

PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY

THE HANSARD

Thursday, 10th February 2022

The House met at 2.30 p.m.

*[The Deputy Speaker
(Hon. Moses Cheboi) in the Chair]*

PRAYERS

Hon. Deputy Speaker: Order Members. On the face of it, we do not have the required numbers to begin business. So, I order the Quorum Bell to be rung for 10 minutes.

(The Quorum Bell was rung)

Order Members. Those Members who have just walked in, please, take your seats. We now have the numbers, therefore, business will begin.

PETITIONS

On this particular Order, we have two Petitions. Let me confirm.

(Hon. Alois Lentoimaga stood in his place)

Hon. Lentoimaga, you will take your seat. I will convey one that I have then we can go to yours. Order Members, take your seats please.

**OPERATIONS OF THE OPEN TENDER SYSTEM FOR
IMPORTATION OF REFINED PETROLEUM PRODUCTS**

Hon. Members, Standing Order 225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member. Further, Article 119 of the Constitution provides for the right of any person to petition Parliament to consider any matter within its authority, including petitioning the House to enact, amend or repeal any legislation. In this regard, I wish to report to the House that my office is in receipt of a Petition by Stephen Mutoro, Secretary General of Consumers Federation of Kenya (COFEK), regarding operations of open tender system for fuel.

Hon. Members, the petitioner states that COFEK is an independent non-political self-funded and non-profit society registered under the Societies Act, Cap.108. It is the apex body that is committed to consumer protection, education, research, consultancy, litigation, anti-counterfeit campaign and other matters related to consumerism. The petitioner claims that COFEK is

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concerned about the manner in which the Ministry of Petroleum and Mining has been operating the Open Tender System (OTS) that was deployed from 2005, as a system for regulating importation of refined petroleum products. The petitioner laments that even though the system is dubbed “open”, the manner in which it is run remains opaque, shrouded in secrecy and susceptible to abuse by cartels.

He is particularly concerned that the current pricing mechanism does not make necessary disclosures on the procurement of fuel products, which makes it almost impossible to determine the prices at which Kenya secures its refined petroleum products *vis-à-vis* the prevailing global oil prices.

Hon. Members, the petitioner claims that whereas the intended purposes of the OTS was to ensure that petroleum products, whose prices are regulated on a monthly basis in Kenya, remain competitive as per market conditions, data from the Energy and Petroleum Regulatory Authority (EPRA) indicates that only 13 out of a possible 96 oil marketing companies (OMCs) participate in the monthly OTS tenders.

The petitioner also alleges that there are credible reports that the said oil companies unfairly dominate the OTS through anti-competitive cartel-like behaviour, which denies consumers the benefits of competitive pricing. In addition, the petitioner avers that neither the Ministry of Petroleum and Mining nor EPRA have made sufficient public disclosure of information relating to the tenders, including when the tenders were floated, when bids were received, the evaluation of the bids, the sizes of the cargo, past winners and beneficial owners of the winning bidders.

Hon. Members, the petitioner is worried that the current situation contradicts the right to access to information enshrined in Article 35 of the Constitution of Kenya as well as the national values and principles of governance on public participation, transparency and accountability provided in Article 10 of the Constitution as well as the President’s Executive Order of 13th June 2018, on ‘Procurement of Public Goods, Works and Services by Public Entities’ that require all public institutions to publish full details of tenders and awards, including the directors of the winning companies.

The petitioner is therefore seeking the intervention of the National Assembly to inquire into the operations of the OTP for procurement of refined petroleum products among other reliefs as follow:

(1) intervenes through the Ministry of Energy and Petroleum to put in place measures for proper oversight of the operations of the OTS in order to ensure that the system promotes free and fair tendering processes that benefit consumers of fuel products through competitive pricing;

(2) develops necessary legislative framework to align the activities of monthly OTS with the national values and principles of governance on public participation, transparency and accountability and in order to secure consumer rights and guarantee the right of access to information;

(3) causes the Ministry of Energy, EPRA and other relevant Government agencies to make necessary disclosures on fuel imports made through the OTS, including ensuring public notification of all OTS awards and details of pricing for imported fuel products *vis-à-vis* the prevailing market prices; and,

(4) recommends to the Competition Authority of Kenya (CMA) to inquire into alleged dominance of the OTS and price manipulation by certain OMCs in order to flush out firms involved in uncompetitive practices and to level the playing ground for all oil marketing firms.

Hon. Members, having determined that the matters raised by the petitioner are well within the authority of this House, I order that, pursuant to the provisions of Standing Order 227(1), this

Petition be committed to the Departmental Committee on Energy. The Committee is required to consider the Petition and report its findings to the House and to the petitioner in accordance with Standing Order 227(2).

I thank you.

I see a few Members want to comment. I will give the opportunity to very few Members. Is that the Chairperson of the Public Accounts Committee (PAC)? Let us begin with him. I believe he is doing this in his personal capacity as a Member not as the Chairperson of PAC.

Hon. Opiyo Wandayi (Unguja, ODM): Thank you very much, Hon. Deputy Speaker for according me this chance to comment briefly on this Petition which I consider timely and important. I must thank the drafter of the Petition on behalf of COFEK as well. As we all know, fuel or refined oil products play a key role in this country's economy. In fact, this country's economy is primarily driven by energy, of which petroleum products are a key component. It is, therefore, important that the procurement process of such important products be as transparent as possible. Nevertheless, it now appears that the purpose of the OTS has been negated by cartels who have conspired to clog the system and to make it impossible for fair play to be realised.

Therefore, I pray that the concerned Committee moves with speed to look at this Petition and report back to the House promptly. Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Duale.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Deputy Speaker. As I support this Petition, let me go on record and seek your guidance. In September last year, there was a huge outcry on the sky rocketing of the petroleum product prices. This House in its wisdom acted very fast. I remember that the Departmental Committee on Finance and National Planning, chaired by Hon. Gladys Wanga, brought the Petroleum Products (Taxes and Levies) (Amendment) Bill which was read the First Time in October 2021. The Committee has tabled its Report. This Bill is supposed to cure what Mr. Mutoro, the Secretary General of COFEK, a very competent lobbyist, is asking. This Bill is supposed to address, among other things, the review of taxes and levies on petroleum products, with the view of making petroleum and petroleum products cheaper, hence alleviate the high cost of living that Kenyans are experiencing.

In the same line of thought, on 13th January, I wrote to the Speaker, Hon. Justin Muturi, who is also the Chairman of the House Business Committee (HBC) asking that when we resume this year, we give this Bill a priority. Till today, I have not gotten an answer.

Therefore, Hon. Deputy Speaker, as we deal with this Petition, the Committee has already tabled its Report. I indulge you today that the Kenyan people are suffering and from your substantive seat, order that this matter is prioritised. Ask if the Petroleum Products (Taxes and Levies) (Amendment) Bill can be brought to the House for Second Reading on Tuesday or Wednesday next week so that, ultimately, this House can deal with the matter substantially. I do not want to impute improper motives but from the grapevine in this Parliament's corridors, there are certain forces who do not want this Bill to be discussed. This is a Committee Bill; it is not a Government Bill.

I wrote to the Speaker on 13th January 2022. On the first day after we resumed, I asked him about it and he said that the HBC will deal with this matter. So, can you order that as we deal with the Petition, this Petroleum Products (Taxes and Levies) (Amendment) Bill, 2021, that was brought to the House after an outcry in the country, be discussed next week for Second Reading. This Bill will help resolve what the Secretary General of COFEK is saying.

Hon. Deputy Speaker: Okay. I will give an opportunity to another Member. Hon. Wamalwa. Hon. Duale, I can assure you that I am not going to make a quick decision on this.

I am not in a position to make such an order because I gave you an opportunity to speak on the basis of the Petition that is before us. I can speed up that one. But, the issue of the Bills and other matters that are here is something which is squarely before the House Business Committee. Maybe what we need to easily do is to enquire on how far that is. That can only be done in a different forum. So, in terms of ordering that it be brought next week, I do not think I will do that now.

So, let us have Hon. Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Deputy Speaker.

Indeed, this is a very important Petition. It is in the right place, as per Article 119 of the Constitution. Fuel contributes a very high percentage in driving the economy and contributing to inflation in this country. Mr. Mutoro, the Chair of the Consumers Federation of Kenya, whom I went to school with at the Friends School Kamusinga, is purely right. Parliament has a right to look into this matter because of national importance. Article 35 of the Constitution is clear that Kenyans have the right to information. We have seen prices of fuel going up but Kenyans do not realise that levies and taxes contribute to almost 60 per cent of the prices of this fuel. If something can be done, maybe Parliament should do something so that prices can be affordable to drive this economy. Whether you go to the upper class or the lower class, fuel is standard. It cuts across.

When it comes to matters of the open tender system, it is something that has really been abused. We agree that we should know the directors of those respective companies that have been winning these tenders. There always is a conspiracy, particularly when it comes to the open tender system, from the section of the people who are benefiting. We passed a law in this Parliament that 30 per cent of the business should go to the youth. So, we want to go further—not just knowing the directors but also their ages and gender. This is for purposes of verification, to know these businesses and who wins the tenders. Are they young people as stipulated in the procurement law that we passed here? Do we have women getting business or the business benefits some specific class that has connections?

So, I call upon the Departmental Committee on Energy to move with speed and table a Report that can move us forward in as far as prices of fuel are concerned.

Hon. Deputy Speaker: Of course, the matter will now go to the Departmental Committee on Energy. We will expect them to move with speed. Well, I know they do not have a substantive chair right now but, of course, the Committee must always be moving. Through the Leader of the Majority Party, let us fast-track this issue so that the matter can be settled.

We will go to the next Petition by Hon. Lentoimaga.

Hon. Alois Lentoimaga (Samburu North, JP): Thank you, Hon. Deputy Speaker. I wanted to comment on the previous Petition.

Hon. Deputy Speaker: Go to your Petition, Hon. Lentoimaga. That one has already been closed and referred.

LOSS OF LIFE AND PROPERTY DUE TO INSECURITY IN SAMBURU NORTH

Hon. Alois Lentoimaga (Samburu North, JP): Hon. Deputy Speaker, thank you so much for giving me this opportunity.

I, the undersigned, on behalf of the residents of Samburu North draw the attention of the House to the following:

THAT, Article 29(c) of the Constitution entitles every person to freedom and security which includes the right not to be subjected to any form of violence whether perpetrated by the State or non-State actors or agencies;

THAT, whereas the State is obligated to guarantee the security of the people, it has become apparent that the Government operatives in Samburu North Constituency are negligent and reluctant to provide security and protection to the residents;

THAT, despite the presence of many security agencies in the area, the Government did not provide alternative security arrangements following the disarmament of the local national police reservists who had previously played a critical role of providing security and safeguarding the lives of the people and their livestock;

THAT, the state of security in the region has deteriorated so much and caused loss of lives, displacement of families and closure of schools and has left many people in dire need of shelter and food;

THAT, the audacity, brutality and the precision with which these vicious attacks are being carried out seem to indicate that this banditry is by well-organised groups, perhaps with an elaborate support system;

THAT, there has been a spate of disturbing cases of insecurity over the last few months which include the following:

- (a) On 3rd February 2022, bandits attacked innocent *boda boda* riders in Suyian and killed four people.
- (b) On 2nd February 2022, bandits attacked Natiti Village near KDF grazing ground, stole about 50 cattle and killed one person.
- (c) On 28th January 2022, bandits raided a *manyatta* near the PCEA church in Baragoi Town and stole an unknown number of goats and one person sustained gunshot injuries.
- (d) On 12th and 19th January, bandits fired randomly within the Baragoi Township and their motive was not known.
- (e) On 18th January 2022, bandits raided Lomirok, took off with over 1,000 goats and killed one person with just about over 180 being recovered.
- (f) On 6th January 2022, bandits attacked a security patrol team within Baragoi Town and damaged a police patrol motor vehicle.
- (g) Sometimes in January, again, bandits attacked herders in Tuum Village and stole 60 cows and no recovery has been made so far.
- (h) On 13th December 2021, bandits stole 17 goats near the Kenya Power offices with deaths and injuries reported.
- (i) On 24th November 2021, bandits raided Kilepoi Village and stole 25 goats.
- (j) On 14th November 2021, a shooting incident by bandits was reported within Baragoi Town.
- (k) On 25th October 2021, bandits attempted to raid Kawap Village but were repulsed by residents and security personnel.
- (l) On 13th October 2021, bandits raided Loilei near Mwalimu Street of Baragoi Town and stole two goats.

THAT, leaders and local residents in the region have raised these matters with relevant State agencies through letters and physical meetings but no significant intervention has been made.

THAT, if the state of security in Samburu North Constituency and surrounding areas is not stabilised, residents risk a continued loss of lives and disruption of their property.

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

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Administration and National Security:

- (i) inquires into the ceaseless cases of insecurity in Samburu North Constituency with a view to establishing the reasons security apparatus have not contained the spate of bandit attacks;
- (ii) intervenes in order to facilitate the recovery of stolen livestock and compensate victims on the loss of their source of livelihoods in cases where State agencies fail to recover stolen livestock;
- (iii) causes the relevant State agencies to arrest and charge the hardcore criminals perpetrating the heinous acts of banditry;
- (iv) recommends to the Ministry of Interior and Coordination of National Government to beef up security in the region, particularly in Baragoi Town, and employ long-term measures to preserve security; and
- (v) makes any other recommendation it deems appropriate in the circumstances of the Petition.

Your petitioners will ever pray. Thank you.

Hon. Deputy Speaker: Very well. I will give chance to two Members, starting with Hon. Kisang.

Hon. William Kisang (Marakwet West, JP): Thank you, Hon. Deputy Speaker. I rise to support the Petition by Hon. Alois.

This cattle rustling and banditry has gone on in the country for close to two or three years, on and off. We have had several meetings on this case about Laikipia, Samburu, the Kerio Valley and Turkana. It seems like the security apparatus have been defeated by the bandits. Yesterday, we were waiting to see if those in charge of security would resign to go and campaign or do something else. Because the main business that they do is public relations.

Last week, we had a meeting in Nakuru on the same issues of insecurity along the Kerio Valley, in Samburu and other areas. The security team promised that within two weeks they would do serious disarmament and get rid of the bandits. Yesterday evening as we were watching news, we saw children and mothers in Baringo South suffering and staying in schools as internally displaced persons (IDPs) on their own land. They were chased away from their land, 64 kilometres inside Baringo South. If you go along the Kerio Valley, in a radius of about 10 kilometres from River Kerio, towards the main road, there are bandits. Therefore, I urge the Committee to move with speed on this Petition. It looks like the respective Ministry is not doing its work. I do not know why we give them a lot of money to protect the lives of Kenyans yet people die every week. This Tuesday we buried three people along the Kerio Valley who died in banditry. Hon. Alois has narrated how many people have died in Samburu. It looks like the security system is not working at all. So, they need to style up or resign and go to do something else.

Thank you

Hon. Deputy Speaker: I have decided that I will give a few more Members an opportunity because this is a serious issue. Let us have, Hon Kamket.

Hon. Kassait Kamket (Tiaty, KANU): Thank you, Hon. Deputy Speaker. This matter of banditry is a big problem for us who come from those regions. While I sympathise with my colleague and neighbour, the Member for Samburu North, I want to state that I am personally opposed to the idea of arming communities to fight each other. Those of us who have lived with guns and in communities with people having illegal firearms know that there is nothing worse than a gun. The gun as we all know, is an instrument of instant death. In as much as we want to plead

with the State to provide our youth with guns, the youth are untrained in gun handling. Among the disciplined forces, the gun rules are strict because they know the dangers of a gun. Sometimes I sympathise with what we go through. However, on the issuance of more guns, whether you sanitise it as MPR or whichever other name you give it, without proper guidelines and regulations on handling of guns, we will be creating more problems to our people.

Unfortunately, we are now in the electioneering period where emotions are high. I want to suggest that the long term solution to the North Rift problem of the gun culture is a deliberate and sustained disarmament programme. Just like it was done in Uganda, it can also be done here. I was at Makerere University and I saw how President Museveni began removing guns from the pastoralists of Uganda and he succeeded. I am sure that with proper mechanisms, we can remove guns from our people instead of adding more guns to them. That is not the way to go.

Hon. Deputy Speaker: Hon. Rasso.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Deputy Speaker. I support the Petition by Hon. Lentoimaga. Whatever he has narrated is heart wrenching. Sometimes you wonder if some parts of this country are part of Kenya. Security is the first thing that any government should provide to its people and not food and shelter.

In the hierarchy of needs for man, security is the first thing. The idea of arming civilians to carry arms means that we want to go back in time. This country can recruit enough police officers paid by taxpayers so that most of these areas with lawlessness can be policed effectively. The failure by Government to provide effective security will at one point make the citizens of this country to take their Government to the international court because they are not being protected. Properties are lost and people are dying. We are not just asking this Committee to move with speed, but the Ministry must wake up; Matiang'i must wake up!

Hon. Deputy Speaker: Hon. Sankok, be brief. We are taking too long on Petitions.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. I support the Petition by Hon. Lentoimaga. It is high time this House accepted that cattle rustling is a capital offence sanitised culturally. In it, there is murder, robbery, rape and deportation of masses. The moment it is treated as such in the penal code, we can tackle it head on. We should also offer solutions as a House. Nairobi is secure because our offices are in Nairobi. I propose that Parliament be relocated to Baragoi, State House to Boni Forest and the Interior Ministry headquarters to Mandera. By doing that, we will be secure. It seems that the security of this country is concentrated around our cities because of protecting big fish in the country. If we do like what Tanzania did, by having a city for administration and a city for economic activities, we will protect our borders.

Thank you.

Hon. Deputy Speaker: Very well. That Petition is referred to the Departmental Committee on Administration and National Security. We expect the Committee to respond within a short time because this is a serious issue. If the Chair or a Member of the Committee are in the House, we need a response in two weeks.

Next Order.

PAPERS LAID

Hon. Deputy Speaker: We have a series of Papers from the Leader of the Majority Party

Hon. Amos Kimunya (Kipipiri, JP): Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today, Thursday, 10th February 2022:

Annual Report and Financial Statements of the Commission on Revenue Allocation for the FY 2019/2020.

Recommendation and Basis of Equitable Sharing of Revenue between the National and County Governments for the FY 2022/2023.

Reports of the Auditor-General and Financial Statement of Meru National Polytechnic for the years ended 30th June, 2017, 2018, 2019 and the certificates therein.

Reports of the Auditor-General and Financial Statement of Sigalagala National Polytechnic for the years ended 30th June, 2017, 2018, 2019 and the certificates therein.

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

1. The National Assembly.
2. Office of the Director of Public Prosecutions.
3. National Humanitarian Fund.
4. The National Intelligence Service.
5. Ministry of Lands and Physical Planning.
6. Government Press Fund.
7. State Department for Crop Development and Agricultural Research.
8. State Department for Post Training and Skills Development.
9. Kenya Youth Employment and Opportunities Project, State Department for Labour;
10. Kenya SymbioCity Programme, Council of Governors.
11. Instrument for Devolution Advice and Support – State Department for Devolution.
12. Kenya Youth Employment and Opportunities Project – National Industrial Training Authority.
13. Kenya-Italy Debt for Development Programme – State Department for Vocational and Technical Training.
14. Support to Enhancement of Quality and Relevance in Higher Education, Science and Technology Project – State Department for University Education.
15. East Africa Skills for Transformation and Regional Integration Project – Ministry of Education – State Department for Vocational and Technical Training.
16. Support to Technical Vocational Educational and Training for Relevant Skills Development Project – State Department for Vocational and Technical Training.
17. Kenya GPE COVID-19 Learning Continuity in Basic Education Project – State Department for Early Learning and Basic Education.
18. Kenya Development Response to Displacement Impacts Project – State Department for Development of Arid and Semi-Arid Lands (ASALs).
19. Ethiopia-Kenya Electricity Highway Project – Kenya Electricity Transmission Company Limited.
20. Power Transmission System Improvement Project – Kenya Electricity Transmission Company Limited.
21. Agricultural Sector Development Support Programme II – State Department for Crop Development and Agricultural Research.
22. Small-Scale Irrigation and Value Addition Project – State Department for Crop Development and Agricultural Research.
23. Aquaculture Business Development Programme – State Department for Fisheries, Aquaculture and the Blue Economy.

24. Lake Victoria Water Supply and Sanitation Programme – Lake Victoria South Water Works Development Agency.
25. Water Sector Development Programme Lake Victoria South (Kericho, Kisii, Nyamira and Litein) – Lake Victoria South Water Works Development Agency.
26. Africa Centre of Excellence in Sustainable Use of Insects as Food and Feeds Project – Jaramogi Oginga Odinga University of Science and Technology.
27. Promotion of Youth Employment and Vocational Training in Kenya Project – State Department for Vocational and Technical Training.
28. Eastern and Southern Africa Higher Education Centres of Excellence Project;
29. GOK/UNICEF Education for Young People Programme.
30. Multinational – Kenya Section of Interconnection Project of Electric Grids of Nile Equatorial Lakes Countries – Kenya Electricity Transmission Company Limited.
31. East Africa Skills Transformation and Regional Integration Project – Kisumu National Polytechnic.
32. Kenya Social and Economic Inclusion Project – National Drought Management Authority.
33. Kenya Primary Education Development Project – State Department for Early Learning and Basic Education.
34. Lake Victoria Water and Sanitation Project – Lake Victoria South Water Works Development Agency.
35. Kisumu Urban Project (Advance Account) – County Government of Kisumu.
36. Kenya Social and Economic Inclusion Project – State Department for Social Protection.
37. Secondary Education Quality Improvement Project – State Department for Early Learning and Basic Education.
38. Kisumu Urban (Cash and Expenditure) - County Government of Kisumu.
39. Eastern Electricity Highway Project – Kenya Electricity Transmission Company Limited.
40. Menengai Geothermal Project – Geothermal Development Company Limited.
41. Bogoria Silali Geothermal Project – Geothermal Development Company Limited.
42. Rural Electrification in Five Regions Project – Rural Electrification and Renewable Energy Corporation.
43. Multinational-Rural Livelihoods Adaptation to Climate Change in the Horn of Africa – State Department for Crop Development and Agricultural Research.
44. Multinational-Drought Resilience and Sustainable Programme in the Horn of Africa - State Department for Crop Development and Agricultural Research.
45. Secondary Education Quality Improvement Project – Teachers Service Commission.
46. Trilateral Development Cooperation in Kenya, Water and Sanitation Sector Project – Lake Victoria South Water Works Development Agency.
47. Establishment of Kenya Advanced Institute of Science and Technology – Ministry of Education – State Department for University Education.
48. Kenya Cereal Enhancement Programme- Climate Resilient Agricultural Livelihood Window - State Department for Crop Development and Agricultural Research;
49. Kisii Water Supply and Sanitation Project – Lake Victoria South Water Works Development Agency.
50. Olkaria-Lessos-Kisumu Transmission Lines Construction Project – Kenya Electricity Transmission Company Limited.

51. Multinational-Kenya-Tanzania Power Interconnection Project – Kenya Electricity Transmission Company Limited; and
52. Petroleum Development Levy Fund – State Department for Petroleum.
53. Lake Victoria Environmental Management Phase III Project – Ministry of Environment and Forestry.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Next is the Chairperson of the Departmental Committee on Health.

Hon. Joshua Kutuny (Cherangany, JP): Hon. Deputy Speaker, I beg to lay the following Paper on the Table of the House.

Addendum to the Report of the Departmental Committee on Health on its consideration of the Health Laws (Amendment) Bill (National Assembly Bill No.2 of 2021), laid on the Table of the House on 28th September 2021.

As I lay this Paper on the Floor, I want to confirm that there were issues of concern that had been brought up by Members. I assure them that the contentious issues have been factored in. There are issues too, raised by the stakeholders, that have been factored in and considered in the Report. I urge Members to take up the Report and go through it so that when it comes to putting the Question, they would be having an idea.

Hon. Deputy Speaker: We then go to the Departmental Committee on Justice and Legal Affairs.

Hon. Kutuny, I did not quite get the last bit. What is the request you made?

Hon. Joshua Kutuny (Cherangany, JP): Hon. Deputy Speaker, I requested Members to go through the Report.

Hon. Deputy Speaker: Alright. Justice and Legal Affairs Committee, kindly have the Floor.

Hon. Olago Aluoch (Kisumu West, FORD-K): Thank you, Hon. Deputy Speaker. On behalf of the Chairman of the Departmental Committee on Justice and Legal Affairs, I beg to lay the following Paper on the Table of the House, this Thursday, 10th February 2022:

Report of the Departmental Committee on Justice and Legal Affairs on the approval hearing for appointment of the following members to the Kenya National Commission on Human Rights:

1. Ms. Roseline Dorine Adhiambo Odhiambo Odede - Chairperson
2. Prof. Marion Mutugi Wanjiku
3. Dr. Ryamond Plal Sang Nyeris
4. Ms. Sarah Talaso Bonaya
5. Dr. Denis Nyongesa Wamalwa

(Hon. Aden Duale stood up in his place)

Hon. Deputy Speaker: What is it, Hon. Duale?

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, in reference to the addendum which was tabled by the Vice-Chair of the Departmental Committee on Health, you recall that on 5th October 2021, I raised a point of order and asked the Speaker to rule. The Speaker ruled and gave a Communication on 21st October 2021 on this matter.

Hon. Deputy Speaker: You are rising on which one?

Hon. Aden Duale (Garissa Township, JP): I am coming to it, if you allow me. The Speaker gave a 19-Page Communication on the matter of constitutionality and sufficiency of public

participation during consideration of the Health Laws (Amendment) Bill (National Assembly No.2 of 2020) by the Departmental Committee.

Of the many directions Hon. Speaker gave, let me just read the last bottom one, which said that this House will now await the Committee to resubmit its Report to the House after complying with these guidelines, the one he has given before resuming consideration at the Second Reading.

In my opinion, that was violated. I am sure the Office of the Clerk and the people who prepare the Order Paper will agree with me. However, now that we are at the tail-end, I indulge you that Members need to read this addendum Report. I ask you to use your wisdom, based on the Communication by the Speaker, that the Question need not be put today until next week, so that we can have time to read and understand. This matter concerns clinicians, nurses, pharmacists and many other key stakeholders.

The Cabinet Secretary was being given imperial powers and this is very emotive. Hon. Members will understand that every nurse and clinician whom we represent sent us text messages to that effect. Therefore, we need to read that addendum over the weekend. Let us read it from tomorrow. So, do not put the Question, you can do it next week based on the ruling of the Speaker. In fact, his ruling reads: "Second Reading Debate cannot start until the addendum is tabled." However, now that they have tabled, when we are at the tail end where the Question is being put, Hon. Deputy Speaker, I indulge you that you do not put the Question today but it be done next week so that some of us can go through and see whether the concern of the many nurses, clinicians and pharmacists have been taken into consideration and we do not create an imperial Cabinet Secretary to run the affairs of the health sector.

Hon. Deputy Speaker: Okay, it would have been obviously tidier for you to raise it not at the laying of Papers, but just before the putting of the Question. Let me hear the Committee. However, the decision will be reached once we reach item No.8.

Hon. Joshua Kutuny (Cherangany, JP): Hon. Deputy Speaker, as I had put it clearly, I had requested the Members to go through the Report. I am meant to understand that the Question is going to be put next week. So, it was my request that Members go through the document.

Hon. Deputy Speaker: Well, the matter is on the Order Paper. We should be putting the Question anytime now, but we will make that decision at that point. So, Hon. Kutuny, I just wanted to hear your view in terms of whether you have no problem with the request made by Hon. Duale, and then we will make that decision.

Hon. Joshua Kutuny (Cherangany, JP): I have no problem, Hon. Deputy Speaker.

Hon. Deputy Speaker: Next Order

NOTICE OF MOTION

Hon. Deputy Speaker: I am trying to confirm whether we have Notices of Motions. Committee on Justice and Legal Affairs, do you have one?

Hon. Olago Aluoch (Kisumu West, FORD-K): I do, Hon. Deputy Speaker, on behalf of the Chairperson of the Departmental Committee of Justice and Legal Affairs.

APPROVAL OF NOMINEES FOR APPOINTMENT TO KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

Hon. Olago Aluoch (Kisumu West, FORD-K): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in its Report on the Vetting of Nominees for Appointment as Chairperson and Members of the Kenya National Commission on Human Rights, laid on the Table of this House today Thursday, 10th February 2022 and pursuant to the provisions of Article 250(2)(b) of the Constitution, Section 11(7) of the Kenya National Commission on Human Rights Act, 2011 and Section 8(1) of the Public Appointments (Parliamentary Approval) Act 2011, this House approves the appointment of the following persons to the Kenya National Commission on Human Rights:

- (i) Ms. Roseline Doreen Adhiambo Odhiambo- Odede - Chairperson
- (ii) Prof. Marion Mutugi Wanjiku - Member
- (iii) Dr. Raymond Plal Sangsang Nyeris - Member
- (iv) Ms. Sara Talaso Bonaya - Member
- (v) Dr. Dennis Nyongesa Wamalwa - Member.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. Next Order

QUESTIONS AND STATEMENTS

Hon. Deputy Speaker: Under this particular one, we will be starting with Questions. We have Ordinary Questions and Hon. Wambugu, Member for Kirinyaga Central, will start us off.

ORDINARY QUESTIONS

Question No.032/2022

DENIAL OF KCSE CERTIFICATES BY KENYA NATIONAL EXAMINATIONS COUNCIL

Hon. Munene Wambugu (Kirinyaga Central, JP): Hon. Deputy Speaker, I wish to ask the Cabinet Secretary for Education the following Question:

- (i) Could the Cabinet Secretary explain the circumstances under which 41 students who sat for the Kenya Certificate of Secondary Education (KCSE) in 2012 at Sacred Heart Kangaita Secondary School in Kirinyaga Central Constituency were denied their certificates by the Kenya National Examinations Council (KNEC)?
- (ii) Could the Cabinet Secretary also explain why KNEC has failed to issue KCSE Certificates to Githae John Kariuki (Index No.09203422035) and Kinyua D. Muriithi (Index No.09203422005) who sat for KCSE in 2012 in the said school despite having made numerous follow-ups and submitting all requirements?
- (iii) When will the affected students be issued with their KCSE Certificates to enable them pursue their respective careers?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well, that one will be replied to before the Departmental Committee on Education and Research.

Next is the Member for Mathare, Hon. Anthony Oluoch.

Question No.033/2022

IMPENDING CLOSURE OF KIAMAIKO ANIMAL SLAUGHTERHOUSE

Hon. Anthony Oluoch (Mathare, ODM): Hon. Deputy Speaker, I wish to ask the Cabinet Secretary for Environment and Forestry the following Question:

- (i) Could the Cabinet Secretary explain measures put in place, if any, to avert the impending closure of Kiamaiko Animal Slaughterhouse in Mathare Constituency, by the National Environment Management Authority (NEMA)?
- (ii) Could the Cabinet Secretary explain the measures put in place by NEMA towards the management of toxic and hazardous chemicals and materials and clarify how the same are implemented, particularly with respect to pollutants to the Nairobi River in Nairobi City County?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well, that will be replied to before the Departmental Committee on Environment and Natural Resources.

Next is the Member for Mwingi, Hon. Charles Nguna Ngusya aka CNN.

Question No.034/2022

STATUS OF KITUI- MIGWANI- MBONDONI ROAD

Hon. Charles Nguna (Mwingi West, WDM-K): Hon. Deputy Speaker, I wish to ask the Cabinet Secretary for Transport, Infrastructure, Housing, Urban Development and Public Works the following Question:

- (i) What is the status of the construction of the Kitui-Migwani-Mbondoni Road in Mwingi West Constituency?
- (ii) When will the construction works for the remaining 25kms stretch of the road resume and what are the expected completion timelines?
- (iii) What was the total funding allocated for the said road during the Financial Year 2021/2022?

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Very well. That one will be replied to before the Departmental Committee on Transport, Public Works and Housing.

The last Question is deferred on request by the Member. That will be placed next week

*Question No.035/2022*NON-ADHERENCE TO POLICY ON HUMAN RESOURCE AND REMUNERATION GUIDELINES BY THE
TEACHERS SERVICE COMMISSION

(Question deferred)

REQUEST FOR STATEMENT

CLOSURE OF EGERTON UNIVERSITY

Hon. (Ms.) Charity Chepkwony (Njoro, JP): Hon. Deputy Speaker, pursuant to the provisions of Standing Order No.44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Education and Research regarding the indefinite closure of Egerton University.

In the recent past, public universities have experienced turbulent times ranging from management wrangles, students' and staff strikes, imminent closure due to lack of funds and other issues. Egerton University has been facing a myriad of such challenges leading to its closure.

Further in November 2021, Egerton University was closed indefinitely due to financial constraints, in addition to a strike by teaching and non-teaching staff.

(Hon. Caleb Kositany consulted loudly)

Hon. Deputy Speaker: Order, Hon. Caleb! Proceed.

Hon. (Ms.) Charity Chepkwony (Njoro, JP): Thank you, Hon. Deputy Speaker.

Cognisant that Egerton University is the only public University in Nakuru County, the institution provides a livelihood for the residents of Njoro Constituency and the entire Nakuru County. Hence, the closure of the university is detrimental to the students due to interrupted learning, the staff, and the entire Njoro Constituency.

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 Chairperson provide a report on the challenges facing Egerton University leading to its closure?
- (ii) Could the Chairperson explain why the employees of Egerton University are yet to receive their salaries for a couple of months?
- (iii) What measures has the Government put in place to ensure that the employees are paid their salaries and wages?
- (iv) What plans has the Ministry put in place to ensure that the university returns to normalcy and be fully operational?
- (v) What immediate and urgent measures are in place to support public universities in this country?

Thank you, Hon. Deputy Speaker for giving me the opportunity to request for a Statement.

Hon. Deputy Speaker: That Statement is referred to the Departmental Committee on Education and Research. We will go to the next Order. Upon request by Hon. Duale, the acceptance by Hon. Kutuny and generally our Standing Orders, we will not put the Question to the Health Laws (Amendment) Bill. The Departmental Committee on Health tabled its Report today. I will proceed on the basis of Standing Order No.53(3). Under normal circumstances, if a report has already been tabled, you fix a date for putting the Question. It will be done on Tuesday next week. If the report was not there, we would have put it off indefinitely to allow the Committee to table it. We will go to the next Order.

BILLS

Second Reading

THE HEALTH LAWS (AMENDMENT) BILL

(Hon. Amos Kimunya on 8.2.2022)

(Debate concluded on 9.2.2022)

Hon. Deputy Speaker: The Question will be put on Tuesday, next week in the afternoon.
Second Reading

THE SACCO SOCIETIES (AMENDMENT) BILL

(Hon. Amos Kimunya on 9.2.2022)

(Debate concluded on 9.2.2022)

(Question put and agreed to)

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

Next Order!

MOTIONS

REPORT ON ANNULMENT OF THE CROPS
(FIBRE CROPS) REGULATIONS

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

(Hon. Kassait Kamket on 3.2.2022)

(Debate concluded on 3.2.2022)

(Question put and agreed to)

REPORT ON ANNULMENT OF PUBLIC FINANCE MANAGEMENT (*BIASHARA KENYA FUND*)
REGULATIONS AND OTHER RELATED REGULATIONS

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (*Biashara Kenya Fund*) Regulations, 2021; the Public Finance Management (Uwezo Fund) (Revocation) Regulations, 2021; the Public Finance Management (Women Enterprise Fund) (Revocation) Regulations, 2021; and the Public Finance Management (Youth

Enterprise Development Fund) (Revocation) Regulations, 2021, laid on the Table of the House on Tuesday, 21st September, 2021, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013, annuls in entirety:

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

(Hon. Kassait Kamket on 3.2.2022)

(Debate concluded on 3.2.2022)

(Question put and agreed to)

OFFICIAL DOCUMENTING OF THE HISTORY OF THE NATIONAL ASSEMBLY

THAT, aware that the history of any institution is key to evaluating its development; further aware that documenting history provides a knowledge bank for future generations; noting that the history of the Parliament of Kenya is largely unrecorded, scattered and piecemeal; further noting that most comparable jurisdictions have elaborate records of their history which are periodically updated to capture new developments; cognisant of the fact that the Parliament of Kenya marks its 115th anniversary this year having been established as the Legislative Council (LegCo) in August 1907; further cognisant that the legislature has been transforming in the last century both in mandate and composition starting as a fused unicameral legislature, to a bicameral one at independence to a unicameral legislature before again reverting to a bicameral Parliament after the promulgation of the Constitution of Kenya 2010; recognising the many works of arts, including statues, frescoes, murals and pictures connected with the history of the Parliament of Kenya, including the contributions of great men and women, families, architects and politicians throughout the 114 years of the history of the institution, and its transformation and growth throughout the period; now therefore, in order to ensure the preservation of the history of the institution for future generations, this House resolves:

1. THAT, at an appropriate stage, the House appoints a Committee comprising of not more than nine (9) Members to oversee the preservation of these histories for posterity, with special focus on the National Assembly;
2. THAT, the copyrights of the History of Parliament of Kenya projects be reserved for the benefit of Parliament and the people of Kenya; and,
3. THAT, the Clerk of the National Assembly puts in place and executes appropriate mechanisms to actualise this Resolution.

(Hon. Amos Kimunya on 9.2.2022)

(Debate concluded on 9.2.2022)

(Question put and agreed to)

Hon. Deputy Speaker: Next Order!

Let us have the Chairperson of the Departmental Committee on Finance and National Planning. Just a minute. Hon. Members, at Order No.7, we inadvertently skipped the Statement by the Leader of the Majority Party. Therefore, I revert back to Order No.7 and give him the opportunity to give his Statement and thereafter we proceed with the business as we had commenced.

STATEMENT

BUSINESS FOR THE WEEK COMMENCING 15TH TO 17TH FEBRUARY 2022

Hon. Amos Kimunya (Kipipiri, JP): Hon. Deputy Speaker, pursuant to the provisions of Standing Order No.44(2)(a), I rise to give a Statement on behalf of the House Business Committee (HBC) which met on Tuesday, 8th February 2022 to prioritise business for consideration.

Hon. Members, as Members are aware, the process of reorganising the various Committees of the House is ongoing and further it is noted that the elections of the leadership of the various Committees that were affected by the changes have been ongoing since morning and should be complete by the end of tomorrow for the last Committee. It is my hope that once the exercise is completed, Committees will resume their core business as soon as possible to fast-track and expedite any urgent pending business.

Hon. Deputy Speaker, for the Sitting of Tuesday, 15th February 2022, the HBC has tentatively approved consideration of the following Motions:

1. The Report of the Budget and Appropriations Committee on the 2022 Budget Policy Statement and Medium-Term Debt Management Strategy should they be tabled today or before commencement of that debate.
2. A Special Motion on the approval of the National Assembly nominee to the Equalisation Fund.
3. A Special Motion on the approval of a nominee for appointment to the Kenya National Commission on Human Rights should the Report of the Committee be tabled today.

Hon. Deputy Speaker, also scheduled for consideration is the First Reading of the Elections (Amendment) Bill, 2022 and Committee of the whole House on the Copyright (Amendment) Bill, 2021, if the report will have been tabled, and Second Reading of the following Bills:

1. The Wildlife Conservation and Management (Amendment) Bill (Senate Bill No.30 of 2020);
2. The Mental Health (Amendment) Bill (Senate Bill No.28 of 2020) if it is not finished today;
3. The Children Bill, 2021;
4. The Advocates (Amendment) Bill, 2021; and
5. The Universities (Amendment) Bill, 2021.

Hon. Deputy Speaker, I am reliably informed that there are no Questions scheduled to be responded to by Cabinet Secretaries. This gives Committees ample time to consider pending

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business especially on the budget-related items. The HBC will reconvene on Tuesday, 15th February 2022, to reschedule the business for the rest of the week. I wish to lay this Statement on the Table of the House. Thank you.

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

Hon. Deputy Speaker: Very well. We go to the next Order.

SPECIAL MOTION

APPROVAL OF NOMINEE TO THE EQUALISATION FUND ADVISORY BOARD

Hon. Deputy Speaker: That is to be done by the Departmental Committee on Finance and National Planning. I cannot see the Chair of the Committee or the deputy. Is there another Member who is supposed to move? In the absence of that, then I step it down.

(Motion deferred)

Let us go to the next one.

MOTIONS

ANNULMENT OF THE PUBLIC FINANCE MANAGEMENT (SINKING FUND) GUIDELINES

Hon. Deputy Speaker: That is the Chairman of Committee on Delegated Legislation, Hon. Kamket. Is there somebody else doing it on his behalf. Okay, you have the Floor.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Deputy Speaker, I beg to move the following Motion:

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

Hon. Deputy Speaker, the guidelines provide for the redemption of Government bonds specifically in the redemption of stock of Government debt, cushion for amortisation of liabilities arising from debt, facilitation of debt restructuring and smoothening of maturity profile, building up resources for meeting maturities of loans and securities issued in the domestic and international debt capital market by ensuring resources are available for the redemption of maturing debts to alleviate roll over risks and buyback of national Government loan obligation in the debt market and further meet the cost of switches and early redemption of national Government loan obligations and costs incidental to the loans. According to the National Treasury, this will attract investors especially on sovereign bond market as well as reducing any potential escalation of the interest rate expenses.

Section 50(8) of the Public Finance Management (PFM) Act 2012 grants power to the Cabinet Secretary, National Treasury, to establish by way of regulations approved by Parliament, such sinking fund or funds for the redemption of loans raised under the Act by the national Government. The CS, therefore, ought to have made the regulations in respect to sinking funds which were supposed to be approved by the National Assembly by way of affirmative resolution. The publication of guidelines are, therefore, in contravention of Section 13(a) of the Statutory Instruments Act. The National Treasury invoked Article 214(1) of the Constitution of Kenya which provides that public debts are charged to the Consolidated Fund, but an Act of Parliament may provide for charging of all or part of the public debt to other public funds while Clause 2 provides that for the purpose of this Article, the “public debt” means “all financial obligations attendant to loans raised or guaranteed by the national Government”. It was indicated that while Section 50(8) of the PFM Act provides for the establishment of a Sinking Fund for the redemption of loans raised under the Act by the national Government, the loans defined by the PFM Act 2012 includes both internal and external loans. Consequently, there is need for the repeal of the General Loans and Stock Act (Cap.419) which provides for the redemption of external debts from the United Kingdom.

Further, Regulation 206 of the PFM (National Government) Regulations 2015 established the Sinking Fund and delegated the power to prepare and publish the guidelines for the operationalisation of this Fund. The Sinking Fund envisaged under the PFM Act 2012 is for redemption of both domestic and external loans including the payment of expenses of, or incidental to, loans and shall be used for that purpose.

Hon. Deputy Speaker, pursuant to Section 16 of the Statutory Instruments Act 2013, the Committee held a meeting with the regulatory making authority on Wednesday, 1st September 2021, in Mombasa. The Committee considered the guidelines against the Constitution, the Interpretations and General Provisions Act, the PFM Act, the Statutory Instruments Act and the PFM Regulations 2015. During the scrutiny, the Committee took note that the guidelines in particular provides for:

1. The definition, objects and purpose of the Fund;
2. The capitalisation of the Fund which shall be appropriated by Parliament from time to time;
3. Sources of the funds; and
4. The Governance structure of the Fund, which comprises of the advisory committee, the Fund administrator and the secretariat of the Fund appointed by the Cabinet Secretary in charge of the National Treasury.

Following a comprehensive scrutiny of the guidelines, the Committee found the following:

- (i) THAT, the Guidelines as published contravene Section 13 (h) of the Statutory Instruments Act (*No.23 of 2013*). The enabling provision invoked the wrong reference as it was made under the Public Finance Management (National Government) Regulations, 2015.
- (ii) THAT, Section 50 (8) of the Public Finance Management Act, 2012 grants power to the Cabinet Secretary for the National Treasury to establish by way of Regulations approved by Parliament, such Sinking Fund or Funds for the redemption of loans raised under the Act by the national Government. The Cabinet Secretary, therefore, ought to have made Regulations in respect to Sinking Funds which were to be approved by the National Assembly by way of affirmative

resolution. The publication of the guidelines is, therefore, a contravention of Section 13 (a) of the Statutory Instruments Act (*No.23 of 2013*).

- (iii) THAT, the Explanatory Memorandum submitted alongside the Regulations does not comprehensively demonstrate the details of consultations with the public as to the dates and responses as required under the Schedule to the Statutory Instrument Act, hence it was not possible to analyse the extent of public participation or level of consultation conducted required under Section 5 of the Statutory Instrument Act and the spirit and letter of Articles 10 and 118 of the Constitution of Kenya, 2010.
- (iv) THAT, the Sinking Fund Guidelines require a regulatory impact assessment and submission to the National Assembly of a regulatory impact statement within the meaning of Section 8 of the Statutory Instruments Act, 2013 as the Fund is appropriated from the Consolidated Fund and as such accrue from the taxpayers and would thus impose significant costs to the community or part of the community.

Hon. Deputy Speaker, the Committee, pursuant to Standing Order 210 (4) and having examined the Public Finance Management (Sinking Fund) Guidelines, 2021 against the Constitution of Kenya, the Interpretations and General Provisions Act (*Cap 2*), the Public Finance Management Act, 2012, the Statutory Instruments Act 2013, and the Public Finance Management (National Government) Regulations, 2015; recommends that the House annuls in entirety the said guidelines for failing to demonstrate that sufficient public participation was undertaken contrary to Articles 10 and 118 of the Constitution and Sections 5, 5A and the Schedule to the Statutory Instruments Act, and failure to submit a regulatory impact statement as required under the Statutory Instruments Act.

The gist of the Report or the recommendation of the Committee is simple and straightforward. Repayment of loans – be it domestic or foreign – is such an important matter that requires every single Kenyan to have a say in the way the matters are handled. The Committee was unable to be persuaded that there was any iota of evidence of public participation. Given that situation, on its own, what we call the regulations or the guidelines, were dead on arrival.

(The Deputy Speaker (Hon. Moses Cheboi) left the Chair)

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

Secondly, the absence of the regulatory impact statement meant that whoever was in charge of the regulatory making authority did not take the matter as seriously as it is required. Here is, therefore, the recommendation of the Committee to annul.

With those remarks, I move and request the Chief Whip to second the Report.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second the Motion. As explained by a very good professor of economics, it is well understood. The facts have been laid bare that the presentation before the House must be annulled so that it complies with the law. Let us be compliant to the law.

I second.

(Question proposed)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Can we have Hon. Sankok?

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. I support the Report of the Committee led by the Professor. They have done a good job. A Professor is always a Professor and they never retire. If they retire, they do not tire, if they tire, they do not die; if they die, they do not rot, and if they rot, they do not smell and if they do smell, they smell like roses.

The Committee has done an excellent job and I support them very much. However, I support all this on condition that, as we go to the Supplementary Budget process, we shall get to know our debt as a country. We also need to know if we are ready to pay our debts without necessarily increasing our taxes or affecting the people at the bottom of the pyramid. I will support but Professor, as you go, use your intellect because you are the most intelligent Member of this House. You must ensure that you have presented the issue of debt. It is a cancer that is now ailing our economy. So, we should concentrate on that and make sure that we are aware, and Kenyans are aware, of what they owe the Chinese and how these loans are taken from the Chinese. It should not be that the Chinese give us loans from their right hand and take them back using their left hand through contracts.

I support.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me have the Member for Kitui Central, Hon. (Dr.) Makali Mulu.

Hon. Makali Mulu (Kitui Central, WDM-K): Thank you, Hon. Temporary Deputy Speaker. I also want to join other colleagues in supporting the Committees' Report, which proposes that we annul the Sinking Fund Guidelines. I have listened to the Mover of the Motion. He has articulated the reasons as to why they are annulling these important guidelines. What I am picking from this presentation is that we are using the same reasons which were being proposed to annul the *Biashara* Fund Regulations that we debated either late last week or earlier this week.

With regard to these two sets of regulations, one is being annulled for technical reasons and the other one because of lack of public participation. It happens that these two sets of regulations come from the same Ministry. I wonder whether people are learning lessons from what is happening. This is a situation where we are annulling regulations because of lack of public participation.

The object of these guidelines is very important to this country. It is through these guidelines that we should be able to address the public debt that Hon. Omboko was talking about. We are supposed to have a sinking fund. For those with financial background, a sinking fund is supposed to assist you when you want to pay for or clear a debt. It can assist when the need for that purpose arises. When we issue Bonds and Treasury Bills to Kenyans and they are due for payment, we can pay them when they are due. If we do not have these guidelines in place, it means that we will never have an operational sinking fund in this country.

The National Treasury needs to take its work seriously. We will approve this Report today, which will mean that the National Treasury has to go back to the drawing board and come up with new guidelines. I do not know how long it will take to have those guidelines in place since the 12th Parliament is coming to an end in August. It is likely that those guidelines will come in during the 13th Parliament. Time will keep moving as Kenyans keep talking about unbearable public debt.

It is important that we address the technical issues and issues of public participation – which this Committee keeps bringing up in the House – before such guidelines are tabled so that we save time and operationalise some of the important activities and funds.

It was very disturbing the other day when we could not approve the *Biashara* Kenya Fund Regulations. I am sure Members are aware that the whole idea behind the *Biashara* Kenya Fund

was to bring together three funds, namely; the Women Enterprise Fund, the Youth Enterprise Development Fund and the Uwezo Fund so that at the end of the day we have a well-structured framework to provide resources to our people. These guidelines are supposed to provide a legal framework which will ensure that our public debt is paid on time. However, you can see what circumstances will force us to do as we cannot go against the law.

The Committee looked at the guidelines and resolved that in terms of the template of what is required, they do not fit the bill. Therefore, on that basis, we have to reject the guidelines even though they are very important to this country. As the Committee that oversees the National Treasury, I urge the Departmental Committee on Finance and National Planning to do a bit of work to ensure that we do not always come here to reject such important guidelines and regulations which can help move the country forward.

With those many remarks, I have no choice but to support the annulment of the Sinking Fund Guidelines.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let us have the Member representing the people of Navakholo, Hon. Emmanuel Wangwe. I am sure you are requesting to speak to the next Order. I thought he had an intervention.

Hon. David ole Sankok (Nominated, JP): ... (*Spoke off-record*)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Hon. Member 001. He being on intervention could mean that he has a point of order.

Let us have the Member for Keiyo South, Hon. Rono Kipkogei.

Hon. Daniel Rono (Keiyo South, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to weigh in on the Report. As I do so, I want to congratulate you because you look very beautiful in green. Particularly, the headgear really matches with some United Democratic Alliance (UDA) colours. You look very nice. All said and done, you are extremely smart.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Thank you, Hon. Rono Kipkosgei. As a matter of procedure, there is a point of order by Hon. Millie Odhiambo. Let us hear what she has to say.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Hon. Temporary Deputy Speaker, I thank you for giving me this opportunity. I have heard some Members shouting and telling me to raise a point of order on whether the Member is relevant. I will not raise the issue of relevance even though he is irrelevant.

As a fellow woman Member of Parliament, I must defend you because the colour you are wearing is not UDA. It is not remotely UDA and where you come from is not UDA at all. So, I know you cannot wear UDA colours. I agree with him that you are extremely smart but you are not wearing UDA colours. I know most men are colour-blind, but is he in order to be colour-blind at this time and hour of electioneering? So, I want to confirm to him that I know you are a Member of Wiper Democratic Movement-Kenya (WDM-K) and not UDA and your colours are not UDA colours whatsoever.

Thank you.

Hon. Daniel Rono (Keiyo South, JP): Hon. Temporary Deputy Speaker, I know she is jealous because I have pointed out your smartness.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Let me hear what the Member for Dagoretti has to say.

Hon. John Kiarie (Dagoretti South, JP): On a point of order, Hon. Temporary Deputy Speaker. I rise to seek your direction on whether Hon. Rono is actually in order to steer away from

the matter that is on the Floor as we speak. I think the Chair should find him out of order on the basis that what he is saying is irrelevant.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): What has he said?

Hon. John Kiarie (Dagoretti South, JP): Hon. Temporary Deputy Speaker, even as I fault him on relevance, I have to agree with him that you look extremely beautiful today. However, I disagree with Hon. Millie Mabona in her claim that all men are colour-blind.

I am a visual and performing artist and want to confirm that green is one of the colours spotted by the UDA party officially. I want to add that you even look more beautiful seated next to the national flag because green has its meaning on the flag of Kenya. As an artist, I know what that green means. We are seeing that party has been found within our borders...

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Your point is taken. Let me hear from the Member of Navakholo, who was on a point of order before.

Hon. Emmanuel Wangwe (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. Mine is to ask whether Hon. Rono is in order for failing to understand. I know he is educated but is he in order to fail to understand the difference between “being smart” and “being beautiful?”

Thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Members, you are all being so irrelevant. Hon. Makali Mulu, maybe, you can tell the House. He is on a point of order.

Hon. Makali Mulu (Kitui Central, WDM-K): On a point of order, Hon. Temporary Deputy Speaker. I want to assure Hon. Members that the most beautiful women in this country come from our region.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): You are now all out of order.

Hon. Makali Mulu (Kitui Central, WDM-K): You are doing the right thing. So, let us appreciate and focus on business. You can send your sons to our side so we provide them with more beautiful ladies. It is actually our weakness to have beautiful ladies. As you can see, we have one here. Thank you very much for appreciating what Kamba men can do in terms of bringing beautiful women to this earth.

(Hon. David ole Sankok spoke off record)

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Sankok, what is out of order? Unless Hon. Makali or the Member for Navakholo are out of order, I see nothing out of order in this House, but we are eating into the time of the Member who was contributing.

Let me hear you.

Hon. David ole Sankok (Nominated, JP): Hon. Temporary Deputy Speaker, I can confirm that you are always extremely beautiful whether in green, yellow or blue. Hon. Rono has just confirmed what all Members have been saying. I want to ask Hon. Millie Odhiambo not to be jealous because all of us are created differently.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Order, Members! We are now taking the debate too far. We have a Motion to debate and Hon. Rono was on the Floor. Let us, please, observe relevance as guided by our Standing Orders. Hon. Rono, please, get to the business of the Motion but I must say “thank you.” As the presiding Speaker, I am non-partisan but I belong to the Wiper Democratic Party.

Hon. Daniel Rono (Keiyo South, JP): Hon. Temporary Deputy Speaker, may I conclude by saying that you are smart and beautiful.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Please, make your point on the Motion.

Hon. Daniel Rono (Keiyo South, JP): I want to point out something that my colleague, Hon. Sankok, had mentioned: This country needs to look at the level of debt that we have and the current level of development in this country and see whether or not they are in tandem. This is because when you look at our debt, it is ridiculously high compared to the level of development. Reducing debt is a very important issue facing this county at this point in time. That is what this House and the Executive should focus on but, of course, without increasing the level of taxation.

Hon. Temporary Deputy Speaker, I want to support the Motion before the House. I want to plead with this House that it is important for us to focus on the policies that would not only assist this country to reduce debt but to also reduce taxes that the citizens are paying. Of course, I do not wish away the ongoing development in Kenya.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very Well. You are supporting the Motion. For the Members who have just come in, we are on Order No.14 – the Motion on Annulment of the Public Finance Management (Sinking Fund) Guidelines 2021. Let me have the Member for Suba North, Hon. Millie Odhiambo.

Hon. (Ms.) Odhiambo-Mabona (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker. That was actually an intervention for the earlier point of order.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. On this matter, let me have the representative of the people of Dagoretti South, Hon. Waweru Kiarie. Use the microphone over there.

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Temporary Deputy Speaker. I do stand to support the Committee's Report that we annul these Regulations in their entirety. It is not the hobby of Parliament to be annulling Regulations. This House does not enjoy taking work back to Committees, which then take them back to the relevant Ministries. However, these Regulations had been crafted in such a way that they have been faulted by the Committee on Delegated Legislation. The Report actually points to a danger in the Ministry that shows the level of laziness. From the Committee's Report, these are actually careless mistakes that could have been picked up by any officer in the Ministry before these Regulations were forwarded to the Committee for approval. It is also regrettable that this is not the first time that we are taking back Regulations to the Ministry responsible for the National Treasury.

The National Treasury is becoming a perennial offender. The devil is always in the detail. The National Treasury is failing on such small issues as preparing Regulations according to the law and the Constitution. It would just have required a person to read the letter of the law and understand the spirit of the law as they were coming up with these guidelines. As I said, Treasury is proving to be a perennial offender. Today, it is these guidelines. Yesterday, it was the matter of the NG-CDF. The other day, it was the matter of the Budget Policy Statement (BPS). Previously, it was the matter of public debt. There is a problem at the National Treasury. The problem is bigger than the eye can see. As Parliament commences the budget-making process, we will have to do the heavy lifting and lift the veil on the ills at the National Treasury.

The Sinking Fund is a very important instrument in public finance management. Today our country is choking under the weight of debt. We are being told that this country is borrowing close to Kshs2.5 billion every day – monies that if we started to pay today, we will be paying all the way

to 2099. That is just the headliner. If we dig deeper, we will find out that even how this debt is being reported could also be in the same manner that we are being told collections are being done by the Kenya Revenue Authority (KRA).

It is on record that the National Treasury reported that they have gone over and above the targets they had set in terms of revenue collection. That is the story we are being told. The reality on the ground, however, is extremely different. Currently, the National Treasury cannot honour its obligations to the National Government, the devolved funds in the counties and even to the NG-CDF. We want to know what is happening at the National Treasury such that they are goofing on matters of regulation-making, obligations and on major issues like public debt management, which is the very basic job that they should be doing.

I support the annulment of the guidelines in entirety as has been recommended in the Report that was tabled by the Committee through the very able Prof. Oundo.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. There is a request by the Member for Garissa Township, Hon. Duale Aden. I confirm that he is consulting in our consultation room.

Hon. Members, there being no other Member interested or requesting to speak to this Motion, I call upon the Mover to reply. Let us have Hon. Oundo Ojiambo, the Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Temporary Deputy Speaker. Colleagues have been very clear in their disgust at the poor show by the State Department of the National Treasury. I believe the Leader of the Majority Party has heard the sentiments. We have also heard the same as a Committee. When the National Treasury appears before us later, we will raise the same issues that this House has raised.

One of the issues that led to the recommendation to annul was lack of a Regulatory Impact Assessment Report. In that Regulatory Impact Assessment Report, we could have easily picked out the issue of how much debt this country owes to the various bilateral lenders and the rest. Because of that, we had no choice but to do what we did.

With those few remarks, I beg to reply.

Hon. Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, cognisant of the Standing Orders, I order that putting of the Question on Order No.14, which is the Motion on Annulment of the Public Finance Management (Sinking Fund) Guidelines, 2021, be deferred.

(Putting of the Question deferred)

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

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Can we have the Vice-Chairperson of the Committee on Delegated Legislation to move the Motion?

Member for Mbeere North.

Hon. Charles Njagagua (Mbeere North, JP): Hon. Temporary Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016, laid on the Table of the House on Wednesday, 10th November 2021; and pursuant to the provisions of section 18 of the Statutory Instruments Act, 2013 and Standing Order 210 (4)(b),

annuls in entirety the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016, published as Legal Notice No.149 of 2016.

Hon. Temporary Deputy Speaker, the Cabinet Secretary for Environment, Natural Resources and Regional Development Authorities, in exercise of the powers conferred by Section 147 of the Environment Management and Coordination Act (No.8 of 1999), made the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016. The Regulations were made *vide* LN No.149 of 2016 and published in the *Kenya Gazette* on 16th August 2016.

The Committee was in receipt of a letter dated 13th November 2020 from the Society for Biotech Farmers of Kenya (SOBIFAK) inquiring whether the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016 that were made *vide* LN. No.149 of 2016, published in the *Kenya Gazette* on 16th August 2016 were submitted to the National Assembly and a further letter dated 16th September 2021 from the Open Forum on Agricultural Biotechnology in Africa (OFAB), inviting the Select Committee on Delegated Legislation to consult, confer and deliberate on the matter.

Hon. Temporary Deputy Speaker, the Committee, pursuant to Section 12 (2) of the Statutory Instruments Act, 2013 may scrutinise instruments published at any time, including instruments published prior to the commencement of the Act. The Committee, pursuant to Section 16 of the Statutory Instruments Act, held a meeting with the Cabinet Secretary for Environment and Forestry attended by the National Environment Management Authority (NEMA) on 15th September 2021 and held a further meeting with the National Safety Authority on 28th September 2021 where members raised a number of concerns in respect of the Regulations. The Committee came up with the following findings:

Following a comprehensive scrutiny of the Environmental Management (Impact Assessment and Audit) (Amendment) Regulations 2016, the Committee observed that Section 147 (1) of the EMCA provides that the Cabinet Secretary may, on the recommendation of the Authority and upon consultation with the relevant lead agencies, make regulations. The enactment clause of the regulations has no mention of any recommendation of the Authority or consultation with the lead agencies and the same is not demonstrated. This infringes Article 259 (11) of the Constitution, which requires mandatory recommendations or consultations with other institutions when so required under a statute, and which must be sufficiently demonstrated at the enactment clause of the regulations.

Article 259(11) of the Constitution provides that if a function or power conferred on a person under the Constitution is exercisable by the person only on the advice or recommendation, with the approval or consent of, or on consultation with another person, the function may be performed or the power exercised only on that advice, recommendation with that approval or consent, or after that consultation, except to the extent that this Constitution provides otherwise.

Also, contrary to the requirements set out in Sections 11 (1), 12 (1) and (2) of the Statutory Instruments Act (No.23 of 2013), the Regulations published as LN No 149 of 2016 were not submitted to, and were not tabled in the National Assembly. This implies that it ought to have ceased to have effect on the last day for it to be so laid, hence lapsed by operation of law.

The Ministry and the NEMA did not conduct public participation as required under Articles 10 and 118 of the Constitution and Sections 5, 5A and the Schedule to the Statutory Instruments Act as read together with the Environmental Management and Coordination Act, 1999. So, contrary to Section 11(2) of the Statutory Instruments Act, there was no explanatory memorandum

due to the regulations providing for the purpose of the statutory instrument and the legislative context, policy, or background. There were no consultations on its impact on fundamental rights and freedoms, modalities of monitoring and review, all of which would have guided the Committee's consideration during the scrutiny.

Having examined the conformity of the Environmental Management and Coordination (Impact Assessment and Audit (Amendment) Regulations 2016, published vide Legal Notice No.149 of 2016, with the Constitution, the Interpretations and General Provisions Act Cap.2, the Statutory Instruments Act No.23 of 2013 and the Environmental Management and Coordination Act No.8, the Committee recommends that the House annuls, in its entirety, the said statutory instrument for non-compliance.

Hon. Temporary Deputy Speaker, I beg to move and ask Hon. (Dr.) Oundo to second the Report.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu: Let me have Dr. Oundo Ojiambo to second.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Hon. Temporary Deputy Speaker, I second and support the Report and the recommendations of the Committee. There are fundamental issues that a country governed by the rule of law should never deviate from.

Firstly, it was the intention of Parliament and the people of Kenya that all subsidiary legislation must go through rigorous process like any other primary legislation. For any regulation-making authority to purport to usurp the power of Parliament and make regulations, it is unacceptable and unconstitutional. The persons involved should be cited for breach of law. On that account alone, and without going to other issues, the regulations are dead on arrival. We also need to make it very clear, as my colleague KJ has said, that we do not take any pride in annulling regulations. It takes money and time to develop these regulations, but we want to tell the regulation-making authorities that we can never deviate or subvert the law. We must abide by the law and that is not negotiable. That is unacceptable. It is an inexcusable breach of the law and must be punishable. We must do what we are supposed to do.

Secondly, as much as these regulations are necessary for they have very far reaching effects, by the mere fact that they are made contrary to the law, they are defective, as the legal mind would say, *ab initio*.

Thirdly, these regulations go to the core of environmental impact assessment and you cannot purport to make regulations without public participation. The framers of the Constitution of Kenya 2010, in Articles 10 and 118, never contemplated that. They actually intended that whatever we do, the people of Kenya must be directly involved in making those decisions. Members of Parliament are their representatives, but how do they represent if they have not been told what to represent?

Hon. Temporary Deputy Speaker, I beg to second.

Hon. Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well.

(Question proposed)

Let us have the Member for Dagoretti South, who is first on my request list.

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me the opportunity to have the first shot on this one. This is a no-brainer. As I had said earlier, this House does not take pride in annulling regulations. We do not have a hobby

of annulling regulations. However, this one is worse than what we were dealing with previously. As you can see, there are three counts that stand out.

One, these regulations came to the Floor of the House via this Report that states that there was no consultation with the relevant lead agencies. Two, we have been told that these regulations do not conform to the relevant provisions of the Constitution. Three, and most important, I have stood here severally and argued the case for proper and effective public participation. It has been said that public participation cannot be seen to be a cosmetic exercise. It needs to happen as provided for by the Constitution. This looks like a no-brainer. I support that the regulations be annulled in their entirety.

Without anticipating debate, I can see that Hon. Millie Mabona is itching to comment on an issue that was raised previously. I would like to set the record straight: I said that I am an artist and I understand colours. The point I was making is that the colour green is on our national flag. The way you look this afternoon depicts that plenty has been found within our borders. The point I am making is that you look resplendent in green this afternoon. Without anticipating what Hon. Millie Mabona will say, I know that colour to be green. It is green and men are not colour-blind.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. The issue of colours is not part of the debate. I confirm that even the Serjeant-at-Arms are in green. I expected you to say that. We are debating serious business.

Hon. Members, there being no other request from a Member to speak to the Motion, and being cognisant of the Standing Orders, I call upon the Mover to reply.

Hon. Charles Njagagua (Mbeere North, JP): Thank you, Hon. Temporary Deputy Speaker. This was very short, but expected. As you have heard from those who have spoken to this Motion, there was no public participation and the lead agencies were never consulted. The people who would be affected by these regulations were never consulted. It goes without saying that even Members of Parliament know that nothing was done by the regulatory authority. As such, we agree that these regulations should be annulled in their entirety.

I beg to reply.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. With that, and aware of the Standing Orders in application, I order that the putting of the Question on Order No.15, which is the Motion on Annulment of the Environmental Management and Coordination (Impact Assessment and Audit) (Amendment) Regulations, 2016, be deferred.

(Putting of the Question deferred)

Next Order!

BILLS

Second Readings

THE WILDLIFE CONSERVATION AND MANAGEMENT (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Can we have the Second Reading moved by the Chairperson, Departmental Committee on Environment and Natural Resources, if he is in the House? Where is he? I am sure the Leader of Majority had indicated that he had some message, but he is still consulting.

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Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. My apologies. The Committee on Environment and Natural Resources is in a meeting. I think they are going through some elections hence they have requested that we step down this matter until they can reconstitute themselves and bring it probably in the course of next week.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Okay. Hon. Members, having listened to the Leader of the Majority Party, I am convinced on the status of Order No.16. Therefore, I order that it be deferred.

(Bill deferred)

THE MENTAL HEALTH (AMENDMENT) BILL

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): The Chairperson, Departmental Committee on Health.

Hon. Joshua Kutuny (Cherangany, JP): Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Are you the Chairperson?

Hon. Joshua Kutuny (Cherangany, JP): I am the Vice-Chair.

Hon. Temporary Deputy Speaker: Thank you. Yes, you are in order. I have confirmed that you are the Vice-Chair. You can move Order No.17.

Hon. Joshua Kutuny (Cherangany, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move the Mental Health (Amendment) Bill (Senate Bill No.28 of 2020), which was published on 30th November 2020. It underwent First Reading on 13th October 2021 in the National Assembly and thereafter, was committed to the Departmental Committee on Health for consideration and reporting to the House.

Following the placement of advertisements in the print media on 5th November 2021, requesting for comments on the Bill from members of the public and relevant stakeholders according to the provisions of Article 118(1)(b) of the Constitution of Kenya and Standing Order 127(3), the Committee received memoranda from stakeholders. Thereafter, it held meetings both in-house and with different stakeholders in consideration of the Mental Health (Amendment) Bill (Senate Bill No.28 of 2020).

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Yes! Do I hear a point of order? There is an intervention by the Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): On a point of order, Hon. Temporary Deputy Speaker.

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

QUORUM

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): I did not want to interrupt my good friend, friend from my constituency; he always comes whenever we call upon him. The matter he is raising is so fundamental as it is on mental health. I rise under Standing Order No.35, to cite that we do not have quorum to discuss such an important and critical matter that has been in the news. Remember, yesterday, when we were talking about the police, it became very critical. So, Hon. Temporary Deputy Speaker, I need your guidance in view of the lack of numbers and the monumental importance of the Bill.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Very well. Hon. Oundo, Member for Funyula has stood on a point of order under Standing Order No.35.

Kwa Kiswahili, wanasema: Akidi wakati wa shughuli za kikao: “Iwapo Mbunge yeyote atadai kuwa akidi haijatimia katika kikao wakati wowote, kikao cha Bunge la taifa au kamati kinapoendelea, Spika au Mwenyekiti atahesabu Wabunge walio katika ukumbi au kamati.”

Hon. Members, with that order being raised and having confirmed that we do not have quorum, I, order that the Quorum Bell be rung for 10 minutes.

Members, this is within our procedures. It is in our Standing Orders.

(The Quorum Bell was rung)

Order Members! Order! Hon. Members, I had ordered the Quorum Bell to be rung for 10 minutes. I wish to report that the 10 minutes are over. The point of order was raised by Hon. Oundo and he is in the House; he has not disappeared. We were unable to raise the numbers. So, cognisant of our Standing Orders, this gives me an opportunity to adjourn the House.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Jessica Mbalu): Hon. Members, the time being 4.51 p.m., this House stands adjourned until Tuesday, 15th February 2022 at 2.30 p.m.

Thank you all.

The House rose at 4.51 p.m.