

**PARLIAMENT OF KENYA****THE NATIONAL ASSEMBLY****THE HANSARD****Thursday, 14<sup>th</sup> November, 2019**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****COMMUNICATION FROM THE CHAIR****CONSIDERATION OF COUNTY GOVERNMENTS (AMENDMENT) BILL  
AND THE NATIONAL COHESION AND PEACE BUILDING BILL**

**Hon. Speaker:** Hon. Members, as you may recall, on 23<sup>rd</sup> April 2019 and 1<sup>st</sup> August 2019, I conveyed to the House Messages from the Senate regarding the passage of the County Governments (Amendment) Bill (Senate Bill No.13 of 2018) and the National Cohesion and Peace Building Bill (Senate Bill No.35 of 2018).

Following the First Reading of the said Bills, I undertook to pronounce my opinion with respect to the Money Bill effects of the said Bills pursuant to the provisions of Standing Order No.143 (2), which provides as follows:

“Following First Reading, the Speaker shall, within reasonable time, pronounce his or her opinion contemplated under Article 114(2) of the Constitution.”

I have made a determination that the two Bills do not fall within the meaning of “Money Bills” and, therefore, they may proceed for Second Reading in the same manner as a Bill originating in the National Assembly as provided for under Standing Order No.143 (3).

The County Governments (Amendment) Bill (Senate Bill No.13 of 2018) shall stand referred to the Departmental Committee on Administration and National Security for consideration, pursuant to the provisions of Standing Order No.127(1) (a) which states that a Bill having been read a First Time, shall stand committed to the relevant Departmental Committee without question put. On the other hand, Standing Order 127(6) (a) provides that -

“127(6) (a) Despite paragraph (1), the Speaker may direct that a particular Bill be committed to such committee as the Speaker may determine.”

Therefore, in accordance with the provisions of this Standing Order, I hereby refer the National Cohesion and Peace Building Bill (Senate Bill No.35 of 2018) to the Select Committee on National Cohesion and Equal Opportunity, given the mandate of the Committee as provided for under Standing Order No.212 and the proposals contained in the Bill.

Next Order!

### PAPER LAID

**Hon. Speaker:** Let us have the Chair of the Departmental Committee on Sports, Tourism and Culture. Let us have Hon. Korei ole Lemein.

**Hon. Korei ole Lemein** (Narok South, JP): Hon. Speaker, I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Sports, Culture and Tourism on its consideration of the Gaming Bill, 2019.

**Hon. Speaker:** Next Order! The first Question is by the Member for Loima, Jeremiah Lomorukai.

### ORDINARY QUESTIONS

*Question No.489/2019*

#### ISSUANCE OF TITLE DEEDS TO RESIDENTS OF TURKANA COUNTY

**Hon. Jeremiah Lomorukai** (Loima, ODM): Hon. Speaker, I rise to ask Question No.489 of 2019 directed to the Cabinet Secretary for Lands and Physical Planning:

- (i) Could the Cabinet Secretary confirm whether land in Turkana County has been demarcated, surveyed or subdivided for purposes of settling the residents, including demarcating trust land and changing of land ownership from customary tenure to individual or group ownership?
- (ii) Could the Cabinet Secretary also provide a list of persons and entities that have been issued with title deeds in the entire Turkana County?
- (iii) What measures is the Ministry putting in place to ensure that residents of Turkana County have access to the services of the Ministry of Lands?
- (iv) When will the Cabinet Secretary issue title deeds to the residents of Turkana County?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Lands. The next Question is by the Member for Baringo Central, Hon. Kandie.

*Question No.493/2019*

## REPAIR AND MAINTENANCE OF KASOIYO-TENGES ROAD

**Hon. Joshua Kandie** (Baringo Central, MCCP): Thank you, Hon. Speaker. I rise to ask Question No.493 of 2019 directed to the CS for Transport, Infrastructure, Housing and Urban Development:

- (i) Are there plans by the Ministry to construct Kasoiyo-Tenges Road in Baringo Central Sub-County, which is in a deplorable state?
- (ii) What measures has the Ministry put in place to ensure that Kasoiyo-Tenges Road in Baringo Central Sub-County is repaired and maintained, including putting water drainage in place, and by when will this be concluded?

**Hon. Speaker:** I suppose you meant deplorable condition. Very well. The Question is referred to the Departmental Committee on Transport, Public Works and Housing.

The next Question is by the Member for Bungoma County, Hon. Catherine Wambilianga.

*Question No.494/2019*

## CONSTRUCTION OF BRIGADIER-NAITERI-MISIKHU ROAD

**Hon. (Ms.) Catherine Wambilianga** (Bungoma CWR, FORD-K): Thank you, Hon. Speaker. I rise to ask Question No.494 of 2019 to the CS for Transport, Infrastructure, Housing and Urban Development:

- (i) What plans has the Ministry put in place to construct the Brigadier-Naiteri-Misikhu Road in Bungoma County which is in a deplorable state?
- (ii) When is the construction of the said road expected to commence and what is the timeframe for completion of the road?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Transport, Public Works and Housing.

Finally, is the Question by the Member for Roysambu.

*Question No.495/2019*

## ALLOCATION OF LAND TO MUTHAIGA PRIMARY SCHOOL

**Hon. Isaac Ndirangu** (Roysambu, JP): Thank you, Hon. Speaker. I rise to ask Question No.495 of 2019 directed to the CS for Lands and Physical Planning:

- (i) What is the actual acreage of the parcel of land allocated to Muthaiga Primary School in Roysambu Constituency?
- (ii) Under what circumstances did the Muthaiga Golf Club give off a parcel of land meant for Muthaiga Primary School?

- (iii) Could the Cabinet Secretary explain why and under what circumstances was part of the houses at the school teachers' quarters allocated to private developers who have since built some houses on it?
- (iv) When will the Ministry issue a title deed to the school as originally intended and revoke any leases and subtitles that have arisen thereafter?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Lands.

### REQUEST FOR STATEMENTS

**Hon. Speaker:** Next is a request for a statement by Hon. Gideon Keter. The Member is absent and not desiring to be present.

The next one is by Hon. Ken Chonga, the Member for Kilifi South.

#### INJURIES TO STUDENTS AND TEACHERS CAUSED BY XYLENE CHEMICAL COMPOUND

**Hon. Ken Chonga** (Kilifi South, ODM): Thank you, Hon. Speaker. Pursuant to Standing Order No.44(2) (c), I wish to request for a statement from the Chairperson of the Departmental Committee on Education and Research on the use of Xylene chemical in the recent KCSE Chemistry practical exams and the resultant injuries to students and teachers.

With each passing day, new evidence emerges indicating that teachers and students suffered extensive injuries from fumes and explosions of Xylene chemical, which was used as an organic solvent in Chemistry Paper 3. A student from Barina Secondary School in Nakuru County passed away from injuries sustained during one of the Xylene incidents, while two teachers and students from Trans Nzoia, Nyeri, Kilifi and Embu Counties are currently admitted in various hospitals nursing injuries. This paints the picture of a disturbing trend. Further, this chemical appears to have been bought at the last minute - allegedly at exorbitant prices - by the Kenya National Examination Council (KNEC) officials due to dwindling stocks of Cyclohexane - the KNEC-approved organic solvent for the chemistry exams.

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

- (i) Could the Ministry of Education provide details on the number of injuries and deaths as a result of the use of that chemical?
- (ii) Why did the Ministry use Xylene instead of the approved Cyclohexane and yet, it appears to be poisonous, causing side effects that are harmful to one's health, and expensive, given that there are other cheaper and safer alternatives in the market or practical options?
- (iii) What specific interventions is the Ministry of Education taking to address the ongoing challenges arising from the use of that chemical?

**Hon. Speaker:** The Statement will be given by the Chair of the Departmental Committee on Education and Research. Does the Chair of the Departmental Committee on Education and

Research have any indication as to when to respond? Is the Vice-Chair here? Hon. Makokha, the Member for Matayos, please, step in to assist.

**Hon. Geoffrey Odanga** (Matayos, ODM): Thank you, Hon. Speaker. I want to inform you that both the Chair and the Vice-Chair are out of the country on official duties. For that matter, we shall pass on the request for the Statement when they come back at the end of the week. They should be in over the weekend, and they will get the information.

As it has been mentioned by the honourable Member, the issue that he has raised is very grievous and disturbing to all Kenyans that they require responses as soon as practically possible.

**Hon. Speaker:** Being a Member of the Committee, you will ensure that the Statement is brought as soon as possible.

**Hon. Geoffrey Odanga** (Matayos, ODM): Yes, Hon. Speaker.

**Hon. Speaker:** Very well. For the second time, let us have Hon. Gideon Keter.

CONSIDERATION OF SPECIAL GROUPS  
IN THE AWARD OF JKIA TAXI TENDER

**Hon. Gideon Keter** (Nominated, JP): Thank you, Hon. Speaker. I would like to request a statement on the consideration of special interest groups in an award tender that happened at the Jomo Kenyatta International Airport (JKIA).

Pursuant to Standing Order No.44 (2) (c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing regarding the award of a tender for provision of taxi services at JKIA by the Kenya Airports Authority (KAA).

In February 2019, the Kenya Airports Authority advertised for the provision of taxi services at JKIA, inviting both general and special group categories. Following that advertisement, a total of ten taxi companies under the special category submitted their bids for tender number KAA/OT/JKIA/1465/2018-2019. However, the tendering process was terminated prematurely for the special group category.

It is against this background that I seek a statement from the Chairperson of the Departmental Committee on Transport, Public Works and Housing. In his statement, the Chair should inform the House on the following:

- (i) The circumstances that led to the extension of the previous taxi contract to the general group category under tender number KAA/ES/JKIA/1172 of 2017/2018, ignoring the plight of the special group category.
- (ii) Whether KAA complies with the provisions of the Presidential Directive 2013 on Access to Government Procurement Opportunities (AGPO) in every government procuring entities; and,
- (iii) When will the award of the successful bidders of the special group category be awarded the mandatory 30 per cent allocation of tenders as provided for in law?

Thank you, Hon. Speaker. I also want to seek clarification since this is a financial query. Should this Statement go to the Public Investment Committee (PIC)?

**Hon. Speaker:** Hon. Keter, I want to advise you. Since the House will rise this evening until Tuesday, please look at your Standing Orders and the mandate of PIC. It is a mortician. I also want to encourage you. The Statement that you are seeking is an important one. However, we should not be basing our Statements requests on presidential directives. If you look at the procurement law, there is a provision for that kind of action which you are seeking. A procuring entity will not flout anything or will not be found culpable if it does not implement a directive. If it does not implement the law, obviously, there will be an action which will be taken because the House can deal with the situation. The Chair of the Departmental Committee on Transport, Public Works and Housing is in the House. How soon will you respond, Hon. Pkosing?

**Hon. David Pkosing** (Pokot South, JP): I thank you, Hon. Speaker. I will take two weeks. There is an advice that you have given which I totally agree with. Hon. Gideon Keter needs to read the functions of PIC. It works on a directive from the Auditor-General. I will take two weeks to respond. He is a new Member and he is learning.

**Hon. Speaker:** We cannot be talking about *monos* now. These are Members who have been in this House in excess of two years. By now, you should have learnt your ropes. It also means that you do not look at the Standing Orders regularly. The mandate of each committee is given in the Standing Orders. The Chairperson, Departmental Committee on Defence and Foreign Relations, wanted to make a Statement. Hon. Mutavi, the Member for Yatta, will make it on his behalf.

#### TREATY ON INTERNATIONAL HYDROGRAPHIC ORGANIZATION CONVENTION

**Hon. Charles Kilonzo** (Yatta, Independent): Thank you, Hon. Speaker. I rise to issue a Statement on behalf of the Departmental Committee on Defence and Foreign Relations regarding a Treaty that is before the Committee. This is a treaty on International Hydrographic Organization Convention.

As you may recall, the Leader of the Majority Party sometimes back stood on the Floor of the House and raised concern on the delay by the committees in processing business before them, including this Treaty that was apparently submitted to the National Assembly on 5<sup>th</sup> June 2018. I can confirm that the Treaty had not been forwarded at the time to the Departmental Committee on Defence and Foreign Relations for processing for ratification. The Treaty was, however, subsequently committed to us on 17<sup>th</sup> September 2019. Notwithstanding the delay, the Committee undertook to consider it and was promptly briefed by the Secretariat. We then scheduled a full day's workshop with the concerned ministries and departments on 14<sup>th</sup> October 2019. Unfortunately, the ministries and the departments concerned neither turned up nor sent apologies. The Committee then re-scheduled a second meeting today on 14<sup>th</sup> November 2019. I regret to inform the House that the said ministries and departments still failed to show up without apologies. Therefore, the Committee is unable to process the Treaty without being appraised and

fully briefed by the ministries concerned. Therefore, it has decided to wait for the Executive to put its house in order and communicate with the Committee.

This Statement is in recognition of the fact that the House Business Committee (HBC) may wish to schedule the Treaty for debate anytime. Our advice is that it be pended until the sponsor, which is the Executive, finds time to brief the Committee. In the meantime, the Committee will dispense with other equally important matters before it.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well. I believe it is in their interest that the Treaty be ratified or considered. Let me put their House in order. Hon. Members, before we proceed, allow me to recognise the presence of the following visitors:

Amka Youth Initiative, Jomo Kenyatta University of Agriculture and Technology (JKUAT) Chapter, Juja Constituency, Kiambu County and Nyandarua County Youth Empowerment Forum from all constituencies in Nyandarua County, courtesy of the Woman representative, Hon. Faith Gitau. They are welcome to observe the proceedings in the House.

Next is the Leader of the Majority Party.

#### BUSINESS FOR THE WEEK COMMENCING 19<sup>TH</sup> TO 21<sup>ST</sup> NOVEMBER, 2019

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, I will pick up on that Treaty with the Ministry of Foreign Affairs and International Trade. I wanted to present that important Treaty to the HBC on Tuesday, so that we expedite it before we go on recess. If the owners do not want to come, then I will pick up the issue with the appointing authority and the Cabinet Secretary (CS).

Hon. Speaker, pursuant to the provisions of Standing Order No.44(2)(a), I rise to give the following Statement on behalf of the HBC following its meeting held on Tuesday, 12<sup>th</sup> November 2019.

On Tuesday, next week, the House will consider the Public Finance Management (Amendment) Bill (National Assembly Bill No.51 of 2017) in the Committee of the whole House. Members must file in their amendments before the end of today or tomorrow. On the same day, we will consider the Reports of the Committee on Delegated Legislation, should the House not conclude them today. That is on the Annulment of the Public Service Commission Regulations, the Approval of the Value Added Tax (Amendment) Regulations, the Annulment of the Private Security General Regulations and the Annulment of the Political Parties Funding Regulations. Also prioritized are the following Bills at Second Reading:

The Competition (Amendment) Bill, 2019;

The Insurance (Amendment) Bill, 2019;

The Tea Bill (Senate Bill No.36 of 2019,

The County Government Revenue Raising Process Bill (National Assembly Bill No.24 of 2019; and,

The Gaming Bill (National Assembly Bill No.38 of 2019).

No questions have been scheduled for next week as committees will embark on looking into the Supplementary Estimates for the Financial Year 2019/2020. The HBC will reconvene on Tuesday, 19<sup>th</sup> November 2019 at the rise of the House to schedule business for the rest of the week.

Hon. Speaker, I want to raise an extra matter for your direction. There is something new which is happening in the 12<sup>th</sup> Parliament. It did not happen in the 10<sup>th</sup> and 11<sup>th</sup> Parliaments. There are lots of transactions of House business in the social media. Bills are proposed on Facebook, Twitter and WhatsApp groups. Select committees are formed with names in the social media. Motions are approved in the Social media. Bills which are not before the House are discussed on television. I am sure you have seen that. This is only happening in the 12<sup>th</sup> Parliament.

There was a ‘Select Committee’ which was formed last week. Among the people who are Members is Hon. Nassir. There is one which was formed on debt matters. It was on social media. I really looked at the House Business Committee and those Bills are either in the Table Office or elsewhere. I looked at all these. Hon. Nassir, you are a Member, you have been nominated. You will hear somebody saying and telling Kenyan people “I am bringing this Bill, I am forming this Committee, and I am doing this and that.”

Hon. Speaker, it is high time you give direction that genuine businesses are transacted through the procedure of the House and in the Chamber, and that there is a whole track in the House Business Committee. You need to tell the people, from where you sit, that those purported motions, select committees, bills and petitions do not exist. We are leaders. We should not lie to our people. You will be accountable to them. They will ask where the Bill you have put on your Facebook account is. How come it is not coming? So, the only business before the House is read on Thursday every week. I am not sure whether any other business that you see elsewhere is part of this august House. This is a matter I felt is serious and I am sure even you are concerned. People wake up as early as 6.00 a.m. in the morning, go to television stations and discuss Bills that do not exist. They discuss Motions that do not exist. They give the calendar of the House that they are not aware of. I think you need to guide the House that what we do outside is not part of what is going on here.

Thank you, Hon. Speaker. This is the document I have tabled.

**Hon. Speaker:** Well, you know the role of the media, both mainstream and social. It is to inform, educate and entertain. I suspect what the Leader of the Majority Party has said belongs to the latter category of entertainment. It is, perhaps, meant to excite Kenyans out there. Of course, Members are encouraged to, first of all, present matters through the normal way. That is if you have anything you wish the House to discuss. Do not write stories in those places and even claim you have submitted documents to the Speaker. The Speaker has, for a whole week, been scratching every corner of his Office and he cannot see them. I begin wondering whether anybody has taken documents or letters that have been submitted by Members.

Maybe, some of those things are actually meant to excite villagers and entertain them. Anybody serious would introduce matters the right way. No Member has proposed anything that has come through my Office that has not been committed to the relevant offices for advice –



either to the Directorate of Legislative and Procedural Services, Legal Department or the Budget and Appropriations Committee (BAC) for relevant advice that is required. Of course, Members are not going to be gagged from wanting to entertain themselves and their electorates if they desire so to do.

Last week, the Member for Mandera North, Major (Rtd.) Bashir Abdullahi sought a Statement. I wonder whether he is in the Chamber.

*(Hon. Major (Rtd.) Bashir S. Abdullahi stood up in his place)*

You are not in the usual place where you normally sit. I was looking for you there. You rose in your place and sought a Statement from the Chair of the Departmental Committee on Finance and National Planning about the National Population and Housing Census (NPHC) results of 2019. Since the Chair of the Committee was not present, the Leader of the Majority Party undertook to communicate and suggested that from what I am seeing on the HANSARD, the Statement was to be possibly made today, on Thursday. I do not know whether the Leader of the Majority Party has discussed about this request with Hon. Limo.

**Hon. Aden Duale** (Garissa Township, JP): I have passed the matter to him and he is sitting here. Once he is sitting here, I cannot speak for the Chair. I have no *locus standi* to speak for the Chair. So, the Clerk and the HANSARD picked it and it was brought to his attention. Maybe, he wants another one week.

**Hon. Speaker:** Table Office, again! The Clerk is also instructed to ensure that the Table Office dispatches requests for Statements, Petitions and Questions that are submitted to the relevant Committees immediately. I have received complaints that some of the requests have stayed at the Table Office for inordinately too long before being presented to the relevant Committees for consideration. That, of course, translates to the Members making the requests or asking the Questions or presenting the Petitions to later blame those Committees. It has come to my notice that it is not all the Committees that are to blame. Some of the delays are caused in the Table Office. Therefore, the Clerk is directed to ensure that the Table Office functions as it should. These kinds of requests should be dispatched without delays, especially when it is a Question by Private Notice and requests for Statements to which the Chairpersons have given commitments as to when they are going to respond to.

Hon. Limo, do you wish to respond to that?

**Hon. Joseph Limo** (Kipkelion East, JP): I can confirm that the request for a Statement came to our Committee. The answers were sought from the National Treasury and Planning, which is in charge of census. I confirm that we have received the answer but it came in an unsigned form. So, we directed the Clerk to follow up on the signed form and I will be ready to present it to this House on Tuesday afternoon.

Thank you, Hon. Speaker.

**Hon. Speaker:** That sounds reasonable, Hon. Bashir. Hon. Limo promises. I also want to encourage Committees that instead of always coming to the Plenary to complain that persons whom you have invited to appear before you are not appearing or making telephone calls, please,

apply the provisions of Standing Order No.191. That is so that the Committee should resolve to summon the person so that if the person does not appear after the summons, then you can proceed to apply the sanctions that are provided for in that Standing Order and Standing Order No.191(a). Please, Committees, not just the Chairpersons, the House should not be seen to be acting in vain. When you invite a person and he has been given sufficient notice which is a period of not less than seven days and the person does not appear or/and offer reasonable explanation, do not just come to complain “we have been inviting and they do not come!” Just proceed. You have seen Committees in the other House applying those provisions. They have similar provisions. If you look at Article 95(5), particularly (b), you oversee very many State organs. If you are not careful, your work will be delayed or derailed by failure of those people whom you invite to appear before you. So, do not come to complain here. You can only come to complain if you say that the summonses you have issued have been disrespected. You can resolve, in a Committee, to summon. The summons would be issued under the hand of the Clerk, if a matter is before Committee. Please, you have authority. Do not appear to be crying here. You have teeth. Make use of them. I assume they are not poisonous. Make full and good use of the teeth as provided for in the Standing Orders. There is an intervention by Hon. Wanyonyi.

**Hon. Tim Wanyonyi** (Westlands, ODM): Thank you, Hon. Speaker. On 25<sup>th</sup> June 2019, I asked a Question to the Cabinet Secretary for Industry, Trade and Co-operatives that was referred to a Departmental Committee. Up to date, I have not received any response. I also asked a Question on 6<sup>th</sup> August 2019 to the Cabinet Secretary for National Treasury. Up to date, I have not received a response to that Question. I am seeking your guidance on what transpired since that moment.

Thank you.

**Hon. Speaker:** Hon. Wanyonyi, is it a Question or a Statement?

**Hon. Tim Wanyonyi** (Westlands, ODM): They are two Questions, Hon. Speaker. The first one I asked in June and the second one in August, 2019. They have not been responded to.

**Hon. Speaker:** You have said the first Question was to the Cabinet Secretary for Trade?

**Hon. Tim Wanyonyi** (Westlands, ODM): It was for the Cabinet Secretary (CS) for Industry, Trade and Co-operatives, Hon. Speaker.

**Hon. Speaker:** Were you told that yesterday the CS appeared before the Committee and responded to all the Questions. That is what has been reported to the Plenary.

**Hon. Tim Wanyonyi** (Westlands, ODM): Hon. Speaker, I was not informed and I do not think my Question was one of the Questions that were answered. My second Question was to the Cabinet Secretary for National Treasury and Planning.

**Hon. Speaker:** Is that the one you said you asked in August?

**Hon. Tim Wanyonyi** (Westlands, ODM): Yes, Hon. Speaker.

**Hon. Speaker:** Hon. Limo can tell us. Maybe, he has not received the Question. Hon. Limo, are you in possession of a Question asked by Hon. Wanyonyi?

**Hon. Joseph Limo** (Kipkelion East, JP): Hon. Speaker, I may not be in a position to recall the exact Question he asked, but I can confirm that it has been a while since the National Treasury appeared before our Committee to answer Questions because of timing differences. In

fact, despite inviting the National Treasury to come and answer the Questions on Tuesday, they sent a response that it was not possible for them to be appearing before the Committee on Tuesday because of unforeseen reasons. However, what we discussed this morning is that, immediately we transact the Supplementary Estimates that are before the House now, we will prioritise the National Treasury to appear before the Committee next Tuesday.

Thank you.

**Hon. Speaker:** Very well. Can we have the Chairman of the Departmental Committee on Trade, Industry and Co-operatives? Whoever clerks that Committee should remind the Chairperson about the Question that was filed in June, 2019 by Hon. Wanyonyi. So, the Table Office is, again, directed to ensure that the Question is presented before the Departmental Committee on Trade, Industry and Co-operatives not later than Tuesday, next week.

Let us have Hon. Kaluma.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): Thank you, Hon. Speaker. I have two issues to raise. Six weeks ago, I raised an issue concerning interdiction of a number of teachers across the country for heading the call by their trade unions to participate in industrial action. If you may remember, the Committee Chairperson was given two weeks to respond. He came here and said that a response came from the Ministry, but it was inadequate. Again, they undertook that within two weeks, they will get an adequate response. To date, there is no response from the Committee Chairperson on that request for a Statement. It is a matter that is urgent and I am requesting for your direction on it.

The second issue – if you will permit – concerns the role of departmental committees in the budget process. I know this is a matter that you have given directions from the Chair before. The whole of today morning – and colleagues in Parliament will confirm – we were in various departmental committees considering the Supplementary Budget Estimates that have been tabled. In the Committee where I was, there was a concern that persistently kept on emerging. The concern was what will be the use to engage with the papers when, ultimately, the Budget and Appropriations Committee will meet with those agencies and also do their work? There is need for clarity on this matter. In as much as you had directed before that there will be an engagement, at least, the departmental committees should not be seen to be acting in vain or disillusionment. I got clarity from the Chair to the effect that if the Budget and Appropriations Committee is going to interfere with its views on the estimates – which I believe are essential because these are the committees that understand the needs of the various sectors under their charge – there should be some level of consultation. Otherwise, I can confirm to you that the membership is bothered about the proceedings in as much as we are using resources and facilities of Parliament in the exercise.

Thank you.

**Hon. Speaker:** This does not require debate. The Chairperson, Budget and Appropriations Committee, do you want to weigh in?

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Speaker. To begin with, I am aware that there is an issue on what Hon. Peter Kaluma has raised on the Judiciary Budget which we committed that we will respond to. Unfortunately, the matter seems to have been overtaken

by time with the tabling of the Supplementary Estimates and a confirmation from the National Treasury and the Judiciary that one of the cuts that had been effected through the Integrated Financial Management Information System (IFMIS) system has since been reversed. However, as Hon. Peter Kaluma has said, some of those cuts that had been effected through the IFMIS have since been proposed in the Supplementary Budget, which ideally is the right procedure. Any proposed cuts...

*(Hon. Mbadi interjected)*

Hon. Speaker, protect me from the Leader of the Minority Party. I do not know if he is rejecting to what I am saying. I will look at the Speaker and ignore him. I was saying that, procedurally, the National Treasury ought not to have effected any cuts in the Budget as it was proposed in the Appropriations Bill. That, as many Members have canvassed here, is against the law. Any changes to what was passed in the Appropriations Bill should come rightfully before this House through the Supplementary Budget that has now been tabled. You are aware that, as Hon. Kaluma has said, it is in the hands of the departmental committees. As I indicated when the Supplementary Estimates were tabled, we have the whole of this week and next week to consider them. I want to give assurance to Hon. Kaluma and the House that the Budget and Appropriations Committee does not, in any way, seek to override what the departmental committees propose or recommend. We do what we do in consultation as is required by our Standing Orders and Chapter 12 of our Constitution - in consultation with the national Treasury.

Therefore, we will consider all the proposals that will come from the departmental committees. Also, in line with what I have said, in consultation with the National Treasury, I want to confirm that we also had a meeting this morning as the Budget and Appropriations Committee. We had a brief from the Parliamentary Budget Office. We have since asked, through the Clerk's Office, to call the National Treasury on Tuesday, next week to have a meeting prior to the closing meeting. The problem that has been there is that we never get an opportunity. This year we never had an opportunity. But in the 2018/2019 Financial Year, we had an opportunity, through the Deputy Speaker and the Liaison Committee, to get back and brief the chairs of committees on what we had done. It is also a question of timelines that we have. If we have an opportunity before tabling of the report or before debate to also be able, through the Liaison Committee, to brief chairs of the committees because we have no other forum to be able to get back to the Departmental Committees, we should be able to sit with the committee chairs and brief them.

I was also going to liaise with you and the Clerk's Office. In the meeting where we have invited the CS and his team, we did propose this morning that we also invite chairs of committees so that they are part and parcel of the engagement that we will have with the National Treasury. So, even as they sit as Departmental Committees...

*(Hon. Mbadi interjected)*

Hon. Speaker, Hon. John Mbadi is shouting and distracting me. We want a very consultative process in this budget-making process for the Supplementary Budget. Therefore, we have proposed, with your permission, that you allow the chairs of committees. And we are aware that they might also be busy, but we had indicated we would invite those who will be able to attend to attend. Those who are not able to attend can send their vice-chairs or a member of the committee to represent them in that engagement with the National Treasury. I think it will help in creating a consultative process so that, at the end of the day, the product we have will be owned by the entire House.

Thank you, Hon. Speaker.

**Hon. Speaker:** Indeed, as has been announced, you must be having problems with your ears Hon. Nassir.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Hon. Speaker, just a clarification of what Hon. Abdullswamad is asking, let me emphasise that it is Chairs of Departmental Committees, not Chairs of Select Committees like PIC and PAC.

**Hon. Speaker:** The invitation is made to chairs of committees. Those that may be busy, because I know some have already scheduled meetings with their ministries and other departments on the same date, I am sure you can get a member of your committee to attend at that meeting. It is important. If you are busy with the ministries and departments, please ensure that any of you represents you at that meeting to hear what the National Treasury is saying. Remember they came here saying they were going to have deficits, which they promised they were going to finance through borrowing. Later, they claimed that they hit a debt ceiling, and then came to the House for that ceiling to be lifted, which you did. But the net effect has been that the budgets of the Judiciary and the PSC are the ones that have been proposed for reductions. Do not ask, please. I am sure the Constitution is very clear. You are the ones who make the decision, Hon. Murugara. Did you want to inform Members? I think they form substantial quorum. Hon. Murugara can inform the House.

**Hon. George Gitonga** (Tharaka, JP): Hon. Speaker, this House should not be engaged in committing illegalities. The Constitution is quite clear especially on the Judiciary. It is Article 173 of the Constitution. Once the Chief Registrar presents estimates to this House and this House approves those estimates, the funds so approved are moved from the Consolidated Fund to the Judiciary Fund. Once that is done, those funds are not available for cuts. The funds are already moved. The only thing this House can do is to enhance the allocation, not to cut it.

This morning, as the presentations were being made to us, we were shocked that they were proposing cuts to a fund that, under the Constitution, cannot be cut. So, we will be urging the House that we should not agree to any cuts of the Judiciary funds because they are protected by the Constitution.

**Hon. Speaker:** I hope you also understand the model of funding of the various agencies, even after the passage of the Appropriations Act. I wish there were several baskets so that you could go harvesting mangoes and once you put them in a particular basket, they remain in that basket until they are exhausted. It looks like the model of funding is different. Things just trickle in the basket and they get exhausted as soon as they land in the basket. You will have the

opportunity to discuss those matters; that is, what is provided for in Article 223 *vis-à-vis* the Budget Estimates as presented under Article 221. You will have to look at the two Articles. There is nothing we are prosecuting. The other point raised by Hon. Kaluma is getting lost in the meantime.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): I am seeking clarification. Does the Treasury have power to meddle with PSC budget according to the law? Please, give that provision in the law which says that. I am asking my Chairman - the Chairman of the PSC.

**Hon. Speaker:** Well, the PSC has many committees. There is a Chairman of the Finance Committee of the Commission and his name is... And he is a ranking Member! If he were here, I am sure he would be shouting and standing like you are doing. That is Hon. Wehliye Keynan. I am sure he will be appearing before the BAC. I suspect he is going to tag you along because you have come from far together. That can be canvassed then.

The point raised by Hon. Kaluma about education. As you notice, Hon. Kaluma, both the Chair and the Vice-Chair are absent. The ranking Member who is holding brief for them is the Member for Matayos, Hon. Makokha. This is good.

**Hon. Geoffrey Odanga** (Matayos, ANC): Thank you, Hon. Speaker. I want to confirm to this House that, indeed, Hon. Peter Opondo Kaluma's Question reached the committee. We did communicate with the TSC. They brought a report which, in the wisdom of the Committee, was not satisfactory enough because it lacked very pertinent information. It was just a list of some teachers, with remarks that one had been interdicted and another one had been dismissed, without giving sufficient reasons for the same and without informing the committee from which counties the teachers came from. Therefore, we referred the matter back to the TSC to give us all the information. I am sure in the next two weeks we should be done with it.

Thank you.

**Hon. Speaker:** Sorry! Hon. Kaluma.

**Hon. Peter Kaluma** (Homa Bay Town, ODM): A ranking Member, Hon. Odanga, is telling us the same thing that the Chair of the Committee said a month ago. It appears that this Committee routinely requests for two weeks. Could we be assured that this time round, it will be available within two weeks? Hon. Speaker, we do not ask these Questions for ourselves. We ask them for the interest of the entire nation. It beats the purpose of seeking Parliamentary intervention through Questions if they take eternity to respond to them. Could the Hon. Speaker give a shorter period or have a firm direction that within the next two weeks this time round, we will no longer delay that matter?

**Hon. Speaker:** I think Hon. Odanga now takes up the matter. Two weeks, we shall still be here.

**Hon. Geoffrey Odanga** (Matayos, ODM): I want to assure the Hon. Member that in two weeks time, we shall receive a full response to what was requested because we know how grievous this matter is and what it has caused to the teachers and their families. Hon. Kaluma should be rest assured that the Committee will do its best to have the response. If anything, we should intervene on behalf of the interdicted and dismissed teachers.

Thank you.

**Hon. Speaker:** Hon. Members, could we get Hon. Wanyonyi? The records that have been provided to me confirm that you did ask a Question on June 25<sup>th</sup> 2019 in the afternoon and then it was referred to the Departmental Committee on Trade, Industry and Co-operatives. Can I get an indication from that Committee whether the Question by Hon. Wanyonyi is one of those that the Chairperson proudly reported yesterday that the Cabinet Secretary had responded to?

Hon. Oundo?

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Speaker. I am not a ranking Member of the Committee but I am an active Member. I am seized of the update of the matter. The Cabinet Secretary came to answer Questions that were asked much earlier and he said he had not received the second set of Questions, which includes the one by Hon. Tim Wanyonyi and many other Members. He undertook to come back to us on either 27<sup>th</sup> or 28<sup>th</sup> of this month to answer the remaining set of Questions.

We asked our team of clerks to compile all the Questions that are pending and forward them to his office to prepare answers in readiness for either date. So, I seek his indulgence that we will communicate to him in good time for him to be present to receive the answer from the Cabinet Secretary on that date.

Thank you, Hon. Speaker.

**Hon. Speaker:** Very well! Then the Chair did not give the correct information. He said that the Cabinet Secretary responded to all the Questions and you say that the Cabinet Secretary responded to Questions which had been forwarded to his Office much earlier. This Question was raised on 25<sup>th</sup> June. What the Chairperson reported was really misleading. If a Question which was raised here on 25<sup>th</sup> June is not considered to be among the earlier ones, then the Chairperson should be careful about the information he gives to this House.

Hon. Oundo, we accept what you have said. Maybe, Hon Wanyonyi should take note of those two dates or, indeed, get in touch with the Committee to know when the Cabinet Secretary is appearing – either on 27<sup>th</sup> or 28<sup>th</sup> as Hon. Oundo has just reported.

I see an intervention from Hon. Osotsi. What is the issue?

**Hon. Godfrey Osotsi** (Nominated, ANC): Hon. Speaker, I also made a request for a statement to the Departmental Committee on Lands on matters of eviction in Kiptuya Ward. That was on the last day before we went for the short recess. I have not had any feedback from the Committee. When I talked to the Chair, she told me that she is not aware of that matter. So, Hon. Speaker, I would like you to intervene on this matter.

**Hon. Speaker:** The Table Office and those clerking the Committees should take note. I know they are listening. The Table Office should take note of the fact that the Chairperson of the Committee on Lands has not received the Question. So, the Question should be forwarded to the Committee and there should be a method of recording those transactions.

Next Order!

**MOTION**ADOPTION OF REPORT ON APPROVAL OF NOMINEES FOR APPOINTMENT  
TO NATIONAL COHESION AND INTEGRATION COMMISSION

THAT, taking into consideration the findings of the Select Committee on National Cohesion and Equal Opportunity in its Report on the vetting of persons nominated for appointment to the position of Chairperson and Members of the National Cohesion and Integration Commission, laid on the Table of the House on Tuesday, November 12, 2019; and pursuant to the provisions of paragraph 9 of the First Schedule to the National Cohesion and Integration Act, 2008 as amended in 2019 and section 8 of the Public Appointments (Parliamentary Approval) Act, this House approves the appointment of the following persons as Chairperson and Members of the National Cohesion and Integration Commission—

- |        |                              |   |              |
|--------|------------------------------|---|--------------|
| (i)    | Rev. (Dr.) Samuel Kobia      | – | Chairperson; |
| (ii)   | Mr. Samuel E. Kona           | – | Member;      |
| (iii)  | Hon. (Eng.) Philip O. Okundi | – | Member;      |
| (iv)   | Ms. Peris W. Nyutu           | – | Member;      |
| (v)    | Hon. Abdulaziz Ali Farah     | – | Member;      |
| (vi)   | Dr. Danvas O. Makori         | – | Member;      |
| (vii)  | Ms. Fatuma S. Tabwara        | – | Member; and, |
| (viii) | Hon. Dorcas L. Kedogo        | – | Member.      |

*(Hon. Kamanda on 13.11.2019)*

*(Debate concluded on 13.11.2019)*

**Hon. Speaker:** I can see the two Hon. Members from Homa Bay County are consulting. Hon. Members, debate on this Motion was concluded yesterday. Unless I am persuaded through protestations, I intend to put the Question for approval wholesale. I do not see any objections. So, I will put the Question.

*(Question put and agreed to)*

Yes, the Leader of the Majority Party

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, my Deputy has been misbehaving of late. He has suffocated the Member for Kikuyu from not expressing himself in any way. He closed his mouth. So, he could not say Aye or Nay. Hon. Speaker, that should not happen again when you preside over this House.

**Hon. Speaker:** Well, they appear to be enjoying some discussion.



Next Order!

## BILL

### *Second Reading*

#### THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL

*(Hon. John Mbadi on 12.11.2019)*

*(Debate concluded on 13.11.2019 – Afternoon sitting)*

**Hon. Speaker:** Hon. Members, just look at the Order Paper. I think some of you have never understood it or, at least, listen to what is read out. Debate on this Bill was concluded yesterday and what remained is for the Question to be put; which I hereby do.

*(Question put and agreed to)*

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

Hon. Osotsi, there is efficiency in the Table Office. Information that has been brought to me indicates that your Question was communicated to the Departmental Committee on Lands on the same day that you asked it. Not unless the person clerking that Committee has not informed the Committee and the Chairperson. That question is before the Committee. So, just check again with the Chair.

Next Order!

## MOTION

#### APPROVAL OF VALUE ADDED TAX (AMENDMENT) REGULATIONS 2019

**Hon. Speaker:** Hon. Fatuma, are you the one moving?

**Hon. (Ms.) Fatuma Gedi** (Wajir (CWR), PDR): Yes.

**Hon. Speaker:** Proceed.

**Hon. (Ms.) Fatuma Gedi** (Wajir (CWR), PDR): Hon. Speaker, I beg to move:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Value Added Tax (Amendment) Regulations, 2019 (Legal Notice No. 86 of 2019), laid on the Table of the House on Wednesday, November 06, 2019, and pursuant to the provisions of section 67(2) of the Value Added Tax Act, 2013, approves the Value Added Tax (Amendment) Regulations, 2019.

**Hon. Speaker:** Proceed.

**Hon. (Ms.) Fatuma Gedi** (Wajir (CWR), PDR): The Committee on Delegated Legislation is established pursuant to the provisions of Standing Order 210 with the power to scrutinise all statutory instruments submitted to the House and to satisfactory ensure they comply with the Constitution of Kenya and all applicable laws.

Hon. Speaker, Hon. Members are accustomed to seeing reports of annulment in this House because Section 15(1) and Standing Order 210(4) (b) requires the Committee to only table reports on annulment. The ones we approve are communicated directly to the respective regulation-making authority save for those of parent Acts e.g. the Public Finance Management (PFM) Act and the Value Added Tax (VAT) Act which specify that the Regulations be approved by the National Assembly.

Hon. Speaker, with the foregoing, therefore, this is the 2<sup>nd</sup> Report for approval that the Committee has brought to the House for approval. The 1<sup>st</sup> one is the PFM (Amendment) Regulations, 2019 on the debt ceiling which the House unanimously approved last month. I want to thank the House for approving those Regulations.

The Committee has approved 35 out of the 70 instruments submitted to the Committee in 2019. A total of 31 are pending consideration by the Committee; 6 have already been annulled by this House while another 4 are pending consideration by the House.

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

*[The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya) took the Chair]*

Hon. Temporary Deputy Speaker, pursuant to powers conferred by Section 67 of the Value Added Tax Act, 2013, the Cabinet Secretary for the National Treasury and Planning published in the Gazette the Value Added Tax (Amendment) Regulations, 2019 on 13<sup>th</sup> June 2019 vide Legal Notice No.86 of 2019.

The Regulations were received by the Clerk of the National Assembly on 21<sup>st</sup> of June 2019 and tabled before the House on 21<sup>st</sup> June 2019 and subsequently committed to the Committee on Delegated Legislation for review and scrutiny pursuant to the Statutory Instruments Act, 2013 and Standing Order 210.

The Regulations seek to amend Regulation 8(2) of VAT Regulations, 2017 which contains the formula used to calculate the Value Added Tax refund. The current formula has been found to disadvantage exporters of taxable goods since they are not able to fully recover their input VAT.

The difference between the current and the revised formula is that the current one calculates the amount allowed as refund of input Value Added Tax whereas the revised one calculates the share of input Value Added Tax to be allowed. The implementation of the proposed revised formula will guarantee the exporters of VAT taxable goods full recovery of their share of input tax relating to zero-rated supplies.

The proposed amendment, therefore, addresses challenges faced by suppliers of both zero-rated and general rated supplies in ensuring that they are able to recover the

deductible input VAT related to zero rated supplies. In addition, the amendment proposed in Regulation 13, Part (b) of the proviso clarifies what constitutes an exported service for VAT purposes, regardless of who pays for them.

The Committee considered the Regulations against the provisions of the Constitution of Kenya, the principal Regulations, i.e., the Value Added Tax Regulations, 2017 (Legal Notice No.54 of 2017), the Interpretations and General Provisions Act (Cap 2), the Value Added Tax Act (No 35 of 2013) and the Statutory Instruments Act (No.23 of 2013) which regulate the making, scrutiny and publication of the Regulations.

The Committee also took into account submissions by the private sector, particularly the KPMG Advisory Services Limited regarding the implementation challenges of the principal Regulations. The Committee also held meetings with the Kenya Revenue Authority (KRA) and the National Treasury in accordance with Section 16 of the Statutory Instruments Act, 2013, and received written submission from the Clerk of the National Assembly dated 4<sup>th</sup> April 2019.

Pursuant to section 16 of the Statutory Instruments Act, 2013 the Committee invited the regulation-making authority (the National Treasury & Planning) to a consultative meeting on 20<sup>th</sup> August 2019 where the authority made a presentation to the Committee on the proposed changes to the Value Added Tax Regulations, 2017 (Legal Notice No.54 of 2017).

The National Treasury and Planning led by the Chief Administrative Secretary, Hon. Nelson Gaichuhie appeared before the Committee on 8<sup>th</sup> and 20<sup>th</sup> August 2019 to respond to the Committee's concerns regarding the implementation of the VAT Regulations, 2017 and the VAT (Amendment) Regulations, 2019. Hon. Temporary Deputy Speaker, the Committee was informed as follows:

That the outstanding claims not processed as at the end of the Financial Year 2018/2019 amounted to Kshs24.3 billion compared to Kshs21.3 billion in the Financial Year 2017/2018.

That KRA has put in place the following measures to fast-track claims processing:

- a) Formation of a dedicated team.
- b) Classification of the taxpayers.
- c) Re-engineered refund processes.
- d) Enhanced staff capacity consultations with industry stakeholders.

That KRA held several engagements with stakeholders on the challenges with implementation of VAT Regulations, 2017. Key among the engagements includes meetings with the Institute of Certified Public Accountants of Kenya (ICPAK), meeting with the Kenya Association of Manufacturers (KAM) and a roundtable engagement with various representatives of the private sector under the umbrella of Kenya Private Sector Alliance (KEPSA). One of the key concerns raised by the stakeholders in these engagements includes the challenges with the new VAT refunds formula. It is as a result of these engagements that the VAT (Amendment) Regulations, 2019 were developed.

The Committee observed:

1. The Regulations were submitted to the National Assembly within the statutory timeline contemplated under Section 11(1) of the Statutory Instruments Act (Legal Notice No. 23 of 2013); having been published on 13<sup>th</sup> June 2019, received by the Clerk of National Assembly on 21<sup>st</sup> June 2019 and tabled on the 21<sup>st</sup> June 2019.
2. The regulation making authority conducted sufficient public participation which resulted in addressing the previous challenges encountered by the private sector occasioned by the VAT Regulations, 2017.
3. The Regulations do not require a Regulatory Impact Statement within the meaning of Sections 6, 7 and 8 of the Act, since they are intended to address challenges faced by suppliers of both zero-rated and general-rated supplies; in ensuring they are able to recover the deductible input of VAT rated to zero-rated supplies.

Hon. Temporary Deputy Speaker, the recommendation of the Committee is as follows. Having examined the Value Added Tax (Amendment) Regulations, 2019, against the Constitution of Kenya, the principal regulations, that is: The Value Added Tax Regulations, 2017 (Legal Notice No.54 of 2017), the Interpretations and General Provisions Act (Cap 2) Laws of Kenya; the Value Added Tax Act (No.35 of 2013) and the Statutory Instruments Act (No.23 of 2013); the Committee recommends that the House approves the said statutory instrument in accordance with Section 67 of the Value Added Tax Act (No.35 of 2013).

As I conclude, allow me to once again acknowledge the efforts that the Committee on Delegated Legislation put in this work and the exceptional commitment and service that ensured that the Committee delivers its mandate on time.

On behalf of the Committee, I wish to thank the leadership for the support accorded to the Committee in discharging its mandate. Our appreciation goes to the Clerk of the National Assembly for providing the necessary technical support. On behalf of the Committee, I plead with Hon. Members of this House to support the regulations. I invite Hon. Tonui, the Member for Bomet Central to second the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Tonui, you have the Floor.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Temporary Deputy Speaker, for this opportunity to second this Motion on the approval of the Report of the Committee on Delegated Legislation on the consideration of the Value Added Tax (Amendment) Regulations, 2019.

The intention of these VAT regulations is to remove the disadvantages faced by exporters in terms of import tax especially on zero-rated goods. We need to make it smooth for competition by removing any disadvantages. That is the intention of these regulations. Therefore, as a Committee, we made a decision that we need to approve these regulations. First of all, these regulations met the minimum requirements, especially on the issue of statutory timelines in submission to this House for them to be considered. It was forwarded to this House within the time required and, therefore, there was no issue with the timeline.

In the view of the Committee, the public participation which was conducted was sufficient on these regulations as stated by the Vice-Chair. I believe these regulations are good

because they will encourage competition. They will make our industries competitive when they face competition from outside.

*(Hon. (Ms.) Catherine Waruguru crossed the Floor without bowing to the Chair)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. Waruguru! If you want to speak to Hon. Junet, please go and change to the other aisle. You seem to be intentioned on speaking something to him.

Go on, Hon. Tonui.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Temporary Deputy Speaker, for that short interlude. I was commenting on the issue of competition that this formula which the National Treasury intends to introduce will encourage competition or it will make our industries more competitive in competing with industries from elsewhere. Therefore, it is an improved formula.

We also made this informed decision of approving these regulations after considering various submissions from the private sector. We received many submissions from them and we thought it was positive. We held meetings with the KRA which was good in terms of technical information. We also held consultative meetings with the National Treasury so that we could get more insight on the same. We agreed with what they stated. I only want to note that the outstanding claims which KRA is yet to pay to various businesses are about Kshs24.3 billion in the Financial Year 2018/2019. This is a lot of money. I believe it contributes to the feeling currently in the public domain. There are complaints that there is no money circulating in this country and that the money is not available. I believe some of this inability to pay the outstanding claims by KRA is contributing to this problem.

This being a small Motion, I do not want to overemphasise on it. I second the Motion. Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. Members!

*(Question proposed)*

I can see some Members who intend to contribute. Unless my screen is interpreted otherwise, let us have Hon. Mogaka Kemosi. He is not here. Hon. Seroney Kipkorir. He is not here too. Hon. Robert Mbui, you have the Floor.

**Hon. Robert Mbui** (Kathiani, WDM – K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to contribute. I am a Member of the Committee. So, I stand to support the Motion. The Committee on Delegated Legislation is guided by the Statutory Instruments Act which is very clear about the kind of things we are supposed to look for. In consultation with the Klynveld Peat Marwick Goerdeler (KPMG), Kenya Revenue Authority (KRA) and the National Treasury, we realised that the purpose behind this Regulation is positive. It intends to amend Regulation 8, part 2(a) of the VAT Regulations 2017 which contains a

formulae used to calculate the Value Added Tax (VAT) refund. The current formulae disadvantage exporters of taxable goods. They are not able to fully recover their input VAT. Basically, it is something that should be supported because it helps those exporters of taxable goods.

For a country to grow, we need to encourage exporters. It makes sense. We considered this Regulation against the principal Regulations. We found that they were in conformity. We checked the timelines and found that they were submitted within the statutory timelines which are contemplated. There was adequate public participation. We realised that they talked to the Institute of Certified Public Accountants of Kenya (ICPAK), Kenya Association of Manufacturers (KAM) and the Private Sector Alliance. We felt that there was enough public participation. These Regulations do not require a statutory impact statement.

I support the approval of the Statutory Instrument in accordance with Section 67 of the VAT Act No.35 of 2013.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us hear the Member for Kiharu, Hon. Ndindi Nyoro.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me the opportunity to support this Report by the Committee. It is a very good and brilliant move to standardise taxation in this county. As you have seen recently, there has been a lot of hullabaloo as far as taxation cases are concerned.

Before I go there, one of the principles of taxation is simplicity. The case of tax refunds as it was there before, and especially when it comes to zero-rated commodities, that was faced by the importers was a quagmire of some sort. As you know, our tax authorities are very agile when it comes to collecting tax and penalising those who do not pay tax in time but they are very slow when it comes to tax refunds.

Tax refunds are an input to the people, especially those who import raw commodities to add value. Therefore, any time lost in refunding the same to business people is money lost because of the time value for money. A country can only sustain itself through the revenues that we collect from the population that we serve. The genesis of democracy was based on taxation. Even from the glorious revolution in the United Kingdom (UK) there before, the democracy then was based on, "No representation without taxation". Therefore, taxation is the basis of any republic or state because that is where we derive money to oil the wheel of the economy, especially when it comes to Government.

I also want to talk about a few things when it comes to taxation. Of late, we have seen a very overzealous Director of Public Prosecutions (DPP), and especially when it comes to business people being taken to court ostensibly because of not paying tax. One of the other very important principles of taxation is the ability to pay. This principle is edged on the assumption that you cannot tax a person more money than he can pay. I listened to some of the cases that were taken to court recently. Some of the tax which is being asked from these business people surpasses their turnover. It is good for our KRA to take note of that because we cannot purport to kill our business people on the basis of tax crimes. Once that person ceases to do business, even

the few shillings you collect from him will not be available in the long run. This is a very peculiar country because very rich people, endowed individuals and business people pay less tax than those people with payslips who are less endowed.

The other principle of taxation I want to speak about is equity which has two facets: horizontal equity and vertical equity. Horizontal equity in taxation assumes that people who are gifted in the same way and those who are equal in revenue and net worth should pay tax that is almost equal, so that it cuts across horizontally. However, the people who carry the burden of taxation in this country are those who have payslips because it is easier for the revenue collector to collect money from people who are employed, especially if they shy away from going to the informal sector. Therefore, this is a call to the KRA. For us to observe this horizontal equity, they also need to go to the informal sector so that we can collect more revenue to make businesses more bearable, and especially when it comes to infrastructure. This is something that we cannot do, if we do not have the revenue to do exactly that.

On the same equity, there is vertical equity which says that if I earn Kshs10, 000, then there is no way I should pay tax which is equivalent to a person who earns many times the revenue that I earn. If there is a differentiation in income and net worth, the same differentiation should also percolate to when it comes to payment of tax. Referencing to also what I have explained there before in horizontal equity, this country is very unequal.

**Hon. Robert Mbui (Kathiani, WDM – K):** On a point of order.

**The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya):** Order, Hon. Ndindi! Yes, Hon. Mbui.

**Hon. Robert Mbui (Kathiani, WDM – K):** Hon. Temporary Deputy Speaker, with all due respect to my colleague from Kiharu Constituency, this is a Report of the Committee that deals with VAT and not just the taxation generally. This is not a debate on taxation. This is a Report of the Committee where we want to approve or disapprove VAT (Amendment) Regulations.

*(Hon. (Ms.) Odhiambo-Mabona, Hon. (Ms.) Cecily Mbarire and Hon. Junet Nuh consulted loudly)*

**The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya):** Order Hon. Millie, the Deputy Majority Whip and the Minority Whip! Please consult in acceptable tones. We can all hear what you are saying. So, please, do not interfere with the debate.

**Hon. Robert Mbui (Kathiani, WDM-K):** So, Hon. Temporary Deputy Speaker, on the issue of relevance, I would like to urge that we just concentrate on what is on the Order Paper.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya):** Hon. Ndindi, did you hear the issue raised by Hon. Mbui?

**Hon. Ndindi Nyoro (Kiharu, JP):** I heard him but I think it is within my rights to make the contributions that I am making, especially given that I have only talked about taxation. To the Hon. Member, you are not talking about cows and milk when you talk about VAT. You are

talking about taxation. All the points I have made are related to the topic that we are discussing this afternoon.

To wind up, one of the other issues that we should be very alive to is economic effect and neutrality. Even as we collect tax, it should be very alive to the Kenya Revenue Authority (KRA) that any kind of tax the KRA levies to the population should bring about neutrality to the economy. I am saying this because we have seen many people being disrupted to the point of closing shop because of our taxation regime. Therefore, it should be conducive even to the taxpayer. That is so that we do not have far reaching economic effects even as we collect tax.

My last point is that VAT is the taxation of a lazy tax collector. The easiest way to collect money from the population, all over the world, is through sales tax which is called the VAT in other jurisdictions. Therefore, I call upon the KRA to be a bit more innovative so that we uphold all the principles of taxation, especially equity, by going even to those people who are not in the mainstream economy. That is so that we collect more but, more importantly, from those who deserve to pay more.

Thank you very much.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Godfrey Osotsi is not in. Hon. What about the Member for Funyula? He is not in. Hon. Mohamed Osman! Hon. Bunyasi!

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Members, you know you cannot just shout it from where you are seated. You have to put it properly, on the Floor. So, I have not heard anything. I will just continue calling Members to contribute.

**Hon. Sakwa Bunyasi** (Nambale, ANC): Indeed, as it should be, Hon. Temporary Deputy Speaker. I will be very brief.

I thought I should say something on the VAT issue in respect of what Hon. Mbui was saying. In respect of what is before the Floor, I can only congratulate the committee and say that any efforts towards simplification are very good. The tax code is never simple even when it is simplified. Anything that makes it easier than the prior requirements is welcome. It means you can collect tax at a minimum cost. If there is compliance which is simple, many people can comply.

I agree with Hon. Ndindi Nyoro that this is part of a broad theme of taxation. Every citizen has to pay tax. However, taxes should only be levied in a justifiable manner. One way in which justifiability can arise is if the expenditures supported by the taxes are misused and if the priorities are not optimal. So, the nation has to worry about taxation as a whole. It usually falls down on the weakest of society because they can push back. I think it is fair to use this opportunity to make comments and raise awareness that you tax only when you must and only when the taxation is going to contribute to the general welfare of society. We have big issues in Kenya on debt and whether the debt is what it must be. Remember debt is going to be collected and paid mostly through taxation of one kind or another. Two, we have so much leakage because of financial mismanagement and outright theft and graft. All those monies that are raised through one tax measure or another end up being wasted; even if they are borrowed, it has to be paid for



at the end of the day. That is why it is fair to comment and raise the alarm that any manner of appropriation that yields resources and the resources are not used optimally is something we need to worry about. These issues will come up since we are in the Budget season; the Supplementary Budget is before us. We should not just let things go because we have the powers to appropriate the funds for which we will pay. Sometimes we could have saved citizens in terms of its timing, magnitude and incidents.

With these few remarks, I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I seem to only have pre-emptors of debate. I think I have called out all the names I have here. They are all talking to some business which is yet to come on the Floor. In that regard, I will call on the Mover to reply.

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Thank you, Hon. Temporary Deputy Speaker.

I beg to move that this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Value Added Tax (Amendment) Regulations, 2019 (Legal Notice No.86 of 2019) laid on the Table of the House on Wednesday, November...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Gedi, did I hear you say you are moving?

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Do I reply?

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Yes. You are standing to reply, not to move. You have moved already.

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Okay. Hon. Temporary Deputy Speaker, I beg to reply. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Okay. We shall defer the putting of the Question until such other time when it comes on the Order Paper. So, we move to the next Order.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The Hon. Murugara.

#### ANNULMENT OF THE PRIVATE SECURITY (GENERAL) REGULATIONS OF 2019

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

I beg to move:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Private Security (General) Regulations, 2019 (Legal Notice No. 108 of 2019), laid on the Table of the House on Wednesday, November 06, 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4) (b) annuls in entirety the said Regulations.

The Committee on Delegated Legislation is established pursuant to Standing Order No. 210 and it has its functions set out thereunder. It is important to note that what comes before the House are Reports of this Committee as regards annulment of statutory instruments. When it comes to those that are approved, their Reports do not come to the House, but the

communications are made directly. So, this House only comes to hear of reports where finance and tax matters are involved.

The Private Security (General) Regulations were made pursuant to various sections of the main Act. The regulations that were to be established are anchored in that Act. The regulations had various functions or objectives including, providing procedure for appointment of members of the Private Security Regulatory Authority. It also provides procedure, requirements and statutory forms for registration amongst other objectives that are set out in the Report of the Committee.

We have a total of 13 objectives. The Committee considered these regulations against the Constitution, the parent Act and other statutes and arrived at the decision that is now being brought to this House with a recommendation that those regulations be annulled. That is of concern and importance to the Committee regarding the Private Security General Regulations.

1. The Committee was extremely concerned that contrary to Articles 10 and 118 of the Constitution, as read together with Sections 5 and 5A of the Statutory Instruments Act, there was inadequate public participation. Public participation is vital. Where it lacks, this Committee is not left with any other option, but to annul the regulations.

2. Contrary to section 13 (a) of the Statutory Instruments Act, the power to make regulations has not been properly invoked when making these regulations. Examples are:

(i) Pursuant to Article 259(11) of the Constitution, where power conferred on a person is exercisable only on the advice of that person, not any other person. It cannot be moved in any other way without the relevant advice that has to be taken as provided by the law.

(ii) Section 45(2) requires consultation with the Inspector-General and the Authority. Unfortunately, we were not able to find any backing regarding that consultation in the National Police service Act. Therefore, it appears to the Committee as if the Inspector-General was being called upon to consult a third party in discharge of his duties, which is against the law.

(iii) Section 51(2) requires consultation with the Authority and private security service providers before making regulations relating to use, manufacture, importation, selling, distribution, possession and classification of security equipment. Again, this was a consultation with a third party which in our view was not properly exercised.

(iv) Section 70 of the Act requires consultation with the Authority before making general regulations for the purpose of proper administration and giving effect to the Act.

3. What was of great concern to the Committee was use of firearms. This is provided by Section 13(c) of the Statutory Instruments Act, which requires the Committee to consider whether the Regulations contain a matter which, in the opinion of the Committee, should be properly dealt with by a different Act of Parliament.

In considering Regulation 25(5), Members were of the opinion that the exercise of the powers of a police officer implies the use of firearms by private security providers when

working under the command of a police officer. There is a provision with regulations to the effect that when a private security officer is working, he is collaborating with the police; he will take all orders and carry out instructions of a police officer to the latter without question. The concern here was that when it came to the use of firearms by private security personnel, which is not provided for under any other law, apart from these regulations, it was *ultra vires* and it offended several main statutes.

4. Contrary to section 13(j) of the Statutory Instruments Act, there appears to be an unjustifiable delay in the publication of the Regulations or laying them before Parliament. This is contrary to the law that is given. We were able to scrutinise many other inconsistencies in the regulations and we were able to bring out these in the Report, including power to arrest, which is only conferred upon police officers, and where it is exercised by the public, it has to be under clear laws.

5. Extension of time to comply with regulations was another concern because we were given six months to comply with the regulations but unfortunately, we are considering these in November. Therefore, we will not have anything more than two months or three months to comply.

There are many other regulations which are in the Report and these were the concerns that we actually brought before the House. It is on the basis of these inconsistencies that we actually made a recommendation that these regulations be annulled.

Having said all this, it is the considered opinion and recommendation of this particular Committee that the regulations under consideration be annulled entirely in accordance with the law.

Allow me to thank Members of the Committee on Delegated Legislation for their continued tireless work to ensure that all statutory instruments that are brought before the Committee are scrutinised in time. Reports are made timeously and those that are approved are approved and those that are rejected are brought to this House to be annulled with speed, so that the regulation making authorities can go back to the drawing board and come up with regulations that are acceptable.

With those remarks, it is my humble prayer that you allow me to move and call upon the Hon. Member for Gilgil, Hon. Martha Wangari, to second.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Wangari, you have the Floor.

**Hon. (Ms.) Martha Wangari** (Gilgil, JP): Thank you, Hon. Temporary Deputy Speaker for this chance to second this Report. We invested a lot of time on these regulations as a Committee not only because it is an important piece of legislation but because it is a sensitive matter. We considered so many of the issues that have been raised by the Mover, especially consistency with the parent Act, with the Constitution and with other statutes.

The issue of public participation, as it has been alluded to, is included. In Article 10 of the Constitution, inclusivity, accountability and transparency are mandatory requirements. They are not optional. We not only looked at the extend but as a House of records that relies on

evidence, we also required that, the regulation making authorities provide the necessary back up documentation to show they have taken adequate time to go round the country, so that all users and consumers of these regulations are apprised.

The Committee has been very open to regulation making authorities in what we call pre-publication scrutiny. This is something that I will say to other authorities that are watching these proceedings. Instead of coming with regulations that we cannot amend because we are not mandated to do that, they engage the Committee beforehand to iron out issues in order to have a smooth sailing regulation making process given by the Statutory Instruments Act.

In addition to what Hon. G.G. Murugara has said while moving, I will only talk about issues that lead us to think that these regulations are fatally defective and they need to be relooked. I would take this chance to look at Regulation 25. It has been a contentious issue in terms of arming security guards. I know there is division of opinion on it. More importantly, even if we go that way, we have to align the process with the parent Act. That has not been done.

The drafting is also fatally defective. If you look at Regulation 27, the heading on Part VII provides for “levy” while the marginal notes provide for a Fund. These are two different things. They will be confusing.

The timeline for implementation had been as February, 2020. I know many security practitioners and consumers had said that timeline is too short. We are already in November. The unfortunate bit is that we cannot amend that timeline unless we annul these statutory instruments to be published again so that they are given enough time to comply, to properly register their companies into an organisation, and to acquire proper instruments. That can only be done if these regulations are republished.

If you look at the Committee’s Report, you will be able to see that the regulation making body provides for power to record and temporarily hold identification documents. That is in contravention to what has been provided for under the parent Act, the Private Security Act, Section 48(4).

The other issue is the power of arrest. I know it has been talked about. You know we live in a very enthusiastic country where people just arrest you for no specific reason and they do not say how long it takes after the arrest to take you to the police or to a police station. It will mean a security guard can easily arrest you on a Friday, hold you wherever they take you until Monday. That will be prone to abuse. That issue is very critical. That is why we are saying Regulation 37 must be very clear that it is in tandem with what has been provided for on arrest under Section 46(4) of the parent Act.

We have very many reasons why we felt that these regulations are fatally defective. I pray that this House sees the sense that we are talking of human life and abuse of power so that we are able to annul these regulations in entirety. If we do so, we will be able to align it to the necessary statutes and the Constitution and be able to do the right thing as we are supposed to do in this House.

With those remarks, Hon. Temporary Deputy Speaker, I beg to second.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order Members. The *Kamukunji* is louder than the Member who is contributing. Please consult in low tones.

*(Question proposed)*

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

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Is it the mood of the House that we put the Question?

**Hon. Members:** Yes.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): I think until I get a Motion, there seems to be some division. There are Members who want to contribute and those who want the Question to be put. You know the procedure. So, we will have Hon. Abdullahi Sheikh, Member for Mandera North.

**Hon. Major (Rtd.) Bashir S. Abdullahi** (Mandera North, JP): Thank you, Hon. Temporary Deputy Speaker. From the outset, I want to really congratulate the Committee for the thorough job they have done in bringing to this House the proposal for annulment of these regulations. The Committee's work is very thorough and exhaustive. I have gone through it page by page. In the first place, there was no public participation. These regulations would have had far reaching implications on all Kenyans. Therefore, not being able to conduct public participation as is required in law itself, is doing things against the law. The Report says that they only did public participation in Nairobi County, out of the 47 counties. So, we are asking ourselves: Who represented the other 46 counties? That tells you that things were not done properly. They just wanted things done in a hurry.

The other issue is the use of firearms. The regulations talk about a situation where all private security officers will at some point be allowed to carry or use firearms. Private security guards are not police, military, and Kenya Wildlife Service or prison officers. The main Act has not been changed and yet here we have a regulation which says within 60 months private security guards will be armed. That contravenes the main Act. It is actually not even good for this country. We are not in a situation where we need to have guards being armed.

The other issue is the timeline. The regulations were published three months ago and they are supposed to be complied with within six months. That is too short. When I look at countries more developed than us...

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Soipan Tuya): Hon. Gedi.

**Hon. (Ms.) Fatuma Gedi** (Wajir, PDR): Hon. Temporary Deputy Speaker, the Member is misleading people. There is nowhere these regulations seek private security guards to be armed. It is only the National Security Council that can approve that. So, as he debates, he needs to be guided. The regulations are not asking for arming of the private security guards.

**Hon. Major (Rtd.) Bashir S. Abdullahi** (Mandera North, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to disagree. This is a matter that I am conversant with and I have a lot of expertise in. The regulations have talked about that and it has been in the media throughout that private security guards will be armed and that this will relieve duties of police officers. S, I beg to differ. I wish to continue.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Sheikh, as you contribute, I believe regulations are attached to a substantive law. So, you debate within the substantive law and what the regulations speak to.

**Hon. Major (Rtd.) Bashir S. Abdullahi** (Mandera North, JP): Thank you. The other point is the timeline. The security firms were given six months to comply. As I was saying, we have drawn examples from countries which are more developed. The United Kingdom had similar regulations but they gave stakeholders five years to comply. In these regulations the Authority says it is six months within which companies should comply. It is too short looking at the ramification of the regulations. So, I support and agree with the Committee in annulling the regulations. I have gone through the Report and I do not want to go into each and every specific aspect. The Mover and the Seconder have spoken about them.

The regulations would have had effects on the economy. There is a provision which says the minimum wage for security guards be Kshs35,000 per month. Even when police officers come from training, that is not the much they are paid. So, this is even inconsistent with the licensed and gazetted police officers. Two, if you say you pay Kshs35,000 to a private guard, how much will the security firm charge you as a client? That means the minimum they will charge is Kshs50,000. As we know, no Government institution or parastatal accepts highest bidders. They always get the lowest bidder in tendering. As we speak, no Government institution or parastatal is being charged by a security firm more than Kshs30,000. So, if you are being charged Kshs30,000 per month and you expect the security guard to be paid Kshs34,000, is that going to work? It is not going to work. That means if you want to force the companies to do the same, where is the money coming from for the Government institutions to pay the security firms? So, these are not provisions which are in tandem with the reality of the day-to-day affairs of the economy.

I do not want to take a lot of time. I thank the Committee for doing a great job in bringing this Report so that this House agrees with them and annuls the regulations. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Godfrey Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to also raise my voice on this Motion.

Hon. Temporary Deputy Speaker, I want to agree with the recommendation of the Committee in that, in my view, these regulations are illegal, unlawful and very punitive. Besides that, I have listened carefully to the Mover of this Motion. He said that we did not have adequate public participation. This is the most important reason why these regulations should be annulled. You cannot conduct public participation in Nairobi alone and we know that we have 47 counties where services of private security guards are required. That was a big omission and every time there is limited public participation, there is always something sinister on what is about to be done. That in itself offends the Constitution, particularly Article 10, on inclusivity.

The second aspect is the inconsistency with the parent law on private security guards. As has been said by the Mover of the Motion, on the requirement that private security guards will have fire arms, what should have been done before these regulations came for publication is that the parent Act needed to be amended to provide for private security guards to hold guns. That

has not been done. So, we cannot make that huge proposal in regulation when the parent Act says otherwise.

I have read the regulations and one of the strange things in the regulation is that it allows the national security forces, the Police commandant, to command private security guards to participate in national security duties. This poses a major challenge to employers of private security guards; that I have employed someone who is earning a salary from me and that person can be called anytime by another authority to participate in national security duties. There are some inconsistencies there. Most importantly we know that private security guards are unionisable. The moment you get them involved in national security matters, it means they will cease to be unionisable. So, we are going to kill the union that represents the interest of these people.

The other reason is conflict with the Human Resource Act; that I have employed someone under my control but this person can be engaged in other duties elsewhere. This raises the question of who pays them when they are engaged in national security. What if there are issues that may arise in that process such as injury or gunshots. Who will be answerable? The regulations are silent on some of these questions.

Then there is the issue that these regulations must be implemented within six months. It is not practical because these regulations were gazetted in July. So, if we talk about six months, we are talking about January 2020 which is just two months from now but, some of the things that security companies are required to comply with...

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): On a point of order.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. (Ms) Shamalla. I have not even given you the Floor. What is out of order?

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Hon. Temporary Deputy Speaker. The Member is being repetitive. He is simply echoing the sentiments, words and expression that have been already used when the Motion was being moved.

*(Laughter)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Osotsi has a right to his words and it is his time. Maybe he just wants to lay more emphasis on what has been said and it is allowed as long as he remains relevant. Proceed, Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker. It is important to emphasise these issues as well because I have also read the Report. So, the compliance requirements are not possible in the next two months. For example, the requirement saying that they need to have an armoury, they need to train people and other things are not possible. It is not possible to comply and that means many of our security companies, especially the small ones, will simply close shop and many security guards will lose jobs. So, for that reason I support the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Is Hon. Thuku Kwenya ready to contribute?

**Hon. Zachary Thuku** (Kinangop, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the annulment of the said regulations on the grounds that have been well moved by the Mover. As much as I would have mentioned a few things that have been said, I believe that Hon. Shamalla will not be in position to say that I am repetitive. Nevertheless, I wish to state that there are many reasons as to why the said regulations should be annulled.

First, they are foreign; they are not Kenyan. I say this for the simple reason that the period at which the person who drafted the same envisaged it to be implemented is impracticable. You cannot tell security companies to comply within a period of six months whereby you are asked to retrain all security guards within six months. We know for sure that we do not have an approved or accredited school where security guards ought to be trained.

The other issue that caused me to look at these regulations is insufficient public participation because security guards are not a preserve of Nairobi County only. We have other counties that have interest in this because private security companies complement the work done by the National Police Service. Telling these small private companies to be in compliance by 20<sup>th</sup> January 2020 is simply not achievable.

Security companies that are compliant or those that can comply within that period are few giants that we have. This maybe begs this question: Who drafted these regulations because the intention seems to have been to drive the small players out of market? Therefore, I strongly support the Committee's position. You can imagine a security firm being asked to pay their security guards a colossal amount of Kshs35,000 per month. How many people can afford to hire a security guard for their homesteads at that amount? How many companies can afford it and make profits from the people they employ?

The other issue is: How is it that the drafter of the said regulations proposed that there be a private security regulatory authority where only two of the representatives would come from the industry players and the rest will be from outside? We have not seen a regulatory authority where people who have no interest in the industry are the ones appointed to regulate.

So, I strongly support the Committee's position to annul the said security regulations. I thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Let us have Hon. Seroney Kipkorir.

**Hon. Sammy Seroney** (Nominated, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I serve in the Committee on Delegated Legislation and this Committee is very serious because it leaves nothing to chance. As you will remember, we have approved very many regulations but this one seems to be worst since I started sitting in this Committee. Public participation is mandatory as far as the Constitution is concerned. When the regulation making authority appeared before us they said they did public participation in 47 counties, yet they had evidence of Nairobi County only.

They were given two weeks to submit all the records from the county commissioners' offices showing that public participation was held. They were unable to do so, meaning they had bad intentions. The private security companies have about 500,000 employees. The only companies which seemed to have qualified are the foreign ones which are only five. Meaning the



intention was to get rid of the local companies and remain with the foreign ones and this would leave the guards jobless. We should be making regulations to assist this Government to create more jobs.

It is my personal observation and advice to any regulation making authority to apply pre-scrutiny publication so that when they bring these regulations, they engage the Committee to agree...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. Seroney! What do you mean by pre-scrutiny publication?

**Hon. Sammy Seroney** (Nominated, WDM-K): Sorry, I meant pre-publication scrutiny. This is the only way any regulation making authority should follow so that regulations are passed on time instead of wasting time and public resources processing them. I do not want to repeat what my colleagues have said, but it is my feeling that these companies should be given, at least, three years in order to register and train their personnel. Otherwise, three months does not make sense.

Hon. Temporary Deputy Speaker, I support the annulment in totality. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Koyi Waluke, he is not ready. Hon. Jennifer Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. As I rise to support, I wish to make certain things very clear to the House. That the reason for the annulment of these regulations were two: One, was the issue of not being able to provide evidence of public participation.

Indeed, when the Ministry and stakeholders appeared before us, the Principal Secretary (PS) indicated that they had sent circulars to all the 47 counties through the county commissioners. They undertook to provide these circulars to the Committee before we sat for deliberations a few days later. By the time we sat to deliberate we were still to receive evidence of these circulars.

Two, there we no clear standard operating procedures with regard to control and command between the police service and security guards. I can remember various stakeholders appeared before us. There was a delegation led by a gentleman who is the head of the Kenya National Private Security Workers Union. The complaint was that they are among the poorest paid sectors in Kenya. What happens is that a security guard works in unregulated industry. The security companies are paid over Kshs30,000 for a security guard and they pay them Kshs8,000 or Kshs10,000. They do not provide uniform, shoes, coats or anything for defence.

It was for these two reasons that we recommended the annulment of these regulations. In the event that the Ministry will come back and satisfy these two regulations, we shall in the interest of the over 500,000 security guards in this country approve them.

With those few remarks I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Well said. Let us have the Hon. Member for Funyula. Hon. Members, if you want the Mover to reply, you know what to do. So, do not shout from your seats. Go on Hon. Oundo.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. I sit in the Committee on Delegated Legislation and I had an opportunity to listen to the presenters and other stakeholders.

I do not want to repeat what my colleagues have said about public participation and the rest. Just allow me to make a few comments and specifically with regard to various provisions. I was alarmed like any other Member of the Committee by a provision that gave the Officer Commanding a Police Station (OCS) unfettered authority to call upon the private security guards to provide security in national interest. I saw that as an extremely dangerous provision with an end result of plunging this country into chaos.

I just recalled that after the 2017 elections there were very many protests, picketing and demonstrations in support of the elections or opposition. I just imagined if we had a rogue Officer Commanding Police Division (OCPD) who could simply collect licensed or unlicensed private security providers to assist in quelling those riots. Considering that the private security guards are not adequately prepared and trained there was going to be chaos.

The most dangerous provision as well is one which required that in the event a private security guard was called upon to provide security services in respect of the Government, if he or she commits a felony or the person whom he has been requested to arrest or quell a riot suffers injury or damages and the victim sues, the private security guard is personally held liable. He is held liable for any damages that may be awarded by a court of law or any other competent authority.

Many of the boys and girls who join private security guards do not have the wherewithal to meet those kinds of damages in the event they are asked to pay. For this reason and many other reasons, the Committee and I felt that these regulations were prematurely drafted with a sinister motive and were going to hurt the intended beneficiaries more than benefiting them. The period given to comply is extremely too short. Currently, it takes 18 months to train a competent police officer. It takes much more to train that police officer on the job to understand the ropes of the job. Private security guards normally go through very rudimentary training. The period left between gazettement and compliance of the Regulations is effectively two months. You can never train a security guard to understand the tenets of providing security within two months and expect him or her to operate at the same level as a qualified police officer or security agent.

With those few remarks, I support the Committee's decision that calls for the annulment of the Regulations. They need to be thoroughly reworked on before they are brought before the Committee for review and approval.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Koyi Waluke.

**Hon. John Waluke** (Sirisia, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me a chance to speak on this. From the outset, I support the Report. It is a good Report that says that the Regulations should be annulled.

In this country, we have enjoyed peace because of accountability of weapons. We are not like South Sudan and other countries where anybody is allowed to walk with firearms. We need that peace to continue, so that our children who are coming up can enjoy the way we have enjoyed. The Regulations should be annulled and we go back to the drawing board because the

period they have given is very short. To train a soldier to use a firearm takes time. It takes more than 12 months for a soldier to understand how to strip the weapon and put it back to how it is supposed to be. Sometimes even our police officers lack control. We have seen and witnessed some police officers shooting their wives, family members and colleagues because they have been left to keep the firearms in their houses. This has cost some families their loved ones because of lack of control and accountability.

It should be like in the military, where I was. When you sign for a firearm, you must return it. When one bullet misses, you must report and state how the bullet got lost or how you fired the bullet without any reason. This should apply to even our police officers, GSU, Administration Police, prison police and wardens who hold firearms. This will control and limit the death of innocent people.

In this country, we have many forces. Maybe we went to war and all our soldiers have died that now we can have private security guards allowed to use firearms. Of late, we have seen them on closed circuit television (CCTV) and many of them have become thieves. They even collude with our police officers and steal in banks and supermarkets. When they are allowed to carry guns, this country will turn into something else. So, we need about five years for public participation and not one-and-a-half years. This is a very important issue and we cannot just allow a private guard to carry a gun. No! This is a House of laws. We should follow the law and the Constitution. Even if somebody is a Member of Parliament, they should not just be allowed to own a firearm if they have not been trained on how to use it. Sometimes you see some of us walking with firearms and showing them to anybody. You want people to see that you have a gun. This should also be limited. Some of us do not even need to own firearms for show-off. The way some of us behave is not also good and there must be some control. Somebody who has never been trained on how to handle a firearm should not be allowed to carry one.

With those few remarks, I support the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Nyoro Ndindi.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Temporary Deputy Speaker, for the chance to support the annulment of the Private Security (General) Regulations. I have gone through the Report by the Committee and I cannot agree more with them.

The issue of saying that private security guards can collaborate with police officers who are employed by the public without proper guidelines is a step in the wrong direction. There is no way a person employed in the private sector can obey the orders given by police bosses. The private sector does not have the privilege of taking their private guards to the kind of thorough training our police officers undergo, especially in handling firearms.

Also, there is something unfortunate about the Regulations, which is that we can give powers to arrest to private guards. I have been a victim of such a thing. We will breed anarchy where a private person purporting to be a private guard can arrest anyone, keep them in their house and take them to court or whichever place after some few days. Therefore, it is not wise for us to expose our country to those kinds of risks. Even more telling is the fact that the drafters of the Regulations never saw the need to do thorough public participation. The issue of security is not just based in the City of Nairobi. Security or lack of it is also found in Murang'a, Busia,

Suna East and other places in this country. Therefore, it was important for the drafters to go around the country. The issue of security affects all and sundry, the mighty and the lowly. Therefore, it is important for them to conduct proper public participation and not just the academic public participation that we are used to. They should even allow enough time for the Kenyan people and the players in that sector to ventilate. The kind of Regulation they were trying to make are far reaching. Therefore, given the magnitude of their effect, the freedom of debate should be enlarged. That can only happen if we have enough time for public participation and ventilation, so that we can correct each other and have good regulations to help us to supplement the National Police Service (NPS) which serves Kenyans.

This Motion comes at a very peculiar time when there is the issue of privately paid people who participate in duties that are done and fulfilled by the NPS. I say it is a peculiar moment because it is hardly one week since we had a private outfit in the name of Orange Democratic Movement (ODM) doing what we are sanctioning them to do as they did in Kibra. For example, if a political party registers a private security company called ODM Securities, it will be very unfortunate. Therefore, it will meet the kind of injustice and violence...

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Member for Funyula, what is out of order?

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Speaker, my Hon. Colleague is becoming notorious for taking all the opportunity to tell lies where there are no lies at all. The ODM is a political party which has no militia. We have ardent supporters who protected *Baba's* bedroom.

*(Laughter)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Ndindi Nyoro, be factual.

**Hon. Ndindi Nyoro** (Kiharu, JP): Hon. Temporary Deputy Speaker, he has reinforced the point that I had. It is not the duty of the ODM as an outfit to protect a bedroom.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Order, Hon. Ndindi Nyoro! Be relevant. Let us speak to the issues at hand. We are not talking about political parties, bedrooms or sitting rooms. Please, confine yourself to the debate at hand.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you, Hon. Temporary Deputy Speaker. I stand guided.

I will give more examples. There is also the kind of brutal force that was meted on the students of Jomo Kenyatta University of Agriculture and Technology (JKUAT) recently. If this is a person who reports through the hierarchy to the NPS, what would have happened if this person got orders from a person who serves in a public office and his obligation is in the private sector? We need a bigger debate on this matter, so that we can make regulations that will work for Kenyans.

There is also the issue of the minimum wage. We have this tendency to stifle markets in this country. We should leave market forces to determine the price of labour because it is one of

the means of production. You cannot fix the prices of the means of production if you do not want to consequently affect the prices of services. Private guards give out a service. The private sector pays for it. It is not the business of this House to regulate the prices of labour in this country. If we say that a private guard will be paid this much without even saying how much private security firms should charge their clients, that is a defeatist argument. They ought to have put a percentage. For example, if I am the client, as the Parliament of Kenya, who is procuring services from a private company, I should be compelled to give a certain proportion of the money that I charge my clients to the persons who serve as private guards. I do not think it is the prerogative of this House to give the actual figure because there are other dynamics. Inflation comes in and the money that you are proposing may be overtaken by time.

We have to ask ourselves why we have the NPS and some services being rendered by the Government or the public sector. The reason we have the NPS, just like any other public service, is because there are some services I cannot procure as an individual. Therefore, we pool our resources through taxation, so that we can procure these services together. Therefore, as we continue to give a good environment to security guards to thrive, especially in the private sector, we should know that it is the prerogative of the Government of the day to provide security. This is a very sensitive area. For example, if as a private person I am allowed to procure my security, first of all, it will be very expensive. Two, it will be unregulated which will breed anarchy.

With those many remarks, I support the Motion. The time to comply with the law is also very important. Six months are given in the Regulations. A child who is conceived today will not be born in six months' time. We need a longer period, so that we can give our companies enough time to fulfil their obligations other than these kinds of knee-jerk activities that stifle the small private companies.

**The Temporary Deputy Speaker** (Hon. (Ms.) Soipan Tuya): Hon. Kipyegon Ngeno.

*(An Hon. Member spoke off-record)*

**Hon. Kipyegon Ngeno** (Emurua Dikirr, KANU): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute. As my friend has just alluded, I have come back. I wish to make a contribution on this particular matter. Security in any nation is very vital. It is something that you cannot take the way people want to take it.

I believe anything to do with security of the nation has to come to this House and be passed as an Act of Parliament, so that the regulations that will be enacted will have the full force of the law. I do not believe in the idea of most Cabinet Secretaries creating regulations here and there. They create regulations in the Ministry of Education on education and health matters. I believe security is so vital that we do not need these Regulations. I believe that each law has to be made and amended in this House, so that we can put down a serious law that will govern security matters.

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Soipan Tuya) left the Chair]*

*[The Temporary Deputy Speaker  
(Hon. (Ms.) Jessica Mbalu) took the Chair]*

We have our forces which are normally called the disciplined forces because they are trained properly. When they want to exercise their duties, they do so based on the discipline and training they have undergone. Of late, what we see is not what it is supposed to be. We have seen several rogue police officers who do dirty work. I do not know whether they do this because of the salaries, the way they are trained or the way the country is at the moment. Sometimes the citizens of this nation influence how people behave. For example, students and police officers. When they see us behaving or misbehaving, they also do that. The drafters of the Constitution saw it fit that any person who serves in the discipline forces cannot picket or go on strike because they carry guns. We should make the punishment for any act that is against this so stringent, so that people who carry guns can behave properly.

Lastly, there is the idea of arming private security guards. Of course, we have had several issues, especially on areas which are guarded by private security guards like banks, private entities, institutions and hotels. We know there is a shortage of police officers to serve in those areas, but we cannot substitute the forces with less trained or untrained personnel and allow them to carry guns. Just like my colleagues have said, if we were to arm private security guards, there will be chaos and problems in this country. My belief is that if we want to have extra security personnel to guard our institutions like Parliament, county offices, banks and other private institutions, we will have to arm trained persons. There is a wing in this country which I have never understood why its persons are trained and have never done any serious job in this nation. There is a wing called the National Youth Service (NYS). We normally pump billions of shillings into this institution and when we check on what they have done, I do not believe the money we put there is equivalent to the work they do. I have never seen anything that the NYS does. We are sometimes told they construct roads, but I have never seen any serious roads that they have constructed. Sometimes we are told they work, but I do not know what they do. We do not see the serious things that they do. So, my opinion is that instead of arming private security guards, the Government should create a wing within the NYS that would be trained as security personnel. These can be armed.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): The Member for Emurua Dikirr, Hon. Kipyegon Ngeno, there is intervention by the Deputy Whip of the Minority Party, the Hon. Member for Kathiani.

**Hon. Robert Mbui** (Kathiani, WDM-K): I am the Deputy Leader of the Minority Party. Thank you, Hon. Temporary Deputy Speaker. I am standing under the Standing Order No.95. Looking at the mood of the House, would I be in order to ask that the Mover Mover be called upon to reply after the Member finishes his contribution? This is also guided by the fact that we have a lot of other reports that we should finish by the end of the day.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. Before I prosecute the Deputy Leader of the Minority Party's point of order, allow Hon. Kipyegon Ngeno to finish his debate on this.

**Hon. Kipyegon Ngeno** (Emurua Dikirr, KANU): Thank you, Hon. Temporary Deputy Speaker. I was almost finishing. I was just saying that members of the NYS should be trained for this work. There should be a section in the NYS that should be trained as guards and be armed. These are the people who should be allowed to do all the security things.

*(Hon. (Dr.) Patrick Musimba hit a table)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Musimba, we do not do that. We do not bang tables.

*(Laughter)*

That is not how we clap. You know there is a way we applaud.

**Hon. Kipyegon Ngeno** (Emurua Dikirr, KANU): We have used policemen and police officers in guarding several institutions and personalities. If we were to create a section in the NYS, even Members of Parliament can be guarded by them. Senators can have their security from the NYS. Governors, Cabinet Secretaries and all such people can have their security from the NYS, so that we can leave police officers to do exactly what they are trained to do. I wish the proponent of this amendment brings it in form of creating a wing under the NYS so that some officers can be trained on security matters.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Musimba says he wanted blood circulation in his hands. In fact, he was not clapping. He knows how we do it. That point is taken. I move to prosecute the Deputy Leader of the Minority Party's point of order. He stood on Standing Order No.95 on closure of debate. From where I sit, the House will have to take a vote.

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

The Mover, reply.

**Hon. George Gitonga** (Tharaka, DP): All right. Thank you very much, Hon. Temporary Deputy Speaker. I beg to reply and thank the Members for their very passionate and lively debate. I believe the regulation making authority now has the opportunity to comply while the service providers in private security firms will have to train the guards well and make them ready for the liaison that is to come in between the disciplined forces and the security personnel. There will also be room for professionalism so that those who get into the private sector can be termed as a *quasi* or para-disciplined force.

With these few remarks, I beg to reply to the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): From where I sit, the House is not properly constituted for me to put the Question. So, I order that the Question to

Motion No.11 on the Annulment of the Private Security (General) Regulations, 2019 be put in the next sitting as it will appear on our Order Paper.

*(Putting of the Question deferred)*

Next Order.

ANNULMENT OF PUBLIC SERVICE COMMISSION REGULATIONS, 2019

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Service Commission Regulations, 2019 (Legal Notice No 65 of 2019), laid on the Table of the House on Wednesday, 6<sup>th</sup> November 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b) annuls in entirety the said Regulations.

The Committee on Delegated Legislation is established pursuant to the provisions of Standing Order No.210 with the power to scrutinise all statutory instruments submitted to the House and, two, certify and ensure that these instruments comply with the Constitution of Kenya and all applicable laws.

The Committee is expected to consider in respect of any statutory instrument, whether it is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or all other relevant written laws. The Standing Order No.210(3) and Section 13 of the Statutory Instruments Act further provides that scrutiny of any published instrument shall be guided by the principles of good governance, the rule of law and various considerations such as any defects in drafting, expenditure from the Consolidated Fund or other public revenues, unjustifiable delay in publishing or laying before Parliament.

The Public Service Commission Regulations of 2019 were made by the Chairperson of the Public Service Commission pursuant to Section 92 of the Public Service Commission Act of 2017. The Regulations were published in the *Gazette* vide Legal Notice No.65 of 2019 on 24<sup>th</sup> May 2019. The Regulations were then submitted to the Clerk of the National Assembly on 5<sup>th</sup> August 2019 and tabled before the House on 11<sup>th</sup> August 2019. The Regulations seek to operationalise the Public Service Commission Act of 2017 by giving effect to the mandate of the Commission pursuant to Section 92.

The Regulations also provide a framework to assist in the better running of the public service. Specifically, the Regulations sought, among others, to provide the form and method of keeping records to provide the appointment, discipline and removal of staff, to guide the administration of career progression, provide for exercise of disciplinary controls, operations and procedures of committees and guidelines on retirements.

The Committee considered the regulations against the Constitution, Interpretation and General Provisions Act, the laws of Kenya, the Public Service Act and the Statutory Instruments Act. Pursuant to Section 16 of the Statutory Instruments Act, the Committee held a meeting with



the regulation making authority and the Ministry of Public Service, Youth and Gender Affairs on 4<sup>th</sup> October 2019 and 1<sup>st</sup> October 2019.

The Committee observed that with regard to consultations and public participation, as provided for under Articles 10 and 118 of the Constitution of Kenya and Sections 5 and 5A of the Schedule to the Act and Standing Order 210 which requires the regulation making authority to conduct public participation and sufficient consultations with stakeholders, the outcome of such consultations are to be included within the explanatory memorandum in detail. It was observed that the explanatory memorandum submitted by the regulation making authority did not demonstrate that sufficient public consultation.

The regulations were published vide a *Gazette* notice on 24<sup>th</sup> of May 2019 and submitted to the Clerk on 5<sup>th</sup> August 2019 and tabled before this House on 11<sup>th</sup> of August. This was 14 sitting days outside the statutory timelines stipulated by Section 11 of the Statutory Instruments Act. There was unjustifiable delay in submission of these regulations, contrary to Section 13J of the Statutory Instruments Act. Furthermore, regulations 22, 47, 49, 52 and 53 inappropriately delegated legislative powers, contrary to Section 13m of the Statutory Instruments Act. The regulatory impact statement sections 6, 7 and 8 of the Act requires the regulation making authority to carry out a regulatory impact assessment and submit to Parliament a regulatory impact statement if the proposed regulations have significant cause or impact to the community.

Having examined the PSC Regulation 29 against the Constitution of Kenya and all other pieces of legislation, the Committee recommends that the House annuls in its entirety the said statutory instruments for contravening Sections 5, 5(a), 11(1), 13(j) and 13(m) of the Statutory Instruments Act, 2013. As I conclude, and I can never say this so many times and none of us can in the Committee on Delegated Legislation, to really thank the tireless efforts of all the members of the Committee. The exceptional commitment and great work ethic and the spirit of excellence ensure that the Committee delivers on its mandate.

Hon. Temporary Deputy Speaker, I therefore beg to move. I do request that Hon. Robert Mbui, Member for Kathiani Constituency and a member of the Committee to second the report.

Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Robert Mbui.

**Hon. Robert Mbui** (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I stand to second the Report that seeks to annul the PSC Regulations, 2019. Much as I am standing to support the annulment, I must begin by mentioning the positives, because there is always a positive in every regulation. The positive is the purpose of these regulations. The purpose is to operationalise the PSC Act, 2017 by giving effect to the mandate of the commission, pursuant to Section 92. The regulations also provide a framework to assist in the better running of public service. So, basically it is an excellent idea. We have noticed that when it comes to issues to do with appointment of staff in the public service, there was a lot of abuse of the process. After the last elections, for example, there were many people that were employed in the public service and the PSC feels that they did not really follow the letter and spirit of the law. That is why these regulations are critically important and do obviously need our support.

When you scrutinise these regulations and look at them against the Statutory Instruments Act, which guides the Committee on Delegated Legislation, then you find that there are some provisions that we cannot support. That is the reason for the annulment. Let me talk about the observations of the Committee.

The first observation was the issue of consultation and public participation. Articles 10 and 118 of the Constitution are very clear that there must be adequate public participation. We are looking in the future to have a law on exactly what constitutes public participation. In the eyes of the Committee, we felt that there was not enough public participation carried out by the regulation making authority. We feel that there was no sufficient public participation conducted under Articles 10 and 118 of the Constitution and Sections 5 and 5(a) of the Statutory Instruments Act.

The second issue that we observed was the statutory timelines. These regulations are supposed to be submitted to the House within a certain specified period of time. The regulations were published in the *Gazette* as Legal Notice No. 65 of 2019 on the 24<sup>th</sup> of May 2019 and submitted to the Clerk of the National Assembly on the 5<sup>th</sup> of August 2019 and tabled before the House on 11<sup>th</sup> August 2019. This was actually 14 sitting days outside the statutory timeline stipulated by Section 11 of the Statutory Instruments Act, which therefore means the regulations are null and void. There was also obviously unjustifiable delay in the transmission of the regulations to Parliament which could not be explained. This again contravenes Section 13(j) of the Statutory Instruments Act.

The other observation is that regulations 22, 47, 49, 52 and 53 have inappropriately delegated legislative powers. What these provisions kind of imply is that we are giving the PSC an opportunity to make further guidelines. Any guidelines are part of statutory instruments. So, if they bring the guidelines to us we have an opportunity to either approve or annul. Now they have delegated to themselves authority to make further guidelines. So, we felt that obviously we cannot give them a blanket cheque because that would mean they can go and make changes to the law without consulting Parliament any more. That is why we feel those five regulations I have mentioned were inappropriately delegating legislative powers which is contrary to Section 13 (m) of the Statutory Instruments Act.

Finally, there is one thing for which they were right. They were not supposed to give a regulation impact statement, which they did not. I want to support the Committee's recommendation that this House annuls in entirety the said statutory instruments for contravening Sections 5, 5(a), 11(1), 13(j) and 13(m) of the Statutory Instruments Act, 2013.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Order, Hon. Shamalla. You are the Mover of the Report.

*(Question proposed)*

I see interest by Members in this matter. Hon. Member for Taveta.

**Hon. (Dr.) Naomi Shaban** (Taveta, JP): Asante sana Mheshimiwa Naibu Spika wa Muda. Mimi nami nataka kuchukua fursa hii kuunga mkono kuwa kanuni hizi za kusimamia

masuala ya Tume ya Wafanyikazi waUmma hapa nchini zitupiliwe mbali kwa sababu hawakufuata mwafaka ambao unatakikana. Vipengele katika Katiba yetu vinaelezea wazi umuhimu wa kuhusisha umma kwenye masuala yote ambayo yanahusu wananchi na haswa masuala ya huduma kwa wananchi.

Ukweli ni kwamba saa nyingine utakuta wafanyikazi wa umma kwenye Serikali wanafanya kama utani kuwa wananchi hawatakikani kuhusishwa. Hivyo basi Kamati hii imefanya kazi nzuri ya kuhakikisha kuwa suala hili linatupiliwa mbali. Vile vile, ningependa kusema nimekuwa na wasiwasi. Tume hii ya kusimamia wafanyikazi wa umma inatakikana kusimamia wafanyikazi wote kwa ujumla. Tunajua kuna ngazi mbili hapa nchini. Kuna ngazi ya juu ambayo ni ya kitaifa na ngazi ya pili ni ile ya ugatuzi. Lakini wameshindwa kuangalia jinsi wataweza kuhakikisha kuwa wafanyikazi wa umma wote wanaangaliwa kupitia tume hii ambayo kwa kweli ni ya kitaifa.

Hayo ndiyo masikitiko yangu makubwa lakini naunga mkono ripoti ya Kamati hii.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): On my request list is the Member for Kitutu Chache. I cannot see him in the House. I am sure he is consulting. Member for Suba North is also consulting. Member for Funyula does not want to speak to this matter. Member for Tharaka.

**Hon. George Gitonga** (Tharaka, DP): I have an intervention.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Do you want to speak to the debate before we go to the intervention?

**Hon. George Gitonga** (Tharaka, DP): No. I have an intervention.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Okay, proceed.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I rise under Standing Order No.95. In view of the fact that we have had a very lively debate on this, I request that you call upon the Mover to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Very well. From where I sit, that is not an abuse of the proceedings of the House. You are quite in order. So, I put the Question.

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

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to reply and do not want to belabour the point because all valid points have been made, most importantly that the purposes for these Regulations were extremely important.

Unfortunately, or fortunately, the Committee on Delegated Legislation is guided at all times by the Statutory Instruments Act which has strict timelines that have to be adhered to and one cannot step out of these timelines. It is now my humble submission to all the bodies that have to engage with the Committee on Delegated Legislation to make themselves conversant

with the Statutory Instruments Act. Most importantly, the Committee on Delegated Legislation is always there for pre-publication scrutiny.

So, before you even go and publish the regulations in the *Kenya Gazette*, please, approach the Committee on Delegated Legislation and we will give the necessary advice.

With those few remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, we are not in a position to put the Question to Motion No.12 on the Annulment of the Public Service Commission Regulations 2019. Putting of the Question on the same is deferred.

*(Putting of the Question deferred)*

Next Order.

ANNULMENT OF PART OF POLITICAL PARTIES  
(FUNDING) REGULATIONS, 2019

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Speaker, on behalf of the Chairperson of the Committee on Delegated Legislation, I beg to move:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Political Parties (Funding) Regulations, 2019 (Legal Notice No.143 of 2019), laid on the Table of the House on Wednesday, 6<sup>th</sup> November 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b), annuls Regulation 18 of the said Regulations.

Hon. Temporary Deputy Speaker, the Committee on Delegated Legislation is established pursuant to Standing Order 210 with power to scrutinise all statutory instruments submitted to the House and to certify and ensure that these instruments comply with the Constitution of Kenya and all applicable laws.

Standing Orders 210(3) and Section 13 of the Statutory Instruments Act provide that scrutiny of any published instruments shall be guided by the principles of good governance, rule of law and various considerations such as if it is defective in its drafting, expenditure from Consolidated Fund or other public revenue, unjustifiable delay in publishing or laying before Parliament.

The Political Parties (Funding) Regulations, 2019 were made by the Registrar of Political Parties pursuant to Section 49 of the Political Parties Act, 2011. The Regulations are vital in giving effect and enhanced implementations of the Political Parties Act, 2011. The Regulations were published in the *Kenya Gazette* vide Legal Notice No.143 of 2013 on 9<sup>th</sup> August 2019. They were received by the Clerk of the National Assembly on 29<sup>th</sup> August 2019 and tabled in the House on 11<sup>th</sup> September 2019.

Hon. Temporary Deputy Speaker, the Regulations are intended to enforce Part III of the Political Parties Act, 2011 and Section 23 which establishes the Political Parties Fund to be administered by the Registrar of Political Parties.

The Regulations seek to revoke the Political Parties (Funding) Regulations of 2009, Legal Notice No.169 of 2009. It provides the duties of the Registrar of Political Parties in the management, accounting and application of the Fund. Regulation 18 requires the Registrar to set guidelines regarding the disbursement of money from the Fund to any political party, programme or activity, the rules and procedures related to the disbursement and the management of the Fund.

The Committee on Delegated Legislation held pre-publication scrutiny of the instruments pursuant to Section 16 of the Statutory Instruments Act, 2013. It invited the regulation making authority being the Registrar of Political Parties to a pre-publication consultation on 14<sup>th</sup> June 2018 and 30<sup>th</sup> November 2018 where the Registrar of Political Parties presented the draft Regulations to the Committee and responded adequately to all concerns raised by the Committee Members. The Regulations having been published on 9<sup>th</sup> August 2019 were committed to the Committee on 11<sup>th</sup> September 2019 for scrutiny. The Committee scheduled the business on 3<sup>rd</sup> October 2019 and took into consideration the pre-publication consultation previously held with the Office of the Registrar of Political Parties.

Having listened to the regulation making authority and having examined the Regulations against the Constitution and other relevant laws, the Committee made the following observations:

- (i) The Regulations were submitted to the National Assembly within the statutory timelines contemplated under Section 11(1) of the Statutory Instruments Act having been published on 9<sup>th</sup> August 2019 and received by the Clerk of the National Assembly on 28<sup>th</sup> August 2019 and tabled on 11<sup>th</sup> September 2019.
- (ii) The regulation making authority demonstrated to the Committee that adequate public participation was conducted. The following key stakeholders were consulted: political parties, the Independent Electoral and Boundaries Commission (IEBC), the Kenya Law Reform Commission (KLRC), Judiciary, the Political Parties Dispute Tribunal (PPDT), the Office of the Attorney-General, the National Gender and Equality Commission (NGEC) and the Kenya National Commission on Human Rights (KNCHR).
- (iii) It was observed that the Regulations do not require a regulatory impact statement since they are intended to make provisions for the structured guidelines for the management, application and disbursement of the Political Parties Fund established under Section 23 of the Political Parties Act.
- (iv) The Committee noted that there was inappropriate delegation of power. Section 13(m) of the Statutory Instruments Act prohibits the regulation making authority to delegate legislative powers. Consequently, the Committee observed that Regulation 18 inappropriately delegates legislative powers to the Registrar giving powers to set guidelines, conditions and requirements for the management of the

Fund. Guidelines of Statutory Instruments within the meaning of Section 2 of the Statutory Instruments Act and if made by the Registrar must be submitted to the National Assembly to be considered by the Committee. This was in contravention of Section 13(m) of the Statutory Instruments Act, which requires the Committee, during scrutiny, to check whether the Regulations inappropriately delegate legislative powers.

Having examined the Political Parties (Funding) Regulations, 2019 against the Constitution of Kenya, the Interpretations and General Provisions Act (Cap 2) of the Laws of Kenya, the Political Parties Act, 2011, and Statutory Instruments Act No.23 of 2013 and pursuant to Standing Order 210(4)(b) and Section 15(1) of the Statutory Instruments Act, the Committee does not accede to a batch of the Political Parties (Funding) Regulation, 2019 and recommends that the House annuls Regulation 18 of the Political Parties (Funding) Regulation 2019, as it inappropriately delegates legislative powers to the Registrar of Political Parties to set general guidelines, conditions and requirements for the management of the Fund contrary to Section 13(m) of the Statutory Instruments Act.

As I conclude, I shall never tire to acknowledge the tireless efforts of the Members of the Committee on Delegated Legislation for their exceptional commitment to great work, ethics and spirit of excellence to service in ensuring that the Committee delivers on its mandate. As we have always said, we are truly honoured and humbled to be servants of the people of Kenya.

I beg to move and request Hon. Robert Mbui, Member for Kathiani Constituency and a Member of the Committee, to second the Report.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Deputy Leader of Minority.

**Hon. Robert Mbui** (Kathiani, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I second the Motion that this House adopts the Report of the Committee to annul Section 18 of the Political Parties (Funding) Regulations, 2019. We had quite a number of reports and out of the four, we are proposing to annul three.

I can remember one time we were in a Committee meeting and a Chair of a Committee, which I do not wish to name, said that this seems to be an annulling Committee. He was especially shocked by our use of the words “annul in its entirety”. This is because we are guided by the law. The fact remains that even the Statutory Instruments Act that we use gives any regulation making authority opportunity to consult with the Committee before they publish any regulations.

We face problems with regulation making authorities since every Act of Parliament seems to identify them and give them powers to make regulations. Whenever they get the powers, they decide to make regulations without following the Statutory Instruments Act, which must be followed. I would like to advise that they consider pre-publication scrutiny. They should do a draft and before they publish in the *Kenya Gazette*, they should sit with the Committee. This is the requirement of the Statutory Instruments Act.

I would like to point out something because I know these authorities would like to refer to it even those that we have annulled. The Statutory Instruments Act provides for the making,

scrutiny, publication and operation of statutory instruments and for matters connected therewith. It would be important to identify what a statutory instrument is. This House has passed many laws and the Statutory Instruments Act is very clear. The law provides that it is any rule, order, regulation, direction, form, tariffs of costs or fees, letters patented, commissions, warrant, proclamation, by-law, resolution or guideline form statutory instruments. So, it is unfortunate that a lot of times the authorities forget what a statutory instrument is.

We follow Section 13 which gives us a guide on the relevant considerations that the Committee must follow in order to make its decision. Allow me to just point out some of them like consistence with the Constitution and the parent Act. So, any regulation must be within the Constitution and must also be subjected to the parent Act. Many times we see regulation making authorities going outside the parent Act and giving themselves powers. They talk about things which are not in the parent Act. Also, we have to ensure that regulations do not infringe on fundamental rights and freedoms of the public.

We have to ensure it does not contain a matter which in the opinion of the Committee should be more properly dealt with by an Act of Parliament. So, they do not make any new laws within the regulations. The regulations should not contain imposition of taxes unless allowed by the law. They do not bar the jurisdiction of the court or give any retrospective effect to any of the provisions and do not involve expenditure from the Consolidated Fund. We saw this in one of the regulations that came from the Judiciary.

It should not be defective in drafting. We can help them with this if we have a sitting beforehand. Regulations should not make unusual use of powers conferred by the Constitution. There is no unjustifiable delay in publication. Then the one we are using to annul this one is that it should not inappropriately delegate legislative powers and impose a fine, imprisonment or other penalty which is not specified in the parent Act. Regulations should not infringe on the rule of law and any other reason the Committee may think necessary.

We are annulling this because as the Mover has said, the Registrar of Political Parties has inappropriately delegated powers to herself to set guidelines. General guidelines form part of statutory instruments. So, she has given herself powers to set guidelines which will no longer be subjected to the National Assembly. That is why we feel that this is in contravention of Section 13(m) of the Statutory Instruments Act, which requires the Committee, during scrutiny, to check whether these regulations inappropriately delegated legislative powers.

I second.

*(Question proposed)*

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

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. I rise to support this Motion and to particularly agree with the Committee, which I sit in, that Regulation 18 of the regulations be annulled.

As the Secunder of the Motion has clearly explained, unfortunately, statutory instruments, which are also known as subsidiary legislation, do not and cannot contain powers to

delegate the making of more regulations and rules which will not come before Parliament. Parliament is the only authority given the mandate to make laws in this country. Laws in this country are, first and foremost, anchored in the Constitution. The Constitution can delegate any of its powers and this is done through an Act of Parliament. An Act of Parliament can delegate the doing of any act through subsidiary legislation. That is where it stops. The only other laws that would follow after subsidiary legislations is precedent, which is set by the courts, rules and orders emanating from courts of competent jurisdiction.

Unfortunately, the Registrar of Political Parties possibly inadvertently gave herself the mandate to make more rules, regulations and orders without having to come back to Parliament. I say 'inadvertently' because we had a pre-publication scrutiny in which we advised her on what she could do regarding all the regulations, but this was not part of what we considered. So, she may have inadvertently thought that she would give herself the mandate to make more rules, regulations and orders without having to come back to Parliament, which now turns out to be *ultra vires*. It is in view of this that we have, in good faith, recommended that this provision be annulled. It goes without saying that all regulation making authorities must at all times observe the provisions of Section 13(m) of the Statutory Instruments Act, which prohibits delegating of powers to make more general guidelines, conditions, requirements or whatever they would call it, contrary to that section.

With those remarks, I support the Motion.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Next is the Member for Taveta, Hon. Shaban.

**Hon. (Dr.) Naomi Shaban** (Taveta, JP): Asante sana, Mhe. Naibu Spika wa Muda kwa kunipatia fursa hii ili nami pia nizungumzie suala hili kuhusu Hazina ya Vyama vya Kisiasa.

Yangu kwanza ni kutoa shukrani kwa Kamati hii kwa kazi waliyofanya kuhakikisha kuwa mambo ya mtu mmoja kukaa mahali na kufanya uamuzi wa kuwa yeye atakuwa umma na kufanya uamuzi akiwa peke yake haiwezekani. Wabunge wote hapa nchini tumechaguliwa kuja kuhakikisha kuwa wananchi na hasa umma wanapata haki na tunalinda haki zao kupitia sheria zilivyo. Hivyo basi nakubaliana na Kamati kwamba Msajili Mkuu wa Vyama vya Kisiasa aweze kufuata sheria vile ilivyo na asiwe mtu anayefikiria kuwa anaweza kufanya kazi akiwa peke yake bila kufuata sheria na kuhakikisha kuwa wawakilishi wa wananchi na wananchi wanahusika katika masuala haya.

Naunga mkono.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Asante sana. Next is the Member for Bomachoge Chache.

**Hon. Alfah Ondieki** (Bomachoge Chache, KNC): Hon. Temporary Deputy Speaker, I have just interrupted.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Yes, I can see you are on intervention.

**Hon. Alfah Ondieki** (Bomachoge Chache, KNC): Is it in order to continue with the House business without quorum? I can see we are very few. Can you give us direction?



**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): I did not even hear you. Order, Hon. Member! I have said this before. You should quote the Standing Order that you are standing on or that which we are violating. So, just research and then you do it in the right way. Let the Member research. In the meantime, as he researches, there is a request by Hon. Waluke who is consulting and Hon. Millie Odhiambo, who is also not ready to debate on this. Therefore, there being no any other Member interested to speak to this, I call upon the Mover to reply as the Member looks at his Standing Orders.

**Hon. (Dr.) Wilberforce Oundo** (Funyula, ODM): Hon. Temporary Deputy Speaker, thank you. Let me take this opportunity again to sincerely thank my colleagues in the House for having ventilated and contributed on this important Motion. It is important for us to note that funding of political parties is provided for in the Constitution and each year we make allocations towards that particular Vote. It is, therefore, important, knowing the emotive nature of the matter, that any regulations, rules or guidelines must have the blessings and approval of this House.

On that matter, I beg to move that this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Political Parties (Funding) Regulations, 2019 (Legal Notice No.143 of 2019) laid on the Table of the House on Wednesday, 6<sup>th</sup> November 2019 and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order No.210(4)(b) annuls Regulation 18 of the said Regulations.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Hon. Members, pursuant to your own Standing Orders, the Question to Motion No.13 on the annulment of part of the Political Parties (Funding) Regulations, 2019 stands deferred.

*(Putting of the Question deferred)*

Hon. Member, I think I can hear you well. I can guide you on the Standing Order.

**Hon. Alfah Ondieki** (Bomachoge Chache, KNC): Hon. Temporary Deputy Speaker, I said as per Standing Order No.35.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): You did say Standing Order No.35?

**Hon. Alfah Ondieki** (Bomachoge Chache, KNC): I said. You never heard it. Is it in order to transact business? We do not have quorum.

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): Now you are rightfully doing it. The Member for Bomachoge Chache is a very seasoned Member. Now you have done it. It is actually Standing Order No.35. I was ready to guide you, but you have said it very well. The Member is raising the issue under Standing Order No.35 on the issue of quorum. So, I do order the Quorum Bell to be rung.

*(The Quorum Bell was rung)*

Order Members. I order that the Quorum Bell be stopped pursuant to the Standing Orders on the time provided.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. (Ms.) Jessica Mbalu): For us to put the Question, we need to have a properly constituted House. The time being 6.20 p.m., the House stands adjourned until Tuesday, 19<sup>th</sup> November 2019 at 2.30 p.m.

The House rose at 6.20 p.m.