSF) and the National Health Insurance Fund (NHIF).

Let us also live within our means. I was looking at the Supplementary Budget and I thought that it was supposed to go down by Ksh300 billion. Unfortunately, the overall budget went up by Ksh14 billion. Where are we moving to as a country? We need to live within our means, borrow less, spend what we are raising and move this country forward.

With those few remarks, I support the Report.

The Temporary Speaker (Hon. Peter Kaluma)**:** Thank you, Hon. Mboni. Next is Hon. Maina Mathenge, Member of Parliament for Nyeri Town.

Hon. Duncan Mathenge (Nyeri Town, UDA): Thank you, Hon. Temporary Speaker, for giving me this opportunity to contribute to this debate and Motion. I rise to support the Report of the Committee on external debt.

Even more important is the Government's appetite to borrow from the local economy because this has the net effect of crowding out Kenyan entrepreneurs and companies that are meant to grow our economy, provide jobs for our people and produce goods that we can sell locally and internationally, out of the financing market. Our banks have become lazy because they want to go for the money they can lend to the Government because it has zero risk. As a result, local banks keep posting humongous profits while no other sector of the economy is posting any profits. Those profits are directly linked to the appetite for Government paper. The Government must move out of the local economy in terms of borrowing to allow Kenyans who actually own this country and this Government to thrive by allowing local banks to have sufficient liquidity to go out and become competitive in terms of pricing of interest rates. As long as the Government is the single largest active player in the local debt market, Kenyan entrepreneurs, including our youth, will continue languishing in poverty. Companies in this country will continue to close as a result of failure to get financing to expand, innovate and carry out improvements in line with market trends and demands.

A debt like the Standard Gauge Railway (SGR) had a negative effect on this country because it resulted in killing businesses that were thriving before the SGR came in. We are borrowing and then insulating the repayment of the debt at the cost and expense of the local economy. That is not sustainable. Therefore, the presence and say of this House in determining when, where and for what purpose the Government must borrow is long overdue.

I, therefore, support this Committee for the positive steps that they are taking. I urge this House to be bolder and to have a say in determining what can be borrowed by our Government and what cannot.

That is my submission. I support the Report.

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much for that informative submission. Hon. Abdikadir Mohamed, the Member of Parliament for Lagdera is in the House. Proceed.

Hon. Abdikadir Mohamed (Lagdera, ODM): Thank you, Hon. Temporary Speaker, for giving me the opportunity to contribute to this very important debate on the Consolidated Fund Service expenditures. About 68 per cent of the Consolidated Fund is used to offset debts. We only remain with 32 per cent of our Consolidated Fund to fund all the other activities. This country is supposed to borrow about Ksh837 billion this year. Our Development Expenditure is approximately Ksh610 billion. That means that we are using loans to develop and over Ksh230 billion to finance our Recurrent Expenditure or repay loans. It is like we are taking loans to pay other loans. If we do not improve our revenue or increase our productivity as a country, we will go the way of Ghana, which defaulted in paying off its foreign debts, and that will be too bad for our economy.

Bureaucrats or Government officers do not look at the conditions attached when they borrow loans. They just sign for the loans and yet, the people giving the loans have such hard conditions such that even implementing a project is a problem. For example, there is a project in my constituency and other parts of Garissa County called the Kenya Development Response to Displacement Impacts Project (KDRDIP). This project is being financed by the World Bank and has been continuing for five years. However, the problem is that the World Bank wants to micro-manage it.

With every small misunderstanding, they want the bank to intervene and threaten to cancel the projects, and this is money that has been given to us as a loan. It is not their money. Why do they want to micro-manage a project in Lagdera Constituency? Why do they have to threaten us with the cancelation of the loan, which they have already disbursed to us? What does a very small misunderstanding or somebody writing something which could be a lie about the project have to do with it? So, I urge the Government that whenever we take a loan, we must look at the conditions attached. That is because some of the conditions are so punitive that implementing the project is a problem. For example, the project I am talking about is by the World Bank loan that was given to us. The World Bank wants to micro-manage the project that we are doing. They even want to micro-manage the subordinate staff. We do not have a say and yet, this is a loan. So, let us look at the conditions of the loans when we are borrowing.

This country has been having a very high appetite for loans. That is because if we do not take loans, we will not be able to develop. If we do not borrow, we will not even be able to pay our debts. As we speak, we are almost reaching Ksh230 billion worth of loans that are used to pay even some of our recurrent expenditures, something that we can avoid.

We have options to either increase our revenues or our productivity and, maybe, wait for divine intervention. As it is now, maybe, in the next two to three years as we borrow more, we will fail to repay our loans because we are not increasing revenues until we go the Ghana way and then it will be bad for us.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much. The Hon. Omboko Milemba, the Member of Parliament for Emuhaya and Temporary Speaker.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you Hon. Temporary Speaker and the Chair of this Committee for bringing this particular Report. Article 206 of the Constitution establishes the Consolidated Fund in this country, where all monies that are supposed to be in Government go to. It also went further to create the Consolidated Funds Services (CFS). Those are the monies that will come from the pool where the monies for Government have gone to, apart from those that may be determined not to go there by this Parliament.

In that Consolidated Fund and CFS, the highest expenditure from that Fund is foreign debt. That is why foreign debt then becomes an important topic as this Report has indicated. Further, the expenditure on foreign debt has sprung up between 2017/2018 Financial Year to the present day by more than 105 per cent. Those are the facts in this particular Report. We are now spending so much on payment of debt and it has increased within five years by about 105 per cent. That is why foreign debt then becomes a very important topic, because it means of all the funds from the Consolidated Fund, almost over 100 per cent of it is being spent on foreign debt and yet, we are continuing to borrow. This is what this Report lays bare. Therefore, it becomes very important that we control foreign debt so that we control expenditure from CFS to pay the foreign debt.

Hon. Temporary Speaker, another thing that comes out very clearly here is the fact that, from the first charge of the CFS is not only the foreign debt but, in fact, there has been a misguidance in this country. I come from the labour movement and, sometimes, we are told that the Government is spending too much money on the Recurrent Expenditure. So then, we the workers of this country get worried, thinking that, maybe, many salaries are being paid. I want to put it to you that the payment on salaries has been reducing since 2017. It has reduced by about 13 per cent. So, when we talk about the Recurrent Expenditure, it is not the salaries as the normal Kenyan will take it. Payments on salaries are reducing, but what is really increasing and making the Recurrent Expenditure to increase is payment of foreign debt.

Unfortunately, the payment of salaries for workers in this country has been lumped together with the payment of foreign debt. So, when it increases, people imagine that the salaries are the ones that are increasing. That is why this Report is here, and the whole country must know so that we bring this to an end. It is very interesting that this country does not even know how much it has borrowed. There are agencies in this country that are supposed to tell how much we have borrowed. Those are the Controller of Budget and the Office of the Auditor-General (OAG), who submitted that they do not know how much we have borrowed. He does not have the correct figures or all the disclosure on how much we have borrowed. There are levels that, that office reaches when no disclosure is given. That is the area we borrow through what is called guarantees. There are organisations in this country, like Kenya Airways (KQ) and others, which can just go and borrow and then the government guarantees. This Report should indict Government officers who are not giving complete disclosure on the guarantees of the Government.

I picked the points from the Hon. Member for Suba. He seemed to have been exact on this. That some of the debts we are talking about could be personal. Otherwise, why are the authorities not disclosing every debt? That is why three levels of foreign debt are given by different agencies in this country. We even do not know how much we have borrowed. That is what the Report is talking about. You will soon be told – and it is coming to this Parliament – that we must now change the way we are borrowing. We have borrowed up to a debt ceiling of Ksh10 trillion. You remember how we argued over that. This Report says that when you put everything together and even include the pending bills that have been talked about, we have surpassed the Ksh10 trillion debt ceiling. Yet, they will bring a document to be passed here.

The Temporary Speaker (Hon. Peter Kaluma): Add Hon. Omboko Milemba two minutes.

Hon. Omboko Milemba (Emuhaya, ANC): Thank you very much, Hon. Temporary Speaker. Kenya should listen to this; that, now we borrow as per the per centum of GDP. I have heard a Hon. Member speak on it. I would wish to say this about borrowing as a per centum of GDP. Yes, it is good. Countries that have done that have equally lent their money outside and that money is earning profit. Kenya has not done any one of that. When you boast of Japan having borrowed a very high percentage of its GDP, sometimes, it borrows to lend to African countries that are paying at a high profit. Hey, you! Are you listening to me? We cannot go their way because we have to go our way. We must look at our situation individually, because we have not lent any money anywhere; even to small countries around us like Sudan. We are not making any profits. That is why this foreign debt must be checked.

I have too much to say about this. Let us support the Report and give this Committee the teeth to bite so that before we do the final Budget, we will also have discussed the status of our foreign debt and how much we can borrow. Soon, they will tell us that we surrender borrowing to them. Please, do not accept that.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): You know the best brain from Homa Bay County on matters finance is Hon. Andrew Okuome Adipo. Give him a chance to contribute and tell us how much foreign debt has been used to fund what project in Homabay County.

(Laughter)

Hon. Adipo Okuome (Karachuonyo, ODM): Thank you, Hon. Temporary Speaker. I do not know whether I am able to tell you that. Did we have any, anyway? If I doubt what am asking, it is impossible for me to say a word on how much of the foreign debt has gone to development in my area of Homa Bay County?

Hon. Temporary Speaker, we have a serious problem. Our debt and the cost of doing business is rising under a situation where the cost of living is extremely high. Businesses are migrating from Kenya to other countries. Some are closing down. Just behind us here is Intercontinental Hotel, which is no more. At one time, they said another hotel was soon closing. All these are happening in Kenya. That means our revenue collection must go down because the bodies that produce revenue for us are going away.

We need to find out why we need to borrow even to feed ourselves. That is because the recurrent expenditure is not what we should borrow for. We are actually borrowing more for expenditure now than what we borrow for development. Development projects would help us and the economy. That is one area where we need to begin.

Public debt comprises of domestic borrowing and foreign borrowing. On foreign borrowing, it is better because it is cheaper but, since we borrow in foreign currency, the rate at which we will be paying is increasing depending on the behaviour of our Kenya Shilling in the market. I do not know which one you will say is better. Local borrowing also has its disadvantages of denying our local people money to do business. That is because the Government is competing with them. The Government borrowing is attractive to banks more than the individual borrowing. If we keep on borrowing in the local market, certainly, the local businesses will suffer. We have to do something.

One thing which has been said before by my colleagues is that, we really need to know what this total debt accumulated is composed of. We need a breakdown per country or per company so that we can analyse and know the genuineness of those foreign currencies. We also need to do the same with local borrowing, because that is when we can know whether we are paying for what we ought to. We are having a big burden of paying this, and it will go on to our children and children's children, yet they are not supposed to be the ones to pay.

On pension, it is sad when we hear that somebody has lived for almost 150 years, and we are paying pension for him. Such a person definitely is not existing. While I mention that, I see that Kenyans themselves suffer a lot because when they retire, it takes several months before they even begin getting their pension. We should ask the Government to collect all the data on the persons who are about to retire early enough so that, by the time they are retiring, they should do so by going home with their pension.

My time is over but I wish I had…

The Temporary Speaker (Hon. Peter Kaluma): Do you need more time? Give him one more minute. Hon. Shabbir, prepare. You are speaking next.

Hon. Adipo Okuome (Karachuonyo, ODM): Thank you, Hon. Temporary Speaker. *Mheshimiwa* Shabbir has agreed he is…

The Temporary Speaker (Hon. Peter Kaluma): Hold on, Hon Okuome Adipo. Hon. Shabbir, according to the list we have here, we have only three requests and you are on top of it after Hon. Okuome Adipo. So, prepare. We have enough time.

Hon. Adipo Okuome (Karachuonyo, ODM): Thank you, Hon. Temporary Speaker. My appeal is that we should look at our tax regime again so that we can tax people in a manner that is conducive to the economy. You remember that the Government has now adopted no subsidy for consumption. This means that petrol, for example, which is a consumption product, cannot be subsidised. If you were to subsidise it, you would need to subsidise the producers. We must have exemptions, look at each of the situations, examine them and not just have a blanket covering the situation of no subsidy for consumption.

Thank you for giving me more time.

The Temporary Speaker (Hon. Peter Kaluma): Thank you, Hon. Andrew Okuome Adipo. The Hon. Shakeel Shabbir, the gentleman representing the people of Kisumu East, proceed.

Hon. Shakeel Shabbir (Kisumu East, Independent): Thank you, Hon. Temporary Speaker. I stand to support…

The Temporary Speaker (Hon. Peter Kaluma): Hon. Shabbir, what time are you worried about?

Hon. Shakeel Shabbir (Kisumu East, Independent): I was calculating if they need 30 minutes for the Mover to reply since I might be running short of time, but you have assured me that, that is not the case.

The Temporary Speaker (Hon. Peter Kaluma): Hon Shakeel, never worry about time when you want to speak and I am on the Chair. Proceed.

Hon. Shakeel Shabbir (Kisumu East, Independent): Thank you, Hon. Temporary Speaker. I stand to support the Report of the Public Debt and Privatisation Committee. I was in the Departmental Committee on Finance and National Planning for 15 years. This time, I am not a member of the Committee. Every time we asked the same question regarding public debt – and our declared public debt is Ksh8.9 trillion – we are told that there is a public debt office and it is public information. I personally went to that office at the Treasury. It is on the first floor, hidden in a corner where they have put all the rejects that they do not want. It took me one and a half hours to get a basic report for 2018, which was full of gaps. They said the report is public and anyone could get it, but that is false.

Under the Public Finance Management Act, there is a Public Debt Management Office. Every year, the National Treasury has to give authority for the office to operate. In Britain, there is an autonomous public debt office. Here, the office is hidden in a corner and not recognised. The officers just waste time. In 2021, the National Treasury made a promise to us on payment of expensive commercial loans. I think you might remember that promise. We have short-term and long-term loans which are so costly. We raised the debt limit under a lot of pressure. The Cabinet Secretary for the National Treasury lied with a straight face. We nearly impeached him. He totally misled the House. The National Treasury takes the Public Debt Management Office as a joke. We do not have a debt management strategy. The one that is there has been thrown into the dustbin. There is no policy. There is nothing.

Hon. Temporary Speaker, I urge you to give me one extra minute.

The Temporary Speaker (Hon. Peter Kaluma): Hon. Shakeel Shabbir, because of your stand on matters of integrity and corruption, and given that you are discussing debt, you have two more minutes.

Hon. Shakeel Shabbir (Kisumu East, Independent): Hon. Temporary Speaker, the Public Debt Management Office is meant to be an autonomous office, but the National Treasury decides what it wants and how much money it needs to borrow. The office looks for the most suitable place to borrow money from at the best rate. They are meant to be professionals in raising money from the money market. But what are they doing? They are doing nothing. What happens is that the Cabinet Secretary goes to IMF to meet the so-called vulture financiers. They agree on short-term debt for long-term projects and then they come back and tell us that we must pay. I hope the Committee insists that the Public Debt Management Office becomes autonomous. It was the same problem when the Central Bank of Kenya (CBK) was under the National Treasury, and it could bully the CBK. But the CBK is now autonomous. We also need the Public Debt Office to be autonomous so that we can actually plan.

I urge this Committee to ensure that they first do a forensic audit. I can tell you with great confidence that the Ksh9 trillion is not the correct amount. As my colleague from Emuhaya indicated, they have not included sovereign debts, separate sovereign guarantees involved, guarantees and contingent liabilities. None of these things have been added on. In other countries, as you understand, contingent debt is a contingent debt. It should be added on to get the right balance. We do not really know what our external public debt is.

The Government should also reduce the amount that they can borrow from the domestic market. As our colleague has just indicated, it is very important because the interest rate also rises. When the Goldenberg issue was in full fledge, the rate of Treasury Bill was 75 per cent. So, in my view, the Government should stop borrowing from the domestic market. I hope that this Committee will be able to take up on the Debt Management Act that was passed in the last Parliament. They should also strengthen the Debt Management Office to be autonomous and to act with speed.

Thank you, Hon. Temporary Speaker, for giving me the extra time.

The Temporary Speaker (Hon. Peter Kaluma): Thank you, Hon. Shakeel Shabbir. Member for Gichugu, Hon. Gichimu Githinji, Senior Counsel. Thank you for your patience. You have been waiting for too long.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Temporary Speaker. I hope that the title of Senior Counsel will be coming soon. Those are good prayers. Let me start by thanking this Committee led by Hon. Abdi Shurie for the timely tabling of this Report for…

The Temporary Speaker (Hon. Peter Kaluma): Order, Hon. Gichimu. Did the Member for Roysambu want to contribute to this? The Member who is now going out.

Hon. Gichimu Githinji (Gichugu, UDA): That is the Member for Kieni.

The Temporary Speaker (Hon. Peter Kaluma): Did the Member for Kieni want to contribute to this? He is speaking from within Parliament. Let him go. Proceed, Hon. Gichimu. He has been quite patient for the entire afternoon, but I do not know whether he wanted to contribute to this.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you, Hon. Temporary Speaker. I started by thanking Hon. Abdi Shurie and his Committee for a timely Report to this House. It comes in when we are just about to start a new budget cycle of 2023/2024. This is very important so that, as we go by the issues of budget, we know what we owe our creditors. It is incumbent upon any Government to disclose all the liabilities, obligations and public debts, both external and internal. That is domestic and external debts. They should be disclosed so that we can be able to cut our coat according to our size.

Debts are good and they are bad at the same time, if they are not well planned. It is not an obligation to spend, but it is an obligation to pay a debt. Except for the basic needs that we know about, all the other expenditures are not mandatory. But a debt is an obligation and, therefore, it is mandatory. That is why even before we go to making the 2023/2024 Budget, it is important for this Parliament to know the level of debts, the commitments that have been made and the structure of the payment of those debts.

Hon. Temporary Speaker, I would also urge the Committee to look at the issue of the Public-Private Partnerships (PPPs) and the concessions that we have; which are implied debts to Kenyans. For instance, when we use the Express Way, we are supposed to pay for close to 30 years. Then it means that we owe the person who constructed it so that where they find that the concessions are unreasonable, the Government can be committed or obligated to re-negotiate such concessions, which are draining Kenyans.

Hon. Temporary Speaker, the other thing that should also be looked into is the issue of the pending bills. These are not usually indicated as debts, but they actually are. They are commitments that are usually made when there is no money, and this Committee should, at some point, look at all the pending bills and come up with a report. We urge the Government not to commit any money unless the money is deposited to the entities that are supposed to be doing those developments.

I urge you, as is your practice and counsel, to earn me a minute or two so that I can conclude on one very important point.

The Temporary Speaker (Hon. Peter Kaluma): Give him *ex debito justitiae* two minutes. That is a language only understood by Hon. Githinji and myself.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): You will have two minutes *ex debito justitiae* as a matter of justice. I am interpreting it for the Chair of the Committee to understand. You, therefore, have two minutes from the time I finish speaking.

Hon. Gichimu Githinji (Gichugu, UDA): Thank you Hon. Temporary Speaker. As I was saying, it is also important to have regulations always tabled on the Floor of this House in respect to the sinking fund so that Parliament can interrogate them and the requisite Committee can be able to guide Parliament in the interest of Kenyans.

Finally, I would like to re-emphasize on the pending bills. They should be taken as a priority and as a debt to Kenyans. We should not always prioritize debts to foreigners, but also those owed to Kenyans by the Government of Kenya.

I support the Report. I thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Thank you Hon. Githinji. Next is Hon. Joshua Mwalyo, a gentleman representing the people of Masinga.

Hon. Joshua Mwalyo (Masinga, Independent): Thank you very much Hon. Temporary Speaker. I rise to support the Report of the Select Committee on Public Debt and Privatization, and I want to say the following.

First, the debt which the country has accrued is hurting everybody, and the survey that was done a while back revealed that everybody in Kenya has a debt of Kshs130,000, including the unborn child in their mothers' womb. This is a very serious thing, and the debt continues to accrue interest that we are trying to pay and yet, we have insufficient funds to pay. If it was possible, we should look for a different method of dealing with debt because it might put us in a situation whereby some of the properties in the country can be seized to pay the debt, which will be a shame for this country.

Secondly, another practice by the Government is to give projects without money, giving tenders and even awarding them without keeping the money in a safe place so that it is not touched and is re-invested. Once the European Union or the United States Agency for International Development (USAID) give us the money, they normally ring-fence it so that you cannot withdraw or touch it until that project is done. That could help us. However, jobs are usually dished out and road projects given out through roadside declarations. You come to my place and say that you have given funds to the Member of Parliament to tarmac a road and yet, it is not in the budget. Those are the things that normally increase the debt in this country.

Something which should again be avoided is borrowing money for projects which cannot give returns. You engage in a project which can never pay itself back. It is like a white elephant. The Government has a habit of doing that. They start projects which they stop midway and yet, the money has already been used and most of the project has been done. An example is the Kenya Industrial Research and Development Institute (KIRDI) in Industrial Area, which was started almost 10 years ago. Money was paid to the contractor and when the project was almost coming to an end, it stopped and stalled. There is no value for money for such projects.

Something else which should be avoided is pending bills. Many people, including my neighbour, have talked about them. Do you know that contractors keep on charging interest on unpaid bills? If an invoice remains unpaid after 45 days, it starts accruing interest. They now start charging interest on the pending invoice so that it is compounded together with the interest accrued on the initial invoice, which is a loss to the Government. That contributes to the debt in this country.

I can see that the red light is on. The Committee has recommended that pensions for retirees should be paid to the right people. There should be a certificate to certify…

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much. Hon. Esther Passaris, Member of Parliament for Nairobi County.

Hon. Esther Passaris (Nairobi County, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity to contribute to the Report by the Select Committee on Public Debt and Privatisation. This is a new Committee in this Parliament and one that was absolutely timely. Our country's debt is really growing and it has been a major concern such that even before a child is born, he or she has already incurred debt.

The Auditor-General, Nancy Gathungu, recently said that if you steal money in Kenya, invest it in Kenya. When the Auditor-General reaches a point where she makes such a statement, she makes us question how much of our public debt is genuine debt. Is the country's debt incurred by providing services such as infrastructure for Kenyans? We are Ksh8.9 trillion in debt. Debt is not bad if it is genuine, justified and manageable.

We have a crisis in this country, which is also global. We have all come back from the COVID-19 pandemic. Kenya is also dealing with drought, banditry, population growth – which we are not checking – and, at the same time, theft of public resources. I was recently travelling with Kenya Airways and there was a lot of hue and cry about delayed flights. I ended up sitting in one of the offices waiting for Kenya Airways to tell me which flight I could catch, because the one that I was supposed to catch was cancelled, removed or delayed. As I sat in that office, I asked the gentleman whether I would get an upgrade because I was delayed and messed up. He said that it would not happen. Things do not happen in Kenya Airways these days like before. They have a Chief Executive Officer (CEO) called Mr. Allan Kilavuka. For the first time, they believe that Kenya Airways will do extremely well. He mentioned how the CEO had put checks and balances and how the people who were working in Kenya Airways were unable to do the things that they used to do before. They would sell you tickets and upgrade you with sideshows and corruption. I sat there and I was so proud. I said I did not know that man, but I was so proud because he had created such structures within Kenya Airways to try and take that airline from where it is in debts and losses to profit. I am sure we will see some changes. The best part was to see the employees of Kenya Airways being so happy that the CEO is actually identifying and pulling out all the people who are responsible for theft. We want to realise where this money is being lost or going. Where are the loopholes, so that we can make sure that the revenue coming into the pot is not being drained by big holes of theft.

Then, we need people who care and love this country. We have a new Government which is now being likened to a company. When you do that, then you are saying that only the shareholders of that company are the beneficiaries. Then we are in the wrong place. Kenya belongs to all of us. It belongs to the past generations and the ones that will come in the future. If we want to live a Kenya that we are going to be proud of for the next generation, then we have to look at Kenya seriously and take its ownership. This is ensuring that we do not incur public debt that is unnecessary through corruption and to strangle the economy. The Government should not borrow from within the economy so that businesses can thrive. We raise taxes, but we make them deliver services.

I met a gentleman today at the airport, and he told me that National Social Security Fund (NSSF) had gone up. From now, it would be Ksh2,400, which is almost 10 times what I used to contribute.

The Temporary Speaker (Hon. Peter Kaluma): The point has been made Hon. Esther Passaris. Let us have Hon. Gideon Ochanda, the Member for Bondo.

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Temporary Speaker. I am really in the last wagon of debt vilification. If you look at what we call Consolidated Fund Services, the only service that is traceable to serious investment is debt. All the others are like consumable kind of services that we have. To that extent, I really want to place debt in a place where it is supposed to be. We need it.

There are other questions that can be asked but, for purposes of this, we need it. What happens in a situation where you want to talk about wealth creation? There are three clear ways of how to make wealth. One, is either you inherit, get it free from somewhere as a gift, save or borrow. All the others which remain are negative. The only three quick ways of how one can make wealth is through those three areas. For example, if Kenyans do not have anything that they inherited or given for free, the problem is that we have to borrow. The main issue is the purpose of borrowing. This is where there is a big problem. What do we borrow for? Do we borrow to consume or invest? This is exactly where the problem is. If we do not borrow for purposes of production, then definitely we are going to be in a mess through and through, because our production cost keeps increasing. We are not competitive and, therefore, we are unable to get foreign exchange meant to stabilise us properly. In the end, we have to borrow. If we borrow for consumables like salaries and other things, I do not think this will take the country anywhere. So, the National Treasury needs to take the recommendations brought by the Committee very seriously, particularly recommendations No.2, 3 and 4.

In recommendation No.2, the critical thing is if Parliament can be on the wrong side. As we get the annual budget estimates, is there anything else that the Government wants to bring in front of us in terms of loan guarantees? What are we getting as we look forward to borrowing? What are we doing in terms of managing debts properly? The recommendation of a sinking fund dedicated for purposes of public debt servicing is very critical. Such that we do not pay today and yet we borrowed yesterday, or we do not borrow beyond what we are able to pay. I think these are some of the most critical and necessary things that are recommended here.

I have talked about investing in production so that we are able to balance. The only way we can balance in terms of foreign trade and everything else is when we place our borrowing in areas that promote production. We have a very big problem in this region because at this stage, there is drought in a big part of it. The production cost in Tanzania and Uganda cannot be compared to ours. It is much more expensive to produce an egg here. So, what happens? We get chicken and eggs from Uganda because we are unable to produce. In the long run, this definitely means we have a shortage of foreign exchange. We have been putting money in things that we can have locally.

Hon. Temporary Speaker, the main question I am bringing as we close is: What are we borrowing for? If we are borrowing to consume, then we are in big problems. If we are borrowing to produce, then that direction will help this country. Debt is not bad. The main thing is what are we borrowing for? I am repeating again that, in terms of all our Consolidated Fund Services, debt is the only service that can create wealth and bring investment to this country.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Thank you, Hon. Ochanda. Hon. Fatuma Mohammed, Member for Migori County.

Hon. Fatuma Mohammed (Migori County, Independent): Thank you, Hon. Temporary Speaker for giving me an opportunity to contribute to this…

The Temporary Speaker (Hon. Peter Kaluma): Immediately after Hon. Fatuma Mohammed, the Movers should be ready to reply.

Hon. Fatuma Mohammed (Migori County, Independent): Hon. Temporary Speaker, mine is very short and precise. My comment goes to the shareholders of the country. I know I am not a shareholder, because I was told I am not one. So, I am requesting that when you are paying our debts, please exclude me because I am not a shareholder. As we continue talking about debt, I will comment as a stranger, since I am not a shareholder.

As a stranger, I request to understand the debt situation of every business, as shareholders of this country. Can they tell us when they borrowed? In accounting, there are loans in profit and loss accounts. Looking at the debt the country has, can we be told when they borrowed a single shilling from another country? What did they spend this money on? As it remains a debt to the shareholders, did they make profit out of it? As they struggle to pay – I believe maybe my children might be shareholders God willing – if they happen to be, can they understand before I give birth to them that shareholders of this country borrowed money in their absence and made a loss? Unfortunately, they have to pay it.

Hon. Temporary Speaker, in this situation as we borrow, we should think carefully if it is worth it. I think even the debtors are wondering because some debts were taken before the new shareholders came in. I am sure that this country is going to run into problems very soon when the owners of the money become aware of who owes them, and Fatuma is not one of them. I request the leaders of this country to be very careful, to be very serious and to choose their words as leaders and as people who respect other Kenyan citizens who are not shareholders. When you borrow a loan and refuse to pay, you should know that your words will be used against you. I remind you once more that I am not a shareholder, and I do not owe anyone.

Thank you, Hon. Temporary Speaker,

The Temporary Speaker (Hon. Peter Kaluma): Hon. Fatuma what is it with the *Kitenge* dressing in Parliament this week? Is it permitted for Members of Parliament like ourselves?

Hon. Fatuma Mohammed (Migori County, Independent): We are very well dressed. I am a person who dresses this way daily, not just for today or this week. *Kitenge* is associated so much with the African women leaders. If all fellow women were here, I would have told them to continue looking as smart as we are today. It is very hard to find a woman in a short kitenge. Most of our *vitenge* cover us up nicely. I am very sure most of the men at home can see how we are glowing. This week, we are wearing *kitenge* to support our local tailors. Mine was made by a woman in Kondele Market in Kisumu. I paid Ksh1,000 only for this to be done and yet, I look smarter than you, Hon. Temporary Speaker, who imported your suit for Ksh100 000 from the United Kingdom. I am also informing our men that there are *kitenge* shirts and suits. Kindly, let us remain Africans and let us support our local tailors.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much. I hope that will also help us to reduce our debts.

There being no further contributions being sought by Members from the Floor, I now call upon the Mover to reply.

Hon. Abdi Shurie (Balambala, UDA): Thank you, Hon. Temporary Speaker. I wish to immensely thank the Members for their rich contributions in supporting the Committee and the recommendations it has made. This is the beginning of a new level of transparency and recommendations. The Consolidated Fund is the cash basket of this country. I think Parliament and Kenyans need to know how this cash basket is being utilised. This is just the beginning. We will be bringing more reports on loan and the debt status of the country to the Floor.

I wish to thank all the Members. Hon. Temporary Speaker, I beg to reply.

The Temporary Speaker (Hon. Peter Kaluma): Thank you very much Hon. Chairperson. I would have put the question, but we do not have the numbers. The Motion will be put when the House sits next and the matter is scheduled for such business.

(Putting of the Question deferred)

ADJOURNMENT

The Temporary Speaker (Hon. Peter Kaluma): Order, Hon. Members! The time being 6.53 p.m., this House stands adjourned until Thursday, 23rd February 2023, at 2:30 p.m.

The House rose at 6.53 p.m.

Published by
Clerk of the National Assembly
Parliament Buildings
Nairobi