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**THIRTEENTH PARLIAMENT**

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## THE HANSARD

Tuesday, 4<sup>th</sup> July 2023

The House met at 2.30 p.m.

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

PRAYERS

PETITION

COMPENSATION OF PERSONS AFFECTED BY  
MOMBASA-MARIAKANI ROAD DUALLING PROJECT

**Hon. Deputy Speaker:** The Member for Jomvu, Hon. Bady Twalib. He is not here?  
Okay.

Next Order.

*(Hon. Bady Twalib walked into the Chamber)*

**Hon. Bady Twalib** (Jomvu, ODM): I am here, Madam.

**Hon. Deputy Speaker:** Okay.

*(Laughter)*

**Hon. Bady Twalib** (Jomvu, ODM): Hon. Deputy Speaker, I rise to present a public Petition regarding compensation of persons affected by the Mombasa-Mariakani Road Dualling Project.

I, the undersigned, on behalf of the people affected by the Mombasa West Community Project of Jomvu Constituency; that is, starting from Jomvu Narcol all the way to Bahati area draw the attention of the House to the following:

THAT, the Kenya National Highways Authority (KeNHA) undertook rehabilitation and expansion of a 41.3 km regional Mombasa Port access road running from Mombasa to Mariakani as part of a 2,000 km-long corridor directly connecting the Port of Mombasa to several neighbouring countries but whose construction has stopped in Jomvu Madafuni where the said road is in a pathetic state despite being the gateway to Mombasa;

THAT, whereas the construction part of the project was financed by the African Development Bank, German KfW, European Investment Bank and the European-Africa Infrastructure Trust Fund, the Government of Kenya was to oversee compensation of all affected persons on the project corridor;

THAT, pursuant to this arrangement, in 2014, KeNHA prepared a faulty resettlement action plan that excluded use of geographic information system on asset inventory tabulation, but later claimed that the project was on public land;

THAT, on its part, the National Land Commission conducted an unclear valuation that led to grave injustice being meted out on the persons affected by the project;

THAT, contrary to expectations and agreement, KeNHA proceeded to brutally evict residents of Jomvu Constituency from their houses without notice in May 2017, whilst the

National Land Commission omitted many residents and property-owners from the final compensation list;

THAT, efforts by the affected persons to secure the collaboration and cooperation of KeNHA and the National Land Commission have been futile; and,

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

Therefore, your humble petitioners pray that the National Assembly through the Public Petitions Committee;

1. urgently intervenes to compel the National Land Commission to compensate the affected persons fairly and in accordance with the actual value of their assets and to disclose the contents of the valuation report, which they have declined to do up to now;
2. directs KeNHA to implement the corrective action plan agreed upon with the affected persons and to additionally embrace the use of geographic information system in asset inventory; and,
3. makes any other recommendation or action it deems fit in addressing the plight of the petitioners.

And your petitioner will for ever pray.

**Hon. Deputy Speaker:** Hon. Member for Kilifi County, Hon. Mbeyu, Hon. Members who want to comment on this Petition, press the intervention button.

Hon. (Dr) Otiende Amollo.

**Hon. (Dr) Otiende Amollo** (Rarieda, ODM): Thank you, Hon. Deputy Speaker. I want to support the Petition by Hon. Bady.

Land issues are emotive and very important. If there is an allegation that there is selective compensation, it is worthy of inquiry, particularly because we know that some of the relevant agencies have adopted a rather unfortunate practice of selecting who to compensate and inflating the prices while ignoring others without any compensation at all. Under the Constitution, it is not only those who have title deeds to land that are entitled to compensation, but anyone who has had usage of the land lawfully, even if they do not have a title deed, are entitled to compensation.

Therefore, I fully support that this Petition be submitted to the relevant Committee and a proper inquiry be done including summoning the National Land Commission and Kenya National Highways Authority to clarify those issues.

**Hon. Deputy Speaker:** The Leader of the Minority Party, Hon. James Wandayi.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Thank you, Hon. Deputy Speaker.

Let me also add my voice to this Petition which is very important. I feel for the residents of the great Jomvu Constituency led by my friend, Hon. Bady Twalib. Under the law and the guidelines, before an implementing agency undertakes a project, first and foremost, they must be sure that they have adequate budgetary allocation. Even if a project is co-funded by international partners, the component for land compensation ordinarily comes from the Government of Kenya, as is the case in this matter. It is important that the implementing agency, which in this case is KeNHA, takes it upon itself to carry out and allocate enough money and transfer that money to the National Land Commission for purposes of compensating the affected persons. There can be no shortcut. You cannot commence a project before the affected persons are compensated for their land.

This is unwarranted injustice on the people of Jomvu. Steps must be taken to remedy the situation. I support the idea that this Petition be processed in an expeditious manner.

**Hon. Deputy Speaker:** Hon. Member for Kilifi North. Hon. Owen Baya.

**Hon. Owen Baya** (Kilifi North, UDA): Thank you, Hon. Deputy Speaker. I want to join my friend Hon. Bady Twalib, *De Mabior, Fula Ngenge, Kijana Mwepesi* on his Petition.

The people of Jomvu have suffered especially on compensation for land which they rightfully own as other people are compensated. The injustice must be corrected. We are also happy now that the National Land Commission has a new CEO, the very good lady, Ms Kabale Tache, I am very sure she will ensure that compensation for land is done to the rightful people and done at the right rates and that there are no exorbitant bills or there are no inflated compensations because one may want to favour people who are seen as more correct than others.

Therefore, I urge Hon. Bady Twalib, because his constituency has a lot of these issues, to consolidate all the issues and ensure they are solved once and for all so that the people of Jomvu can get justice for the many injustices they have been subjected to. The land in Jomvu belongs to the people of Jomvu and if compensation must be done, it must be done to the people of Jomvu. The people of Jomvu must get money for their land and not any other person.

I support and ask the Committee in charge of petitions to expeditiously look at this Petition and give justice, because justice delayed is justice denied.

I thank you, Hon. Deputy Speaker, and congratulate my friend and brother, Hon. Bady Twalib on this Petition.

**Hon. Deputy Speaker:** Hon. Gertrude Mbeyu, Member for Kilifi County.

**Hon. Gertrude Mwanyanje** (Kilifi County, ODM): Asante Naibu Spika. Naunga mkono kaka yangu Mhe. Bady Twalib, anayejiita *Fula Ngenge*.

Ninaungana naye kuomba Serikali na hasa Tume ya Taifa ya Ardhi wafidie watu wa Jomvu. Makadirio ya malipo yalifanywa na pesa ziko, lakini wafanyakazi wengine na wakubwa wengine ambao wameongeza mambo ambayo hayamo wamesababisha watu wa Jomvu kukosa kulipwa fidia. Ninajua kuna ujanja pale. Wanataka kuwanyaganya riba ya hizo pesa zote ambazo zilikuwa ni za kufidia wananchi wa Jomvu. Wakaazi wa Jomvu ni Wakenya sawasawa na Wakenya wengine ambao walifurushwa makao yao. Kwanza barabara ya Madafuni ni mbaya sana. Wakaazi wa Jomvu walitolewa kwa nguvu bila kulipwa fidia. Majangili ambao wanakataza haki ya watu wa Jomvu wakabiliwe na watu wa Jomvu wapate haki yao.

Ninamuunga mkono Mhe. Bady Twalib. Asante.

**Hon. Deputy Speaker:** Member for Taita Taveta, Hon. Lydia Mizighi.

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

I support the Petition. We have seen many families languishing in poverty because their land has been taken by the Government for development purposes, but they have not been compensated. Jomvu is one of the places that is affected by that. I also have cases in Taita Taveta where the Standard Gauge Railway victims have not been compensated. There are some people whose land was taken for an airstrip project, but have not been compensated.

Hon. Deputy Speaker, it is about time the agencies involved in such came out and compensated the people.

I support.

**The Deputy Speaker:** Hon. Junet Sheikh of Suna East.

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Deputy Speaker, I stand to support Hon. Bady Twalib. John is his real name. Firstly, I want to bring to the attention of the House that petitions are very important. They are not like Ordinary Questions. I want the Committee that is in charge of petitions in the House to come up with a detailed report; an inquiry into this matter. It is not like the Questions that are answered here by Cabinet Secretaries. That is why the House came up with the Public Petitions Committee, even though we know the Chair is not around as usual. He is never around, but the Members of that Committee should furnish this House...

*(Hon. Members spoke off record)*

He is never around. I think the Leader of the Majority Party will stand in for him as usual as Chairman of the Public Petitions Committee. This matter is very important to the people of Mombasa especially the residents of Jomvu Constituency where Hon. Bady comes from.

Hon. Deputy Speaker, I know the road has been blocked by certain businessmen. The companies that are working on that road have decided to work in cohorts with the Kenya National Highways Authority to block the expansion of that road for the last four years. I do not want to mention names here, but I will mention them when the Petition comes.

**Hon. Members:** Mention them!

**Hon. Junet Mohamed** (Suna East, ODM): We mention them? No, let us spare the Committee to do that work. Let those businessmen be told to vacate the road. The road is going to be used by all Kenyans. Mombasa is a small island and people in that town will suffer if there will be no proper accessibility. The issue of compensation has been a big problem in that area. There are people who have been evicted from that land and have not been compensated for the last four years. I want to support Hon. Bady that this matter must be brought to conclusion.

Hon. Deputy Speaker, give the Public Petitions Committee not more than two weeks to furnish this House with a proper report that can be useful.

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

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you, Hon. Deputy Speaker, let me support the Petition by the people of Jomvu Constituency, Mombasa. The question of land compensation as the Minority Whip says, is a very touchy subject. We have always said that land is an emotive and touchy subject in the country. As much as land is emotive and touchy, it is also true that development of infrastructure goes a long way to improve life of the people where it is being built, in this case, the road in Jomvu would open up the Mombasa Island and also improve connectivity between towns. The Member for Jomvu will tell you how difficult it is especially during rush hours to move from the island of Mombasa to get to Kilifi or Mtwapa using that road.

Hon. Deputy Speaker, we must look at bigger issues on land compensation in this country. This afternoon, I had a meeting with the CEO of the National Land Commission and among the issues we were discussing are those touching on compensation because KeNHA, which should be providing the funds has failed. I have no fear in saying that we have a very inept Director General (DG) of KeNHA, completely inept! And the Cabinet Secretary in charge of infrastructure, Hon. Kipchumba Murkomen, must either take up the work of the DG, KeNHA or act on the DG, KeNHA to make sure that he does his work in accordance to the law. We cannot keep lamenting here as Members as Parliament.

*(Hon. Opiyo Wandayi consulted loudly)*

I can see Hon. Opiyo Wandayi saying the DG is from my county. It is true, the DG comes from my county in Kiambu.

**Hon. Opiyo Wandayi** (Ugunja, ODM): On a point of order

**Hon. Deputy Speaker:** What is your point of order, Hon. Wandayi?

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): I do not stomach ineptness even in my own office. And we must not stomach ineptness...

**Hon. Opiyo Wandayi** (Ugunja, ODM): I am on a point of order.

**Hon. Deputy Speaker:** Yes.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Deputy Speaker, you know we have rules in this House that have to be applied at all times. I have no knowledge of that DG in person

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and neither do I hold brief for him, but our rules do not allow us to discuss the conduct of a person who cannot defend themselves on the Floor of this House. It would be better if it is an issue about the DG, KeNHA, that a Motion is brought to discuss his conduct or performance so that we can deal with the matter in a procedural manner.

**Hon. Junet Mohamed** (Suna East, ODM): On point of order.

**Hon. Deputy Speaker:** What is your point of order, Hon. Junet?

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Deputy Speaker, I cannot disagree with my leader here, but we are discussing the office of KeNHA and whether they are doing a shoddy job. It looks like some angels have come through the Leader of the Majority Party himself and he is condemning KeNHA today in the House. We have to clap for him. We cannot oppose him.

*(Laughter)*

We cannot oppose the Leader of the Majority Party.

**Hon. Deputy Speaker:** You may proceed, Leader of the Majority Party, with those compliments.

*(Laughter)*

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you, Hon. Deputy Speaker. You know my good friend, the Leader of the Minority Party, may have not listened to me keenly because he was being interrupted by the Member for Kathiani. I was not discussing the conduct of a person. I was discussing the office of the DG, KeNHA. The person who holds that office is inept. I have no fears saying he is inept and I said he actually hails from my county.

**An Hon. Member:** Your village.

*(A Member spoke off record)*

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Not village, but my county. Hon. Junet should know I do not just come from a village. I come from a village called *Mayaihi* that hosts Alliance High School. That is why the Senior Counsel Otiende Amollo the other day said I went to a village school. It is so derogatory to refer to Alliance High School as a village school.

Hon. Deputy Speaker, on KeNHA issue, we cannot be committing public resources to construction of roads and engineers who design the roads know that they have designed a road that is going to touch particular land that belongs to members of the public. By the time they are committing a contractor, they must have made sure that the money relating to land compensation has gone to NLC and people are compensated. We are also misusing and misappropriating public resources when contractors are penalising the same KeNHA for idle time because they cannot access the ground where they were to do a road.

Hon. Deputy Speaker, it is not just Jomvu. If you go to my constituency and those who drive to the western part of Kenya will tell you, the junction around Gitaru at the intersection of three major national highways, namely, the Southern Bypass, the Northern Bypass, and the Great Northern Corridor and the Waiyaki way-Rironi interchange has stayed for four to five years without being completed on account of land compensation. The same thing with Kisumu. Hon. Junet will tell you about the Mamboleo Junction.

*(Laughter)*

Hon. Deputy Speaker, you must protect me from Hon. Junet. He is telling me to pronounce junction as 'juncsion' and he knows I hail from Kikuyu not the other part of the

country where Hon. Otiende Amollo would say ‘junction’. The Mamboleo ‘Junction’ has stayed close to 11 years without being completed. You can be certain that the contractor there is charging for idle time and equipment and penalising KeNHA. We are paying interest. That is why I am saying the Cabinet Secretary in charge of infrastructure, Hon. Kipchumba Murkomen, besides giving directives from his office, must show this country that he is able to deliver on the mandate that the people of Kenya gave him through his appointment by His Excellency the President. He must begin with KeNHA. That is where the problem is. I know they will hide behind saying that they have not had the Exchequer resources.

If you look at the amount of money being wasted in what I call Performance Based Road Maintenance (PBR) Contracts at KeNHA, you will be amazed. Contractors of KeNHA and the Kenya Urban Roads Authority (KURA) are minting billions of shillings from taxpayers’ money for sweeping roads and planting flowers. These are facts.

Therefore, let us not hide behind issues of saying that this one is from my county, the Cabinet Secretary belongs to my coalition – they must deliver. None other than the President, His Excellency William Ruto, has said that every public officer whom he has appointed to office must deliver services to the people of Kenya.

If you are holding public office to serve private interests above public interests, count your days. Let me speak to the engineers at KeNHA, start counting your days if you do not shape up. You will either shape up or ship out.

**Hon. Deputy Speaker:** Hon. Bowen Kangogo, the Member for Marakwet East.

**Hon. Kangogo Bowen** (Marakwet East, UDA): Thank you, Hon. Deputy Speaker, for giving me this opportunity to support the Petition by Hon. Bady Twalib.

The Petition is very important. It is one of the many other issues of similar nature. The National Land Commission needs to up their game. There is a collusion between the NLC and KeNHA especially on issues of land valuation.

You can imagine a farmer with half an acre of land where KeNHA has designed a road yet they have not been compensated. This makes me want to support the Petition.

In the last Parliament, this House passed the Land Value Index Bill which has not been operationalised. The Bill was meant to address the disparities in land compensation across the country. As a House, even as we support this Petition, we need to see how we can address corruption at the NLC.

I am happy His Excellency the President took the valuation last month back to the Ministry of Lands. There are many people who for many years, have been waiting to be compensated either through road projects or even water projects. Even in water projects, the ministries rushed into signing contracts where there is no place to develop. We also need to take issue with the chief executive officers, ministries, departments and agencies (MDAs) and the parastatals which are implementing Government projects, that before they sign contracts, they should make sure that the land is available, and owners are compensated.

I want to support the Petition that the people of Jomvu who have been affected by the road must be paid.

I support.

**Hon. Deputy Speaker:** I think we are now done. I will just give one last chance to Hon. Beatrice Elachi, Member for Dagoretti North.

**Hon. Beatrice Elachi** (Dagoretti North, ODM): Thank you, Hon. Deputy Speaker.

I also rise to support the Petition. I wish to say that just like in Mombasa, there are many roads that have not been completed and especially in terms of compensation. There are many roads that were done, for example, by the Kenya Urban Roads Authority in Nairobi where many of them were never finalised and yet they have new roads that they are about to start. Even as we do all this, we need to ensure that roads are completed. We are, therefore,

pushing KURA to ensure that they work in an efficient way. When they start a road, they should complete it before they start a new one.

**Hon. Deputy Speaker:** Hon. Members, we will move to the next Order, but before we do, I would like to recognise the presence of schools in the Public Gallery. They are: Westridge School, Gatanga Constituency, Murang'a County and Mugiko Secondary School, Lari Constituency, Kiambu County.

I will give an opportunity to the Member for Thika Town Constituency, Hon. Alice Ng'ang'a, to welcome the students.

**Hon. Alice Ng'ang'a** (Thika Town, UDA): Thank you, Hon. Deputy Speaker for the opportunity that you have given to me.

I welcome Westridge School to this House of debate to see how we usually debate. I am happy they came to visit and see what kind of work their director does. Westridge School is located in Gatanga, Thika Greens and it includes pre-primary and post-primary which is baby school, classes One to Eight, junior secondary school (JSS), Form One to Form Four, and it also offers the British Curriculum.

I, therefore, want to welcome them so that they can get that confidence. Our first Form Four students are sitting for their exams this year, and I can only wish them nothing but the best in their forthcoming examinations in the next one week.

Thank you very much, Hon. Deputy Speaker for the opportunity you have accorded me.

*Ahsante sana.*

**Hon. Deputy Speaker:** Thank you. Next Order.

## PAPERS

**Hon. Owen Baya** (Kilifi North, UDA): Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

1. Report of the Auditor-General and Financial Statements on the Energy and Petroleum Regulatory Authority (EPRA) for the year ended 30<sup>th</sup> June 2022.
2. Bi-Annual Report of the Commission on Administrative Justice for the period July to December 2022.
3. Reports of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2022 and the certificates therein:
  - (a) Msambweni;
  - (b) Tiaty;
  - (c) Mwingi West;
  - (d) Wajir West;
  - (e) Narok East;
  - (f) Narok South;
  - (g) Narok North;
  - (h) Galole;
  - (i) Kangundo;
  - (j) Garsen;
  - (k) Eldas;
  - (l) Tarbaj;
  - (m) Bura;
  - (n) Subukia;
  - (o) Molo;
  - (p) Kuresoi North;

- (q) Mogotio;
- (r) Fafi;
- (s) Magarini;
- (t) Kabete;
- (u) Kibra;
- (v) Konoin;
- (w) Emurua Dikirr;
- (x) Mbooni;
- (y) Rongai; and,
- (z) Mtuga

Hon. Deputy Speaker, I beg to lay.

**Hon. Deputy Speaker:** Chairperson, Finance and National Planning Committee, Hon. Kimani Kuria.

**Hon. Kuria Kimani** (Molo, UDA): Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Finance and National Planning on its consideration of the Pensions (Amendment) Bill (National Assembly Bill No. 44 of 2022).

**Hon. Deputy Speaker:** Hon. Members, I have just received the physical Petition by the Member for Jomvu Constituency. I now order that it be marked to the Committee on Public Petitions. He has made a special request that it be dealt with within two weeks and reported back to the House.

### NOTICE OF MOTION

*(Hon. Jared Okello rose on a point of order)*

**Hon. Deputy Speaker:** What is your point of order yet nothing has been said? Okay, proceed.

**Hon. Jared Okello** (Nyando, ODM): Thank you very much, Hon. Deputy Speaker, for giving me this opportunity. There is a matter of great public interest that touches Kisumu County. I really need your indulgence and directions. On the fateful day, 18<sup>th</sup> February 2023, the Lands Registry Office in Awasi caught fire on a weekend. All the documents on land matters in that area were destroyed. On 19<sup>th</sup> May 2023...

**Hon. Deputy Speaker:** Is that a point of order?

**Hon. Jared Okello** (Nyando, ODM): Yes, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Are you reading a Statement?

**Hon. Jared Okello** (Nyando, ODM): No. I want your directions. Sorry, you were talking to my friend, Hon...

*(Loud consultations)*

**Hon. Deputy Speaker:** Hon. Members, I kindly request that you consult in low tones, so that I can hear Hon. Jared Okello.

**Hon. Jared Okello** (Nyando, ODM): Thank you, Hon. Deputy Speaker. On 19<sup>th</sup> May 2023, the Ministry of Lands, Housing and Urban Development issued a gazette notice requiring people holding parcels of land to present their documents at the Nyando offices, so that reconstruction could take shape.

**Hon. Deputy Speaker:** Hon. Member, I will give you an opportunity during Statements.

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**Hon. Jared Okello** (Nyando, ODM): Okay. Thank you.

### QUESTIONS AND STATEMENTS

**Hon. Deputy Speaker:** We will go to Questions and Statements later. Hon. Joshua Kimilu, you wanted to raise an issue.

**Hon. Joshua Kimilu** (Kaiti, WDM): Thank you, Hon. Deputy Speaker, for giving me this opportunity. I rise on a point of order under Standing Order 83, to seek your direction on delay in responses to Questions. I asked a Question on Safaricom Limited which was directed to the Ministry of Information, Communications and Digital Economy on 23<sup>rd</sup> March 2023. To date, I have not received any response and there is no indication of when the Cabinet Secretary will appear in plenary to provide this answer.

This arrangement on Questions appears not to be working, especially where urgent matters which need immediate answers are delayed. They end up being overtaken by events. Can the leadership of the House provide guidance on how this issue can be resolved? Other Members in this House are going through the same problem. Questions are taking months to be answered. It is high time the leadership of the House gave the way forward.

**Hon. Deputy Speaker:** Thank you, Hon. Member. I am presuming that those were the Questions that were presented on 23<sup>rd</sup> March before the Cabinet Secretaries began to come to Parliament. I will give the opportunity to Hon. John Waweru, Member for Dagoretti South, who is also the Chairperson of the Departmental Committee on Communication, Information and Innovation. Is that what you told me?

**Hon. John Kiarie** (Dagoretti South, UDA): Hon. Deputy Speaker, you are perfectly in order. That is the Departmental Committee on Communication, Information and Innovation. There are people who try to call it the Departmental Committee on Information, Communication and Technology (ICT). We take them to school and let them know that ICT is a very small component of communication.

Because I had shown interest to speak on other matters, I would like to know if you are calling me on the issue of my Statement or a matter that I need to contribute on.

**Hon. Deputy Speaker:** I am asking you to respond to Hon. Kimilu's Question. Do you remember it?

**Hon. John Kiarie** (Dagoretti South, UDA): Wonderful. The Question is properly before the Committee. We are expediting for a response. I would like to make a commitment on the Floor of the House for the Member for Kaiti. After we engage the Ministry, he shall get a comprehensive response from our Committee in two weeks' time.

Thank you very much, Hon. Deputy Speaker.

*(Hon. Deputy Speaker consulted the Clerk-at-the-Table)*

**Hon. Deputy Speaker:** Since there are no other Questions and Statements, I will now give the opportunity to the Member for Nyando.

### BURNING DOWN OF LANDS REGISTRY OFFICE IN AWASI

**Hon. Jared Okello** (Nyando, ODM): I thank you, Hon. Deputy Speaker. As I indicated at the beginning, there is a matter that I need your direction and great indulgence on.

On 18<sup>th</sup> February this year, fire burnt down Lands Registry Office in Awasi. It takes care of most parcels of land within Kisumu County, starting from Kogony in Kisumu West, Sango in Nyakach, Fort Ternan in Muhoroni all the way to Pala in Awasi. On 19<sup>th</sup> May 2023, the Ministry of Lands, Housing and Urban Development gave a gazette notice asking owners

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of those parcels of land to present original documents to offices in Awasi for their reconstruction. Even though there was a direction of presenting documents within 60 days, that receipt did not take place until after 31 days. Thereby, leaving only 29 days, excluding weekends, for the land owners to present the documents in that office.

Considering the many landowners whose documents were affected, the duration of time is not enough. Therefore, I seek your direction on this matter. You should ask the Ministry of Lands, Housing and Urban Development to extend this time upon which people should present the documents at the registry or give any other direction. Some of the owners of these parcels of land live outside the country and they have their documents. I am afraid they can be left out of this scheme. Land matters are emotive. Fears are that people may come up with fake documents claiming ownership of these parcels of land.

There is an ongoing investigation on the burning down of these offices. We do not know the extent of the investigations and why it has taken too long to apprehend any culprit for what took place.

**Hon. Deputy Speaker:** Member for Nyando, you have made the point. You need to write it, so that we can mark it to the relevant committee. I cannot do it now, as we do not have anything to give to them.

**Hon. Jared Okello** (Nyando, ODM): Hon. Deputy Speaker, I stand guided by you. I am only afraid that we are running against time, considering that we shall begin our recess on Thursday. The time upon which the Lands Registry gave us as the deadline will lapse during the period that we shall be undertaking our recess, unless the process will be expedited. I stand guided once again.

**Hon. Deputy Speaker:** Thank you. The next Statement is by the Member for Dagoretti South, Hon. John Kiarie.

#### INTERNATIONAL DAY OF PARLIAMENTARISM

**Hon. John Kiarie** (Dagoretti South, UDA): Thank you, Hon. Deputy Speaker. Before I read the Statement, I would like to let it be known that in the National Assembly, the Inter-Parliamentary Union (IPU) is under the leadership of the very able Deputy Speaker, Hon. Gladys Boss Shollei.

I rise to give a general statement regarding the International Day of Parliamentarism. The International Day of Parliamentarism is celebrated every year on 30<sup>th</sup> June, the date in 1889 when the IPU, also known as the parliament of parliaments was founded. The day was established in 2018 through a resolution of the United Nations General Assembly. Instituting an international day for parliaments is particularly important at this crucial time for parliamentary democracy, when people are losing trust in political institutions and democracy itself is facing challenges from populist and nationalist movements. If democracy is to thrive, then parliaments, as the cornerstone of functioning democracies, need to be strong, transparent, accountable and representative.

The International Day of Parliamentarism is a time to review the progress that parliaments have made in achieving key goals of being more representative and moving with the times, including carrying out self-assessments, working to include more women and youthful Members and adapting to new technologies. The UN General Assembly (UNGA), in its Resolution A/RES/72/278, recognised the role of parliaments in national plans and strategies and in ensuring greater transparency and accountability, both at national and global levels, in order to ably represent and protect the interest of the public. This year's theme, "Parliaments for the Planet," is an emphasis towards better climate policies. You will recall that this esteemed House passed the Climate Change Act in 2016 to, among other things, provide a

regulatory framework for enhanced response to climate and to provide a mechanism and measures to achieve low carbon climate development.

In order to ensure that pieces of legislation such as this and other House resolutions are implemented by the relevant authorities, this House amended the Standing Orders to allow Cabinet Secretaries to appear and respond to parliamentary Questions in plenary. This change aims to uphold checks and balances while respecting the principle of separation of powers. The new procedure has proven effective and efficient, enabling Cabinet Secretaries to explain Government policy and answer Questions on the Floor of the House, thus enhancing accountability of the Executive to the people through their elected representatives.

Parliament has also taken steps to ensure that its internal processes are responsive to Sustainable Development Goal 13 on Climate Action. Strategic Pillar V of the Parliamentary Service Commission Strategic Plan 2019-2030 seeks to embrace a green-compliant Parliament that responds to the global push for sustainable and environmentally friendly development in the midst of finite natural resources. The aim of this strategic pillar is to adopt and implement modern energy management systems as well as waste recycling technologies in Parliament. There is need to hasten the implementation of these proposals to ensure that Parliament is at the forefront in the fight against climate change.

On a positive note, the integration of ICT as an essential ingredient for effective and efficient service delivery through representation, legislation and oversight has been embraced by the National Assembly as captured in the Strategic Plan. Strategic Pillar IV facilitates the Parliament of Kenya in its quest to transform into a paperless Parliament by 2030. The objectives under the pillar seek to enhance automation and digitisation of all systems and processes core to the operation of both Houses of Parliament. The National Assembly has made remarkable progress towards achieving the objective of going paperless by 2030 through paperless solutions and automation of processes. Through this paperless solution, Parliament will make its contribution, albeit little, towards combating climate change by reducing its carbon footprint.

As we continue to commemorate this year's International Day of Parliamentarism, I encourage all of us to renew our commitment to continue to promote transparency, accountability and inclusivity in parliamentary democratic governance with a view to enhancing the voices of the people and realising their aspirations for a better future.

I truly thank you, Hon. Deputy Speaker. Happy Day of Parliamentarism to you.

**Hon. Deputy Speaker:** Why are Members not acknowledging the happy wishes from Hon. John Kiarie?

*(Applause)*

Next Order.

## MOTION

### APPROVAL OF PUBLIC FINANCE MANAGEMENT (NATIONAL PEACE SUPPORT OPERATIONS FUND) REGULATIONS

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023, laid on the Table of the House on Wednesday, 21<sup>st</sup> June 2023, and pursuant to the provisions of Section 24(4) of the Public Finance Management Act, 2012, approves the Public Finance Management (National Peace Support Operations Fund) Regulations, published as Legal Notice No.58 of 2023.

*(Moved by Hon. Samwel Chepkonga on 29.6.2023)*

*(Debate concluded on 29.6.2023)*

*(Question put and agreed to)*

## **BILL**

### *First Reading*

THE ECONOMIC AND SOCIAL RIGHTS BILL  
(Senate Bill No.7 of 2022)

*(The Bill was read a First Time and referred to the relevant Committee)*

## **SPECIAL MOTION**

CONSIDERATION OF NOMINEE FOR APPOINTMENT AS MEMBER  
OF SALARIES AND REMUNERATION COMMISSION

**Hon. Deputy Speaker:** The Chairperson of the Departmental Committee on Labour, Hon. Alice Ng'ang'a. Sorry, it is Hon. Karemba Muchangi.

**Hon. Muchangi Karemba** (Runyenjes, UDA): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Labour in its report on the vetting of a nominee for appointment as a member of the Salaries and Remuneration Commission, laid on the Table of the House on Tuesday, 27<sup>th</sup> June 2023, and pursuant to the provisions of Article 250(2)(b) of the Constitution, section 7(11) of the Salaries and Remuneration Commission Act, 2011 and Section 8(1) of the Public Appointments (Parliamentary Approval) Act, 2011, this House rejects the appointment of Dr Phyllis Wambui Wagacha as a member of the Salaries and Remuneration Commission.

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

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

The Committee sat a few days ago. Pursuant to the provisions of Article 230(b) of the Constitution, the Salaries and Remuneration Commission Act, 2011, and Section 6 of the Public Appointments (Parliamentary Approval) Act No.33 of 2011, His Excellency the President notified the National Assembly of the nomination of Dr Phyllis Wambui Wagacha for approval for appointment as a member of the Salaries and Remuneration Commission through a letter dated 25<sup>th</sup> May 2023.

The Speaker, pursuant to the Standing Order 42(1), through a Communication made on Tuesday, 6<sup>th</sup> June 2023, conveyed to the House a Message from His Excellency the President and subsequently referred the nominee's name, curriculum vitae (CV) and the report of the

selection panel on her recruitment to the Departmental Committee on Labour, to conduct the approval hearings and report to the House.

While referring the nominee to the Committee for approval hearing, the Speaker directed that the Committee undertakes the vetting within 28 days, pursuant to Section 8 of the Public Appointments (Parliamentary Approval) Act No.33 of 2011. The Speaker further directed that the Office of the Clerk of the National Assembly facilitates the Committee to notify the nominee and the general public of the time and the place of holding the approval hearing through advertisement in the two newspapers with nationwide circulation and the Parliamentary website.

In compliance with the Article 118(b) of the Constitution, and Section 8(4) of the Public Appointments (Parliamentary Approval) Act No.33 of 2011, the Committee published an advertisement in the print media on Thursday, 15<sup>th</sup> June 2023 informing the public of the nomination, date, time and place of the approval hearing. The Committee also invited the public to submit memoranda by way of written statements on oath on suitability of the nominee to hold office as required by Section 6(9) of the of the Public Appointments (Parliamentary Approval) Act No.33 of 2011. The memoranda were to be received on or before Thursday, 22<sup>nd</sup> June 2023 at 5.00 p.m. At the close of the deadline, the Committee had not received any memoranda for or against the nominee's suitability to hold the office.

Hon. Temporary Speaker, the Committee also sought references and conducted background checks on the suitability of the nominee to hold office from the Kenya Revenue Authority (KRA), the Ethics and Anti-Corruption Commission (EACC), the Directorate of Criminal Investigations (DCI), the Higher Education Loans Board (HELB), and the Office of the Registrar of Political Parties (ORPP). All the agencies had no opposition to the nominee being appointed to the office.

The nominee appeared before the Committee on Friday, 23<sup>rd</sup> June 2023, for the approval hearing, during which the Committee examined her suitability to the office based on the criteria set out in Section 7 of the Public Appointments (Parliamentary Approval) Act No.33 of 2011. In addition, the Committee examined her academic credentials, relevant experience, knowledge of sector issues and on leadership and integrity. The Committee paid due regard to the procedure used to arrive at the nominee, constitutional or statutory requirements relating to the office in question, and suitability of the nominee for the appointment proposed, having regard to whether the nominee's abilities, experience and qualities met the needs of the Salaries and Remuneration Commission (SRC).

The Committee, having considered the nominee's filled questionnaire, pursuant to Section 6(8) of the Public Appointments (Parliamentary Approval) Act No.33 of 2011, the nominee's CV, and having heard her oral submissions during the approval hearings, made the following observations on the nominee's suitability for appointment as member of SRC:

1. THAT, in accordance with Article 78(1 and 2) of the Constitution, the nominee is eligible for appointment to a state office since she is a Kenyan citizen born in 1948, in Kiambu County, and does not hold dual citizenship.
2. THAT, the nominee meets the requirements of Chapter 6 of the Constitution on leadership and integrity.
3. THAT, the nominee has not been charged in a court of law in the past three years.
4. THAT, the nominee does not hold office in any political party.
5. THAT, the nominee has never been dismissed from office under Article 75 of the Constitution.
6. THAT, the nominee demonstrated knowledge on topical, administrative and technical issues of SRC and the public service.
7. THAT, on the matter of suitability as envisioned in Article 12(1)(a) and Chapter 6 of the Constitution, in the matter of Kenya Young Parliamentarians Associations

(KYPA) and two others vs. the Cabinet Secretary, Ministry of Labour and Social Protection and three others in 2020, and the matter of Justice Kalpana Rawal vs. the Judicial Service Commission and three others in 2016 in the Kenya Law Report, held that when the Constitution or a law sets a requirement age, that may constitute unequal treatment or discrimination on the grounds of age. Article 24(1) as read with Article 25 of the Constitution allows limitation of rights guaranteed by Article 27 so long as the conditions set in Article 24 are satisfied.

8. THAT, Article 12(1)(a) on limitations of rights, privileges and benefits of citizens provided for and limited by the Constitution under Article 24(1) that provides that a right of fundamental freedom in the Bill of Rights shall not be limited except by law, only to the extent that such limitations are reasonable and justifiable.
9. THAT, Article 232 (2) provides that all values and principles of public service apply in all State organs in both levels of government and all State corporations.
10. THAT, under Section 70 of the Public Service Commission Regulations, 2020, subject to the Constitution, Section 80 of the Public Service Commission Act, No.10 of 2017, the retirement age for public officers is 60 years, and 65 years for persons with disability, and such age as may be determined by the Commission for lecturers and research scientists serving in public universities, research institutions, and equivalent institutions, and determined by the Commission in consultation with the universities, research institutions and equivalent institutions.
11. THAT, further, subject to Section 8(2) of the Public Service Commission Act, No.10 of 2017, in determining whether to engage an officer after attainment of retirement age, the Commission shall determine and document the rare knowledge, skills or competence that the officer possesses.  
In the regulation, 'rare knowledge', 'skills' and 'competencies' mean knowledge, skills and competencies that are scarce, unique and not readily available in the job market. It is noted that in the recruitment report of the Public Service Commission, 261 persons applied and 80 were shortlisted. This was not cited as the reason for her nomination in the recruitment report from the Public Service Commission as transmitted to the Head of Public Service on 17<sup>th</sup> May 2023.

12. THAT, whereas there is no explicit law on retirement age of State officers, the Committee notes that the nominee was nominated to be a member of the Salaries and Remuneration Commission as a representative of the Public Service Commission, and she is currently 75 years of age, and would become a State officer where Article 10, Chapter 6, and Article 232 applies. To this end, the Committee noted that the nominee was not suitable to hold the position of member of Salaries and Remuneration Commission.

Hon. Temporary Speaker, it is good to mention that SRC commissioners work on full time basis unlike other commissions who attend sessions when called upon to do so. This nominee is 75 years old. When you get to that age, you lack energy to do many things. Considering this nominee was from the Public Service Commission where the retirement age is 60 years, the Committee felt her age was quite advanced. She does not possess the necessary energy since this Commission will need her services on full time basis. When you become a Commissioner of SRC, you are supposed to serve for six good years. If she is 75 years, it means by the time she comes to the end of one term, she will be 81 years.

*(Loud consultations)*

**The Temporary Speaker** (Hon. Peter Kaluma): Order, Hon. Members! Order! I request we discuss in slightly lower tones. The Committee is recommending a rejection and

the points being made by the Chairman are critical for us to make a decision. So, those consulting should do so in low tones.

**Hon. Muchangi Karemba** (Runyenjes, UDA): Thank you, Hon. Temporary Speaker. Given that the nominee is supposed to work for the SRC for six years, this means she will be 81 years old at the end of one term. So, the Committee felt that PSC should have given us a more suitable candidate than Dr Phylis Wambui Wagacha for this position. The reason being, you are supposed to retire at the age of 60 years from public service and for people with disabilities at 65 years. So, it was not right for them to give us a person who is 75 years old.

We appeal to this House to support the Committee's report so that PSC gives us another person who is more suitable for this assignment. They did not demonstrate that she possesses any rare skills. Her qualifications are possessed by very many other Kenyans. We believe in the spirit of supporting young people. Hon. Members in this House will agree with me that most memoranda we received were from young people looking for jobs. So, we cannot afford to give senior citizens jobs whereas we have millions of young people who are energetic and looking for similar positions. If you walk into most of our banks and financial institutions, you will not find senior citizens. The reason why financial institutions recruit and employ young people is because they have energy, good memory and what it takes to deliver.

So, I urge this House to support this Report. I request the Vice-Chair, Hon. Fabian Muli, to second. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Chairperson, who is seconding your Motion?

**Hon. Muchangi Karemba** (Runyenjes, UDA): Hon. Fabian Muli.

**The Temporary Speaker** (Hon. Peter Kaluma): Give Hon. Fabian Muli the microphone.

**Hon. Fabian Muli** (Kangundo, GDDP): Thank you very much, Hon. Temporary Speaker. I rise to support the Report from our Committee. Indeed, the candidate is a Kenyan citizen as per Article 78(1) and (2) of the Constitution and we even checked Chapter Six found that she is qualified. She has very rich experience of public service in this country.

Looking at Section 80 of the PSC Act, the retirement age for civil servants is 60 years and those with disability is 65 years. This will be a conflict of interest because the nominee is coming to serve the SRC, which is in the public sector. It will be a conflict sitting in a commission when you are above retirement age. The retirement age of judges is 70 years and as per the report presented to this House, the candidate is 75 years. There is no explicit age given by the Constitution but a commissioner working for SRC is a public officer of this country.

We are crying for the younger generation to get positions. So, the Committee felt that recycling a person who is 75 years to serve in public service will be a bad idea. We are looking for energetic manpower for this position. There are a lot of challenges facing the Kenyan manpower. For example, Parliament has not been categorised and we do not know where we belong. We do not know which manpower is supposed to pay taxes. So, we are looking for an energetic candidate to handle the manpower in the country. I know the candidate has a Doctorate (PhD) in Labour and Information Communication Technology (ICT), but after long scrutiny we felt that she needs to relax or come as a consultant for the SRC and not to serve on fulltime basis. I support the Report and urge Hon. Members to support it.

Thank you very much Hon. Temporary Speaker.

*(Question proposed)*

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Lillian Liyoi.

**Hon. Lillian Siyoi** (Trans Nzoia, UDA): Thank you Hon. Temporary Speaker, I am Hon. Lillian Siyoi not Liyoi. I happen to be a Member of the Committee and I was among those vetting the nominee. I think we are doing injustice to the youth of this country because we have millions of graduates in different fields, but there are no jobs in this country. If we deny the youths an opportunity to get employment, how do we expect them to start their lives? We advise a majority of them to start businesses and employ themselves, but where will they start if we do not give them a platform to do so?

I agree with my fellow Members of the Departmental Committee on Labour that we should give the youth of this country the first priority in employment, so that they can employ themselves. In addition, we should come up with a law that states that anybody who has attained 65 years of age and above should be considered for consultancy jobs because he or she is knowledgeable and experienced. Those are the people that can help and advise the youth in various fields.

I support the Motion.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. John Gitonga, Member for Manyatta.

**Hon. Gitonga Mukunji** (Manyatta, UDA): Thank you, Hon. Temporary Speaker. I rise to support the decision by the Departmental Committee on Labour to reject the appointment of Phyllis Wambui Wagacha as a member of the SRC.

Having looked at the Report of the Committee, I commend the Chairperson for standing up for the youth of this country. If you peruse the Report, you will see that Madam Phyllis has been an officer in the public domain for quite a long time. Her net worth is close to Ksh500 million. We are doing this country a disservice when we appoint people who are over 75 years of age. It is not okay or right to give a 75-year-old a job that requires them to wake up at 5.00 a.m. in the morning and go back home at night. As a young Member of Parliament and as a Member of the Kenya Young Parliamentarians Association, I support the Committee's analysis that this nominee should relax, be an advisor, and ensure that things are running right. The youth should be left to run these institutions. That should apply to all forms of employment in this country.

Even as Members of Parliament, we should not push too far when time is not on our side and old age has called on us. We would like a situation where this country is representative of its population, which is made up of almost 70 per cent youths. His Excellency the President is at the forefront in campaigning for our youths to get jobs. The SRC, which is the organisation that determines the salaries of public officers, cannot have a 75-year-old member making decisions.

**The Temporary Speaker** (Hon. Peter Kaluma): Could we get you clearly? How old did you say the nominee is?

**Hon. Gitonga Mukunji** (Manyatta, UDA): Seventy-five years old, Hon. Temporary Speaker.

*(Laughter)*

We always talk of octogenarians, even in politics. We do not want a situation where our country has a youth population of 70 per cent, but our presidential candidates are hitting their 80s in terms of age. We respect the elderly, and we even give them money to ensure that they retire in peace. However, they should leave the running of the country to young blood and to vibrant youths, who make up a large population of the country.

I support the decision by the Committee.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Donya Dorice.

**Hon. Dorice Donya** (Kisii County, WDM): Thank you, Hon. Temporary Speaker. I support the Committee's proposal. I am a Member of the Departmental Committee on Labour and on that day when we questioned Dr. Phyllis, we realised that she was not strong enough to fit in that Commission.

When I turn 75, I will be taking care of my many grandchildren, and I will incite my children to have more babies. If they are living in Hon. Ichung'wah's constituency, I will visit them. I have a pet called Bobby. Seventy-five is the age when you take care of pets, go to church, and participate in praise and worship. We leave work and employment to those between the ages of 25 and 60.

**The Temporary Speaker** (Hon. Peter Kaluma): What is out of order, Hon. Chepkonga?

**Hon. Samwel Chepkonga** (Ainabkoi, UDA): Thank you, Hon. Temporary Speaker. The Standing Orders require that when I stand on a point of order, she must sit. In fact, what she is saying is completely correct. I rise pursuant to Standing Order 95. As you can see, everybody agrees with the Committee's recommendation.

Secondly, when rejecting somebody, do not talk too much about his or her conduct. It is only fair to speak less because we all agree. Please, preserve the nominee's dignity. Hon. Donya says that the nominee is 75 years old. The Bible states that God gives us a lifespan of 70 years, and by reason of strength, 80 years. She has lived for 75 years by reason of strength.

Hon. Temporary Speaker, will I be in order to request you to call the Mover to reply under Standing Order 95?

*(Loud consultations)*

**Hon. Dorice Donya** (Kisii County, WDM): I am on the Floor, Hon. Temporary Speaker. I can proceed.

**The Temporary Speaker** (Hon. Peter Kaluma): Leader of the Majority Party, what information would you want to give Hon. Donya Dorice?

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Hon. Temporary Speaker, I beg your indulgence. I want to inform the Member for Kisii County, Hon. Doris Donya that at 75 years of age, you may not be in a position to even actively participate in praise and worship in your church. I encourage Hon. Dorice Donya to participate in praise and worship now when she is still energetic, and she has the vocals to sing. At 75 years of age, your vocals may not serve the church very well.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Donya Dorice, you have been informed. Proceed.

**Hon. Dorice Donya** (Kisii County, WDM): I am actually in a church choir. Because I will not be working at that time, I will be taking care of my grandchildren. Even if I have no rhythm I will, at least, participate in praise and worship in church.

We have many unemployed youths. I thank our Chairperson for making sure that we set a precedent. When people apply for jobs next time, they will, first of all, check their age. We retire at 60 years of age, and people living with disabilities do so at 65 years of age. What we have stated makes sense. There is no need to go backwards. We should always move forwards. Members of the Departmental Committee on Labour, I support you. I support the Motion too.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Samuel Chepkong'a stood at his place and requested that the Mover be called to reply. I will only move under Standing Order 1 to allow only one person to contribute, and then I will put the Question.

Hon. Samuel Atandi.

**Hon. Samuel Atandi** (Alego Usonga, ODM): Thank you, Hon. Temporary Speaker. I rise to oppose this Motion for the following reasons: one, I have read this Report from the first page to the last one, and whereas the Committee attempts to reject the nomination of Dr Phyllis Wambui by virtue of age, the Committee has failed to censure the Public Service Commission, which has done the blunder of forwarding this name to the President for nomination.

Hon. Temporary Speaker, this Report outlines the process which was used to arrive at the name of this nominee. The process started with the advertisement to fill this position. About 261 Kenyans applied for this position and out of those applications, only two nominees were identified. The first nominee was Dr Phyllis Wambui Wagacha and the second one was Mr Japhter Kiplimo Rugut.

Hon. Temporary Speaker, for PSC to forward this name to Parliament knowing very well the nominee does not meet the requirements for appointment means that we must censure the PSC. We have seen the PSC making various recommendations and forwarding to this House, but we have never assessed its performance.

Hon. Temporary Speaker, this is a Commission which exists to support political actions. This Commission is not competent and professional and does not look at various factors before forwarding the names of nominees to this House.

Last time, the PSC approved the appointment of the so called Chief Administrative Secretaries (CASs). The court has rejected their appointment and this House has done nothing, including even writing to invite the PSC to come to answer. Therefore, my view is that as a country, we cannot condemn people because of age. We know that there are many people who are aged, but are still very productive.

Hon. Temporary Speaker, if you go to some countries in the West, there are people in their 90s who are still very productive. Mr. Joseph Kinyua, the former Head of Civil Service is active and is still being appointed. This House should not be used to condemn innocent Kenyans because of age.

I want to disagree with my colleagues who have submitted that this lady does not meet the qualification for this appointment because of age. If you read this Report, the Committee says that Dr Wagacha met all the criteria that was set out, including competence, ability and education. When it comes to age, we are saying that because she is 75, she cannot even sing in church.

Hon. Temporary Speaker, I want to disagree. Most Kenyans even go to school after their retirement. By the way, after I leave Parliament, I will go back to school and I will expect this country to give me an opportunity to serve after I have increased my level of education. I want to say that I do not agree with the reason that has been submitted here for rejection of Dr Wagacha. I want this House to support the appointment of Dr Wagacha to serve in this position. In any case, the Salaries and Remuneration Commission is not a running competition. The job does not need you to go there to run or play football. This is a job where you are supposed to use your intellect. This lady has gathered a lot of knowledge in her career that is spanning over many years. Therefore, it is not right to say that she is old and cannot perform and to be a commissioner of the SRC you need to be running every morning for five hours or go to the gym to lift weights. That is not the description of this position.

Therefore, I want to plead with this House that we must support this lady to be given this job. This is because I know what the politicians are trying to do. They want us to reject this nominee so that the next person to be appointed is Mr Rugut. That is the intention of this appointment. Once you reject this nominee, the next person to be appointed will be Mr Rugut because the PSC had forwarded two names to the President; Dr Wagacha and Mr Rugut. So, Hon. Chepkong'a wants...

**Hon. Samwel Chepkong'a** (Ainabkoi, UDA): On a point of order.

**The Temporary Speaker** (Hon. Peter Kaluma): Yes, Hon. Chepkong'a.

**Hon. Samuel Atandi** (Alego Usonga, ODM): Hon. Chepkong'a wants us to allow this...

**Hon. Samwel Chepkong'a** (Ainabkoi, UDA): Hon. Temporary Speaker, I stand pursuant to Standing Order 92 on the veracity of the information Hon. Atandi is purporting to offer to this House. I have never heard anywhere that a Mr Rugut is intended to substitute...

**The Temporary Speaker** (Hon. Peter Kaluma): We get you, Hon. Chepkong'a. Just sit down.

Hon. Samuel Atandi, when did you leave Parliament to work in the offices of the appointing authority to know who they intend to appoint?

**Hon. Samuel Atandi** (Alego Usonga, ODM): Hon. Temporary Speaker, the PSC forwarded two names to the President. The first name was Dr Phyllis Wambui Wagacha and the second name was Mr Japhter Kiplimo Rugut. The President picked Dr Phyllis Wambui. The alternative is Mr Kiplimo Rugut. Once we reject this nominee, the next person will be submitted.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Atandi, you must be careful with the statements you make in Parliament. Which law provides that when number one is dropped, the process is not started afresh and number two on the list takes over?

**Hon. Samwel Chepkong'a** (Ainabkoi, UDA): Hon. Temporary Speaker...

**The Temporary Speaker** (Hon. Peter Kaluma): Is there a law that you can quote?

**Hon. Samuel Atandi** (Alego Usonga, ODM): No, Hon. Temporary Speaker. You are insinuating that the process will be started afresh. I am telling you this because I know the politicians on that side. They will lobby...

**The Temporary Speaker** (Hon. Peter Kaluma): Under which law? If you are not quoting any law, I would rather you withdraw that part and conclude your submissions.

**Hon. Samuel Atandi** (Alego Usonga, ODM): Hon. Temporary Speaker, I am being a politician and you know this House is full of politicians. We know that these appointments are all political. There is nothing legal in these appointments because if there was any law to be followed, then this name would have not ended here.

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

**The Temporary Speaker** (Hon. Peter Kaluma): Leader of the Majority Party.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Hon. Temporary Speaker, I rise on a point of order because you have given very clear instructions to Hon. Samuel Atandi. He must withdraw and apologise to the House because as much as he wants to play politics, this is a House of politicians, but not a House of politics. In this House, we deal with facts and laws as they are. You have guided him well. He should tell us the law that provides that if you do not pick number one, then you go to number two. I know he has no knowledge of any law that exists. He has no knowledge of such a law and if he has, he should give us or simply withdraw what he has said and apologise to the House. He cannot use that opportunity to continue saying more unpalatable things on the same issue.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Atandi, you have made your point. Make it easy for the House by withdrawing that part that is not supported by law and procedure.

**Hon. Samuel Atandi** (Alego Usonga, ODM): Hon. Temporary Speaker, I withdraw with caution. But to also say that...

**The Temporary Speaker** (Hon. Peter Kaluma): You have withdrawn. Thank you very much. You can proceed.

**Hon. Samuel Atandi** (Alego Usonga, ODM): Hon. Temporary Speaker, in case this House rejects the nomination of Dr Phyllis, I would be sad if the name of the second fellow is sent here for appointment. At that point, the House may then agree with me.

Let me conclude by saying that I have not seen anything in this Report that should make this House reject Dr Phyllis Wambui Wagacha for this position. I have given reasons that this

position is not meant to be performed using a lot of energy. You do not need to be an athlete or a boxer to perform as a commissioner. The reasons that have been advanced by the Committee on account of age do not make sense because there are so many Kenyans, including the former head of Public Service, who I think is in his 90s, and still serving in public service.

Hon. Temporary Speaker, I submit that I reject this Report by the Committee.

**Hon. (Dr) James Nyikal** (Seme, ODM): On a point of order!

**The Temporary Speaker** (Hon. Peter Kaluma): What is out of order, Hon. Nyikal?

**Hon. (Dr) James Nyikal** (Seme, ODM): Hon. Chair, is it in order that this House continues with a discussion that is quite reasonable in political terms, but completely unconstitutional? We are talking about the rights of a person. Article 27(4) of the Constitution says that the State shall not discriminate directly or indirectly against any person on any ground including age. That is completely unconstitutional. Article 57(a) of our Constitution makes it quite clear that what we are discussing and our reasons are actually completely unconstitutional. It says this about older members of the society:

“The State shall take measures to ensure the rights of older persons to fully participate in affairs of the society.”

If you take those two Articles, the basic reasons we are against this lady are actually...

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Nyikal, you have raised a constitutional issue but you are not telling us whether those provisions in the Constitution conferring rights to elderly persons are subject to restrictions or limitations under Article 24 of the Constitution. I assure you they are subject to limitation. One limitation is found in the law setting the retirement age of everybody in spite of those provisions of the Constitution saying that you shall not discriminate a person on account of age. The law setting retirement age puts it at 60 years and 65 years for persons living with disability. I assure you that the House is not offending any law by debating and making a determination on this matter.

Hon. Members, Hon. Chepkong’ a had stood on Standing Order 95.

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

Mover.

**Hon. Muchangi Karemba** (Runyenjes, UDA): Hon. Temporary Speaker, I beg to reply.

*(Question put and agreed to)*

**The Temporary Speaker** (Hon. Peter Kaluma): Next Order.

Give the microphone to the Chairperson of the Departmental Committee on Environment, Forestry and Mining.

## MOTIONS

### RATIFICATION OF BAMAKO CONVENTION

**Hon. David Gikaria** (Nakuru Town East, UDA): Hon. Temporary Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Environment, Forestry and Mining on its consideration of the ratification of the Bamako Convention on the Ban of Importation into Africa and the Control of

Transboundary Movement and Management of Hazardous Waste within Africa, laid on the Table of the House on Thursday, 4<sup>th</sup> May 2023, and pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act, 2012, approves the Ratification of the Bamako Convention on the Ban of Importation into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa.

Hon. Temporary Speaker, this is a very important Motion. I hope you remember what has happened in this country. We have had the worst drought in 40 years because we do not take care of our environment. We do not take into consideration some of the materials or wastes that harm our environment.

The Bamako Convention on the Ban of Importation into Africa and Control of the Transboundary Movement and Management of Hazardous Waste within Africa was submitted to the National Assembly on 20<sup>th</sup> July 2022. The convention was negotiated for 12 months by 12 nations of the Organisation of African Unity (OAU). This was done in Mali on 30<sup>th</sup> January 1991 and it came into force on 22<sup>nd</sup> April 1998. Thirty-five African countries and states have signed the convention. Kenya signed it on 17<sup>th</sup> December 2003.

It is important for us to recognise that this administration takes environmental matters seriously. Imagine a convention that was brought to this country in 2003, almost 20 years ago, is now being brought to this House for us to approve. The Committee did not receive any memoranda in support or to the contrary on the convention by close of business on 8<sup>th</sup> January 2023. The Committee held consultative meetings on the convention with the Ministry of Environment, Climate Change Forestry and Mining and the Ministry of Foreign and Diaspora Affairs and lastly with the Office of the Attorney General.

Among the few observations that we made are: Article 2(5) of the Constitution of Kenya 2010 provides that the general rules of international law shall form part of the laws of Kenya while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution. The conventions are already reflected in the laws of Kenya through the Constitution and in particular Article 42 that guarantees Kenyan citizens the right to a clean and healthy environment and Article 69(1)(g) that obligates the State to eliminate processes and activities that are likely to endanger the environment.

Under the Environmental Management and Coordination Act (EMCA), 1999, Kenya has banned importation of waste into the country. You will agree with me that some countries donate electronic devices such as computers and other devices to this country not because they are of any important use but because they are looking for a dumping place. That is why you will hear an organisation telling you that it has received donations of up to 5,000 computers and laptops.

Once Kenya ratifies this, we will have a check on how to manage donations, particularly electronic donations which are harmful to our environment. Countries that want to dispose waste normally look for a country where they can donate the waste. Indeed, that is harmful to the environment.

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

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

We also observed that there are clear laws that stipulate procedures and implementation mechanisms to ensure effective hazardous waste management and this is key.

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Dumping of radioactive waste has become a very big issue. There is the Radiation Protection Board that does check any material that has radioactive effects. We want to thank the good work that they are doing. Article 27 provides for withdrawal at any time. We are not locked to this convention forever. If we want to have some of those materials identified in the convention and would not wish to bring to the country for purposes of industrialisation, manufacturing and other things, this convention provides for our withdrawal or closure at any time after three years from the date the convention has come into force.

Parties also agree on the scale of contribution to the recurrent budget. This has some budgetary issue. Kenya will contribute towards the budgetary provision for the secretariat and also consider the establishment of a revolving fund to assist on the interim basis, to ease the emergency situation and minimise damage from disasters or accidents arising from transboundary movement of hazardous waste or during disposal of the same. I remember one day we had a crisis where a ship had a leak and of course that affects our environment in a big way. If such an occurrence happens, the revolving fund will go towards addressing that emergency.

Pursuant to Section 8(4) of the Treaty Making and Ratification Act No.45 of 2012, the National Assembly may approve the ratification with or without reservation. From the engagement that we had with the concerned ministry, Ministry of Foreign Affairs and the Office of the Attorney-General, we did not come across any clause that needed an amendment. As a Committee, we approved the convention as it was endorsed after doing due diligence. Having considered the submission and analysed documents tabled before the Committee and pursuant to Section 8 of the Treaty Making and Ratification Act, the House approves the ratification of Bamako Convention on the Ban of Importation into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes Within Africa, 1991. This is a very important convention. I ask my colleagues to consider agreeing with the Committee so that we can be part and parcel of it. Since 2003, that is over 20 years.

I want to remind this House that the President of the Republic of Kenya is the Chair of the African Conference of Climate Change which will be having a huge conference in September. Being the Chair and this ratification not being approved in the last 20 years by Parliament is an issue. We will be doing this country injustice. It will be a big boost if by the time they come, we will have ratified it. I want to thank this House because today we approved two other treaties on environment. This will enable us to protect our environment. Countries have invested huge amounts of money for us to protect our environment. We try to protect our environment from emissions from industries or the manufacturing sector. The effect of such has been felt in this country in the last one year. I think when the President will be chairing that conference in September, we will have approved all the others.

Finally, the Committee is thankful to the Office of the Clerk of the National Assembly for logistical and technical support accorded to it during its sittings. I thank the ministry for their participation and submissions during consideration of the convention. I request my able Vice-Chair, Hon. Charles Kamuren, to second.

**The Temporary Speaker** (Hon. Farah Maalim): Hon. Charles Kamuren.

**Hon. Charles Kamuren** (Baringo South, UDA): Thank you, Hon. Temporary Speaker, I stand to second the ratification of Bamako Convention on the Ban of Importation into Africa and the Control of Transboundary Movement and Management of Hazardous Waste within Africa, 1991. This convention is important specifically to this country because any waste that is brought to Africa is harmful to our people, wild animals and the environment. You know the changes and challenges that we are undergoing as a result of climate change. This is another way we can control and rectify the challenges that we are experiencing as a result of climate change.

Negotiations started way back in 1999. It is the right time to be part of this by approving the convention so that we can be active, relevant, and equal to other states in Africa. When we met with the relevant ministries, including the Office of the Attorney General, it became clear that this convention will not interfere with our Constitution. It is in line with our Constitution and will enhance what we had approved as a House way back in 1999. There was need that we control plastics and any waste that might interfere with our environment and the lives of Kenyans.

**The Temporary Speaker** (Hon. Farah Maalim): I hope you understand the rules of the House that you only have five minutes. It is only the Mover who has 20 minutes while everybody else has five minutes in this particular Motion.

Proceed.

**Hon. Charles Kamuren** (Baringo South, UDA): Thank you, Hon. Temporary Speaker. I believe I am still within my timing because I am making some little contribution in support of the Mover.

Article 42 of our Constitution guarantees every Kenyan a clean and healthy environment. This convention will, therefore, enhance that. Article 69 of our Constitution also gives power to our State to eliminate anything that might be harmful to the lives of Kenyans. If this House will approve, it will give a new image to this country and we shall be equal to other countries which have approved this.

I second this Motion. Thank you.

*(Question proposed)*

**The Temporary Speaker** (Hon. Farah Maalim): Let us have the Member of Parliament for Funyula followed by the Member for Dagoretti.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Speaker, as I stand to support, I do so with reservations. My reservations are based on the text of the Report and nothing else.

This is a document that was originated, negotiated and signed in 1991. The year 1991 up to now is close to 30 years. I do not understand or believe that the context, text, terminologies, remedies they offered, and the manner they opted and intended to cure, are still relevant and valid for now. Everybody will be wondering how it has taken Kenya all those years. It has taken the Government all those years to bring the same to the National Assembly to basically approve.

The most damaging aspect of this convention is that it has no provision for reservations completely yet the respective Act of Parliament, the Treaty Making and Ratification Act, No.45 of 2012 says that the National Assembly may approve the ratification of a treaty with or without reservation. In essence, what the Committee is telling Kenyans and this House is that this House is merely a rubber stamp. We cannot raise any reservations. We can either reject or accept, yet the Act requires...

*(Hon. David Ochieng' consulted loudly)*

Hon. Temporary Speaker, I am seeking protection from the Temporary Speaker who is canvassing in high tones.

**The Temporary Speaker** (Hon. Farah Maalim): Order, Hon. Ochieng'.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Thank you, Hon. Temporary Speaker. This Ugenya boy...

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

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Speaker, in essence, there is a contravention of the law because if you can only have one way and no other, what is the purpose of this document coming to this House where we cannot raise any reservations at all? I need further guidance. Probably, when the Mover will be called upon to reply, we need to guide this House and the country well. Was this document forced on us? If so, Article 27 has provisions to withdraw. This is what it says: “At any time after three years from the date on which this convention has entered into force for a party, the party may withdraw from the convention by giving written notification to the depositary. Withdrawal shall take effect one year after receipt.”

So, essentially, what it says is that if we ratify the treaty today, the earliest we can withdraw is after a whopping four years. There was no reservation at all and hence, there is nothing that we can amend. What if there are very many offending clauses here? What do we do as a country? Do we live with this problem forever for a full four years?

The Chairperson of the Committee needs to be very candid and tell Kenyans what we are signing for. In his moving notes he has said that if there is anything that Kenya wants to do that probably offends these provisions or treaty, Kenya can withdraw. What happens in the four years awaiting withdrawal?

Under the Committee’s observations, point six, they have also made assertion that they are not very strong. That the present international, regional and national laws applying to Kenya have proven to be inadequate and the country is, therefore, in dire need of a law is not true, but an exaggeration. That is why in as much as I support, I do so with strong reservations which I hope would be noted, and if there is anything that can be done, it will be great.

Thank you.

**The Temporary Speaker** (Hon. Farah Maalim): Hon. John Kiarie.

**Hon. John Kiarie** (Dagoretti South, UDA): I want to thank you, Hon. Temporary Speaker. The opportunity to speak to this Motion is much appreciated.

I would not stand and contribute to this without thanking the very able Chairman, Hon. David Gikaria from Nakuru Town and the Seconder, the Member for Baringo South for putting such a strong case for this ratification to be adopted by this House.

You would understand the passion with which I stand to support this ratification because I understand that by adopting it, according to our laws and the Constitution, it becomes a law of Kenya. I, chairing the Departmental Committee on Communication, Information and Innovation, have a pressing matter. The issue at hand is e-waste. I am talking about the waste that accrues from computers, phones, and technological gadgets that are being shipped into this country. Please, consider the rate at which they are being shipped in. After our gadgets are used and utilised, they find their way to the waste bins in our homes. They then end up in our garbage pile outside our houses. They are then collected and pooled in the small garbage site somewhere around the estate.

Hon. Temporary Speaker, in the entire journey to Dandora Dumping Site and beyond, the waste leaves a footprint of damage to individuals, animals, and environment. This is growing at an increasing rate. I am keen to support the ratification of this treaty that was agreed on in Bamako for one reason, that we shall be clearing our electronic waste.

Secondly, Kenya has an opportunity to race to the front of this race on climate change. As a country, we might not be doing well with our forest cover. However, the new efforts of not only planting a tree, but also growing trees will catapult us to being one of the greenest countries in the continent, if the plan works. If the President’s plan of planting 15 billion trees in the next four years works out, we shall easily be one of the greenest countries in Africa. As we await the September conference on climate change under whose banner high delegations shall meet in Kenya under the chairmanship of our President, we have an extra reason to support the ratification of this convention. I do not want to forget to mention that the waste that

the Chairman has talked about goes beyond e-waste. There is a lot of hazardous waste that finds its way to Kenya because our borders are ajar or open. We lack instruments to regulate what comes in.

The President of this country had a very personal conversation with farmers at the beginning of this planting season. He stipulated that there is a brand of fertiliser that has been making its way to this country through cartels who have been making money out of it for years on end. It was banned in many countries around the world. It may look good on your crop. However, we might never be able to explain the cases of cancer that are happening at a very increasing rate. This fertiliser is harmful. The farmers agreed with the President. They did not bring in that fertiliser rather the one that the President recommended. I am sure that in your drive around the country, you see the bumper harvest that awaits in this harvesting season. This is because a decision was made that people shall not dump fertiliser in our country and we shall use the correct one. You shall see how good a bumper harvest we shall get this year. I am sure the Vice-Chairman agrees with me because his constituency is one of those that is growing maize using the fertiliser that was recommended by the President.

In the spirit of sticking to our Constitution, we should manage e-waste, check what comes into our country and keep our country green and clean. I support this Motion.

**The Temporary Speaker** (Hon. Farah Maalim): For the benefit of Hon. Members, Hon. Chairman explain whether this treaty has come into force or not. The presumption by the Member for Funyula is that it will take three years, although the text says that you can pull out at any time. If it has already come into force, then it will take four years from now. For the benefit of Hon. Members, can you clarify that issue?

**Hon. David Gikaria** (Nakuru Town East, UDA): Hon. Temporary Speaker, when I was moving this Motion, I said that the treaty came here in 2003. It will come into force in the country after this House approves it.

**The Temporary Speaker** (Hon. Farah Maalim): Has it come into force globally?

**Hon. David Gikaria** (Nakuru Town East, UDA): Yes.

**The Temporary Speaker** (Hon. Farah Maalim): When a treaty is negotiated, it waits for a certain number of member states to ratify it before it comes into force globally. If that has already been done, do we still need an additional three years, if the nation wants to pull out?

**Hon. David Gikaria** (Nakuru Town East, UDA): The three years the Member talked about is when we want to withdraw from this convention.

**The Temporary Speaker** (Hon. Farah Maalim): Is it three years from ratification or coming into force?

**Hon. David Gikaria** (Nakuru Town East, UDA): I think it is coming into force, Hon. Temporary Speaker. There is an office for that.

*(Several Members spoke off record)*

**The Temporary Speaker** (Hon. Farah Maalim): Member for Funyula. It is important for Kenyans and other Members to understand exactly what we are debating.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Speaker, the Constitution clearly says that a treaty or any international law only comes into force upon ratification by the National Assembly in our country.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): It means that this treaty will apply the moment this House approves or adopts the Report. That is when the three years plus one take effect. For example, if we adopt the Report today, it means that the first day of the three years starts today. That is the application of the law.

**The Temporary Speaker** (Hon. Farah Maalim): Is it provided in our Constitution or the treaty?

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): It is in the Constitution. It says...

**The Temporary Speaker** (Hon. Farah Maalim): It comes into force when we ratify the treaty.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Yes.

**The Temporary Speaker** (Hon. Farah Maalim): The time it comes into force globally is different from the time it is implemented in the country.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Speaker, the Constitution 2010 is explicitly clear. When the Chairman was moving the Motion he said that the obligation to implement the treaty falls to the country adopting it. Further, it says that after adoption of the treaty, it takes three years.

**The Temporary Speaker** (Hon. Farah Maalim): Okay. Fair enough. Member for Kwanza.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Hon. Temporary Speaker, I have listened to the Member for Funyula and Hon. Chairman. We are talking about the harmful waste in this country. You do not have to be taken around for you to do anything. You and I see a lot of harmful waste where we stay. I thank Hon. Chairman for coming up with this convention. I want it to be implemented immediately.

Firstly, we have suffered because of the side effects of the waste that comes into this country. We do not have the mechanism and knowledge to recycle and make it useful. Once this waste comes to this country, it is just dumped at the Dandora Dump Site. Our boys and girls go there to remove things from that wastage which is very harmful. I know of a neighbour who has a cousin there. His hands are frozen for handling the waste with bare hands. I can prove that. We need to move with speed to implement this convention so that we can do what is supposed to be done.

We have been experiencing droughts recently. I come from Trans-Nzoia County and there was drought there too. It is just common sense that we should move fast to sign this convention. I am happy because it has come at this time. I ask this House to approve it without any reservation. Some of the waste that comes from developed countries is useless. You can only use it for a short period of time and then it goes to waste. You dump it, buy another one, and then the cycle continues. You find yourself having useless gadgets. This convention has come at the right time. This House should look at the environment and approve it, so that we can move forward. His Excellency the President is the Chairman of...

Hon. Temporary Speaker, I support this Motion without reservations and ask my colleagues not to bring in issues that are not helping our country. If someone comes from upcountry, we will take him to the dumpsite to see that we have a problem.

Therefore, I support the Motion.

**The Temporary Speaker** (Hon. Farah Maalim): Hon. (Dr) Nyikal.

**Hon. (Dr) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Speaker, for giving me the opportunity to contribute to this Motion. This is an extremely important debate. I stand to support the Motion while acknowledging our delay in considering it, which has made us not to take advantage of the recent developments. I support the Bamako Convention because it is in line with all our constitutional and legal provisions. It adheres to Article 2 of the Constitution, which says that any treaty we sign becomes part of our law. It also adheres to Article 69 of the Constitution which says that we must keep our environment safe. It is also in line with the Treaty Making and Ratification Act.

The big issue is that this convention arises from another convention – the Basel Convention – in which developed countries agreed on how to move hazardous waste. However, the Basel Convention was weak. It made it possible for developed countries to export hazardous waste to African countries which do not have proper regulations. The Basel Convention provided that there has to be bilateral agreements between countries for the movement of

hazardous waste, but it excluded some hazardous waste like radioactive materials. You do not immediately understand what they are talking about if they include that. I support the Bamako initiative because its language is much stronger. It prohibits things like radioactive waste. It was noted that the Basel Convention exposed Africa and other countries to hazardous waste. In countries without proper regulation, and where there is corruption, it is not unconceivable for people to accept importation or movement of hazardous waste at a cost. There were cases, like in Nigeria and Ivory Coast, where hazardous wastes were found. For Members who are asking when the Bamako Convention first came into force, it was sometime in 1998. A number of African countries have signed it. The Bamako Convention is basically an African agreement between African countries, which is desirable because we are the most vulnerable.

Where does all the e-waste - the computers, laptops and handsets we use - go? They have to be taken somewhere. Where do plastic waste and other non-biodegradable materials go? Developed countries export the waste to Africa. When batteries, including ordinary ones based on acid are no longer useful, you throw them away. In the process, they contaminate the environment with their acidic material. Lithium batteries are actually radioactive. These are things we use virtually every day. Some medical wastes are very hazardous and not easily moved. Where do they go? Some of them, such as x-ray and scanning machines, are radioactive. Where do those things go? Those are the wastes we are being protected from. Some of the things we use contain mercury, which is long lasting. When it goes into the environment, it contaminates it. It is even transmitted to unborn children.

Therefore, this is a useful convention that we should sign so that we are together with the other African countries that have signed it. We need to review it, incorporate advancements that have come and amend what we need to. I agree with Hon. Oundo that we are late in considering this convention, but we should sign it. People put these...

**The Temporary Speaker** (Hon. Farah Maalim): You can have one more minute.

**Hon. (Dr) James Nyikal** (Seme, ODM): Hon. Temporary Speaker, the developed countries put hazardous materials in concrete and ship them to our countries. They either dig the ground and put them there or throw them into the sea. People are worried. Developed countries are using nuclear energy. Where do they put the nuclear waste? They do not know where to put them. So, they target us. Therefore, a convention like this one is the only protective mechanism that is in place now. We should support it and integrate our activities into it.

With those remarks, Hon. Temporary Speaker, I support the ratification of this convention.

**The Temporary Speaker** (Hon. Farah Maalim): Hon. Alice Ng'ang'a, followed by Hon. Memusi.

**Hon. Alice Ng'ang'a** (Thika Town, UDA): Thank you, Hon. Temporary Speaker. I rise to also support the ratification of the Bamako Convention. I do not know what people in the western countries think of us. They like sending to us waste materials in form of second-hand goods. They sell to us second-hand phones, computers, scanners and so many other things. They know very well that by the time the items leave their country, they are waste. They do not know where to dispose that waste. The best they know is to dump the waste in Africa. There is a dumping site called Kang'oki in my constituency. They do not dump there during the day but at night. In the morning, you find a lot of waste material. You do not know who dumped it there, where it came from and what it is for. People start getting sick from unknown diseases. Those who dump the wastes have their cartels in the country that guide them on where and when to dump. This convention is timely and on point. We need to ratify it immediately in order to protect our own country.

Electronic gadgets are very acidic and poisonous to both the soil and human beings. The dumpsites are also used for other bad purposes. When someone is killed somewhere, their body is dumped at such dumpsites. The killers know that it will take time before people go to

such places because of the very bad smell that the dumpsite emits. You cannot touch the waste. Some wastes are in the form of flowing liquid whose nature you cannot tell. Only the western countries know what those liquids are.

We need to pass this convention like yesterday. We thank the Chairman and members of the Committee for finding it right and timely to bring the Motion so as to protect our country and people, especially farmers. Once you plant, you wonder why crops do not do very well, only to discover that the soils have already been damaged and poisoned. Nothing can grow on that soil. You may think the wastes affect only the dumping area but because of climate change and the weather, people from a different region can smell the waste. There has been an outbreak of flu that does not go away. We wonder where the flu is coming from. Our children are suffering. There was even a Member who was sneezing.

*(A Member spoke off the record)*

It was not here, Hon. Member, but out there. I support the ratification of this convention and send a warning to the western nations. A time has come for Africa to rise in a big way. We are equal to the task, even financially.

*(Applause)*

We can have our own dollar, climate change ratifications and laws to guide us. We do not need to get everything from the West. We have come of age. We can do things our own way. We do not need the West to teach us how to do our own things. We know that they do not like us. They only think of Africa as a dumping site for their wastes. When they want to dump their wastes, Africa becomes very important. They will say: "Let us take these gadgets to Africa. We are helping them with laptops and phones." However, in their hearts, they know that the materials will harm us. They are only looking for a place to dump their waste. We are saying: "No!"

Thank you, Chairman of the Committee, for bringing this timely Motion.

**The Temporary Speaker** (Hon. Farah Maalim): Hon. Memusi, Member for Kajiado Central.

**Hon. Memusi Kanchory** (Kajiado Central, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity.

Let me start by thanking the Chairman of the Departmental Committee on Environment, Forestry and Mining, together with his Committee, for bringing this convention to the House for ratification.

At the outset, I support. Now, more than ever, we need to be very careful on how we deal with our environment. We have seen that if we do not take care of our environment, the effects are devastating and unbearable. Just the other day, we went through a period of ravaging drought where communities, especially the pastoralist community, lost their source of livelihood. It will take us a very long time to spring back. Right now, that community is unable to take their children to school because of not caring about our environment.

As some Members have said, we have also seen an increase in diseases, for example, cancer. This is straining our families. Families are selling their land and dispose of their property to be able to treat their loved ones. All this is as a result of degradation of our environment.

This convention is important. I challenge the Chairman, together with his Committee Members, to also look at local legislation. As Members were contributing to this debate, it came to my mind that we have not been conscious of where our e-waste goes to. In the last Jubilee regime, the Government talked about providing computers to Class One pupils and

unscrupulous businesspeople took advantage of that policy to bring in substandard computers. Private schools bought computers which were conking out after six months of use. Where did all those computers go to? How and where were they disposed? We might all be on our tenth or fifteenth phone. Where have all those phones been going to?

I want to challenge the Chairman of the Departmental Committee on Environment, Forestry and Mining, together with his team, to look at local legislation on how we dispose of our e-waste. It is time we started taking care of our environment because without taking care of it, even in terms of food security, we are not secure. We are polluting our soil. Consequently, the same acreage of land from which you used to harvest 20 bags of maize, you are now harvesting five bags. Land is now producing less and being subdivided. All these things will come to bite us. We will continue becoming poor. It is time we became very conscious of our environment.

With those few words, I support.

**The Temporary Speaker** (Hon. Farah Maalim): Hon. Members, I wish to recognise, in the Speaker's Gallery, the presence of Kenyans who live in the United States of America, who have come on a visit to their own motherland and want to see how this august institution is working.

*(Applause)*

Could you just stand up so that Members can see you? They are Fauzia Kirwa, Alex Kirwa, William Kungu, John Koros and Jennifer Kogo.

They are also largely relatives of our own Member of Parliament for Mosop, Hon. Abraham Kirwa. You probably want to say one or two words. Do you want to say something briefly and then you contribute on the Motion because I can see your name is here?

**Hon. Abraham Kirwa** (Mosop, UDA): Yes. Thank you again, Hon. Temporary Speaker, for giving me this opportunity to recognise my relatives who are seated in the Gallery, and who are visiting from the United States of America to see how Parliament actually operates.

Thank you also for giving me the opportunity to contribute to this Motion on ratification of the Bamako Convention on the ban of the importation into Africa and the control of trans-boundary movement and management of hazardous waste within Africa. This Motion is very timely. Africa has been considered a place where all wastes can be dumped, be it in the ocean or inland. We are going through a big problem in terms of climate change.

As a Member mentioned a few minutes ago, we have truly suffered as a nation in the last few months because of the issue of climate change. One of the issues that have contributed to the problem that we have, is dumping of waste. Most of the trans-national companies have chosen Africa as a place where they can dump anything and everything, just because we do not have systems that check the hazardous waste that is brought in. We have mentioned computers, old phones and many other things that end up in Africa and nobody checks on them.

It is high time we talked about the rate of cancer that has truly gone up in the last few years. We should ask ourselves why we have a very sharp increase in the cases of cancer. It is because of dumping of waste that nobody talks about and controls. Therefore, the ratification of the Bamako Convention by African countries will help us. As of now, we have 29 or 30 countries that have ratified the convention and are saying no to dumping of hazardous waste in their countries.

I support the Committee for bringing this particular Motion to allow us to ratify and accept this convention so that Kenya can be a safe place for our future generations. Even our oceans and beaches will be very safe. Sometime back, the beaches in Mombasa and elsewhere used to be very beautiful but, if you go there now, you will sadly see that most of those places have been polluted. Some beautiful beaches have been turned into dumpsites.

With those remarks, I support the Motion.

**The Temporary Speaker** (Hon. Farah Maalim): Member for Kibwezi West. Is Hon. Mutuse here? Let us have the Member for Marakwet West.

**Hon. Timothy Kipchumba** (Marakwet West, Independent): Hon. Temporary Speaker, I rise to support this Motion on the ban of the importation of hazardous waste to Africa, and in particular Kenya, because we are ratifying it here. This Motion has come at a very important time when Kenya is becoming a global champion in matters to do with environmental conservation.

This country has an extremely progressive constitution. Article 2 (6) of the Constitution of Kenya, 2010 provides that any treaty or convention that has been ratified becomes part of the laws of this county. The effect of ratifying this convention is that Kenya, as a signatory, becomes part of the global community on matters to do with environmental conservation. We have no reason for not ratifying this convention. We also need to know that Africans are facing a lot of challenges in terms of exposure to chemicals because of global trade. This challenge must be curbed through ratification of such treaties.

As the Member for Funyula has pointed out, it is unfortunate that, as a House, this is the first time we are interacting with this international instrument. If you look at the procedure for ratification, you will see that it deals with negotiations on international instruments, the signing of a treaty and the ratification. Therefore, ratification comes in at the tail-end of the process. When treaties are being negotiated, the relevant committee of this House should be on the negotiating table. The draft treaty for this instrument should have been brought to this House before its final ratification is sought so that the Members of this House can be appraised on the matter. We are here on behalf of so many people. We represent many people in this country.

**Hon. John Kiarie** (Dagoretti South, UDA): On a point of information, Hon. Temporary Speaker.

**The Temporary Speaker** (Hon. Farah Maalim): Hon. Timothy Kipchumba, do you want to be informed by Hon. K.J.?

**Hon. Timothy Kipchumba** (Marakwet West, Independent): Yes, Hon. Temporary Speaker. I know he is a learned man.

**The Temporary Speaker** (Hon. Farah Maalim): Proceed, Hon. K.J.

**Hon. John Kiarie** (Dagoretti South, UDA): Hon. Temporary Speaker, I do not intend to interrupt the flow of the Member's thoughts on this debate. He was flowing very well. He has rightly said that there is a cohort of Members of Parliament who are interacting with the international instruments for the first time, which is very correct. In fact, this is a matter that I raised in the last Parliament. How can we ensure that Parliament participates during the negotiations on a treaty instead of coming in at the tail-end when ratification is happening?

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

*[The Temporary Speaker (Hon. (Dr) Rachael Nyamai) took the Chair]*

The truth of the matter is that the procedure is correct. This convention found itself on the Floor of this House in a proper manner. I am only adding my voice to what the Member is saying – that, there exists a legislative gap. Legislative gaps are only cured in this House. Maybe, this is a legislative opportunity for the Hon. Member to take up so that we review how we ratify international treaties in terms of ensuring that Parliament participates in the conversation on such a treaty document before it is brought here for formal ratification.

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Madam Temporary Speaker, I want to note that when Kenya was ratifying an agreement between herself and the United Kingdom in the last Parliament, I flagged out the same issue that the Member has flagged out. He is right to take it up as a legislative proposal.

Thank you.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Member for Marakwet, I hope you are duly informed.

**Hon. Timothy Kipchumba** (Marakwet West, Independent): Yes, Hon. Temporary Speaker. I am duly informed. I will take up that matter so that we can initiate an amendment to the Act to that effect.

What I was saying is that it is important that the Members of this House are on the negotiating table during the negotiation stage of treaties so that when a convention is brought here for ratification, Members have full knowledge of it before they ratify it. Nonetheless, I want to be on record for supporting the ratification of the Bamako Convention on the Ban of Importation into Africa and the Control of Trans-boundary Movement and Management of Hazardous Waste Within Africa.

Thank you.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Waqo.

**Hon. Naomi Waqo** (Marsabit County, UDA): Thank you very much, Hon. Temporary Speaker, for allowing me to add my voice to this important debate. This Motion has come at the right time. It has come at a time when, as a country, we are encountering a lot of challenges as a result of uncontrolled dumping of hazardous waste. Many times, when you visit different counties in our country, you hear of sicknesses that people do not know how they started, especially cancer which is taking many lives of Kenyans. Of late, in rural areas like where I come from, many people die of cancer and other diseases they cannot get medication for. All this happens as a result of dumping of hazardous waste within Africa.

God has given us this opportunity. It is high time that Members stood up and said enough is enough. The Bamako Convention was first negotiated by 12 nations of OAU in Bamako. It came into force in 1998. Even though it was effected, many times waste management is not being taken care of, especially in small towns in Kenya. Our local waste management is not done in a good way. We have polluted our environment and destroyed the resources that God has given us. If we want to overcome this problem, we need to take care of our environment by stopping the current pollution and seeing how best to take care of our lands so that our environment can also take care of us. I like the idea of us planting a billion trees so that we can overcome some of those challenges. However, unless we put our efforts together and develop the passion to do so, we may not realise that dream.

As a country, we have enough of the required policies, rules and regulations in place. However, there is no implementation. It is unfortunate that when it comes to implementation of policies, we do not give it any attention. Other nations come to our country, learn from us and go and implement our policies. They end up improving their environment because they are committed to what they want to do. Our country has suffered because we have not given any attention to taking care of our environment.

We have invested a lot in our country to take care of our dumpsites. It is unfortunate that to-date, many people are suffering because of the diseases that are in the environment as a result of dumpsites that are not taken care of. If we want to revive our economy, social life and health sector, we must invest in our environment.

With those few remarks, I support the Motion.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much, Member for Marsabit County. Hon. Julius Melly, Member for Tinderet Constituency.

**Hon. Julius Melly** (Tinderet UDA): Thank you, Hon. Temporary Speaker. I rise to support the Motion that has been tabled by the Chair of the Departmental Committee on Environment, Forestry and Mining. The ratification of the Bamako Convention is supported by the Constitution. Our Constitution provides that treaties and conventions that have been ratified form part of the Kenyan law. The environment is all that supports life. A bad environment contributes to loss of human life, plants and animals. Hazardous waste is a problem that we face today. It will be quite expensive for us, as a country, if we do not control the disposal of hazardous waste. Countries across the world, especially the advanced nations, manufacture items that will have a lot of negative effects on our life, if they are not well disposed. A few minutes ago, I heard Members talking about items like phones and computers, and the disposal of chemical cans, polythene bags and many others items. If those items are not disposed of well, they will cause a number of diseases which will affect us. As medics rightly put it, many of the diseases we have in the society today are as a result of poor disposal of hazardous waste and this has also affected our economy. In this country, we have many families that use their resources to treat the sick and treat their land which, at times, does not produce enough food. That is why we should look for ways to prevent this menace.

The Environmental Management and Co-ordination Act, 1999 speaks very clearly on how the Government should protect the environment and control the trans-boundary transportation of waste. The lorry drivers who ferry goods to neighbouring nations might bring in containers without knowing they contain hazardous waste. So, this instrument, when put in force, will stop the movement of such dangerous materials.

Every year, thousands of schools, institutions and Government agencies dispose of computers. The manner in which those devices are disposed of is not very clear and they end up injuring our environment in one way or another. Some of them are disposed of in water bodies thinking that they will dissolve. In the end, we suffer as a nation. The Bamako Convention will end the trans-boundary movement and contain the nations that are propagating it. This will enable our environment to be safe for men, animals and plants.

With those remarks, I support.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you. Next is Hon. Jackson Kosgei, Nominated Member.

**Hon. (Dr) Jackson Kosgei** (Nominated, UDA): Thank you, Hon. Temporary Speaker for giving me an opportunity to contribute to this debate. At the outset, I support this Motion on management of hazardous wastes. The convention is being ratified by this country through this House. As we all know, products that are no longer useful to any society, or industrial waste products, are dangerous and capable of harming human beings and the environment. Therefore, they require attention in the manufacturing chain.

The responsible ministries and authorities must ensure that they take care of the disposal of imported products that are used by the citizens of this country when those products are no longer needed. In Africa, and in our country, as we manufacture, we must pay attention and ensure safe disposal of industrial waste products. As we ratify such instruments together with other African countries, we must be proactive in protecting our people and environment. We should take responsibility and ensure that our environment is safe. Companies that are importing products should be held responsible for safe disposal of hazardous waste. Those importing automobiles, electronics and telephones, before being issued with licences, should be monitored to find out if they have disposal arrangements in place.

With those remarks, I support this Motion.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much, Bishop. Next is Hon. James Nyikal, Member for Seme. Are you on the radar? Hon. Wilberforce Oundo, Member for Funyula. If you had spoken on this Motion, you will not speak to it again. Hon. Paul Biego, Member for Chesumei, did you speak?

**Hon. Members:** Yes.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Hon. Joseph Makilap, Member for Baringo North.

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

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Hon. Eckomas Mutuse, Member for Kibwezi West. Hon. Members, we may need to look at the system. Hon. Gichimu Githinji, Member for Gichugu. Serjeant-at-Arms, kindly trace him with a microphone.

**Hon. Gichimu Githinji** (Gichugu, UDA): Thank you, Hon. Temporary Speaker. I rise to support the ratification of the Bamako Convention because it touches on very important issues in this country, which have to do with the environment. I have noted from the Report that this convention was signed by the Government of Kenya on 17<sup>th</sup> December 2003. I commend the Committee for looking into this matter because it was lying somewhere for all those years. Issues of environment are very critical in this country. I also commend the President for spearheading matters environment in Africa. It is through him that this matter found its way to this House for approval and ratification.

One of the issues we have been grappling with is donations, as has been very well put by the Chairman. We have been getting many donations but, in essence, those countries are disposing of their waste. That needs to be taken very seriously. We should follow up on this matter through the Committee to make sure that all materials that are donated to this country through the education sector, the Ministry of Health or whichever institution, are taken to the Kenya Bureau of Standards (KEBS) for them to verify that they meet our standards as a country. We should be very keen in that area. We should not accept donations under the guise of assisting our people and yet, those people are just dumping hazardous waste into our country.

I also think that our efforts to preserve the environment, through the current Government that is led by the President, should be respected by other countries. When a decision to plant enough trees to conserve our environment has been made, it should be respected by making sure that this convention is followed to the letter.

A lot has been said about this convention. I do not want to belabour the points that have already been made. I thought I must rise and support the Motion on this convention because it has come at a very critical time - when the Government is taking matters of the environment very seriously for the benefit of Kenyans.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Jackson Lekumontare.

**Hon. Jackson Lekumontare** (Samburu East, KANU): Thank you, Hon. Temporary Speaker. My name is Lekumontare. I rise to support this important Motion, which is on a matter that is beneficial to our country.

Many hazardous materials sometimes find their way into our country. Ratifying this convention will help us to deal with them. In fact, hazardous materials were dumped in some places in this country a long time ago, and are now affecting livestock and human beings. Our environment is very important, and this is one way of taking care of it.

As a country, we have learned that we need to work and improve on what we have. Many harmful materials have been imported into our country. If we do not take care, they may affect us. Industries release harmful wastes into the environment. If we are to take care of our environment, it is important that we adopt this convention. If we take care of our environment, we will have good land for people to occupy and use.

Kenyans have, of late, been talking about genetically modified organisms (GMOs). It, therefore, means that we need to protect our environment and our citizens. We have to remove anything that threatens our environment.

This is a very important and timely convention. We need to ratify it for the sake of our country.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Hon. Charles Kamuren.

*(Hon. Charles Kamuren spoke off-record)*

Your name also appears on the screen. Hon. Catherine Omanyu, do you intend to speak on this Motion?

**Hon. Catherine Omanyu** (Busia County, ODM): Yes.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Okay, proceed.

**Hon. Catherine Omanyu** (Busia County, ODM): Thank you, Hon. Temporary Speaker. I support the Motion because most countries abroad treat Africa as a dumpsite. They have convinced us into thinking that they care. However, when they realise that some of the objects that they come up with are hazardous and they can cause problems, they do not want to dump them on their soil. Instead, they bring them to Africa. It is high time we took charge of our environment and made sure that any items that are being imported into our countries are not hazardous or radioactive.

I back the Motion. We should not be taken as a dumping ground.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Mwafrika.

**Hon. Kamande Mwafrika** (Roysambu, UDA): Thank you, Hon. Temporary Speaker. I rise to support the Bamako Convention, which seeks to stop the importation of hazardous and radioactive waste into Africa. We also need to take the initiative, as African countries, to implement this convention by controlling and minimising the trans-boundary crossing of developed countries, which come to Africa to dump their waste. I believe that developed countries know that dumping their waste in Africa results in diseases, and we end up going to their countries to seek treatment.

It would be very good if we could come up with ways to implement this convention and enforce consequences on countries which will not observe its conditions. I call upon African countries to rise to the occasion and make sure that it is implemented to the letter.

With those remarks, I support.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Bedzimba. I am trying to trace Hon. Bedzimba on my left.

**Hon. Rashid Bedzimba** (Kisauni, ODM): I am here.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Please, move to the microphone that is working.

**Hon. Rashid Bedzimba** (Kisauni, ODM): Ahsante sana, Mhe. Spika wa Muda kwa kunipa fursa hii ili niweze kupenyeza sauti yangu.

Nimesimama kuunga mkono Ripoti hii. Taifa bora ni lile linalolinda mazingira yake. Mazingira ndio chanzo cha matatizo mengi. Mataifa mengi yanarudi nyuma wakati mazingira yanakuwa mabaya. Mazingira yanapokuwa mabaya, maradhi yanagubika taifa hilo. Na badala ya kwenda mbele, linarudi nyuma. Siyo vyema watu katika mataifa mengine ambayo ni ya kitajiri kutupa takataka zao sehemu zetu. Au hata mabaki ambayo wanaona hayawafai na kusema sasa yanakuja kama msaada na kumbe yana madhara.

Bahari yetu imechafuliwa sana na mataifa yanayojiita ya kitajiri. Licha ya kuwa tuna umaskini, hao ndio wametusalabishia umaskini huo kwa njia kama hii ya kutuletea uchafu ambao ni sumu. Tabia hiyo yao inaturudisha nyuma na wao wanatambia kuwa wanakuja kutupa misaada. Maradhi ya saratani hayakuwa hapa Afrika hapo zamani. Sasa yamezidi mpaka mtoto mdogo anazaliwa na hayo maradhi kwa sababu ya ule uchafu wanaotubwagia. Kule kwao, wanajifanya wanasafisha bahari zao, lakini kwetu ndio wanatumia kama *dumping* grounds na kusema ni msaada.

Taifa linaloheshimika ni lile ambalo linahakikisha kwamba watu wake wanaishi salama. Kuishi salama ni kutokubali kabisa kumwagiwa vitu usivyovijua. Wanatuletea vifaa, kama wanavyosema, vinakuja kama msaada lakini baada ya wiki mbili vinaharibika na tayari vilishatoa miale fulani kwa wale watoto kama ni vya shule. Ni vyema twende na hali yetu wenyewe. Tusijaribu kuomba misaada ambayo itakuja kutudhuru. Hata sisi katika taifa letu, ikiwa ni takataka ambazo ziko katika sehemu ya mji mwingine, zisihamishwe kupelekwa mji mwingine. Zikae pale pale na kama zina madhara, basi zikabiliwe pale na zisiambukize sehemu nyingine.

Nimesimama kuunga mkono Ripoti hili. Tusikubali hilo licha ya umaskini wetu. Mungu ndiye atakuwa ametupa sisi na ana njia ya kutuhifadhi. Tusikubali kuletewa uchafu kutoka mataifa ya ulaya ama ya kitajiri.

Kwa hayo machache, nashukuru na kuipongeza Kamati iliyounda Ripoti hii.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Ahsante sana, Mhe. Bedzimba. Hon. Ngogoyo, Member for Kajiado North.

**Hon. Onesmus Ngogoyo** (Kajiado North, UDA): Thank you, Hon. Temporary Speaker, for giving me this chance. I also rise as a member of this Committee to support the Motion and thank the Chairman and the entire membership of the Committee.

We went through this convention and its ratification is progress for this country; people who believe in the environment. Going forward, we will be putting a buffer against anyone or any country that would want to deposit hazardous materials to this country. As an environmental impact assessment analyst who is qualified by the National Environment Management Authority (NEMA), and one who practises, this is one of the most progressive laws to adopt. Ratification means we are saying we are part of the global world that is saying “no” to such materials.

Some years ago, hospitals were built using asbestos. Most environmentalists said: “No.” But there was no law that hindered hospitals from being built using asbestos. One of the prime jobs we are nowadays doing is removing asbestos from all institutions, and mostly hospitals that were built at that time. We will not mention some of the dangers they have caused because some of them have ended up making people lose their lives. We are now creating a law that will protect our people from other countries or other people. They will be hindered by this law to even export certain items to this country.

I thank the Committee for taking its time to go through this instrument. We had very many days of arguments until we reached an agreement on the way forward. I want to tell the Executive, through the Cabinet Secretary Soipan Tuya, that they now have the tool to work with. They have an opportunity to make sure that this country is well protected. Going forward, it will be important for us to ratify other conventions that are before us so that we can bar people who import hazardous materials or even depositing into this country such materials from other countries.

With those very many remarks, I support the Motion and urge Members to adopt this convention by ratifying it so that we can become part of the people who are saying “no” to dumping of hazardous materials in this country.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Gonzi Rai will be the last one on this debate.

**Hon. Gonzi Rai** (Kinango, PAA): Ahsante sana, Mhe. Spika wa Muda kwa kunipa nafasi ili nami nipate kuungana na wenzangu kuunga mkono Ripoti ambayo iko mbele ya Bunge hili.

Ni kitu cha kuhuzunisha sana kwamba wenzetu, kimaendeleo mara nyingi wanachukua nafasi hii kutuumiza kwa sababu ya umaskini wetu. Kutokana na Ripoti hii na vile mambo yalivyochambuliwa na kupangwa, kuna umuhimu kwamba pia Bunge libuni sheria mwafaka ndiyo kutakapogunduliwa kwamba watu fulani humu nchini wametumiwa kutupa vifaa

ambavyo vinaweza kuleta madhara kwa jamii, hatua ya kisheria ichukuliwe dhidi yao ndiyo iwe funzo kwa mataifa mengine.

Mara kwa mara, tumekuwa tukiona mambo ambayo wakati mwingine hayapendezi kwa sababu licha ya kwamba pengine tunatumiwa takataka, kuna wakati ulifika tukaja tukaambiwa sukari inayoletwa humu nchini ina madhara. Lakini, kwa sababu ya tamaa ya kutaka kujitajirisha mapema, watu fulani humu nchini wakaamua kwamba maisha ya binadamu si muhimu, bali utajiri ambao wanautafuta. Mambo haya yamekuwa yakiendelea na vitengo vinavyohusika viko lakini hatua haichukuliwi. Unakuta mambo yale yanapotea kwa upepo. Hatuna roho mbadala kwamba pengine baada ya kupata shida kama zile, tunaweza tukaenda tukaomba roho nyingine ili tuwapatie watu wetu. Tunapopewa maradhi, tunahangaika na kutafuta kitu kitakachoweza kutuokoa.

Kamati hii imefanya kazi ya kutosha na letu ni kuwapa pongezi kwamba kazi walioifanya ionekane na mwangaza huko mbele. Likiwa ni funzo kwamba Bunge hili linapitisha Hoja hii, basi inatakikana kwamba baada ya hii, sheria mwafaka ikafuate ili tupate kuhakikisha kwamba tunafunga milango yote inayoweza kutumiwa na wale ambao wanaona Kenya kama mahali pa kufanya lolote lile kimajaribio. Sisi si raia ambao pengine hatuna umuhimu kwa Mwenyezi Mungu. Huu umaskini ambao tuko nao sio kwamba tulitaka tuwe hivi. Watu wasichukulie umaskini huu kuwa unyonge na kuwa wanaweza kutufanyia mambo vile wanavyotaka. Naipongeza Kamati, na nalipongeza Bunge hili kwa sababu ya kuiunga mkono Hoja hii ili kuhakikisha kwamba tunatafuta usalama kwa wananchi wetu.

Miaka miwili au mitatu iliyopita, tulikuwa na maradhi ya Corona. Maradhi hayo, tukiyaulizia zaidi, tunapata yalitokana na baadhi ya watu fulani kueneze ugonjwa huo kwa sababu walikuwa wanafanyia madawa yao majaribio. Mataifa yamewahi kufanya majaribio ya silaha zao hatari katika Bahari Hindi. Kule kuna samaki tunaowatumia. Mwisho tunapatikana na matatizo ya maradhi. Mambo haya yote yanatumiza sisi wananchi. Kwa hivyo, naomba sheria ipitishwe ya kuhakikisha kwamba tumefunga njia zote za wahalifu wanaotumia nafasi kama hii kutuletea vitu ambavyo vinaweza kutuletea madhara.

Nakushukuru Mhe. Spika wa Muda kwa sababu ya kunipa nafasi. Ninakotoka ni mahali ambapo najua mambo haya yapo. Kwa sababu ya ukosefu wa elimu, watu wengi hujiingiza mashakani.

Kwa hivyo, naiunga mkono na nasema Mungu atubariki kwa hayo. Ahsante.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Ahsante sana Mheshimiwa wa Kinango.

Hon. Members, I see one more interest by Hon. Waithaka, Member for Kiambu.

**Hon. John Waithaka** (Kiambu, UDA): Hon. Temporary Speaker, I rise to support the ratification of the Bamako Convention. I would like to thank the Departmental Committee on Environment, Forestry and Mining led by the very able Chairperson, Hon. Gikaria.

I rise to support the Motion because we have heard of cases of many ships that dock at the Port of Mombasa. The latest one that I know of was on 21<sup>st</sup> December 2021 – *MV Piraeus Voy*, a Danish ship that had come from India on its way to Tanzania. The western countries take advantage of our weak laws. They come to dump hazardous waste in Africa because they have very strong institutions that check on hazardous waste in their countries. They know we do not have enough resources to support our investigative agencies and thus, they take advantage and dump hazardous waste in Kenya and Africa in general. Therefore, this Motion is very timely.

When hazardous or nuclear waste is dumped in our countries, for example, in Mombasa, contamination of sea food occurs. People who eat the sea food get diseases that cannot be explained. Diseases like cancer are very expensive to treat. So, we lose many lives.

In my Kiambu Constituency, we have fertilizer that has been banned in the western countries. However, that fertilizer makes its way to the country and to Kiambu County. In my

constituency, we have a very high rate of cancer. If you look at the map of Kenya, you will find that agricultural areas like Kiambu have many cases of cancer. This is caused by dumping of cheap materials and contaminated fertilisers, which are banned in the western countries.

I urge that we fund our investigative agencies and put laws in place so that we can have checks and balances to make sure that goods or materials that are banned in the western world are not allowed into our country. If we allow them, we will continue to have a very big problem of deteriorating health amongst Kenyans, which then becomes expensive for us.

With those remarks, I support the Motion and commend the Committee for bringing it to the House.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much, Member for Kiambu.

Hon. Members, I had said that the Member for Kiambu would be the last one to speak on this Motion. However, I have a request by Hon. Kawanjiku, Member for Kiambaa. He will be the very last one to speak on the Motion before I call upon the Mover to reply.

**Hon. Njuguna Kawanjiku** (Kiambaa, UDA): Thank you, Hon. Temporary Speaker for extending your hand and time to me so that I can contribute to this great Motion. I rise to support the Departmental Committee on Environment, Forestry and Mining, led by the able Chairman, Hon. Gikaria.

This Motion is very important because it is all about taking care of our environment and also being responsible as a country. Sometimes, we take it for granted that we have a beautiful country and a beautiful Continent. We have very good marine systems and we border an ocean. Many western countries take advantage of our innocence and ignorance and sometimes the help that they provide us. I, therefore, commend the five countries that came up with the Bamako Convention. I also commend the Ministry of Foreign and Diaspora Affairs.

As a country, we have witnessed western countries and the Asian tigers come to experiment and make our ocean a dumping site. Some of the effects of the dumping may not be realised now but in days to come, it will be a great problem for our country. Even the taxpayers will continue to incur a lot of losses because of the hazards and sicknesses that are brought about by the waste. The Ministry of Environment and Forestry needs to take a step further once we ratify this convention and put in place systems to make sure that western countries do not make our oceans, our countryside and our Continent a dumping site. Some of the effects of the dumping are the diseases that people neighbouring the oceans contract such as cancer. We have a very high rate of cancer in our country, but we do not know how to tame it. Cancer affects every household in our Republic. The Government spends a lot of money to buy medicines to treat people who are suffering from cancer. The genesis of this disease is because we ignored some of the signs and some advice by scientists. Many western countries have not adopted the Genetically Modified Organisms (GMO), but they want us to adopt them. Had we prevented the dumping, probably, today we would not be dealing with the diseases that are ravaging our people.

I, therefore, support this Motion. Even if we ratify this convention, we must put to task the ministries involved to make sure that they monitor whatever is happening within our oceans. People at the Coast earn their living from the fishing industry. They go there to fish. When they fish, they can feed their families. When they feed their families, they can educate their children. We must, therefore, protect our marine life. We must monitor whatever the western and Asian countries are doing within the ocean. We must protect the wealth that God has given us as a country, by hook or by crook, and make sure that we protect our environment because it is what we have. We do not know what will happen tomorrow, but we must take care of it.

I, therefore, rise to support.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much, Member for Kiambaa. Hon. Members, there being no other interest in this Motion, I call upon the Mover to reply.

**Hon. David Gikaria** (Nakuru Town East, UDA): Thank you, Hon. Temporary Speaker. I want to thank the many Members who have given their input. Most importantly, I want to thank the Whip of the Majority Party, *Madam Naomi Waqo*. How I wish this would have attracted interest like the Finance Bill, 2023.

This Ratification of the Bamako Convention on the Ban of Importation into Africa and the Control of Trans-boundary Movement and Management of Hazardous Waste Within Africa is one of the most important things. However, Members look like they do not have an interest in it. I want to thank Hon. Naomi Waqo for her presence right from when we started up to now.

I have heard what they have said. Hon. KJ spoke passionately about e-waste, which is exactly what we are discussing. E-waste is something that we need to address through this ratification. Being the Chairman of the Committee in charge of ICT, he knows how to go about it and how it affects this country and the environment.

I want to thank Hon. Nyikal. As a medical practitioner, he understands medical waste and what happens, particularly on radioactive issues that affect this country. They concern the health of the people, animals, environment and everything else.

A few Members have spoken about the banned fertilizer that is always finding its way into our country. But with this ratification, some of those issues will be ironed out.

My brother, Hon. Bedzimba, has talked about how marine life is affected by some of the things that are brought by those people when they come to our country. As a Committee, we will caution NEMA. There is no way ships could be coming to be cleaned in Kenya, and while they go back clean, all the waste is left with us. Where would we take the waste? Some people are given some of the waste which is then taken to Kilifi, and I do not know where for disposal. Those are some of the issues that we are talking about and need to stop. The owners of the ships should keep their waste in their ships. The fact that Kenyans are paid a few shillings to clean the ships does not warrant them to pollute our environment. We must put a stop to this habit.

Hon. Alice Ng'ang'a of Thika said that we always discuss African ratification, but we always use ratifications from developed European countries. We now have our ratification from Bamako, Mali, that we need to support. What hurts the most is that this country is going through so much because of our polluted environment. Carbon credit is a huge thing. Kenya is rated at the top as the first earner of carbon credit because of those developed countries that pollute our environment. When they pay because of our trees, the same *Wazungus* take the money back to their countries and yet, they have never planted trees in this country, for heaven's sake. Those are some of the issues that we need to look into.

The issue of rise in diseases has been said. A Member of Parliament from Marakwet West talked about Parliament coming at the tail-end and he was supported by Hon. K.J. As a Parliament, we must be at the forefront when these things are being discussed.

Hon. Oundo had indicated that we have become rubber stamps. We say that we can amend the convention, and at the same time, there is a clause that locks us. I agree with you, Hon. Oundo, that we need to get involved from the beginning.

Lastly is on implementation. We came before this Parliament and asked for money to budget for the department that deals with environmental issues under the Ministry of Environment and Forestry. The lean staff in NEMA cannot implement what we propose. Therefore, it is important for this country and the Executive to think about this issue. We tried and got a few shillings to support staff in NEMA so that they can implement what we propose.

I thank all Members who have contributed. I beg to reply and request you, Hon. Temporary Speaker, under Standing Order 53(3), to defer the putting of the Question. I do not want to read the Standing Order because you know what it means.

Thank you. I beg to reply.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much, Hon. Gikaria. Hon. Members, the putting of the Question is deferred to another Sitting as it will be scheduled by the House Business Committee.

*(Putting of the Question deferred)*

Next Order.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Mover.

ADOPTION OF REPORT ON RATIFICATION OF THE MINAMATA  
CONVENTION ON MERCURY

**Hon. David Gikaria** (Nakuru Town East, UDA): Hon. Temporary Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Environment, Forestry and Mining on its consideration of the Ratification of the Minamata Convention on Mercury, laid on the Table of the House on Wednesday, 21<sup>st</sup> June 2023 and, pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act, 2012, approves the Ratification of the Minamata Convention on Mercury.

Hon. Temporary Speaker, mercury is a hazardous waste, and as I indicated earlier, I do not want to belabour so much on it. The Minamata Convention on Mercury entered into force on 16<sup>th</sup> August 2017 as provided for in Article 31 of the Constitution and the 90<sup>th</sup> day after the date of deposit of the 50<sup>th</sup> instrument of ratification, acceptance, approval and accession. It has 128 signatories and 140 state parties. It has 39 African states; namely, Uganda, the United Republic of Tanzania, Zambia and Zimbabwe, among others which have already ratified.

This convention aims to protect human health and the environment from anthropogenic emissions. It requires, by 2020, all parties to cease manufacturing, importing and exporting mercury-containing products, but of course, this has been overtaken by events. As I indicated earlier, unfortunately, this convention was brought here many years ago, but has only found its way to Parliament. In the first Motion, Hon. Oundo was right when he questioned the effectiveness of a convention that has already been overtaken by time.

Hon. Temporary Speaker, the convention has met the requirements of the law and, once approved by Parliament, will become part and parcel of the laws of Kenya. Having considered the submission and analysed documents that have been tabled, and pursuant to Section 8(4) of the Treaty Making and Ratification Act, the Committee recommends that the House approves the ratification of the Minamata Convention on Mercury. I take this opportunity to thank and commend my Committee Members for their devotion and commitment to duty. Also, the Speaker and the Clerk of the National Assembly for providing us with adequate staff.

Hon. Temporary Speaker, I beg to move and ask Hon. Kamuren, the Vice-Chair, to second.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Hon. Kamuren, you may proceed.

**Hon. Charles Kamuren** (Baringo South, UDA): Thank you, Hon. Temporary Speaker. I rise to second the Minamata Convention on Mercury, a well-known mineral that is very dangerous and harmful to human beings and living things. This convention will open doors for

us to control mercury. When ratified by Kenya, it will allow us also to learn new techniques for handling mercury from other countries that have already ratified it. It will also allow our people to learn and acquire knowledge on mercury and benefit from monies that have been set aside to assist in its elimination. Our country will have a good image like other countries and a clean and healthy environment.

Hon. Temporary Speaker, I second.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much, Hon. Kamuren. Hon. Members, let me propose the Question.

*(Question proposed)*

Hon. Members, I assume those who have inserted their cards intend to speak on this Motion. The first opportunity goes to the Member for Dagoretti South, Hon. John Waweru.

**Hon. John Kiarie** (Dagoretti South, UDA): Thank you, Hon. Temporary Speaker. I am honoured to have an opportunity to debate the ratification of this convention regarding the handling of mercury in Kenya. As we all know, the good Lord created this world and gave provisions for man and life on this planet, which were well balanced at creation. However, man has one very curious characteristic, which is very dangerous, and that is greed. The life we have been living for the last 500 years is what scientists call the ‘materialistic age.’ We have adopted insatiable greed, especially with the formation of a capitalist society. This greed has increased to an unsustainable level. The Great Gandhi said: “This world has everything, enough for everyone, but does not have enough for one greedy individual.”

The mishandling of what God created stems from greed and hence the need to balance the world through laws, regulations, statutes and conventions. I am one excited individual, and that is why I have sat here for long hours to debate the ratification of these critical and very important conventions, which have been sitting on desks and shelves somewhere. I commend the Committee for an amazing job of reaching out to the shelves where these reports have been gathering dust, pulling them out and bringing them to the Floor of the House for debate and ratification.

Hon. Temporary Speaker, I want to thank the Committee because we can see their commitment in this debate, and Members have sat for long hours to ratify. I would also like to thank the Chairperson, Vice-Chairperson and all the 15 Members. On matters of mercury, I want to add words from my previous contribution to the earlier ratification. It is important to note that mercury is a special metal that is utilized in many fields in our lives. We find it in our homes, thermometers, hospitals, installations in public institutions and kitchens. So, the handling of mercury must be cascaded down to those who handle that curious metal, even in places with insufficient training. It is an extremely good servant when serving man, but when it becomes a master, it is a killer.

Hon. Temporary Speaker, I stand to support the ratification of this convention. I want to borrow all my contribution notes from the previous debate, add them to this one over and above, and add that Kenya stands a position in taking leadership in climate change. The benefits are there for everyone to see; a clean environment, better health and living standards. Most importantly, we should remember that there is money made from this climate change journey. Kenya has every opportunity to take leadership in cashing in benefits accrued from carbon credits.

For this reason, with all my strength, I support this convention that has been brought here for our ratification. I pray that after ratification, we shall see a follow-up from this Committee regarding regulations that will be stemming up from the agencies and organizations that have been tasked with policing this area.

Hon. Temporary Speaker, I support the ratification of this convention. Thank you very much.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Very well-spoken, Member for Dagoretti South. Hon. James Nyikal, Member for Seme.

**Hon. (Dr) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity to contribute. I rise to support the ratification of this convention, which is extremely important. It is a global treaty. I am actually happy because so many African countries have signed in.

These silent things that do not attract many of us to the House are very important. People from other continents know that. This lack of interest from us is beautiful to them. They do what they want. We should sign this international convention that was negotiated in Geneva in 2013. It came into force in 2017. As the Mover has said, many African countries have signed it. The main thing is the impact of mercury. Why do we need a convention on mercury? It seeks to ban further mining of mercury, phase down its use and control its emissions into the air, land and water.

How does this happen? We have daily use of mercury in gold mining, which is important in this country. The artisans or the small-time gold miners use mercury, to a large extent, in the process. It is used in fuels, particularly coal. We do not use much coal in this country. However, there are some parts which have coal, and it can be used. Some of the pesticides we use contain mercury. Thermometers and sphygmomanometers have mercury. There are many in hospitals, and when they break, what happens to them? Where does the mercury go? That is important. Perhaps, they are still used in dental filling in some of our clinics. So, there is a lot of mercury in the environment.

Why are we concerned? We get exposed to them. If we use pesticides, we are exposed to mercury through breathing. We are also exposed to it through the consumption of food like fish. If it is used in industry and the waste is drained into water, it goes into fish and food which we eat. We also get exposed to it through physical contact. What does it do? The main culprit is a form of mercury that gets into the body quickly; Methylmercury. If it gets into the body, there is significant damage to the brain. You get serious neurological defects, abnormal movements, mental disorders, paralysis and people even die, particularly at an acute stage. The worst effect is the chronic place where you get it gradually, and it accumulates in the brain. People get mental disorders, abnormal movements, paralysis, numbness, and eventually, they cannot use or feel their limbs. Because of that, they get almost to amputation. They have many problems. It is worse when it is used by pregnant women because it affects the unborn children. The children are then born with mental damage, small heads, paralysis and pink disease. This is where the word Minamata originates. Between 1950 and 1968, the condition was a big problem at Minamata Bay in Japan. Women were giving birth to malformed children. The people were unaware that it was being caused by mercury. The Minamata women were getting the Minamata disease from the fish they ate. The situation attracted international attention, and the convention's development started. It is something that we should support.

The convention provides that we will need technical and financial support through a global environment facility that we will have to co-fund. As a country, we should take advantage of this.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Please give him one more minute.

**Hon. (Dr) James Nyikal** (Seme, ODM): Thank you. Today I am fortunate.

*(Laughter)*

If there is a co-funding programme where you put in US\$1 and get US\$4, why do you not put in US\$1 and get the US\$4 and get the technical assistance? It is in line with our laws. Should we use coal, we may have to look at the Pharmacy and Poisons Act, the Mining Act, and the Petroleum Act. The discussions this afternoon are extremely important. We should support the ratification of the convention, but put in place structures to monitor what is happening.

Thank you, Hon. Temporary Speaker.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much, Hon. Nyikal. Hon. Naomi Waqo, Member for Marsabit.

**Hon. Naomi Waqo** (Marsabit County, UDA): Thank you, Hon. Temporary Speaker, once again, for allowing me to add my voice to this very important Motion. I am glad for this opportunity because this matter is very important to us and our environment. As I said earlier, our society is doomed unless we take care of our environment. Mercury is important, but our environment will be polluted if we do not properly handle it.

In 1956, two sisters aged two and five from Minamata Bay in Japan were diagnosed with the crippling, untreatable and stigmatizing effects of mercury poisoning. That served as an eye-opener. Since that time, many people have been negatively affected. Mercury is known as a substance that produces significant adverse neurological effects. It has a lot of other health effects, primarily on infants and unborn babies. Anything concerning infants and unborn children affects our future generations. We need to take care of future generations by ratifying this convention. Anything that affects expectant mothers and unborn children needs our serious attention as a country.

I also support the ratification of the convention because its objective is to protect human health and the environment. Today, many people suffer because we have not been caring for our environment. There has been an outbreak of many diseases. Since COVID-19, a clean environment is what many people have been advocating for. We thank God that it is now in the past, but you never know what other diseases can result from this. If we take care of our environment, put good control measures in place, and ensure that we have all the laws we need, we will be assured of a healthy society. We need this ratification, especially considering the health concerns in developing countries like Kenya and many others.

With those few remarks, I support the ratification. Thank you.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much, Hon. Naomi Waqo. Hon. Wilberforce Oundo, Professor. Member for Funyula Constituency.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Thank you, Hon. Temporary Speaker. Let me also echo the sentiments of the Chairman of the Committee that this could be one of the most important Motions that we are debating and yet, you can see how few we are on the Floor of the House because the powers that be have not told us to come and become voting machines.

Nevertheless, in a matter of the convention, mercury, as clearly stated, is a multilateral treaty aimed at protecting human health and the environment against mercury's harmful effects. From the limited knowledge I have...

**Hon. (Dr) John K. Mutunga** (Tigania West, UDA): On a point of order, Hon. Temporary Speaker.

**The Temporary Speaker** (Hon. (Dr.) Rachael Nyamai): Hon. Mutunga, what is out of order?

**Hon. (Dr) John K. Mutunga** (Tigania West, UDA): Is the Hon. Professor in order to suggest that there are powers to be that transform human beings, especially Members of Parliament, into voting machines? And would he substantiate that? Name the powers-that-be and how we became machines.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Hon. Oundo, you need to respond to that matter.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): Hon. Temporary Speaker, the Standing Orders are expressly clear that you cannot impute wrong motive on a Member of Parliament. I did not mention any Member. So, there is nothing out of order. Allow me to proceed and complete my point.

**The Temporary Speaker** (Hon. (Dr.) Rachael Nyamai): You will proceed, but make sure you stick to the subject matter.

**Hon. (Dr) Ojiambo Oundo** (Funyula, ODM): For sure, I will. I am very well guided.

Hon. Temporary Speaker, the harmful effects of mercury are known. I remember that in the 12th Parliament, there was an animated debate about sugar laced with mercury. The debate became very interesting. Of course, it turned out incorrect as the House threw out the Report. The general danger of mercury cannot be over-emphasized. As we stand here to support this convention, and as my colleagues have echoed, it is time to revisit how we negotiate and adopt these treaties. This is because the country and the National Assembly come at the tail-end when there is very little we can do to look at it.

If you look at the Report, it has raised that the extensive use of artisanal gold mining has special significance in Kakamega, Tekera, Pokot, Transmara and Migori. On the face of it, adopting this convention will render those participating in artisanal gold mining jobless. We hope and pray that there are alternatives that we can use instead of mercury in respect of those jobs that will be lost. I hope the Executive will use the benefits like Global Environmental Facility, a financial instrument and the convention. We hope that when that facility is eventually availed, it will be used to address historical exposure to mercury and to find alternative ways for those miners to proceed with their work without necessarily losing their jobs.

Hon. Temporary Speaker, one of the core requirements of this convention is to reduce or eliminate the use of mercury in whichever production process. I approve entirely or support the adoption. However, we need to re-look at the provisions of the Act to ensure adequate participation from the people of Kenya before we approve or ratify such a far-reaching piece of legislation that will affect the people of Kenya. Thank you.

**The Temporary Speaker** (Hon (Dr). Rachael Nyamai): Thank you. Let us have Hon. John Mutunga, Member for Tigania West.

**Hon. (Dr). John K. Mutunga** (Tigania West, UDA): Thank you, Hon. Temporary Speaker, for giving me the opportunity to add my voice to this very important Motion. Adopting the Minamata Convention on Mercury is key to our country because we are members of the global community. So, we belong and live together. This is the most recent convention that was adopted in 2013 and signed off in 2017.

It is about the protection of the environment and human health. After the Minamata Bay Syndrome, the global community realized the need for us to adopt or talk together to contain issues related to mercury. After this convention, there is a clear realization that mercury is one of the top 10 poisonous chemicals that can be contained. The purpose is the reduction of effects on the environment and human life.

What are the key provisions which our people need to know about this convention? The convention brought the world community to think and work together to control the supply of mercury across the globe and to trade in mercury as a commodity. To control and contain the use of mercury as it were, to control and contain the emissions because any accidental emissions and delivery of mercury emissions would have some of those effects. This particular convention also captures the release of mercury as a chemical.

The second most important thing that the convention covers is to create awareness of the necessary precautions that need to be taken by people in the event they have to add mercury or have anything to do with mercury.

The third one is to build institutional capacity for people to contain mercury as a substance. Mercury has the potential to penetrate our skin through breakages of the skin. It can cause many problems.

Hon. (Dr) Nyikal has mentioned some of them, but from a lay point of view, it will cause skin irritation, stomachache, chest pains, coughing, insomnia, indecision, and people will have headaches. People will have the inability to decide what is right or wrong. It will cause exhaustion and weight loss. So, it has a complicated effect that may be mistaken for other disease-causative agents.

We need to join the global community in containing and controlling the various applications or handlings of mercury.

Hon. Temporary Speaker, I support the adoption; thank you.

**The Temporary Speaker** (Hon (Dr). Rachael Nyamai): Thank you very much. The final interest in this is the Member for Chesumei, Hon. Paul Biego.

**Hon. Paul Biego** (Chesumei, UDA): Hon. Temporary Speaker, I rise to support the resolutions of the Committee strongly. It is my prayer that the convention is ratified.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): There being no other interest in speaking to this Motion, I would like to call upon the Mover to reply.

**Hon. David Gikaria** (Nakuru Town East, UDA): Thank you, Hon. Temporary Speaker. Once again, I thank the Members who have contributed. The effects of mercury, particularly on human health, cannot go unnoticed. It is precisely as Hon. Nyikal and others have indicated. Hon. Naomi Waqo even indicated how some children are born with mercury in their systems. Hon. Nyikal indicated that if a pregnant woman consumed mercury, it would affect their unborn child. That was amplified by Hon. Naomi Waqo. She also explained how the Minamata Convention came into effect. It would be unthinkable for this country not to take this convention seriously. Our Committee considered the convention, and we ask this House to approve it.

*Mheshimiwa* Oundo indicated that artisanal miners, particularly in the western region of this country, might become jobless if this convention is ratified. The convention has indeed proposed a ban on certain uses of mercury, but it has also given other provisions on how mercury can be used without adverse health effects. That does not necessarily mean that we will ban the use of mercury. Our Committee oversees the Ministry of Mining, the Blue Economy and Maritime Affairs, and we have agreed that artisanal miners make up a significant business component in this country. We know that they have to earn a living for their families. We also know what that industry has done for the western part of this country.

As a Committee, we propose establishing a co-operative for artisanal miners because middlemen have taken advantage of their ignorance and innocence about the precious minerals that they mine. We have taken that into consideration, and we will not render them jobless. We are just looking for a proper way to use mercury.

Hon. Temporary Speaker, I beg to reply. Under Standing Order 53, I request that you defer putting the Question.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much, Chairperson. The request is acceded to. Putting of the Question is deferred to the next Sitting as will be scheduled by the House Business Committee.

*(Putting of the Question deferred)*

Next Order.

REPORT ON APPROVAL OF THE DEFENCE CO-OPERATION  
AGREEMENT BETWEEN KENYA AND SEYCHELLES

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Is Hon. Bashir the Chairperson? Major Bashir, please, proceed.

**Hon. Major (Rtd.) Abdullahi Sheikh** (Mandera North, UDM): Thank you, Hon. Temporary Speaker. I am cognisant of the time. Nevertheless, I will still move the Motion.

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

THAT, this House adopts the Report of the Departmental Committee on Defence, Intelligence and Foreign Relations on its consideration of the Defence Co-operation Agreement between the Government of the Republic of Kenya and the Government of the Republic of Seychelles, laid on the Table of the House on Tuesday, 13<sup>th</sup> June 2023 and, pursuant to the provisions of Section 8(4) of the Treaty Making and Ratification Act, 2012, approves the Defence Co-operation Agreement between the Government of the Republic of Kenya and the Government of the Republic of Seychelles.

The Departmental Committee on Defence, Intelligence and Foreign Relations is established under the National Assembly Standing Order 216, and it is mandated, among other things, to examine treaties, agreements and conventions. The Committee Report before the House details the Committee's consideration of the Defence Co-operation Agreement between the Government of the Republic of Kenya and the Government of the Republic of Seychelles.

Defence Collaborative Services (DCS) establish broad defence-oriented legal frameworks between the parties. Thus, they facilitate co-operation in defence policy coordination, research and development, joint military exercises, education, training, arms procurement and exchange of classified information. A radical shift in the global security environment since the 1980s has fuelled demand for DCS. Largely, states use DCS to modernize their militaries, respond to shared security threats and establish security umbrellas with like-minded states.

Hon. Temporary Speaker, Kenya and Seychelles co-operate in many areas, including trade, maritime security and the fight against piracy, blue economy, parliamentary exchanges, exchanges between chambers of commerce, youth and sports, cultural exchanges, fisheries, and exchange of information.

On 18<sup>th</sup> July 2022, the Seychelles Minister for Foreign Affairs and Tourism, Mr. Sylvestre Radegonde, and Kenya's former Cabinet Secretary for Foreign Affairs, Amb. Raychelle Omamo signed a Defence Co-operation Agreement between the Government of Kenya and Seychelles. The Cabinet Secretary in the Ministry of Defence, Hon. Aden Duale, submitted a copy of the Defence Co-operation Agreement and a memorandum dated 28<sup>th</sup> November 2022 to the National Assembly for consideration. The purpose of the memorandum was to appraise the House on the agreement and seek the approval of the National Assembly for ratification of the agreement.

Pursuant to Article 118(1)(b) of the Constitution on public participation and Section 8(3) of the Treaty Making and Ratification Act, 2012, the Committee placed an advertisement in two local daily newspapers on Thursday, 23<sup>rd</sup> February 2023, calling for submissions of a memorandum on the agreement. However, by the close of the deadline, the Committee had not received any memorandum. Section 37 of the Kenya Defence Forces (KDF) Act governs co-operation with external forces. It provides that any treaty or agreement between the Government of Kenya and any other state or international institution regarding the use or provision of military forces shall provide for, among others:

- (a) The legal status of members of the defence forces placed at the disposal of the military authorities, such as state institutions or organizations and foreign military personnel and their mission while the personnel are deployed in Kenya;
- (b) The conditions of operations of the KDF and foreign military personnel outside gazetted areas;
- (c) Compensation of local communities in the event of accidents in areas where the military is deployed; and,
- (d) The treaty or agreement entered into pursuant to Section 37 of the KDF Act shall put in place mechanisms to protect the interests of the local community of the place where the foreign military forces are deployed and provide that the foreign forces are subject to the Constitution and all the laws of the Republic of Kenya.

The DCS places an obligation on visiting forces to comply with domestic and international laws and specify the areas for co-operation anchored on strategic interests and priorities. Therefore, the Defence Co-operation Agreement that this House is now considering with Seychelles has identified the following areas for co-operation: Maritime security, counter-terrorism, information exchange, exchange of defence and military delegations; exchange of military students, instructors and directing staff; joint military training exercises, procurement of defence equipment, supplies and repair services subject to national laws, participation in trade, science and technology exhibits and research and development in defence, science and technology. Other fields may be agreed upon according to the nature of this agreement.

Hon. Temporary Speaker, the implementation mechanism involves a Joint Military Co-operation Committee and Joint Technical Committee, which will formulate work plans for implementing this Defence Co-operation Agreement with the representation of, at least, three uniformed personnel for each party. They will convene alternately in Seychelles and Kenya. The Joint Military Co-operation Committee will meet annually, while the Joint Technical Committee will meet twice per annum or as directed by the Joint Military Co-operation Committee.

Some of the key provisions of the Defence Co-operation Agreement are mandatory requirements to conform to Kenyan laws and international obligations. The financial arrangements include each party bearing its costs - travel costs, insurance, evacuation, and salaries and allowances. The training costs will be administered through supplementary arrangements.

Further, security on visits will be guided by the host nation's laws. The coordination visits will be implemented through the designated points of contact. Having considered the agreement and analysed submissions made, the Committee observed as follows:

1. Globally, bilateral defence co-operation agreements (DCAs) have emerged as the most common practice of institutionalized defence co-operation. DCAs establish local, broad-based defence-oriented legal frameworks between parties, thus facilitating co-operation in defence policy coordination, research and development; joint military exercises, education and training; arms procurement and exchange of classified information.
2. The Republic of Seychelles and the Republic of Kenya share a common border at sea, which is critical. Being neighbours, it is imperative that the countries maintain structured defence co-operation for their mutual benefit.
3. The Republic of Seychelles is a crucial and ideal training ground, especially for the Kenya Navy or KDF. It is, therefore, in Kenya's best interest to foster defence co-operation with Seychelles.
4. Seychelles Defence Forces, formed in 1977, is one of the world's smallest militaries. Its primary responsibility is maritime security, particularly

countering illegal fishing, piracy and drug smuggling. With a large swathe of the sea and a small military base, this will give our Kenya Navy base a large area to train and expand its territory in terms of training and facilitation.

Having reviewed the agreement and considered submissions made and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012, the Committee recommends that this House approves the ratification of the Defence Co-operation Agreement between the Government of the Republic of Kenya and the Government of the Republic of Seychelles.

I beg to move and urge the House to support this Report. I request Hon. Memusi to second the Motion. I thank you.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Hon. Memusi.

**Hon. Memusi Kanchory** (Kajiado Central, ODM): Thank you, Hon. Temporary Speaker. I wish to second the Motion. Globally, states have resorted to using DCAs to modernize their militaries, respond to mutual security threats and establish security umbrellas with like-minded states. Kenya is not an exception to this.

The agreement provides for the obligation to protect classified information and intellectual property of each party. Legal status is to be conferred in accordance with the laws of the host nation. The host nation retains primary jurisdiction for criminal offences. Offences that violate military discipline will be disposed of by respective parties in accordance with their military laws and regulations. On claims and indemnity, the DCA provides for cross indemnities and/or settlement of claims caused by negligence, with parties negotiating settlement of third-party claims in accordance with the law. The DCA further provides for the settlement of disputes on its implementation through amicable means and community relations that respect and are sensitive to traditions, customs and the culture of local communities. Additionally, the DCA provides that each party shall retain their respective command for military personnel and ensure the security of equipment, uniforms and arms, with a requirement to provide notice on importing the same.

Finally, on taxation, importation and exportation, the DCA provides for tax-free importation of goods for official use, subject to inspection and customs regulations. It also prescribes procedures for identification, vehicle registration, investigation, accidents and entry into force, duration, amendment and termination.

Hon. Temporary Speaker, having reviewed the agreement and considered the submissions made, I have no doubt that it will foster Kenya's national interest. The House ought to expeditiously approve the ratification of the agreement.

Hon. Temporary Speaker, I second the Motion and urge the House to adopt this Report. Thank you.

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much Hon. Memusi ole Kanchory.

*(Question proposed)*

**The Temporary Speaker** (Hon. (Dr.) Rachael Nyamai): Hon. Members, if you intend to speak on this Motion, please hit the intervention button.

Hon. Jane Kagiri.

**Hon. Jane Kagiri** (Laikipia County, UDA): Thank you, Hon. Temporary Speaker, for allowing me to contribute to this Report. It is worth mentioning that I hail from a county called Laikipia. We have benefitted from a co-operation agreement like this between the British Army Training Unit of Kenya (BATUK) and the Kenya Government. Aside from the benefits both institutions will gain, local communities in areas where training will happen would also benefit. In Laikipia, the local communities benefit from jobs that come with those trainings. The

economy of the local areas benefits by renting out their premises and properties to those institutions. Our people learn from the skills that are imparted by the people in the military.

I urge both parties to observe the local laws of either country and the obligations they are supposed to be observing. I support and wish the best as we pass this important Report.

Thank you.

**The Temporary Speaker** (Hon. (Dr.) Rachael Nyamai): Hon. Timothy Toroitich.

**Hon. Timothy Kipchumba** (Marakwet West, Independent): Thank you, Hon. Temporary Speaker, for allowing me to contribute to this very important Motion. I rise to support this defence co-operation between the Republic of Kenya and the Republic of Seychelles. I thank the Committee led by the Chair for presenting this Defence Co-operation Agreement. Unlike yesteryears, the veil is being lifted on military engagements in Kenya. Initially, matters to do with such were hidden and were not subjected to public participation. I want to thank our current legal framework in this country because we conduct public participation on matters that would otherwise be hidden from the public.

It is unfortunate that the Chair, who has moved the Motion, indicated that there was no memorandum received from the public. In future, the Committee should look at more avenues of conducting or engaging the public. It is important that we get the input of the public with respect to this very important Defence Co-operation Agreement. I have heard the Chair put it clearly that all engagements will be guided by the Constitution of this country and all the other laws. If you look at this country's history, we did not have such engagements at some point, and military officers from other countries would come to this country, and they would not be subject to our regime of laws. In other areas, women have given birth to children of different colours and those responsible are not held accountable. But if we have such kind of an engagement, they will be told that they will be liable under the laws of Kenya if they mess up in the country.

The engagement in the agreement is also very clear that they will respect the local culture of our people. That is very important because those military engagements normally happen in areas that are not occupied because of the expansive nature of their trade. Those areas still retain their cultures.

I fully support this Defence Co-operation Agreement.

## ADJOURNMENT

**The Temporary Speaker** (Hon. (Dr) Rachael Nyamai): Thank you very much, Member for Marakwet West.

Hon. Members, the time being 7.00 p.m., this House stands adjourned until Wednesday, 5<sup>th</sup> July 2023 at 9.30 a.m.

The House rose at 7.00 p.m.

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