

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 14th August 2018

The House met at 2.30 p.m.

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

PRAYERS

Hon. Deputy Speaker: Let us proceed.

PETITION

DELAYED COMPENSATION FOR LAND ACQUIRED UNDER STANDARD GAUGE RAILWAY PROJECT IN KAJIADO EAST

Hon. (Ms.) Peris Tobiko (Kajiado East, JP): Thank you, Hon. Deputy Speaker.

I, the undersigned, on behalf of residents of Empaash, Tuala, Rongai and Oloosirkon areas in Kajiado East Constituency draw the attention of the House to the following:

THAT, Article 40(3) of the Constitution of Kenya affords every Kenyan the right to own property and prohibits the State from depriving any person of their property without compensation which should be prompt payment in full of just compensation to the person;

THAT, Article 42 of the Constitution affords every person the right to a clean and healthy environment;

THAT, under sections 111 and 120(1) of the Land Act, 2012 the National Lands Commission (NLC) can only take formal possession of the affected lands after an award for compensation has been made and the amount paid in full to the affected persons;

THAT, in early 2017, the Government of Kenya through the Kenya Railways Corporation (KRC) embarked construction of the second phase of the Standard Gauge Railway (SGR) Project which starts at the Nairobi Railway Terminal to Enoosurutia in Naivasha. Kenya Railways identified the Nairobi National Park and parcels of lands in Empaash, Tuala, Rongai and Oloosirkon areas within Kajiado East Constituency to be affected by the SGR Phase 2A;

THAT, for this purpose, the Government of Kenya commissioned an Environmental and Social Impact Assessment (ESIA) study on the proposed railway corridor in October, 2016. The ESIA required the KRC and the contractor to employ certain measures to ensure that the environmental and social impacts of the SGR Phase 2A project are either mitigated or eliminated;

THAT, some of the measures include the corporate social responsibility (CSR) projects on roads, water projects and other infrastructure projects;

THAT, despite having not formally served upon the affected land owners with the necessary legal notices – and therefore without compensation - the KRC in association with China Communications Construction Company (CCCC), the NLC and the local Provincial

Administration, through a number of uncoordinated public gatherings harangued and intimidated the land owners and other project affected persons to relocate and allow what they then termed as early entry to the China Communications Construction Company areas for the urgent purpose of construction of the SGR Phase 2A on the understanding that the NLC will fasttrack their compensation;

THAT, in order to gain early entry, KRC and CCCC promised the residents of these areas that public utilities like electricity and water would not be affected by the construction;

THAT, in some instances where the land owners refused to allow early access by the company, the CCCC gained entry by force with the assistance of the Kenya Police Service officers deployed to protect the project company;

THAT, consequently, the houses, farms, business and homes of affected persons were demolished to allow for early access by the company despite not affording the owners of those parcels an opportunity to look for alternative land to settle;

THAT, the construction of the SGR Phase 2A began in early 2017 in earnest and the project is now reportedly 70 to 80 per cent complete and is due to be commissioned on 1st June, 2019 with a first train ride to Naivasha;

THAT, on 22nd December 2017 the NLC published in the *Kenya Gazette* a notice of intention to acquire land, clearly stating the names and parcel number of the lands which would be compulsorily acquired to pave way for SGR Phase 2A;

THAT, on 2nd May 2018, the NLC published a notice of inquiry in the *Kenya Gazette* for the purpose of carrying out validation of claims by affected persons, determination of their compensation and presenting of awards to the affected persons;

THAT, the inquiries were conducted by the NLC on the scheduled dates and time and majority, if not all, of the affected persons accepted the awards despite them having been patently undervalued.

THAT, to date, no project affected person has been paid by the NLC as promised and the affected persons continue to suffer due to relocation.

THAT, it has been reported that the Ministry of Lands and Physical Planning has commissioned an exercise of re-evaluation or validation of awards issued by the NLC despite there not being any physical structures on the lands for valuation;

THAT, access roads and the existing roads have been depleted by many trucks conveying materials to various construction sites along the SGR Phase 2A corridor.

THAT, by piling of soil and rocks to form the railway embankment, the company has closed or blocked the existing roads utilised by area residents thereby rendering a number of homes and even schools inaccessible particularly during the rainy season.

THAT, through piling of soil and rocks to form the railway embankment, the company has redirected rain water to one direction which brought about flash floods in an area hitherto not prone to flash floods.

Hon. Deputy Speaker, you know the Kiambu Governor said we can redirect rivers but this one is really difficult. It is proving very difficult for the people of Kajiado East.

THAT, the company employs the use of explosives to extract rocks by way of blasting. Blasting is done at any time of the day, including the night. The blasting is extremely

loud and powerful and has brought irreparable damage to a number of residences evident by way of cracks on the way and falling off of ceilings. In addition, residents are unable to enjoy their sleep due to loud blasting.

THAT, the blasting conducted by the CCCC offends the Environmental and Social Impact Assessment for the project which requires that quarry sites must undergo their own Environmental Impact Assessments before they are authorised to operate;

THAT, the company has failed to pour water on the dusty roads as required under the Environmental and Social Impact Assessment for the project thereby causing dust which is harmful to persons' health, especially asthmatic ones. The dust has also damaged crops on farms adjacent to the dusty roads;

THAT, my constituents have made efforts to have issues of compensation addressed by way of inquiries to the NLC, Kenya Railways Corporation, the Ministry of Lands and Physical Planning, Ministry of Transport, Infrastructure, Housing and Urban Development, but the inquiries have not yielded a satisfactory response from any of the concerned bodies;

THAT, my constituents have also made efforts to inquire from Kenya Railways and the company regarding the promises made on community projects as per their corporate social responsibility, but the same have been ignored; and

THAT, the issues in respect of which this Petition is made are not pending before any court of law, constitutional, or legal body to the Petitioner's best beliefs and knowledge.

Hon. Deputy Speaker: Make your prayers.

Hon. (Ms.) Peris Tobiko (Kajiado East, JP): Let me make my prayers.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing:

1. inquires into the blatant violation of citizens' right to property, right to prompt and just compensation and their right to a clean and peaceful environment with a view of resolving the issues;
2. conducts a site visit to the project-affected area; and,
3. ensures that the Petitioners' plight is addressed.

And your Petitioner will ever pray.

Hon. Deputy Speaker: That was a very long one. I encourage Members, as they present Petitions, to make them brief. Hon. Members, I will probably give two Members an opportunity to make a comment on that one and then we will proceed.

Let us start with Hon. Wandayi.

Hon. Opiyo Wandayi (Ugunja, ODM): Hon. Deputy Speaker, whereas I want to agree with the Petition, my only concern is that as things stand, we are likely to see more of such Petitions coming before this House.

The NLC has actually been unable to respond effectively to audit queries for the Financial Years 2014/2015 and 2015/2016. About three months ago, my Committee did direct the Auditor-General to undertake a special audit on all matters of compensation for land and that audit has not yet been completed as we speak. So, even though I support that the Petition be forwarded to the relevant Committee, we may need to take a holistic approach to this matter of land compensation specifically by the NLC.

My view is that this Commission has a bigger structural problem that needs to be cured in one way or another. If things remain the way they are, this country will land into serious problems, more so when it comes to matters of property rights. This Commission is very quick in regularising and making payments for land whose ownership is in doubt, but the process is too slow or the Commission is totally unable to compensate rightful owners of land that is acquired by the acquiring agencies such as the Kenya Rural Roads Authority, Kenya Urban Roads Authority, Kenya National Highways Authority and now SGR.

I support. Thank you.

Hon. Deputy Speaker: Hon. Mwadime.

Hon. Andrew Mwadime (Mwatate, ODM): Thank you, Hon. Deputy Speaker. I support the Petition from the Hon. Member for Kajiado on SGR. In fact, I want to advise Members whose regions the SGR is going to pass through - I have the experience when it was being constructed in my county as the Environmental Impact Assessment was not done well.

For example, if you go towards Mombasa between Mackinnon Road and Manyani, you will realise that they have built sand dunes. We have a big problem. Even the man eaters, the lions, have come back simply because animals cannot traverse from Tsavo West to Tsavo East. In fact, the other day they mauled all my dairy cattle on top of the hills. Other than that, there is the issue of non-payment of some of my constituents. I know of my constituents who live in Voi and Taveta and who have not been paid. All the same, we should not be complaining about Swazuri all the time. You know very well that promulgation started in 2013. We should give these officers time and, of course, redirect them so that they can start working very well. This is because we have many commissions and all of them have problems. It is unfortunate that most of us are just dedicated and focussed on Swazuri. We should also look at other commissions. In my view, Swazuri has really tried.

Thank you, Hon. Deputy Speaker.

(Laughter)

Hon. Deputy Speaker: Hon. Iringo, do you want to speak to this one?

Hon. Kubai Iringo (Igembe Central, JP): Thank you, Hon. Deputy Speaker, for giving me this opportunity to comment on the Petition. It has got a lot of issues which have been raised by the petitioners. In as much as we like development and we are ready to have these infrastructural developments in our country, the planners and the people who are supposed to do the survey and everything else should put into consideration people's property. They should regard people who own the affected pieces of land.

The problem we have in this country is poor planning whereas we have officers who are on the ground who should plan properly so that when we try to develop some areas of our country, we do not affect other people's properties. If the railway is being laid down, the contractor must take into consideration compensation for the affected people. Therefore, it should not take ages to compensate people who have had their property destroyed or who have been displaced. Before they start excavating that land, they should ensure those people who have been living, farming or sleeping on those pieces of land are first compensated and well-settled before the work starts.

The demolition of properties in Nairobi and elsewhere which is currently ongoing is because of poor planning. Those officers who have been certifying construction on those pieces of land should be held culpable because they are the ones who have caused all those problems.

Even the people who have been issuing licences or vetting the putting up of properties should also be held responsible and surcharged for having allocated land where a building was not supposed to be put up.

I support the Petition. It is well-presented.

Hon. Deputy Speaker: Lastly on this one, let us have Hon. Nakuleu. Do you want to speak to this one, Hon. Nakuleu?

Hon. Christopher Nakuleu (Turkana North, JP): Hon. Deputy Speaker, I had the intention of rising on a point of order on a different issue which appeared in the one of the gutter presses.

Hon. Deputy Speaker: If it is a different issue, you will deal with the matter in the normal manner. I just wanted those Members who would comment on the Petition. It means that you do not want to comment on that one so we will move to the next Order.

PAPERS LAID

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

The Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2017, and the certificates therein:

- (a) National Government Affirmative Action Fund;
- (b) Water Sector Trust Fund;
- (c) Rural Electrification Authority;
- (d) Water Services Regulatory Board (WASREB);
- (e) Athi Water Services Board;
- (f) National Environment Trust Fund;
- (g) Kenya Academy of Sports; and
- (h) The Technical University of Kenya.

Hon. Deputy Speaker: Let us move on to the next one. Who is the Chairperson of the Departmental Committee on Transport, Public Works and Housing?

Hon. David Losiakou (Pokot South, JP): Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

Reports of the Departmental Committee on Transport, Public Works and Housing on its consideration of:

1. The petition regarding the construction of footbridges/ crossings along Outering Road in Nairobi;
2. The petition under Articles 26(1), 28 and 35 of the Constitution of Kenya, 2010 and Traffic Act, 2012 with regard to Kenya traffic road accidents; and
3. The petition on alleged impending demolition of buildings along the Mtangawanda-Kizingitini Road.

Hon. Deputy Speaker: Let us go to the next Order.

NOTICE OF MOTION

EXTENSION OF PERIOD FOR CONSIDERATION OF NOMINEES TO THE SRC

Hon. Joseph Limo (Kipkelion East, JP): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, pursuant to the provisions of Section 13 of the Public Appointments (Parliamentary Approval) Act, 2011 relating to the extension of period for consideration of nominees for appointment to a public office, this House resolves to extend the period for consideration of the nominees submitted by His Excellency the President for the appointment to the Salaries and Remuneration Commission (SRC) by a further period of 14 days from 21st August 2018.

Hon. Deputy Speaker: Let us move on to the next Order.

STATEMENT

Hon. Deputy Speaker: Hon. Mogaka, there was something I approved. Proceed.

DEMISE OF THE LATE HON. HENRY ONYANCHA OBWOCHA

Hon. Vincent Kemosi (West Mugirango, FORD – K): Thank you, Hon. Deputy Speaker. It is with a heavy heart that I regret to announce the death of Hon. Henry Obwocha, - who was a distinguished Kenyan - which took place on Friday, 3rd August 2018.

The late Hon. Henry Obwocha was, until his death, the Chair of the Privatisation Commission of Kenya, a former Minister for Planning and National Development, a former Assistant Minister for Finance and a former Member of Parliament for West Mugirango Constituency. Hon. Obwocha served for three terms from 1992 to 2007. He also served as acting Minister for Energy from February to November 2006. He was a member of the National Economic and Social Council of Kenya which drafted Kenya's Vision 2030.

The late Obwocha was a founding member of KCA University, formerly Kenya College of Accountancy. He had previously served as a member of the Inter-Parties Parliamentary Group (IPPG) and also as a Chair of the Public Accounts Committee. Notably, the late Hon. Obwocha, together with the other Members of this House in the previous parliaments visited various countries to study the existence and operation of committee systems and prepared a report which saw the formation of the current and existing departmental committees of this House.

The late Hon. Obwocha was also involved in many company meetings, investment meetings within the National Treasury and led Kenyan delegations to various international meetings and conferences.

I wish to note that Hon. Obwocha has left a legacy of a generous, hardworking and strong believer in education. Above all, a humble man who always gave a helping hand to all. He will always be remembered for his development record, more particularly in West Mugirango Constituency, the greater Kisii community and Kenya at large.

On behalf of the people of West Mugirango and on my own behalf, I take this opportunity to convey my sincere condolences to the family, relatives and friends of the departed Hon. Obwocha. I express my gratitude at the selfless service he rendered to the people of the great constituency of West Mugirango and Kenyans at large.

May God rest his soul in eternal peace.

Hon. Deputy Speaker: On this particular one, I will give an opportunity to a few Members. At one point, I will identify a Member from the FORD-K Party which Hon. Obwocha

was originally in. I will start with the Secretary General of FORD-K because that was his original party. I will also look out for Members who served with him in the 9th Parliament and before.

I will also look out at neighbours and that will be it. If you are brief, I will give opportunity to more Members.

Hon. (Dr.) Eseli Simiyu (Tongaren, FORD- K): Thank you, Hon. Temporary Deputy Speaker, for giving me this chance to also pass my condolences to the family of the late Hon. Obwocha. I also do it on behalf of the Forum for Restoration of Democracy (FORD-K) Party, of which I am the Secretary-General. Hon. Obwocha was the Organising Secretary of this party when he was in Parliament. He is indeed the one who took FORD-K to Kisiiland, where it still exists to-today, as you have heard from the Member who has just read the condolence message and the Deputy Party leader, Hon. Onyonka, all of whom come from Kisii County.

Indeed, Hon. Obwocha's contribution to the fight for opening up the democratic space will forever be remembered. All of us who are enjoying our various positions in various committees should remember that the National Assembly used to have only two committees – Public Accounts Committee (PAC) and Public Investments Committee (PIC) – until a time when Hon. Obwocha and other colleagues benchmarked around the world and proposed that we form departmental committees. So, he has left a legacy that this Parliament and the nation should always remember him for.

Lastly, I recall that Hon. Obwocha, even in his retirement from active politics, was involved in the activities of the Parliamentary Savings and Credit Cooperative (SACCO) Society mainly as the auditor. He was reappointed year in, year out. Therefore, he is somebody who served diligently. We pass our heartfelt condolences to the family and the people of West Mugirango Constituency.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Momanyi Orori, Member for Borabu. I am picking the Members who have pressed their intervention buttons.

Hon. Ben Momanyi (Borabu, WDM-K): Thank you, Hon. Deputy Speaker, for giving me an opportunity to extend my sincere condolences to the family of Hon. Henry Obwocha, the people of West Mugirango, Nyamira and Kisii counties, as well as the nation in general.

When Hon. Obwocha was a Member of this House, we always admired him when he was debating in this Chamber. He comes from the neighbouring constituency. He was admired by people across the board. He was a very strong and brave man. I remember one time when nobody could dare say “No” to former President Moi on anything. He stood up at a public meeting and told the former president “No” when he requested Hon. Obwocha to join the Kenya African National Union (KANU). As you have heard from the two speakers, the former Minister contributed greatly to this nation. As a team, we need to remind other Kenyans that those who have served in this House need to be respected. As Hon. Kemosi, who is the Member for West Mugirango, has requested this evening we should all walk to 680 Hotel, so that we contribute generously so that at the end of the day, we give Hon. Obwocha the send-off that he deserves.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Members, I want to say two things before I give opportunity to a few more Members.

First, I did not refer Hon. Tobiko's Petition to a committee. I proceed to refer it to the Departmental Committee on Transport, Public Works and Housing. I can see that the Chairman is in the House.

Let me recognise, in the Public Gallery, students and pupils from Our Lady of Peace Primary School, Nandi Hills, Nandi County; Besiobei Primary School from Konoin Constituency, Bomet County; New Star Day Care Academy from Likoni, Mombasa County; St. Pius Uriri Boys High School from Uriri Constituency of Migori County, and Eldoret Achievers Primary School from Kapseret Constituency, Uasin Gishu County. In the Speaker's Gallery, we have students and pupils from Kapsabet Boys Primary School from Emgwen Constituency of Nandi County, and Simbolei Junior Academy from Keiyo North Constituency of Elgeyo Marakwet County.

I am trying to look out for Members who want to contribute. I can see that there is a lot of interest, and it is understood. Hon. Kimunya served in the Cabinet with the late Hon. Obwocha.

Therefore, you have the Floor.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Deputy Speaker. I rise to convey my heartfelt condolences as well as those of the many accountants I had the opportunity to lead, including Hon. Mbadi, on the passing on of one of our own, Hon. Obwocha, whom I had the honour of serving with in Government. I had the opportunity to serve with him within the National Economic and Social Council, which I chaired. I know he was a contributor as we developed the National Planning Framework, which came to be known as the National Vision 2030. He was a fine gentleman. I have known him for many years; from the time he served in the Pyrethrum Board to the time he came to Parliament as the Member for West Mugirango. As a nation, we have suffered a great loss with the passing on of such a fine gentleman. I hope the people of West Mugirango and his family will be consoled in the knowledge that he left his legacy.

(Technical hitch)

Hon. Deputy Speaker: Proceed, Hon. Kimunya. I can see that there is interruption. You still have the microphone. I have a problem identifying a Member for an opportunity to contribute because many of them have pressed their intervention button.

Hon. Amos Kimunya (Kipipiri, JP): There was a technical failure. Like I said, the people of West Mugirango, his family and friends have lost a fine gentleman who made a fine contribution to the development of this country in terms of the development of the accountancy profession, and to the development of professionalism in general. I hope that many more Members will emulate the virtues and values he stood for. His contribution in this House will be immortalised forever because the good thing with history is that it is there; nobody can erase what you have done. We lost a fine gentleman. Let us all stand together and support the family, so that we can give him a decent send-off. Most importantly, let us aspire to learn from some of those gentlemen who lived in this world and left before us, leaving behind a mark in the history of this House.

Hon. Deputy Speaker, thank you very much. I wish to thank the Member for West Mugirango for raising this matter in the House.

Hon. Deputy Speaker: Hon. Member, I cannot sight any other Member who has specific interests in this Motion.

The Leader of the Minority Party.

Hon. John Mbadi (Suba South, ODM): Thank you very much, Hon. Deputy Speaker. I want to make a few comments with regard to the late Hon. Obwocha. First, I express my sincere sympathies and condolences to the family, friends, the people he represented and Kenyans at large.

Even those of us who did not serve with him, we know that he served in the 7th, 8th and 9th Parliaments. Whereas I came in during the 10th Parliament, I know that his contributions in this Republic and Parliament were admirable. He served diligently as a Cabinet Secretary. Members will also remember that he was our auditor in the Parliamentary SACCO. He performed his duty diligently. As a professional colleague, I want to say that the accounting profession has lost some good brain and manpower. Fare thee well to him.

Thank you, Hon. Deputy Speaker.

Hon. Christopher Nakuleu (Turkana North, JP): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Before we go to the next Order, what is out of order, Hon. Nakuleu?

Hon. Christopher Nakuleu (Turkana North, JP): Hon. Deputy Speaker, there is nothing out of order. I pressed the intervention button to raise a relevant issue. I seek your indulgence on a matter that has been circulating in the social media in the last two days. A lot of information which is

(Loud consultations)

Hon. Deputy Speaker: Order Members. Let us listen to him. We had finalised the issue of the late Hon. Obwocha. I want to see where the issue he is raising can be placed. I have heard him speak about social media. Proceed.

POINT OF ORDER

DEFAMATORY INFORMATION ON MEMBERS OF PARLIAMENT

Hon. Christopher Nakuleu (Turkana North, JP): Hon. Deputy Speaker, there is a lot of defamatory information about Members of Parliament who were purported to have received Kshs10,000 last Thursday. It is, indeed, very unfortunate that somebody can sit somewhere and generate a list of Members with serious malice.

Most of the Members whose names appear in the list were not present in the House last week. For example, all Members from Turkana County were in Turkana because the Deputy President had visited that county. All of us were not there. Some Members who are in the list were also outside the country when the purported bribery is said to have happened and they have not come back. Members from West Pokot like Hon. Mark Lomunokol were not present. Hon. Moroto is out of the country and some are admitted in hospital. We need protection from the leadership of this House

Hon. Deputy Speaker: As I continue to keenly follow what you are saying, I hope we are also able to prove that it was not sent by Western Union, but proceed any way.

(Laughter)

Hon. Christopher Nakuleu (Turkana North, JP): Hon. Deputy Speaker...

(Consultations)

Hon. Deputy Speaker: Hon. Nakuleu, what do you want?

Hon. Christopher Nakuleu (Turkana North, JP): Hon. Deputy Speaker, most Members whose names have been listed are not aware of the transactions that have been purported to have been done. It is serious malice and the leadership of this House must give the correct position and protect the dignity of Members of Parliament.

Hon. Deputy Speaker: I have heard you. Do you want to give a Personal Statement? You have placed an intervention and you have proceeded and I have listened to you keenly. Of course, I understand that the issues of sugar and the allegations of bribery are of extremely grave concern to Kenyans and, obviously, Members of this House. I am struggling to see what I should do.

(Loud consultations)

I realised that even the Members themselves are throwing names left and right. It is difficult for me to be of use at this particular point in time. It is true some Members and I do not know the ones you are talking about. The few you have mentioned are out of the country. If there are allegations against them, they are not true at all.

My hands are fairly tied, but maybe Members should not be very helpful to the media in trying to generate news for it. Let the media look for news; do not help them as Members. If you have issues, there are avenues for addressing them. If you have been mentioned personally, maybe by a colleague, you know there are avenues you can use. There are even local mechanisms that we have as an Assembly. Let us not also overreact. You are a senior Member of this House. Do not react to everything that is everywhere in the social media. Things that you did not do should not offend you at all. You can ignore some of the things.

I met a Member who says he was in Uganda and he was wondering if he was paid in Kenya shillings or Uganda Shillings.

(Laughter)

I also personally met the Hon. Member for Kuresoi and he was not sure. He asked whether the payment was in dollars or in Kenya shillings.

Therefore, Hon. Members, let us not react to everything. We can do very well by keeping off these kinds of things. Of course, I sympathise a great deal with your position and the Members from Turkana because we are actually sure that you were not in the House yourself, but there is nothing much we can do. I do not know who generated the list at all. Probably, you should be comfortable that what you did not do should not harm you at all. And some of these things we can leave to the conscience.

Hon. Lomenen, what is it again? I can see the Member for Turkana North has already spoken on this, is it the same thing?

Hon. James Lomenen (Turkana South, JP): Yes. Hon. Deputy Speaker. This is a very serious issue. In this digital world, any information that spreads threatens our re-election and our role. The reason we are raising this issue is because we are protected by this House. Anything

that is done in this House is recorded. The first thing that is supposed to be done is to produce the list of the Members who were present in the House on Thursday and say whether they were bribed or not, to correct the gutter Press.

Hon. Deputy Speaker: Which list?

Hon. James Lomenen (Turkana South, JP): The list of Members who attended the Sitting or who were in the House on Thursday last week. It is not a sin to produce the list of those Members who were there.

Hon. Deputy Speaker: Are you suggesting that all the Members who were there received Order, Hon. Lomenen!

(Hon. James Lomenen spoke off record)

Hon. Deputy Speaker: Before I give you back the microphone, Hon. Lomenen, though I see you have probably exhausted your point; as far as we are concerned, the vote that was taken that day was on acclamation. It will be very difficult to know who voted one way or the other and it is perfectly in order for any Member to make whatever decision, even those who went on record. It is not for us to impute that Members who probably supported were paid or the ones who did not support were paid. It is not up to us.

Again, let us not give credence to things that are not credible at all. So, let us leave it at that. You have said that you were not in the House and that should be enough. We should not go beyond there.

Hon. Members, if there are Members, at all or even if the Press is sure about the allegations they have made, they are free to produce evidence. Of course, the rest will follow. We have our Powers and Privileges Committee. They can approach any other agency to resolve that particular issue. Therefore, let us not give too much time to that issue.

Let me give a chance to Hon. Wamunyinyi. I hope his contribution is on the same thing. We will then finalise it by giving a chance to one more Member. I hope it is not something else. Proceed.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Thank you very much Hon. Deputy Speaker. It is not a different matter, but it is fairly different because it is in the interest of Kenyans, the people we represent; the sugarcane farmers and the Kenyans taking poisoned sugar and all of us are affected.

The accusations that have been made against the Leader of the Majority Party and the Leader of the Minority Party on this side....

(Laughter)

I would like to raise this issue on the basis of our Standing Orders. We all understand and I appreciate the procedure that we cannot revisit the matter which has been exhausted, but there is a window. I seek your permission in accordance to Standing Order 49(2)(b)...

Hon. Deputy Speaker: Well, let me stop you there first. I understand that bit you are talking about – it is about rescinding any decision that has been made. You are a very senior Member in this House; in fact, one of the most senior Members. You know how to approach that particular matter. You know that you need to put it in writing for the Speaker's approval.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): I have done that. It is on your desk. I seek your permission to urge the House to rescind the decision that was taken last week. Again, I

would like us to understand that this is a very serious matter. I would like you to give me time to express myself.

I want to draw your attention to the Constitution of Kenya. Article 73(2) (b) that talks about the objectivity and impartiality in decision-making to ensure that decisions are not influenced by nepotism, favouritism and other improper motives or corrupt practices. It is provided in the Constitution. It is clear that there has been bribery here. Article 95(2) states that the National Assembly deliberates on and resolves issues of concern to the people. This issue has not been resolved. The issue of sugar importation has not been resolved!

Hon. Ngunjiri Wambugu (Nyeri Town, JP): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is it Member for Nyeri Town?

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): Hon. Deputy Speaker, I am on a point of order.

Hon. Ngunjiri Wambugu (Nyeri Town, JP): Thank you, Hon. Deputy Speaker. I rise on a point of order. I am wondering whether Hon. Wamunyinyi realises that the line of argument he is taking confirms the allegations. He is playing to the media. He is taking a line that seeks to confirm...

Hon. Members: No!

Hon. Ngunjiri Wambugu (Nyeri Town, JP): Can I finish? It is important.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, let us listen to each Member. Each Member has a voice in this House. Let us listen to what Hon. Wambugu has to say.

Hon. Ngunjiri Wambugu (Nyeri Town, JP): Thank you, Hon. Deputy Speaker. My point is this: I have listened to some Members of Parliament. There is a list going round and I am not on that list. The point I want to make is that when a Member of Parliament stands in this House and argues that there was undue influence used in the decision that was made on that report, he or she is actually confirming the reports that are out there that Members of Parliament were paid.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): *(Inaudible)*.

Hon. Deputy Speaker: Hold on Hon. Wamunyinyi. I gave you the Floor. The only thing is that when you make such allegations...

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): *(Inaudible)*.

Hon. Deputy Speaker: I am not giving you the Floor. I am making a ruling. You have stated that you have already put it in writing and it is with the Speaker. That is a document I am willing to see. Two, on the allegations you have made that you are sure that there are Members who have been bribed; I cannot say it is true or not true.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): *(Inaudible)*.

Hon. Deputy Speaker: Just hold on, Hon. Wamunyinyi. That is an issue that if you have good evidence, we have avenues that we can deal with. We have the Powers and Privileges Committee to which you can take the evidence. Hon. Wamunyinyi, I will not allow you to make a sweeping statement without any substantiation. I will give you an opportunity to substantiate with facts and evidence. It is not a question of you throwing one word against... Therefore, I am not going to give you an opportunity to proceed. I will expect to get some evidence from you which we will refer to the relevant committee. We have mechanisms in this House.

I am going to give another Member who is on a point of order a chance.

(Loud consultations)

Hon. Members, let us be fair to each other. We can only make allegations which we can substantiate. You have read the Constitution and I have heard you.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): What I said is in the Constitution. I am not the one who wrote it.

Hon. Deputy Speaker: Absolutely. What you have said and which I accept is that you have put it in writing. So, you will be given an opportunity once the document has been seen just like every other Member. What you have done here amounts to ambush, but I still gave you a chance. You have already made your allegations. Initially, you had come in very well under Standing Order No.49 that you wanted the matter to be rescinded. I know you know the procedure. Now, you have gone ahead to make an allegation, which of course...

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): *(Inaudible)*.

Hon. Deputy Speaker: In that case, I will look at the HANSARD. If you did not make allegations, of course, you will have an opportunity to speak to this tomorrow. However, if you made the allegations, then proceed and substantiate. Do not tell me about newspapers; do not tell me about those kinds of things. Just be fair and say so and so was given money. If you are able to prove, that will be fine. In fact, you do not need to come to the Speaker; you can approach the Committee directly. I have made an order to check the HANSARD. That should not be so difficult. You will have an opportunity to proceed with that.

Hon. Wafula Wamunyinyi (Kanduyi, FORD-K): *(Inaudible)*.

Hon. Deputy Speaker: No! That will not be right. I expect you to be a little bit... Since it is you Hon. Wamunyinyi... I would expect it from somebody else, not you. I know you are a senior Member. I said I am calling for the HANSARD. If you did not make any allegations, you will have an opportunity again to canvass your position, but if you made the allegations, we will have to dispense first the issue that you have indicated. It is straightforward. I know, for example, that you are speaking seriously for your constituents, which is right. It is the perfect right of every Member here. You have been heard. I am sure the Members for Nzoia and those ones who supply sugar to Nzoia have heard you. Of course, Hon. Lomenen and Hon. Nakuleu have been heard by their constituents that they were not in the House. We do not need to go to all those details.

Hon. Members, let us be fair. Let us follow our Standing Orders. Let us proceed in a good manner. Let us not unnecessarily get excited about this. This is a matter that was canvassed and transacted on that particular day. It was voted one way or the other. The substantive Speaker commented on this. He said that he will make sure that this thing is investigated. He has even instructed that other agencies can participate in this inquiry.

Remember, in the last Parliament, you were given an opportunity to create a committee on standards similar to the one in the House of Commons in the UK, but you threw it away. Now, how do you expect the Speaker, seated here, to start accepting that so-and-so picked this and that?

I will give a few Members an opportunity to speak. The rest of it can be done another day. You will have an opportunity, Hon. Wamunyinyi. I can see you are nodding. Please, let us not throw allegations, left, right and centre. Whoever has details should come up with them. We will be more than happy to act on them. We have acted before. We acted on the issue where Members were mentioning each other, left, right and centre. I am talking about Hon. Ababu's

case. We have done that before. This House will rise to the occasion. You do not make allegations.

I rule that this is not a matter that needs to proceed on now. We will proceed to other things. We will wait for Hon. Wamunyinyi's case and then we shall proceed.

(Loud consultations)

Hon. Members, you will have an opportunity tomorrow or the day after.
Next Order!

BILL

Second Reading

THE SACCO SOCIETIES (AMENDMENT) BILL

Hon. Deputy Speaker: Leader of the Majority Party, are you going to be speaking on that one?

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, we got the indulgence to step down the Sacco Societies (Amendment) Bill. The Committee is yet to bring the Report. Once that is done, we will go on.

An hon. Member: It has been moved.

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I am being told that it has been moved. I am not aware. I am the owner of the Bill and it has not been moved.

Hon. Members: It has!

Hon. Aden Duale (Garissa Township, JP): Let me speak, I am the owner of the Bill. Anybody else purporting to have a contrary view is masquerading. We have not moved it. It is written "Second Reading" on the Order Paper. It is not a continuation because I have checked with the Office of the Clerk and the Report of the Committee is not there. Once that Report is tabled and the Chair is ready to second, we can do it tomorrow or the day after.

Hon. Deputy Speaker: Let us accept that the Leader of the Majority Party is the one who owns that Bill. The chair of the Committee is here and I thought he tabled the Report, but the Leader of the Majority Party is perfectly in order. We have other businesses in the House. If you really think we should step it down, we should have no problem with that.

(Bill deferred)

What is it the Leader of the Majority Party?

Hon. Aden Duale (Garissa Township, JP): I will brief the House Business Committee (HBC) this evening. My Whip of the Majority Party and the Chair are saying that this item was moved. Therefore, we will check and report to the HBC tonight and then brief the House.

Hon. Deputy Speaker: Just to confirm and for future reference, we should know whether the Report was moved or not, so that we know at what point to start when we resume.

Hon. Kanini Kega (Kieni, JP): Thank you, Hon. Deputy Speaker.

I am not aware that it was moved because I did not second it. I think we were busy with the sugar issues. We need to check with the HANSARD to see what happened. If it was moved, then it was on Thursday, after the sugar issue. We will do internal consultation.

Hon. Deputy Speaker: Okay.

Hon. Omboko Milemba: (Emuhaya, ANC): Thank you for this opportunity, Hon. Deputy Speaker.

You can see the order of the House business is not moving clearly. This is courtesy of the residual effect of the poisonous sugar. I also want to tell you that the integrity of the House is at stake. It will be important that we tackle it at one point in time.

Hon. Deputy Speaker: You do not have the microphone on that one. Hon. Omboko Milemba, I gave you an opportunity on this and you have mentioned that bit. You have said the problem is probably... I will not mention that but, that is a matter that has been dealt with. We have stepped it down. So, we will proceed.

There is confirmation that, if the Report was tabled, the matter was not moved.

Let us proceed. Next Order.

MOTIONS

ANNULMENT OF TRAFFIC RULES, 2018

Hon. Deputy Speaker: Okay. Let us hear from the Hon. Chair of the Committee on Delegated Legislation.

Hon. Junet Nuh (Suna East, ODM): On a point of order.

Hon. Deputy Speaker: What is it again? What has the Whip of the Minority Party done?

Hon. Junet Nuh (Suna East, ODM): Hon. Deputy Speaker, you know this is a House of traditions, procedures and laws. There is a lot of indiscipline I am seeing here especially from some first time Members of Parliament. This is not the market they were operating in the villages. This is a very serious House. We cannot allow this House to move on like this.

Hon. Deputy Speaker: I agree with you on this one but, proceed, Hon. Gladys Shollei.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation, laid on the Table of the House on Thursday, 2nd August 2018, and pursuant to the provisions of section 15(1) of the Statutory Instruments Act and Standing Order 210(4)(b) annuls in entirety the Traffic (Driving Schools, Driving Instructors and Driving Licenses) Rules, 2018.

The Select Committee on Delegated Legislation is established pursuant to Standing Order No.210 and has the power to scrutinise all statutory instruments submitted to the House. The Committee is mandated to ensure that all regulations comply with the Constitution of Kenya and all other applicable laws. In exercise of the powers conferred under the Traffic Act (Cap. 403), the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development published the Traffic (Driving Schools, Driving Instructors and Driving Licenses) Rules, 2018 on 26th April 2018 via Legal Notice No.81 of 2018.

Following publication, the Rules were tabled before the House on 13th June 2018 and immediately committed to the Select Committee on Delegated Legislation for scrutiny.

Prior to the publication of the Rules, the regulation making authority, in this case the National Transport and Safety Authority (NTSA) which is the body mandated to operationalise the Rules, presented the draft Rules to the Committee on Delegated Legislation in a workshop held on 20th April 2018. This was a joint workshop between the NTSA and the National Assembly's Select Committee on Delegated Legislation, together with the Departmental Committee on Transport, Public Works and Housing.

During consultations, Members of both Committees proposed to the NTSA the actions it should take to ensure conformity with relevant requirements of the Constitution. Hon. Members were particularly concerned that the regulations should be as stipulated in Article 2, Article 10, Article 94 and Article 118 of the Constitution, which I shall explain shortly, as read with the Traffic Act (Cap. 403), the National Transport and Safety Authority Act and the Interpretation and General Provisions Act.

The NTSA, on its part, undertook after that consultation to realign the draft Rules with the stated provisions of the Constitution and the relevant statutes prior to publishing those Rules and subsequently tabling them before Parliament for consideration. To our shock, the NTSA failed, ignored and refused to incorporate any of the concerns that were raised by the two Committees and proceeded to publish the Rules on 26th April 2018 via Legal Notice No.81 of 2018. This is a mistake that many ministries and regulation making authorities make.

However, unfortunately for them, this Committee is extremely diligent. I know that the regulation making authority took great exception when the Committee annulled the Regulations. We shall explain, briefly, the reasons why this nullification happened. I am sure Members in the House will agree with us.

Hon. Deputy Speaker, having considered the Rules, pursuant to the provisions of Articles of the Constitution, the Traffic Act and the National Transport and Safety Authority (NTSA) Act; the regulation making authority published the rules, and the two committees observed as follows:

Rule No. 4 which deals with acreage proposed that each driving school must have 1.6 acres of land for Category A and Category B licence and one acre for Category C. The Committee considered this to be prohibitive and in contravention of the Traffic Act which is the parent statute and has no such requirements. The Statutory Instruments Act requires that the regulations made by the regulation making authority, does not exceed those that are made by the parent statute. There was also another rule, Rule No. 5 which required that all driving schools renew their licences every two years. The Committee deliberated on this and found out that it was an added bureaucracy that would be punitive to those operating driving schools within our country.

Rule No. 7 proposed random inspection by inspectors under this authority. It also proposed that for the purpose of determining the suitability of a proposed school, the inspectors from NTSA would make random checks or inspection to the driving schools and ensure that the driving schools have television projectors, computers, video players and digital video disk players and so on. The Committee felt that this was prohibitive and needed to be reviewed. Most of our secondary schools and universities do not have the equipment. To expect that a driving school would have the equipment is simply to ensure that they go out of business. If we want our country to be one that is rated highly for ease of doing business, creating extra layers of bureaucracy is not good for the business environment.

Rule No. 8 requires that school managers have a minimum qualification of a certificate of education. The Committee observed that this provision was not only ambiguous, but bordered

on absurdity. It presupposes that every teacher who is trained as a teacher can teach driving. I will use the example of Hon. Kogo, MP for Chesumei Constituency, who I know taught Uasin Gishu Secondary School in Eldoret. He is a major in Mathematics and Economy and a teacher per excellence, but I know he cannot possibly teach driving at all, in a driving school.

Rule No. 12 allows inspectors to enter driving school premises during regular hours at any time. The Committee observed that inspection at any time is not only arbitrary search of property and infringing on Article 31 of the Constitution, but also the right to privacy.

Rule No. 16 provides for continuous development of driving instructors. The Committee also observed after long deliberations that the proposal of instructors to undergo a minimum number of continuous development courses is punitive, since the presumption is that the more they teach or train, the better they advance their abilities and competencies in their trade. All of us know that a driver of 10 years' standing is better than one or two years' standing.

Rule No. 24, read together with the Third Schedule, in those proposed regulations was found by the Committee to be unconstitutional because it allows a child of 16 years to get a driving licence. That will be tantamount to amending the Constitution by reducing the age of the majority as set out in our laws. It also required that citizens above the age of 65 years to repeat their driving test every 10 years. This is punitive and I know many Members in this House would have to repeat the test right now as we speak.

Rule No. 25 talks to the validity of licences. It requires that for certain licences, one would have to repeat the driving examination every three years. The Committee observed that this provision was frivolous and unnecessary because it is obvious that the more one drives, the better they get at the skill. The Rule also requires that people or persons of age 70 and above should not only renew their licences every year, but also go for a medical examination every year.

Rule No. 26(4) fails because it has defective drafting. It uses the words 'may' and 'shall' interchangeably which does not make sense in legislative drafting and causes ambiguity.

Finally, the committee also observed that the last regulation that I am referring to required that there has to be a minimum literacy level for one to be a driver. This would put many of our competent drivers off the road.

Therefore, in conclusion, the Committee states that the said rules pursuant to the provisions of the Constitution, the Traffic Act, the Statutory Instruments Act, the NTSA Act, Interpretation and General Provisions Act, which regulate the making, scrutiny and publications of the rules and having conferred with the regulation making authority, the Committee recommends that the Traffic (Driving Schools, Driving Instructors and Driving Licenses) Rules, 2018 be annulled in its entirety for the aforementioned reasons that I have been able to explain.

As I conclude, I would like to thank Members of my Committee and the secretariat, who have diligently worked on ensuring that this Report is as it is.

As I beg to move, I request Hon. Daniel Maanzo, Member of Parliament for Makueni Constituency and my claim to fame because he was my student, who is also a Member of my committee, to second this Report.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Maanzo, proceed. It surprises me that you were a student of Hon. Shollei.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Deputy Speaker. I rise to second the Motion. There is no way any delegated legislation or subsidiary legislation could be won against the Constitution, and against a statute; especially a parent statute and against

consultations with the two House Committees dealing with a particular matter. It is important that when regulations are being made, the regulating bodies avoid the mischief of sneaking behind the laws and the advice of Parliament to make laws purporting to serve Kenyans.

Some of the statutes, like the NTSA Act, should be reviewed and checked to see whether they were done within the law, or whether there are flaws which are enabling the managers of NTSA not to follow the law and make regulations which will bring a lot of confusion to Kenyans.

I, therefore, urge this House to support the Committee as has been explained by our very able Chair, so that we can safeguard Kenyans and ensure that regulations which are made in this country are made for the people and not the other way round.

I beg to second.

(Question proposed)

Hon. Deputy Speaker. I do not see much interest on this. Do we have Members who want to speak to it? I see Hon. Murugara, Member for Tharaka.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Deputy Speaker. I rise to support the adoption of this Report that recommends that these regulations be annulled in their entirety. There is a lot that the Committee has observed as being irregular in these regulations. It is also important to point out that, to some extent, these regulations were sneaked into force. They were actually in operation until the Committee met and is now presenting a Report to have them annulled.

There are interesting provisions which have been pointed out, and which are clearly offensive to the wellbeing of the people of Kenya. Driving schools are business enterprises like any other and, as such, they should not be prohibited from conducting their business in an atmosphere that is conducive. To impose regulations which cannot be complied with, or regulations that are punitive in nature, is actually to punish the business community.

Let me speak on only one issue. There is a schedule attached to these regulations, which relates to motorcyclists, popularly known as *boda boda* riders. It is good to speak for these people because they insist all the time that when we debate matters in Parliament, we always overlook them because we feel that they are lowly placed in society. There is a provision that a motorcyclist should, first, get a licence for one year, in which case he cannot carry a pillion passenger. It is after one receives a second licence after the second year that one is allowed to carry a passenger.

Out there, we do have *boda boda* operators. They are very qualified persons who ride motorcycles and carry passengers in spite of the fact that some of them may not be having licences. That is not allowed by the law but because they operate in rural areas, where modes of transport are highly limited, they are able to operate. It is the desire of Members of Parliament to ensure that those citizens comply with the law. They should be provided with riding licences, after which they can carry pillion passengers. With these regulations, this would not be possible. That is one of the reasons that drove the Committee to say, "With such regulations, we are inhibiting our citizens from doing what they can do." We, today, pray that these regulations be annulled. They should be thrown back to the regulation making authority. We can go back to where we used to be; where once you can get your riding licence, you carry a pillion passenger.

There is also a regulation which requires the NTSA to administer driving tests, which is contrary to the Traffic Act. The Act provides that it is police officers from the Traffic Department who are supposed to administer driving tests. Unless the main Act is amended, there is no way the NTSA can administer driving tests. So, from today, if this House approves this Report, we are back to where we started. Driving tests will be conducted by traffic police officers and *boda boda* riders will be carrying pillion passengers as soon as they get their riding licences.

I, therefore, support the Motion for adoption of this Report.

Hon. Deputy Speaker: I see no major interest in this one. Is it the mood of the House that we put the Question?

Hon. Members: Yes!

Hon. Deputy Speaker: Okay. I will put the Question, but let me confirm first whether we satisfy the requirements of our Standing Orders in terms of quorum. I do not think we do. Because we have finalised debate on this Motion, we will have the Mover replying. If the status of our quorum remains the same, we will not move to the next step.

So, proceed and reply, Hon. Shollei.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Deputy Speaker, am I allowed to donate my part of my time to other Members?

Hon. Deputy Speaker: You could donate.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): I will donate part of my time to Hon. ole Sankok.

Hon. Deputy Speaker: Let us have the Member.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Deputy Speaker. Thank you very much, Hon. Boss Shollei, for donating those minutes to me.

Hon. Deputy Speaker, those who are normally affected by road traffic accidents are mostly persons with disabilities. The membership of our club gets bloated every now and then through road accidents. So, I am an interested stakeholder when it comes to traffic rules.

I support the annulment of these regulations because, for once, this may be another soft-landing spot for officers of NTSA, who were removed from our roads for trying to manipulate the issuance of transport and traffic rules. This House needs to come up with a law to regulate the issuance of driving licences. We have thorough training for pilots – even for pilots who fly helicopters ferrying only six passengers – but we do not have thorough training for public transport drivers who ferry 30 to 40 passengers. The lives of the passengers are in the hands of the drivers. So, I support the annulment of these particular regulations. The Committee should go further and come up with rules and regulations that will govern the issuance of driving licences to public transport drivers.

Thank you very much, Hon. Deputy Speaker.

Hon. Deputy Speaker: Let us go back to the Mover to finalise.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Thank you, Hon. Deputy Speaker. Since it is clear that most of the Members support the annulment as the regulations would have far-reaching effects on people, I would request that we move to see if the House can adopt it when we have the requisite quorum.

Hon. Deputy Speaker, I beg to move.

Hon. Deputy Speaker: Hon. Members, we do not satisfy our Standing Orders regarding quorum. Therefore, we will move to the next Order.

(Putting of Question deferred)

REPORT ON CONSIDERATION OF THE ENERGY
(SOLAR WATER HEATING) REGULATIONS

Hon. Deputy Speaker: Again, Hon. Shollei.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, the House adopts the Report of the Committee on Delegated Legislation, laid on the Table of the House on Thursday, 2nd August 2018 and, pursuant to the provisions of Section 15(1) of the Statutory Instruments Act and Standing Order 210(4)(b), annuls in its entirety, the Energy (Solar Water Heating) Regulations, 2012.

The Select Committee on Delegated Legislation is established to scrutinise regulations that are made by regulation making authorities as permitted by an Act of Parliament. The Energy Act, 2006, in Sections 63 and 110, provides that the Minister may make regulations for or with respect to any matter that pertains to that Act. In exercise of that power, the Minister for Energy, as he was then known, published the Energy (Solar Water Heating) Regulations on 25th May 2012, at the time of the 10th Parliament, via Legal Notice No.43 of 2012. It was done as a subsidiary legislation under the Act.

Hon. Deputy Speaker, you will recall that the Energy (Solar and Water Heating) Regulations, 2012, required that the buildings that consume more than 100 litres of hot water a day were required to install hot water heating systems.

Hon. Deputy Speaker, because of concerns raised by members of the public on the cost of converting to solar energy, the public were given a further five year window to enable owners of buildings that consume more than 100 litres to install solar water systems.

The Committee observed that 100 litres is such a low number that nearly all school hostels and buildings will be affected, especially in the urban areas. The window lapsed on 25th May 2017, implying that the Energy Regulatory Commission (ERC) could then recommend prosecution for non-compliance to all property owners, which included a one year prison term or Kshs1million fine. Several building owners across the country would be affected. There was also a risk that the property owners would transfer this cost to the tenants by charging higher rent and, therefore, punishing members of the public.

The regulations also required that domestic residential homes with three bedrooms and educational institutions such as colleges and boarding schools with more than 20 students or more were to meet these regulations. Other premises targeted were hotels, hostels, lodges and similar ones that provide boarding services. The Statutory Instruments Act, Section 12 empowers the Committee to scrutinise statutory instruments previously published before the commencement of the Statutory Instruments Act. I must commend yourself and the substantive Speaker because you were instrumental in ensuring that delegated legislation comes to the House.

Hon. Deputy Speaker, I am aware that, had this not been the case, Kenyans would now be paying an added cost in rent because of this very prohibitive and expensive requirement. In fact, it would have been a national crisis. In recalling these regulations, the Committee then conferred with the regulation making authority, the ERC on the 29th May, 2018, pursuant to Section 16 of the Statutory Instruments Act. The Committee then proceeded to scrutinise the regulations

against the Constitution, the Energy Act, the Statutory Instruments Act, the Interpretation and General Provisions Act and reviewed them comprehensively.

The Committee then made the following observations:

The regulations were not accompanied by an explanatory memorandum as required by the Statutory Instruments Act, Section 11. In the absence of the memorandum, it is not possible for the Committee to analyse the extent of public participation or the level of consultation conducted with members of the public in order to test the viability and the practicability of these regulations.

Hon. Deputy Speaker, the regulations also provide for a fine of Kshs1 million shillings, which contravenes the Statutory Instruments Act which states that:

“The amount provided in the regulation should not exceed a maximum of Kshs20,000 or a prison term not exceeding six month as set out in the Statutory Instruments Act.”

Anything beyond that should be in a parent statute or an Act of Parliament.

Hon. Deputy Speaker, Section 13 of the Statutory Instruments Act provides that regulations delegated cannot impose a fine, imprisonment or a penalty. That also goes beyond the enabling and parent Act of Parliament. In this case, it is the Energy Act 2006. So, the penalty prescribed contravenes both the Statutory Instruments Act and the Energy Act.

Hon. Deputy Speaker, the Statutory Instruments Act, Section 6 requires that the regulation making authority, in this case the ERC should prepare a regulatory impact assessment. This statement is expected to lay out the socio-economic impact that the regulations should have. The reading of these regulations from the outset as we have laid out would affect a considerable number of households especially in urban areas and cities, along with institutions where our children go to school. It would impose a significant cost on society, including parents who pay boarding facilities, school fees and the tenants who have to pay rent.

Hon. Deputy Speaker, pursuant to Section 13 of the Act which allows the Committee to consider any other grounds during scrutiny, it was the Committee’s contention that the implementation of the regulations would be punitive to landlords, tenants and persons occupying their own premises as the installation of solar energy is cost prohibitive .

It is also not a basic requirement considering that the country has had a very big programme of ensuring that electricity gets to every household. Therefore, the public would be over-burdened and would negatively affect the Government’s agenda for affordable housing. It is also not practical to operationalise and monitor implementation as installing the appliances alone may not be tantamount to using them for hot water. Neither is the number of bedrooms in a house a reflection of the amount of cold or hot water that the householders use. It is, therefore, ambiguous and regulations in vain that are incapable of being supervised, monitored or penalties prescribed. The regulations also refer to the Local Government Act, Cap. 265 which was repealed in 2011. It is, therefore, necessary to amend the regulations to ensure that they comply with the current constitutional framework

Hon. Deputy Speaker it is, therefore, a recommendation of the Committee that having considered the regulations pursuant to the provisions of the Constitution, the Energy Act, the Statutory Instruments Act, the Interpretation and General Provisions Act which regulate the making, scrutiny and publication of regulations and having conferred with the regulation making authority, it is the Committee’s recommendation that the Energy (Solar Water Heating) Regulations, 2012, be annulled in their entirety for the aforementioned reasons .

I conclude by thanking and recognising the tireless efforts of all Members of the Committee on Delegated Legislation.

Hon. Deputy Speaker, I beg to move and request Hon. Alice Wahome, Member for Kandara Constituency and a member of the Committee to second this Report.

Thank you.

Hon. Deputy Speaker: Very well. Hon. Wahome, proceed.

Hon. (Ms.) Alice Wahome (Kandara, JP): Thank you, Hon. Deputy Speaker and Chair for allowing me time to second the Motion as moved by the Chairperson of the Committee on Delegated Legislation.

The Chairperson has enumerated several reasons why the regulations should be revoked. I would like to emphasise the fact that when these regulations, though very belatedly came into operation, there was a huge public outcry. One of the reasons was the punitive measures that the regulations were proposing. You have heard from the Chairperson that the penalties that were being proposed, both custodial and monetary, exceeded what the Energy Act provides. So, from the outset, it is obvious that the regulatory authority did not do its homework even to compare the proposals that it was bringing forward with the parent Act that gives them the authority to regulate.

There was no public participation. The memorandum failed to actually list where the public participation was carried out and who was engaged. For example, there was a proposal that a Kshs1 million fine be meted upon a woman who has a three-bedroomed house. They were also insisting that a three-bedroomed house must have a solar water heating system. It did not matter the capacity of the person to actually put the solar water heating system in the house. This is really something that requires assessment to be done. When you demand that somebody must put solar energy in his or her house... When we asked the regulatory authority, the Committee was advised that the cost of putting up a solar heating system in one house of three bedrooms is between Kshs150,000 to Kshs300,000. How many people in our rural areas can afford that? When we asked them how they have marked the jurisdiction, that is, the area within which these rules will apply, again, there was ambiguity and lack of clarity as to who will actually be affected. We found that there was lack of public participation. If they had done sufficient public participation, they would have avoided those kinds of ambiguities and impunity measures.

We are supposed to be encouraging Kenyans to actually consume energy. It is good that we are talking about solar energy, but it cannot come with that kind of a penalty and cost to people who have already built their houses without knowing that there would be a requirement that you must have a solar heating system. We even think that if they had done sufficient public participation, it is possible that they would have come with an option so that people will have to put solar because they actually feel that there is a benefit. There is no incentive. Instead, the regulations were providing for punitive measures that did not go very well even with the public, hence the huge public outcry.

With those remarks, I second the Motion.

(Question proposed)

Hon. Deputy Speaker: Let us start with Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Deputy Speaker. I rise to support the annulment of these regulations in their entirety. In 2017, Kenya was ranked 80 out of 190 countries marked in terms of ease of doing business, having risen from 92 in 2016. One of the key pillars of the four-point agenda is affordable housing. These regulations are going to make this untenable. Housing and ease of doing business go hand-in-hand. There are investors

who come in our country and they want to employ people. They want to live in their homes and the rent must be affordable for them. If these regulations had gone through, it would have caused the rent to skyrocket.

Another thing the Committee has noted is that in most of the regulations that have been annulled, there was total disregard to public participation and yet, public participation is anchored in Article 118 of the Constitution of Kenya. It states that Parliament must ensure or facilitate public participation. Indeed, the policy towards solar heating is one that should be encouraged through civic education and not forced down the throats of the people of Kenya.

Another observation the Committee has noted is that the regulations that are nullified contravene the parent Act. The Committee on Delegated Legislation would be pleased if the ministries and agencies concerned made themselves conversant with the Statutory Instruments Act and also conduct public participation so that we do not have to get to this stage where we are nullifying regulations.

With those few remarks, I do support the annulment in entirety of these regulations.

Hon. Deputy Speaker: Hon. Oundo Ojiambo, Member for Funyula.

Hon. (Dr.) Wilberforce Oundo (Funyula, ODM): Thank you, Hon. Deputy Speaker. I stand, at the outset, to support the Motion by virtue of what my able Chairperson has stated. As I support the Motion, there are some pertinent issues that we need to raise on the Floor of the House that, probably, will support and assist the ERC as they amend the regulations to ensure they come into force.

First of all, I note that in the entire regulations, there was no evidence of public participation and that contradicts the law, the Constitution and precedent that has already been set. No regulation, law or anything that has the force of law should be allowed to become law without public input. It is becoming a vexing issue that many regulation-making authorities do not undertake any public participation and if they do, it is purely selective. Members of the public who will concur with the regulations are the ones selected for public participation. So, it is a call to all the regulation making authorities, through the Attorney-General's chamber, to ensure that we comply with the requirement of public participation. It is becoming costly and a waste of time and public resources that these regulation making authorities make regulations that end up being annulled on account that they do not comply with the provisions of the Statutory Instruments Act and, more so, the question of enforcement or compliance to public participation.

A second issue that becomes glaringly clear is that the regulations as crafted – while the intentions were good as enacted in 2015 – are impossible to enforce. They are so ambiguous, unclear and badly drafted to an extent that it is practically impossible for any officer or member of the public to enforce the same. Our apprehension as a Committee was that they were going to be used as an avenue to extort and harass innocent Kenyans all over the country. Merely stating that a house of a certain number of bedrooms ought to have solar water heating system was extremely unclear because the size of the bedrooms does not indicate the amount of water to be consumed that requires solar water heating. It was hilarious that they had even proposed to impose regulations where there was no piped or running water. So, essentially, it was not making any sense at all. Consequently, as a Committee, it was obviously felt it did not meet the threshold of practicability or application.

It is important for us to appreciate that we are moving into an era of environmental conservation. That era requires that we comply, as much as possible, with green energy and we design and construct smart buildings. One of the requirements of smart buildings is to minimise use of non-renewable energy so that we depend mostly on renewable energy. As much as we are

annulling the regulations, I urge the Cabinet Secretary (CS) in charge of energy, the ERC and all professionals involved in the built environment to move with speed to come up with workable and practical regulations in as far as the use of solar energy and other renewable energy is concerned, to minimise loss of forest cover and reliance on other forms of electricity generation like diesel and, probably, other sources of power that pollute the environment. We cannot just sit and wait because issues of electricity bills and depletion of the various sources of energy are becoming a reality in this country and globally. We cannot sit back and wait until we get to a crisis and then we move up and down. There are very many international conventions and best practices all over the world.

I urge the ERC to get out of its comfort zone and be practical in their approach. Otherwise, if they just go to sleep and resign to fate that Parliament has annulled the regulations, it is the leaders who sit here today who will be castigated or told that we annulled the regulations without providing an avenue for redress on the issue of the environment and energy use in our built environments and elsewhere.

With those few remarks, I support the Motion.

Hon. Deputy Speaker: Very well. Let us have Hon. John Mose, Member for Kitutu Masaba. He is not here and, so, let us have Hon. Waweru Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Thank you very much, Hon. Deputy Speaker. However, I would like to cede the Floor. I am looking forward to contributing to the Report of the 49th Session of the ACP Parliamentary Assembly.

Hon. Deputy Speaker: Let us have Hon. Ndindi Nyoro.

(Hon. ole Sankok raised his hand)

Hon. Sankok, we are following an order here. I can see you putting up your hand. We are following the list and you are sixth on the list. Keep your peace until the sixth Member speaks.

Hon. Ndindi Nyoro (Kiharu, JP): Thank you very much, Hon. Deputy Speaker, for giving me this chance.

At the outset, I support the annulment of the said regulations. I see a lot of laziness on the side of ERC. For them to come up with regulations to force, especially very small houses like three bedroomed houses to have solar systems for water is being lazy and sleeping on their job. Whereas we understand and support that we need to promote green energy, this should never come at the expense of people who are trying to own homes. For every good thing to happen, people must never be forced to do it. We should invest more as a Government. The ERC especially should invest more in incentives to make builders, developers and house owners want to promote green energy, but not force them.

Even in the wake of the Big Four Agenda, we are trying to promote ownership of houses in this country. But these regulations go in the opposite direction. They are imposing a fine of Kshs1 million, which is almost the entire cost of building such a house. The ambiguity is that they have not even specified where that kind of solar system should be fitted. It ropes in even houses we are building in our rural areas where there is no running water. Therefore, I urge the ERC not to sleep on its job; not to abandon the quest for green energy, but to be a bit more innovative. This is so that we do not seem like we are forcing Kenyans, but we are giving them enough incentives. As a developer, I will then choose to install green energy and solar power rather than be forced to do it.

I see a trend in this country where we have layers and layers of over-regulation. We were just debating another issue about driving schools. That was over-regulation. This issue about installing solar energy in those kinds of houses is over-regulation. This goes against our promotion of private enterprise and the private sector in this country. There seems to be a concerted effort to stifle business people and push entrepreneurs to a corner where they have to keep on fighting for their bread. Those people are doing a lot in so far as spurring our economy is concerned.

Very important issues were noted by the Mover about public participation. Public participation nowadays is not a choice. We have to keep doing it. Even in our small jurisdictions, constituencies and in the growth of these small geographical areas, there is hardly anything we can do without public participation. For the ERC to come up with such far-reaching regulations and not to involve the users and the public goes against all the stipulated laws in this country... Also, it is laughable that the ERC - in their definition - assumes that when a house is big, it translates into usage of water. You can even have a ten-bedroomed house and another person has a much smaller house yet, the much smaller house can end up using more heated water. Therefore, I urge the ERC to be a bit more exact and avoid ambiguity insofar as coming up with more regulations in the future is concerned.

My parting shot as I finish is that we need to have a smaller Government and lesser regulation in this country, so that we can promote enterprise and the public sector. They do a lot more than the few jobs that we are trying to create in this country by starting so many bodies and so many layers of regulations that increase the recurrent expenditure at the expense of what we need most in this country, which is the development expenditure and providing a fair playing ground for business people and entrepreneurs.

I support the Report.

Hon. Deputy Speaker: Very well. Let us have Hon. Lodepe.

Hon. Lodepe Nakara (Turkana Central, ODM): Thank you, Hon. Deputy Speaker. First of all, I support the Report and congratulate the Committee for the work it has done.

The Committee has protected the public. The penalties that were set by the ERC against anybody who would not implement their policy cannot be attained. It is not practicable, as Hon. Ali has said. Charging a poor person Kshs1 million for not following that regulation is not tenable. You do not know how this person bought their house. Maybe, they did so through Sportpesa or the lottery. I support the Committee for advising the ERC not to implement that policy.

Secondly, we suggest that the Government takes this as a business so that it can supply solar energy to every house in this country. There are some people who cannot even afford solar energy in this country. If the Government can take responsibility to make sure that they supply energy to every person in this country, it will be a step forward in achieving the goal of having this country connected by 2022. If the Government cannot do it, then the private sector must take it so that they can engage in it as business and charge a small fee. There are counties like Turkana, West Pokot and Marsabit where we have full solar energy throughout the day. If we can get some investors who can go to such counties to invest, all those counties can get energy in a cheaper way. It is the responsibility of the Government to avail energy to every household, whether it is one room, thatched house or mud house. Energy is required because you cannot live in darkness at this age.

With those few remarks, I support the Report and congratulate the Committee.

Hon. Deputy Speaker: Hon. Passaris Rosanna.

Hon. (Ms.) Esther Passaris (Nairobi CWR, ODM): Thank you, Hon. Deputy Speaker. I stand to support the Motion because when you think about it, this country seems to always not care about what the citizens are going through. It takes me back to a time when all of a sudden, energy saving bulbs were introduced. The Government came up with a project of distributing energy saving bulbs to communities. People were told that the Government wanted to try and save energy. That was done only once. Somebody benefitted and the project was done away with.

Solar heating systems are good things to have, but they are very costly. The way it was programmed by the Energy Regulatory Commission shows that this was, again, going to be part of a corruption mix. The fact that we have a Committee that looked into these regulations and said that we cannot afford to do this – that we need to do away with them – is fantastic. We want green energy, but we need incentives. The Government has to recognise that the citizens at this particular time are really hard pressed. The economy is suffering. For us to have green energy, we need incentives and affordable solar systems. We need to partner with the Government to ensure that we go along that route. The fines that were being imposed were going to be detrimental to this country in terms of man-eat-man society. The Government and the people have to work together. When we were thinking about our Constitution, we were thinking about how we, as citizens, could own the Government and its programmes. Public participation is crucial but it was not done. I am grateful that we stand here today and say that we do not agree that the citizens of this country should be subjected to something positive, but in a negative form.

Thank you.

Hon. Deputy Speaker: I can see that Members are not sure as to whether they want to contribute to this Motion. Hon. Wanyonyi is top on the list. Do you want to contribute to this Motion?

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Yes, Hon. Deputy Speaker. I thank the Committee for recommending the annulment of these regulations, which I understand were to take effect from August this year. They would have caught people off-guard. I have a house in Kwanza, where I use more than 100 litres of water per day because of the many dependants I stay with. I had not known anything about these regulations. It appears that the Committee proposes the annulment of these regulations largely because there was no public participation. I want to thank them for that because most people, including me, would have been caught unawares. If I were to be found culpable, I would have been made to pay a Kshs1million fine, which is very punitive.

Secondly, I have two houses, on which no solar energy heating systems have been installed because I bought them sometime back. I did not think about it. You can now imagine how many Kenyans would have paid that fine. We want to have green energy production as opposed to the conventional way of doing it. That is because we have a problem with rainfall. The rain pattern in this country is changing. Doing the usual hydro power production is becoming a problem. This Committee did a good thing to nullify all these regulations. Let us give the ERC time. I hope the Chair is listening to me. Please, let us give the ERC time, so that they can go back to the original proposal.

With those few remarks, I support the Report.

Hon. Deputy Speaker: Hon. Sankok, I really want to see the angle you want to bring in this debate.

Hon. David ole Sankok (Nominated, JP): Thank you very much, Hon. Deputy Speaker. At the outset, let me congratulate the Committee for doing such a wonderful job because these regulations are very punitive. They are meant to scare away investors.

At times, we come up with regulations not necessarily to assist the common *mwananchi*, but with an intention of creating some business opportunities for some individuals. An example is in the year 2000, when there was an anticipation of *La Nina* after the *El Nino* of 1997. Some good people in this country imported very big generators that were meant to be hired by the Government and private institutions. God was not in the midst of all those who predicted the coming of *La Nina*. Therefore, it was not there in Kenya. The generators were imported by very powerful people in this country. For them to be used, they introduced an artificial *La Nina* by releasing the waters of the hydro-electric dams, so that their imported generators could be hired. During that time, I was the Chairman of the Students Organisation of Nairobi University (SONU). I knew from very reliable sources that an artificial *La Nina* was created. I thank God that, during that time, there was no electricity rationing at the University of Nairobi. We were aware of their ill motives and intentions.

This is another creation of business opportunity for an individual. The Committee did a very good job and came up with a Report seeking to annul these regulations because there was no public participation. It does not mean that water consumption is equivalent to the size of the house. Those of us who were hustlers who lived 10 of us in a single room know that, sometimes, a single room can have a bigger population than a big house. There were times we were surviving 10 of us in a single room. You can imagine the level of water consumption in such a room as compared to a three-bedroomed house where a husband, wife and one child live. Therefore, these particular regulations are punitive. I thank the Committee for coming up with a Report to annul them.

I support the Report.

Hon. Deputy Speaker: Hon. (Dr.) Nyikal. I am not sure if the other Members want to contribute. There are only two more.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Deputy Speaker. I rise to support the Report of the Committee.

I must start by congratulating this Committee. The Report we have just passed indicates that they actually do a good job. They are diligent. They look at the laws and the Constitution and pick up these issues.

On this particular one, they realised that the ERC did not conduct public participation. They also did not adhere to certain procedures. They did not attach some documents. Further, the law limited the sanctions, but they went way beyond them. They proposed a penalty of Kshs1 million and yet, the maximum amount that is supposed to be charged is Kshs20,000. That is almost criminal. Had the Committee not picked that aspect, people would suffer. A school with only 20 students is struggling. It cannot even afford that.

Hon. Deputy Speaker, they are not doing a good job. Those who came up with these regulations actually did an extremely shoddy job. They should not have reached the Committee.

It brings out two main issues. One, we are going to lose the value and principle of delegated legislation. This is an important principle because it was not possible, at the time of enacting the mother Act, to visualise all things that may come up to affect the public. But this provision is given so that those who are in positions of responsibility like the ministries, departments and agencies (MDAs), when in their good wisdom they note that there are issues that need to be raised and are not raised or are too detailed, they bring that in the mother Act for

the good of the public. We have a housing policy and they know that we want to encourage people to have houses. They also know that we have an environment policy on environment conservation. It is for such reasons that we have made provisions for delegated legislation and for regulations. So, if they are not followed and they are brought here and Committees keep annulling them, then we know that they are not doing the correct work.

All MDAs have either legal departments or have access to the Attorney-General. How can they bring to the Committees of the House regulations that are against the law? That is the bare minimum. They cannot put together a team of legal experts to look at the document and its legal implications and bring it to the House? That is irresponsible.

The Government should move forward and propose regulations on the use of solar energy. We should also propose regulations that concern the cost of solar heaters and other solar equipment so that we have incentives and people can move in that direction, conserve energy and even save money for themselves.

With those remarks, I support the Report of the Committee. But the MDAs must do thorough work before they bring any regulations to the House.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Wambugu.

Hon. Munene Wambugu (Kirinyaga Central, JP): Thank you Hon. Deputy Speaker for giving me this opportunity to add my voice in support of the annulment of these regulations. With all due respect, there is a tendency with regulation making bodies to circumvent the law even when it is very clear like in this case. It must be pointed out that time has come when they are not going to escape with these kind of regulations.

In this case, it is very clear that the regulation making body deliberately failed to comply with the Constitution, in that there was no public participation. The Committee made that conclusion because the regulations were submitted deliberately without an explanatory memorandum to show whether public participation was done or not and, in the event it was done, to what extent.

Further, it is very clear that the regulations were made contrary to the parent Act or enabling Act. The parent Act - The Energy Act - does not grant the authority to make regulations which have provisions to fines and imprison people in case they do not comply and infringe the provisions of the Statutory Instruments Act which says that the maximum fine that can be levied is Kshs20,000. But they impose a fine of Kshs1 million. Time has come for these authorities to go through the parent Act and the Constitution before they submit the regulations to ensure that whatever they submit complies with the Constitution and the enabling piece of legislation.

As they do these regulations, it is good to look at the living conditions of Kenyans. When they prescribe that a three-bedroomed house should have a solar heater, it is very difficult for someone living in a three-bedroomed house to start factoring the cost of installing a solar heater without considering the cost of the house. We have some three-bedrommed houses whose cost of construction is less than Kshs1 million.

With those few remarks, I beg to support.

Hon. Deputy Speaker: Let us have the Leader of the Majority Party and he will be the last one on this.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Deputy Speaker. I rise to support the Report of the Committee on Delegated Legislation that seeks to annul the Energy (Solar Water Heating) Regulations, 2012. You will observe that the regulations were published before the enactment of the Statutory Instruments Act which guides, facilitates and provides for

scrutiny of statutory instruments. Therefore, I can comfortably say that they were not subjected to the examination by the House. I thank the Committee on Delegated Legislation for bringing this matter to our attention for deliberation and debate.

I want to go on record that, as the Member of Parliament for Garissa Township, I have the exclusive right based on the report that I read and analysed - the one I want to support and the one I will oppose. I will never be coerced and intimidated to agree with what I do not believe in. This is my 12th year in this House. That is why I am supporting a report that is annulling Government regulations because I am convinced they have given the reasons. Even if they are regulations from a Government entity, I am convinced, after going through them, that they violated the Constitution. In fact, in the first Motion on traffic regulations which I missed, it had a number of violations of the Constitution, including even the age limit of who should be given a driving licence. Those out there who feel they can intimidate me, I am telling them that I have been here for a long period and I am ready. Every report is brought to the plenary where Members, in one way or the other, based on its contents, express their views.

We all appreciate the benefits of introducing energy solutions that will reduce global warming, improve our environment, our health and our economy. We appreciate that. Therefore, at the outset...

Hon. Kassait Kamket (Tiaty, KANU): On a point of order, Hon. Deputy Speaker.

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

Hon. Kassait Kamket (Tiaty, KANU): Hon. Deputy Speaker, you have heard the Hon. Leader of the Majority Party state that he feels intimidated by some forces and that he is ready to stand against them. Could he clarify which forces are intimidating him?

Hon. Deputy Speaker: I did not hear it. So, the Leader of the Majority Party...

Hon. Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, I am a pastoralist. The party of this Member of Parliament has only five Members, while mine has 175. From where I come from, we do not respond to those who own 20 or 30 goats. If it was from ODM, I would have responded. But this is a party with five Members. I am sure he read in the media people mentioning the Leader of the Majority Party and the Leader of the Minority Party.

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

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

Hon. Aden Duale (Garissa Township, JP): I can see there is a change of guard. I said it long time ago that when there is change of guard, there must be some ritual so that the Member speaking can know that there is taking over of power.

Before I was rudely interrupted by the Member for Tiaty, who in this House was represented... He is one of my very active Members in the Pastoralist Parliamentary Caucus. I am his patron. So, he must show respect to me when I am speaking. The patron of the Pastoralists Parliamentary Caucus is equivalent to the President or the Deputy President. So, Hon. Kamket, the pastoralists are watching you. That is on a light touch. You are one Member who will not be intimidated. I am following your footsteps.

We all appreciate the benefit of introducing energy solutions that will reduce global warming and improve our environment, health and economy. I must, therefore, at the outset,

seek to promote the use of alternative energy. On the contrary, I also firmly believe that if we are to achieve accelerated growth in the economy, we must reduce our dependence on imported energy sources. I, therefore, observe that these regulations, if considered, will greatly support one of the four key pillars of the Jubilee Government. They are anchored in law and there was serious public participation.

(Hon. John Mbadi walked into the Chamber)

Hon. Temporary Deputy Speaker, I want to welcome back the Leader of the Minority Party. This is the only man whose party is next to Jubilee. So, if he stands to ask me a question, I can reply. Parties with 11 Members, 14 Members or five Members will not get a response from me. I can see Hon. Wanyonyi getting agitated. His party has 12 Members. Still, in the pastoralist context, he falls short of my response. We need to make the House lively. Hon. Wanyonyi should not get agitated. It is my nature to make the House lively. You cannot just read and read.

As we discuss these regulations, we need to remember that Kenya is a signatory to the Climate Change Convention. We are committed, as a country, to implement plans that would protect our ecosystems, for example, the Mau ecosystem and our future generations. We insist, however, that such measures must be produced procedurally and in conformity with our Constitution and the regulatory framework. That is why the Committee on Delegated Legislation, under the able leadership of Hon. Boss Shollei... She should tell me where this name "Boss" came from. Is it English or Kalenjin?

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Pastoralist!

Hon. Aden Duale (Garissa Township, JP): I hear it is pastoralist. The Committee has looked at the procedure, the constitutionality and the regulatory framework. Have they conformed to that? I am sure it is on that basis that these regulations are being annulled.

The regulations were published after the promulgation of the new Constitution. Article 10 of the Constitution on Values and Principles and Article 118 on public participation are very clear and precise - that public participation in the development of law and policy is no longer an option. The only body that can make or change a piece of the law is this House. So, it is no longer an optional requirement; regulations of this nature must be structured. These regulations were not structured. Regulations of this nature must be well informed and sufficiently publicised. The enterprising citizen of our nation who works day and night to build the economy should be informed of the rationale and the implication of introducing regulations. I hope those guys in the energy sector are listening to me. Those citizens that you make these regulations for, who work day and night, must be informed on the rationale and the implication of introducing the regulations.

You will agree with me that the deterrence theory that seeks to impose swift and severe punishment does not apply in every situation. The imposition of a fine of Kshs1 million for contravening these regulations is highly punitive and unlawful. I am sure the Committee, led by Hon. Shollei, looked at all that. We want chairpersons and colleagues to take their time when they want to bring a report to his House. I have served in this House as an Assistant Minister with the sole business of answering questions every Tuesday, Wednesday and Thursday. Hon. Mbarire, Hon. Mbadi and I have done that. I also served in this House as a backbencher with Isaac Ruto, Ekwe Ethuro and Bonnie Khalwale. We would make sure we were prepared for the Prime Minister's time in the 10th Parliament. I serve now as the Leader of the Majority Party. So,

many chairpersons can borrow a leaf from leaders like me, Hon. Mbadi and Hon. Mbarire who have been in this House for long.

So, to achieve optimum success, citizens must be and should be viewed as partners and allies who should be consulted in order to identify critical, practical and beneficial means of achieving the objectives of these regulations. We are making regulations for the interest of the citizens. So, the citizens, through public participation, must identify the practicability and the benefit in terms of achieving the objectives of those regulations. This will not only inspire support and compliance, but also ensure that there is effectiveness in the implementation.

I thank Hon. Boss Shollei. Every day, I table pieces of regulations from various agencies. Two months ago, the Ministry of Defence submitted about eight pieces of regulations out of which the able Committee on Delegated Legislation rejected two. They came to my office. We sat with the Cabinet Secretary for Defence and the Clerk of the Committee - a very able legal mind. We took them through the regulations showing them the shortcomings. They went and rectified the errors. Some of the regulations required amendments to the KDF Act. The amendments are in the Statute Law (Miscellaneous Amendments) Bill currently before the House. So, that is how we make laws. For effectiveness in terms of implementation, citizens must play an important role. It is not a choice because it is a right they have been given by the Constitution of Kenya.

With those many remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The Leader of the Minority Party, you are almost qualifying to be the grandfather of this House with the vast experiences you have outlined.

Before I call upon the Mover to reply, we have pupils from Memon Academy from Mvita Constituency. I can see the Member of Parliament is right here. I hope the students are still up there. You are most welcome.

I now call upon the Mover to reply.

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Thank you, Hon. Temporary Deputy Speaker.

As I reply, I thank all Members who have contributed to this Motion. I also thank them for the kind compliments, especially the Leader of the Majority Party. My Committee and I are greatly humbled by your comments.

As I reply and conclude, I wish to clarify that I know my Committee and I are committed to clean energy, especially because I am an Environmental Law Major. Therefore, no one supports clean energy more than me. However, I hope the comments that have been made by Members today send a clear and very strong message to the ERC to inform them that you cannot achieve clean energy by punishing and forcing citizens to adopt solar heating methodologies. Remember, it is just only recently that there has been a big push by the Government in what they call the Last Mile Connectivity. They are connecting electricity to every household in the most rural areas. Transformers are all over the place and electricity is being installed. All of a sudden, without notice, you inform the public that you will punish them for using that very electricity that you supported them to install in their homes.

(Applause)

It is unfair. Even if the ERC wants to promote solar energy, it has to be done progressively and in a phased out approach. You can decide that instead of saying that anyone

who has a home must install solar energy, you instead say that there will be no approvals for all new buildings without installation of solar energy and then create incentives for those who already have buildings by subsidising or lowering the cost of the installation of that equipment. The Government can subsidise it and it will be possible for people to install it so that you promote it and support them to use clean energy. It cannot be achieved by making it compulsory. In fact, some Members in our Committee said that the regulations were bordering on absurdity. You cannot punish someone with a penalty of Kshs1 million yet the house on which you want them to install solar energy does not cost Kshs1 million. It is totally unfair and completely disregards fairness and the rights of citizens.

With that, we hope that the ERC will come up with a long term vision and decide to encourage installation of solar water heating systems over a period of time. We know that some of our schools do not have even windows. How do you expect them to install solar heating systems? That is not possible. It is not achievable in a short time unless it is done in a more calculated manner. I beg to request, under Standing Order No.53(3), that the putting of the Question be deferred to a further time.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well Hon. Shollei, and a commendable job there for you and your Committee. We shall go by the Standing Orders by deferring the putting of the Question of the Motion until such a time as the HBC will slot it on the Order Paper.

(Putting of the Question deferred)

Next Order.

REPORT OF THE 49TH SESSION OF THE ACP PARLIAMENTARY ASSEMBLY
AND INTER-SESSIONAL MEETINGS OF THE ACP-EU JOINT PARLIAMENTARY ASSEMBLY

Hon. Katoo ole Metito (Kajiado South, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to move the following Motion:

THAT, this House notes the Report of the 49th Session of the ACP Parliamentary Assembly and Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly held at the ACP House and the European Parliament in Brussels, Belgium on 20th - 22nd March 2018, laid on the Table of the House on Tuesday, 24th July 2018.

The ACP-EU stands for the African, Caribbean, Pacific and European Union. It is a partnership which is legally binding between 28 countries from the European Union and 78 from the African-Caribbean Pacific. Its work mostly deals with issues on trade, development co-operation and, at times, political issues. In doing so, it considers a lot of human rights issues and democratic principles that are a prerequisite for partner states to comply with or face certain sanctions. It also has an elaborate dispute resolution or settlement mechanism. It has three organs. One is the Council of Ministers composed of mostly ministers of foreign affairs, depending with the ministry dealing with foreign matters in a country. There is the Committee of Ambassadors. That is why, even in Kenya, our representative is the Ambassador in Brussels, who is always called the Ambassador to Belgium, Luxemburg and the EU, which is the

headquarters. There is also a Joint Parliamentary Assembly (JPA). This is for the ACP and the EU member states.

This association has some predictable multi-annual resources. For instance, from 2014 to 2020 which is the current agreement, there is the European Development Fund that is mostly the financial instrument outside the EU budget. For the period I have talked about, it has an allocation of 30.5 billion Euros. It is strictly from direct contribution by the EU member states.

What we are discussing in the Motion is the 49th Session since the formation of the ACP. It took place on 21st March 2018 in Brussels, Belgium. Before that Joint Assembly, there were some committee meetings. The first one was a meeting of the Working Group on the Post-Cotonou. It is good to understand this Post-Cotonou because it will be repeated many times, especially when we are talking of ACP-EU for the period 2014-2020. This meeting on Post-Cotonou was held on 19th March 2018. I will explain what Post-Cotonou is. Then, there was a second meeting which was held on 20th March 2018. That was a meeting of the ACP before EU. This partnership is in two components: the ACP and the EU.

The third one was the 49th Session of the ACP Parliamentary Assembly which was held on 21st March, 2018. Thereafter, there were Inter-Sessional Meetings of the ACP-EU. That is why in the Motion, it is called the 49th Session of the ACP Parliamentary Assembly and Inter-Sessional Meetings of the ACP-EU Joint Parliamentary Assembly. These were held on 22nd March 2018. The ACP Committee meetings and the assembly meetings were all held at the ACP House, while the inter-sessional meetings were held at the ACP-EU in the European Parliament. Both of these venues are in Brussels, Belgium.

The Kenyan delegation to this meeting comprised of the following Members:

1. Hon. Katoo ole Metito - MP, Leader of Delegation, National Assembly.
2. Hon. (Prof.) Margaret Kamar - Senator.
3. Hon. (Dr.) Lillian Gogo - MP, National Assembly.
4. Hon. John Waweru Kiarie - MP, National Assembly.

As I had mentioned, I will explain the meaning of Cotonou for the benefit of the House. The ACP-EU partnership agreement was signed on 23rd June 2000 in Cotonou, Benin. This, therefore, became the Cotonou agreement, hence the name ACP-EU partnership agreement or the Cotonou Agreement. The agreement was for a period of 20 years and it is ending in February, 2020. The agreement covers over 100 countries. The ACP has 78-member countries and the EU has 28 member countries. This totals to 106 countries with a total population of 1.5 billion people. This enables the EU relationship with the ACP partners to be rejuvenated.

Hon. Temporary Deputy Speaker, the most important thing in bilateral or multilateral relationship is business. It is good to have business relations with a population of 1.5 billion people. One of the recommendations from this meeting was to have a system where ACP Members can meet regularly on their own. Previously, we were required to have joint meetings. Arising from this 49th Session, these are called regional blocs and can meet. It is the same way colleagues from the European Parliament can meet in their regions and have a position to expand their bargaining space in business. It is good to meet as regional blocs and have a position. Some of the allocations such as leadership are given with regional blocks in mind. So, these regional blocs can help member states to articulate their issues very well. A good example is when Kenya hosted a meeting of the East African region, called the 15th Regional Meeting of East African Region of ACP-EU Joint Parliamentary Assembly on 11th to 12th April this year. This is one of those good recommendations.

Another recommendation was that there is need to enhance protection of parliamentary diplomacy especially when we talk of the Joint Parliamentary Assembly, when they have a fact-finding mission in any country. That should be protected because it is part of parliamentary diplomacy. It was also recommended that as partnerships, Joint Parliamentary Assembly can also form election observer missions when there are elections in one of the partner states. You can be accredited to become an election observer mission.

Another recommendation is that there is need to guarantee what we call the multi-stakeholder approach at all the relevant stages of the ACP-EU activities. That multi-stakeholder approach is very necessary in giving strength and synergy to what a certain region wants to push for. For instance, it talks of post-Cotonou because the Cotonou Agreement is coming to an end. It talks of issues to do with doing business with the EU. It is better to take a multi-stakeholder approach. The ACP that has a membership of 78 countries can come together as a multi-stakeholder, have a common stand and negotiate with their EU counterparts. The EAC is now negotiating with the EU on what we call Economic Partnership Agreements (EPAs). If we do not negotiate as a bloc, then you will find Kenya being isolated because the rest of the East African partner states will still import things from the EU using the rider, 'everything but arms'. Kenya is the only country in the EAC that is not a least developed country (LDC). There is an entry point for LDC's to access European markets on everything, but arms. If we take this multi-stakeholders' approach beyond East Africa and use the ACP approach with a common stand, we will all benefit.

There are other issues that were discussed during the 49th Session like the issue of illegal trade, specifically the phytosanitary products, seeds and other agricultural inputs. I am happy to report that when the 15th regional meeting of the ACP-EU was held in Kenya, we visited the Kenya Plant Health Inspectorate Service (KEPHIS) laboratory in Karen where there are phytosanitary products, seeds and agricultural inputs. Kenya took a strong position that there was need to have emphasis on research and development on various aspects of agro-economy. Like many other ACP countries, we are an agro-economy that relies on agriculture.

Therefore, for us to improve on that and protect the originality of these products, there is need to emphasise on research and development. This will improve the quality of the produce that we send to the European market. Therefore, we implored our fellow parliamentarians, as the Kenyan delegation, to enact laws on stiffer penalties for persons engaged in illegal trade of phytosanitary products.

Further deliberations at the 49th Session were on issues to do with the fight against cybercrime and drug trafficking. A lot of presentations were made. Very pertinent issues were discussed, including the role of parliamentarians in monitoring work and action of the UN, especially peacekeepers. Peacekeepers have been all over the world. Even as we speak, there is a petition before the Committee on Defence and Foreign Relations that we are deliberating on, where some people have petitioned the Government of Kenya to withdraw the Kenya Defence Forces (KDF) from Somalia. If you look at it, the soldiers are under the African Union Mission to Somalia (*AMISOM*), which is working on approval of the UN as a peacekeeping force.

The ACP-EU is purely for sitting parliamentarians. It was also said that there is need for parliamentarians to be involved in monitoring the work and actions of UN peacekeepers. There is need to monitor physical cooperation of the ACP countries, specifically the ones in the EU list of non-compliance with tax jurisdiction. A presentation was done on ACP countries that have not complied with the EU tax jurisdictions. It was also felt that it is good that, as Members of Parliament forming the joint parliamentary association of the ACP, there is need for them to be

fully involved in physical cooperation, especially on tax jurisdiction with regard to the European Development Fund (EDF). As I said, the EDF is a sole contribution of the EU member states to the ACP countries.

The impact and effectiveness of the EU Emergency Trust Fund for Africa on countries of origin and transit of migrants, and on combating the destabilisation effects of wildlife trafficking in ACP countries, was also discussed at length. The need to protect the environment, specifically the issue of wildlife trafficking, and in terms of forests, were also discussed. Wildlife and forests are one and the same thing. They are all part of the environment. It is in that regard that we are trying, as a country, to conserve the Mau Forest. Those things were discussed at length. The issue of wildlife trafficking and the need to promote the implementation of external dimension of the AU Action Plan against Wildlife Trafficking was discussed.

I do not want to take much time. As I said, as the Kenyan delegation, we issued a statement on the hosting of the 15th ACP-EU East African Region Joint Parliamentary Assembly that took place from 11th to 13th April 2018 at the Intercontinental Hotel, Nairobi. That was after the 49th Session that was held in Brussels.

I want to thank the Kenyan delegation for being actively involved in the matters that were discussed. I cannot exhaust what was discussed for three days in 20 minutes. Some of my colleagues are here to add more meat to it. Before I give them the opportunity, it is also good that I extend my appreciation to the Speakers of the Senate and the National Assembly for allowing us to attend the session and for facilitating travel and accommodation as well as providing logistics and technical support, in liaison with the offices of the clerks of the two Houses.

I do not want to conclude without mentioning that we have a Kenyan team, led by the Deputy Ambassador to the Kingdom of Belgium and the EU, Mr. Patrick Zuzi, together with Mr. Githaiga and Madam Dorothy Nthiwa. They were at hand to receive the delegation and throughout the session, they provided us with technical support for the meetings.

I heard some Members say that they have experience of being assistant ministers before. Some of us were full Cabinet Ministers and I have used that wisdom to present the Report. Therefore, on behalf of the delegation, I want to present and commend this Report to the House for information and noting.

With those remarks, I beg to move and call upon Hon. Dida Rasso to second.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well, Hon. Katoo. It is commonly said, ‘Do I say?’ Some people were Assistant Ministers, but there are some who were full Cabinet Ministers.

Hon. Dido Rasso.

Hon. Ali Rasso (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker. I rise to second this Report.

I thank the head of the delegation for having provided leadership during our visit. What comes to mind, looking at this Report and Kenya’s participation in the ACP Assembly, is a quote which says, ‘You are confined only by the walls you build yourself’. As we go out there to represent our country, we get a lot of experiences. We also showcase what Kenya has to offer at the national, regional and international level.

This ACP Assembly provides a unique forum for Kenya, as a major regional player in the larger East African region, and in Africa, to provide both political and economic leadership in terms of what the ACP countries have to offer and negotiate with the EU. As you know, one of the major areas of concern and contestation between the EU and the ACP is trade, and the post-Cotonou arrangement is on the table. This is because one side is industrialised major economies

and the other side, the ACP, are mainly developing or at least developed countries. There is that exchange between raw materials and machinery and finished products from the other side. So, one of the areas of concern that, we, as Kenyans, take cognisance of, are issues such as trade barriers and market entry of Kenyan goods. The area of post-Cotonou is where our technocrats particularly in Brussels and in the Ministry of Foreign Affairs are grappling with. They are burning the midnight oil to ensure that we are not left behind.

The other area of concern that the Chairman and the leader of the delegation has alluded to, is the issue of clean energy and environmental protection. The EU has put on the table about 30.5 billion Euros between the years 2014 and 2020. This is the piece of cake that countries that are innovative, and are in a position to come up with smart ideas particularly in terms of protection of the environment and generating clean energy, are able to bite from by providing their options or by putting forward their proposals on how Kenya can benefit from this. One of the major areas that the EU is looking at are areas like the Lake Turkana wind power that is trying to generate 360 megawatts to the national grid.

Hon. Temporary Deputy Speaker, the other area of concern that we as legislators and Kenyans shared during this forum with our European counterparts is that of wildlife trafficking and trafficking in endangered species. Added to that is the area of tourism, where the Europeans found out that you cannot compare Kenya and Dubai. When you go to Dubai, you find brick walls and glasses made by human hands while in Kenya, as you go to the Maasai Mara, Amboseli and the Kenyan Coast, you will see nature in its pristine shape. What we offer is much better than what humans create out there. One of the major concerns for us as Kenyans and others within the international community is how to protect our environment and wildlife. Also, how do we lessen the human/wildlife conflict? That is one of the reasons why our people are trying to destroy the habitat of the natural species. It is one of those things that this country can showcase when we talk of the wildebeest migration being the eighth wonder of the world and many will agree with us.

The other area of concern for both the ACP and the EU is that of migration. In the 16th, 17th and 18th centuries, Europeans were moving to the south. However, in the 21st Century, Africans and Asians are moving north. It is a major connotation of human interaction. Why were the Europeans moving south those early years and why are we moving to the north at this point in our lives? Migration brings about cultural interaction, conflict and matters terrorism. So, there are many issues involved.

Finally, this forum has the social and political dimension where the former is about the youth and women empowerment. Today, almost 60 per cent of our population comprises of youth and women. That makes them major stakeholders of our economy. There is also a political dimension to the ACP-EU.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Wind up, Hon. Rasso

Hon. Ali Rasso (Saku, JP): Here is where the ACP-EU is thinking in terms of how they can interact with the post-Cotonou agreement. Does the EU just join the African Union and negotiate with them or deal with countries block by block?

Thank you very much, Hon. Temporary Deputy Speaker.

I beg to second.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Katoo, are you going or coming in?

(Question proposed)

Let us have Hon. Kiarie.

Hon. John Kiarie (Dagoretti South, JP): Thank you, Hon. Temporary Deputy Speaker. I stand to support that this Report be tabled and adopted. The ACP-EU August Assembly is an important formation. Although it is never said as such, it is not a loss to us, as Members of Parliament, that this Joint Assembly, by its very formation, is a roundtable engagement of former coloniser countries and their colonies.

In the larger scheme of things, and especially in this new emerging world order where we are seeing former superpowers falling and weakening while newer superpowers are coming up and rising, the deliberations of the 49th Session of the ACP Parliamentary Assembly could not have been more timely. This is especially in the light of the new era that is dawning that is being popularly called the 'post-Cotonou era', where we shall renegotiate the terms of engagement between the African, Caribbean and Pacific countries as relates to the EU and especially in matters to do with trade.

Hon. Temporary Deputy Speaker, I would like to confirm that, indeed, the Kenyan delegation participated in the very extensive deliberations on matters that covered, but were not limited to, business, climate, investments, terrorism and even organised crime in the different committees that were formed. The committees are the Committee on Social Affairs and Environment, the Committee on Economic Development and the committee that I very actively participated in, the Committee on Political Affairs.

I think it would be good to report to this House that the Kenyan political situation came up during the deliberations at that time. It was a time immediately after the now famous handshake between President Uhuru Kenyatta and the former Prime Minister, Right Honourable Raila Amolo Odinga. In fact, the handshake was lauded by members of the ACP-EU Joint Parliamentary Assembly as a ground-breaking political advancement. You can bear me witness that after the handshake by the President and the former Prime Minister, we have seen many other handshakes around the world, one of which is the handshake between the President of the United States of America (USA) and the leader of North Korea. We have seen the leader of North Korea shaking hands with the leader of South Korea. We have seen the President of the USA shaking hands with the President of Russia. As such, the people who were at the Joint Parliamentary Assembly lauded this landmark political gesture between our President and the former Prime Minister.

Finally, I have a recommendation that I would like to put forward. Bearing in mind the nature of the deliberations at the ACP-EU Assembly, I propose that it would be a great idea to have a permanent delegation from this National Assembly. These are the people who are going to be carrying the institutional memory of the deliberations at this Assembly. I would like to say that on my part, when I was appointed to go for the ACP-EU Assembly, I did not sleep throughout my flight from here all the way to where the Assembly was being held. I had to apprise myself of the nature of the deliberations by looking even at the past deliberations of the Assembly. I had to learn what it meant to talk about post-Cotonou. As such, I would like to recommend that the people who are appointed - and it does not have to be the Member of Parliament from Dagoretti South - to attend to these matters as a delegation, be a permanent delegation and permanent Members to this Assembly.

There is going to be an opportunity for Kenya to rise up as a regional leader in matters politics, economics and social affairs as we open up the discussion on post-Cotonou as has been stated by the leader of delegation and also by Hon. Rasso. It is, indeed, a new world. I would like

to end by quoting a Turkish author and playwright, who said that a new world order is not going to be created until we establish an order where the powerful wolf cannot eat the weak lamb. Even as we go into these deliberations between what I called former colonisers and former colonies, I would like to say that we should be negotiating towards a new world order where the powerful wolf will not be able to eat the weak lamb.

Thank you, Hon. Temporary Deputy Speaker, for that opportunity.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well, Hon. Kiarie. I see no more interest in contributing to this Motion. On that note, I call upon the Mover. Hon. Rasso, you may reply.

Hon. Ali Rasso (Saku, JP): Thank you very much, Hon. Temporary Deputy Speaker, for the time and also for having allowed our team to present its Report. This will form part of the parliamentary and historical records. Those who will come after us will look at and, maybe, work with it and bring changes that are required. I beg to reply, but also raise the Standing Order No.53(3) that the putting of the Question be deferred until a later date.

Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well, Hon. Rasso. We shall be bound by that Standing Order at this particular time. We will defer the putting of the Question on this Motion until such other time that the House Business Committee will slot it in on the Order Paper.

Let us move on to the next Order.

REPORT OF 138TH ASSEMBLY OF INTER-PARLIAMENTARY
UNION AND RELATED MEETINGS

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have Hon. William Kamket.

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

THAT, this House notes the Report of the 138th Assembly of the Inter-Parliamentary Union (IPU) and related Meetings held in Geneva, Switzerland, on March 22-28, 2018, laid on the Table of the House on Tuesday, 24th July 2018.

Hon. Temporary Deputy Speaker, just for the sake of Hon. Members who have no idea - because I do appreciate that this House is relatively new in terms of percentage of Members - the IPU and the World Organisation of Parliaments is a global forum for parliamentary dialogue, co-operation and action. The Union advances democracy and assists parliaments and parliamentarians throughout the world to fulfil their mandates. At the time of this Assembly, there were 178-member Parliaments of the IPU. The IPU facilitates parliamentary debate, dialogue and co-operation, promotes and defends democracy and the rule of law while assisting parliaments in coping with growing international agenda relevant to their duties. The IPU Assembly is a principal statutory body that expresses the views of inter-parliamentary union on political issues. It brings together parliaments to study international problems and make recommendations for parliamentary and government action. The Assembly meets twice a year and is held each time in a different country, providing participants with an opportunity to see various national realities.

The IPU hearing at Geneva, Switzerland, happened on the said dates. The theme of this year's hearing was: 'Strengthening the Global Regime for Migrants and Refugees - the Need for

Evidence-Based Policy Solutions'. The Kenyan delegation was led by the Speaker of the Senate, Hon. Ken Lusaka. Among the membership that went to this meeting was Senator Enoch Wambua, Senator Susan Kihika, Hon. Owen Baya, Hon. Vincent Tuwei, Hon. Nasri Ibrahim and I.

One of the key highlights of the conference was the election of Senator Kihika as the Vice-President of the Women Parliamentary Caucus of the IPU. It is also good to note that the Speaker of the Senate, Hon. Lusaka, sits on the Executive Committee of the IPU. The other Members were not able to contest other positions in the standing committees, for instance, the Standing Committee on Peace and International Security, the Standing Committee on Sustainable Development, Finance and Trade and many other committees. There was an interest in the Forum for Young Parliamentarians. Due to the presence of our Speaker, Hon. Lusaka, on the Executive Committee, we were not able to contest other positions as per the rules of the IPU.

At the IPU Conference this year on the matter of refugees, one of the highly debated issues was the rights of refugees to vote in the countries that they live in. That matter was debated and left to the parliaments of the world to look into and look at our UN Resolutions to see whether it is possible, in future, to allow refugees to vote in the countries that they live in.

In this year's conference, you will also note that most of the Members of this delegation were fairly new. They had not attended IPU conference before. There was a near mistake that raised the issue of the need for institutional memory in such international forums. During one of the sessions, there was a heated debate on the consequences of the United States of America (USA) declaration of Jerusalem as the Capital of Israel and the USA moving its embassy to Jerusalem. There was a very heated debate in the plenary. We were caught up in the debate as Members of the delegation. As we were about to take a vote on this very important debate, we were lucky to have been reminded by the secretariat that Kenya belongs to the non-aligned status in terms of international diplomacy and we lost the opportunity to vote on such a very lively Motion.

Suffice it to say, the delegation was very ably represented by the Members who were present. I do not want to labour this House that much. The resolutions are as contained in this Report. I will be highlighting some of the resolutions so that Members may have time to look at the Report and read it for themselves. One of the key resolutions that came up from this Conference was the one that I spoke of earlier on the consequences of the USA declaration on Jerusalem and the rights of the Palestinian people in Jerusalem in light of the UN Chapter and Resolutions.

Just as a highlight, the Conference called on parliamentarians to urge their governments to recognise the State of Palestine along the 1967 borders with Jerusalem as its capital in accordance with the UN Resolutions. That was a very emotive issue and as I said, this Resolution was adopted by a vote.

Without much ado, the recommendations of the Kenyan delegation are that this House notes this Report. Therefore, this House follows up on the implementation of the declaration and resolution of the 138th IPU Assembly and related meetings.

I ask Hon. Owen Baya to second.

Hon. Owen Baya (Kilifi North, ODM): Hon. Temporary Deputy Speaker, I stand to second this Motion and Report as tabled.

The 138th Assembly of the IPU and related meetings held on 22nd to 28th March 2018 was quite an eye opener. First, it took a lot of time to discuss issues of refugees and migrants which was the theme of this very important meeting that was held in Geneva. We also discussed issues of renewable energy and how to engage the private sector in ensuring that renewable energy in

the world is sustainable. Kenya benefits immensely from a discussion like this at the global stage. As a country, we are discovering new energy sources in terms of oil in Turkana and other places. The world is moving towards renewable energy. Looking at the Report, you realise that for this country to be sustainable and part of the Sustainable Development Goals (SDGs) is that we have to invest heavily in renewable energy so that we can sustain the economy as it were.

One of the other interesting topics that we discussed at the IPU is the issue of democracy and human rights. When we were at the IPU Conference in Geneva, there were many things that were happening in this country. We thank God that the handshake has brought this country to a completely new path. We need to look at democracy as something that we benefit from. The Constitution of this country is very rich at ensuring that human rights are given the maximum support and respect as enshrined in the Constitution. The Global Compact on regular migration looks at human rights from the perspective of migrants and how a country needs to look at refugees. Kenya is host to many refugees. This conference was relevant to Kenya in giving a pedestal for Kenyans to look at how we continue to treat refugees in this country.

The Government has been very clear on its policy on refugees and there has been a push to close the current refugee camps because refugees coming to this country have continued to deplete the little resources that we have. Human rights call upon us to continue to address the problems that are encountered by refugees. More importantly, this conference showed that we need to look at the root causes of migration and refugees and why refugees move from one country to the other as a way of addressing human rights in the world. Kenya has had so many refugees from Sudan, Somalia and other countries. As we receive those refugees into this country, we treat them well, but we also need to continue to be the peace super power within the region to address the causes of refugees. Kenya has participated effectively in bringing peace in South Sudan.

That way, we address the resolution of the IPU, which says that we need to look at the root causes of refugees and address them so that we can stop their influx into nations. We also need to look at why people migrate from one country to another and address the root causes of migration so that, as a country, we feel safe with the few refugees and migrants that we have and also stop countries from acting in ways that make their people refugees.

Hon. Temporary Deputy Speaker, one of the things that we noted in the IPU, and Hon. Kamket has talked about it, is the Forum of Women Parliamentarians. As Kenyans, we are honoured that we got one of our own to become Vice-President of the Forum of Women Parliamentarians in the IPU. Through a lot of lobbying, Sen. Kihika was elected the Vice-President of the Forum of Women Parliamentarians. One of the things that came to our minds during this time is that, as a country, we have not been a great participant in these great fora because the delegations keep on changing. Notable countries like South Africa, Namibia and other African countries have a strong footing in the IPU because they continuously send the same Members. Therefore, their names are household names there. They are given opportunity to speak and move the Assembly to make certain resolutions. The East African delegation was not strong. Kenya was running a lot of things on its own. Without the backing of the East African countries, we were not able to get as many seats as other countries had. We were not able to move the Assembly to adopt certain positions and Motions within the Assembly. Therefore, I call upon the leadership of the two Houses to ensure that there is consistency and a permanent delegation, so that we can also influence the resolutions that are passed.

Interestingly, a lot of countries had influence on the Floor of the Assembly because their delegations have been there. They lobbied for certain positions because they knew each other

within the Assembly. However, the Kenyan delegation was not able to do so because we were completely new. We had to learn what the IPU was about. We had to learn a lot of things before we could move a Motion.

I want to say a few things about what the Mover, Hon. Kamket, said. When it came to the most important Motion on the Floor of the House, Kenyans were at a loss because, firstly, we did not have a policy that was developed by the Ministry of Foreign Affairs and International Trade to guide us in the debate. Secondly, we were told very late that we were a non-aligned nation and, therefore, we could not take a position. Other African countries took votes and either supported or opposed the USA declaration that Jerusalem becomes the capital city of Israel. As the Kenyan delegation, we were informed late that we could not take a position on the matter. We were told that taking a position would interfere with our foreign policy. It is important for this country to develop a foreign policy that sways the African foreign policies. As a country, we have come of age. Our economy and everything about this country can lead foreign policy in the continent. Kenya needs to take leadership in terms of the foreign policy that drives this continent on whether to align its matters on this area. The IPU exposed. It became evident that we are actually not a powerhouse in international policies or continental matters. Therefore, I would like to call upon this House and its leadership, the national Government, and especially the Ministry of Foreign Affairs and International Trade, to start thinking about becoming the leader in the continent in terms of foreign policy.

As I say this, I also want to very sincerely thank the Kenyan Embassy in Geneva, especially Hon. (Dr.) Mukhisa Kituyi, who took his time off and hosted us. He talked to us and gave us direction on a lot of international matters.

With those remarks, I beg to second the Motion.

(Question proposed)

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

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I also rise to support the Report that has been tabled by Hon. Kamket, whom I presume was the leader of the delegation from the National Assembly. In the past, I also had the benefit of attending one or two IPU meetings. I saw a major gap in the way delegations from other countries participated in IPU meetings compared to the way the Kenyan delegation did.

I am glad that for the first time, Kenyans have been elected to sit in various committees of the IPU. I remember that it was very hard to be elected at that time. Delegates elected people they were familiar with. Part of the familiarity came out of the fact that other nations would send a permanent delegation to the IPU until their voices were heard. They were able to network with the rest of the membership. As a result, they created a name in the Assembly and were recognised and even elected when elections came. So, I am glad that we have the first Member, Sen. Susan Kihika, who was elected to sit in the women committee as the Vice-President. I hope this is truly the beginning of the right step towards ensuring that our foothold in IPU, as a nation, is felt so that we can eventually go for bigger positions in the future.

The IPU creates a very good global platform for parliamentarians to engage on matters that are of importance to the nation and the world. I am sure you have also participated in IPU meetings. We always go for IPU sessions in the Commission on the Status of Women but, again, we are never really right inside those organisations and conversations because we just attend and

every time, there are new attendants. I hope, going forward, we will take this matter seriously and have a permanent delegation so that our views, as a nation, can be heard.

Where I come from, people say that if you start coughing while talking, some people are talking about you somewhere. So, I hope the talk is a good one.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): That is superstition.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, I like the topics that were discussed in this particular Assembly. One of them is strengthening the global regime for migrants and refugees.

As a nation, I do not know how much the delegation spoke about this because we are one country that has dealt with refugees over a long time because of conflict within the region. So, we are a very important partner in the region, in terms of refugees and migrants. It is a matter we have seen the President talk about even in international fora, seeking support for Kenya because of the role we play in hosting refugees in Kakuma and other camps in the country. That was an important topic that obviously must have been thoroughly debated. I am not able to go into the resolutions one by one, but Members should look at them and hope that the departmental committee that deals with that particular matter can begin to look at it and see how we can domesticate some of those resolutions to fit into our specific experience as a nation.

Hon. Temporary Deputy Speaker, also important is sustaining peace as a vehicle for achieving sustainable development. Obviously, one of the major causes of migration, especially having refugees, is lack of peace and an enabling environment for people to live meaningful lifestyles. So, that too, was an important topic that is relevant to us as a nation.

More importantly and what I liked was the topic on renewable energy, which we are all talking about. Earlier on, we were looking at the issue of solar energy. What I found very interesting is that we are now also recognising the role of women in renewable energy as a means of enhancing economic empowerment as well as women's potential given the key role they play in producing and using energy in households and communities particularly in developing countries. We just had this debate when we were looking at the Report of the Committee on Delegated Legislation where we have thrown away the entire regulations which had been set up around solar energy by ERC. One of the things that came up was that there was no public participation. Time has come that whenever we talk about renewable energy, we must appreciate the special role of women in it considering that they are a big consumer of the same. So, I hope going forward, we will start to look at these issues.

My concern, having looked at the discussions that took place and the resolutions, is to ensure that the important resolutions which fit into our nation from the delegations that go out on account of taxpayers' money to these meetings, are taken up by the relevant committees. For example, the resolutions on energy should be looked at by the Departmental Committee on Energy, so that we can see what we can borrow from them. We should see what we can pick from them and how they can be helpful to our nation going forward. I believe there are many experiences and best practices that end up in the final recommendations. So, I hope that, going forward, we will not just be picking reports, noting them on the Floor of the House and it ends there. Surely, there must be something we can bring back to the country that adds value. This is a global platform in which people exchange ideas and get what other nations are doing. Then we can borrow some of those things and use them here in our country.

I thank the Chair and the delegation that attended the IPU. I add my voice in saying that there is need to make this delegation permanent. It does not add value that we have not been able to rise to the top in the IPU to a point where we are recognised as a nation because of the

turnover of delegations that we keep sending to the IPU. At least, within a period of five years, let us have a permanent delegation that can add value to that important global platform.

With those many remarks, I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Member for Bureti.

Hon. Japheth Mutai (Bureti, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to support the Report. From the outset, the Report is good. It is detailed and encompasses everything the Members were taken through at the IPU meeting.

One thing that caught my eye was the stigma faced by people living with HIV and AIDS. The Forum of Young Parliamentarians of the IPU went into details in dealing with this. It is very critical and it strikes a chord in me that at this modern age, it is sad that some people living with HIV and AIDS still face stigma in our society. The HIV and AIDS have been with us for a long time and it is surprising that stigma is still on going. I thought it is long overdue and this issue has been got rid of, but you will appreciate that in some societies, this issue has not been buried. Somebody living within HIV and AIDS is not by choice, but by circumstances probably brought to them not because they liked it or because they were in control of it. It is upon us as a society to empathise with them. It is upon us to realise that having HIV and AIDS is not the end of the world and with proper care and nutrition, life can continue. I like what is in the Report and echo that it is a job that was well done to actually align the issues and the challenges faced by this minority group in the society. Having HIV and AIDS is not the end of the world and it is not an individual disease. When a family member is suffering from this, the entire family suffers.

There was an intriguing issue that the IPU discussed on the consequences of the USA declaration on Jerusalem and the rights of Palestinians people in Jerusalem in light of the UN Charter Resolution submitted by the Palestinian, Kuwait, Bahrain and Turkey delegations. This is one area that has caught the attention of the entire world currently. The mere fact that the capital of Israel has been relocated to Jerusalem from Tel Aviv has caused a lot of uproar. But what surprised me during the IPU meeting is that the Kenyan delegation did not vote because we are part of the members of the non-aligned movement. I would have loved to see the stand of Kenyans when faced with this critical vote on whether they agree for the capital of Israel to be taken to Jerusalem or to remain in Tel Aviv. Jerusalem has special attachment to most religions of the world. The Jews believe that, that is where the Lord will land when he comes back to this world. The *Al Aqsa* Mosque is one of the precious symbols of Islam and Christians, where I belong, believe that Jerusalem is a holy place. So, we all have a special attachment to Jerusalem, but what was intriguing was how many nations especially the Islamic nations took the declaration by the US that Jerusalem hosts its embassy. It was very intriguing.

The issue of refugees was discussed at length in this meeting. This issue has been with us since time immemorial. The first slaves were taken involuntarily to the US and South America by the whites. Many blacks were also taken to the Middle East to work as slaves. But what we are facing at the moment are economic refugees or migrants and refugees that are running away from persecution in their countries. I am happy the meeting dealt with the plight of refugees. You will find that most refugees have their rights trampled upon in the destinations they arrive. But it is nice that these issues are being highlighted so that the world can come to know and the rights of refugees are respected. Women who travel across the Mediterranean into Europe find themselves in a tricky position. They are turned into prostitutes along the way and at their final destination. I am happy that the plight of these refugees and migrants has been highlighted so that the receiving countries can ensure that the rights of these human beings and their dignity are upheld.

European countries currently are not comfortable in accepting refugees or economic migrants. What the UN and group discussants did was commendable. Members of those countries were engaged and there were discussions to ensure that in future, countries are made to understand that some of the refugees do not migrate out of choice, but rather, it is out of fear for their lives. There is a lot of persecution where they come from. We have countries such as Germany that have done a commendable job in receiving refugees. We have incidences in Europe whereby far-right groups have been rising up and saying they do not want refugees in their backyard. As I said, it is commendable that the issue of refugees was dealt with at length.

I want to thank the group that travelled. I also want to echo what Hon. Cecily Mbarire said that we should have some form of continuity so that the group that travelled to this destination travels to the next meeting. That way, we will have continuity. Members who travel should demonstrate interest. We do not need to have one Member travelling this time and another one tomorrow. Therefore, interest in particular subjects that are being discussed in the course of the meetings has to be demonstrated.

On that note, I support the Motion. I thank the group that travelled to Geneva for a job well done.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Well said. I see no other interest in contributing to this apart from the head of delegation. You look like you are eagerly waiting to reply. So, take your chance.

Hon. Kassait Kamket (Tiaty, KANU): In replying, I want to say that the IPU in its nature is the parliament of parliaments of the world. Just like the Seconder said, it is important that whenever Kenya sends delegations to such fora, then it must send very strong delegations. I am happy that the delegation I led managed to get one of our own to get elected as the vice-president of the women caucus. I am very proud of Hon. Kihika for achieving that position of the world.

The issue of the vote on the matter of Jerusalem has been touched by many of the Members who spoke on this debate. It brings to question the viability of the non-aligned movement many years after the end of the cold war. Perhaps, it is time the Republic of Kenya and other nations rethought their positions in terms of this movement. At that time, it was relevant to be non-aligned or aligned to either of the power blocs. Many years after the end of the cold war, it is time we relooked at our foreign policy, as a nation, so that we are not just a whimper of a nation. Kenya is a very strong country. Kenya must be able to stand up and be counted among the community of nations as a nation that does not duck when real issues come up that affect human populations. That is a very important matter that needs to be reviewed moving forward.

The matter of refugees has been touched by Members who spoke. It was a major agenda of this IPU Conference. We appreciate that we have refugee issues in this country. It is important also, just as it was discussed in the IPU Assembly, to begin looking at the rights of refugees in a more detailed manner considering their human rights. It is enough to be removed from your country to go and live in a foreign country, but it is worse to be disenfranchised twice; that you have been disenfranchised forcefully from the country of origin and you continue to be disenfranchised in the country that has adopted you. That is a matter that needs to be discussed as a matter of principle in terms of addressing the rights of refugees in the world.

Hon. Temporary Deputy Speaker, I urge you to indulge me even as I request that putting of the Question on this Motion be postponed according to Standing Order 53(3).

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well, Hon. Kamket. We shall go by that Standing Order to defer putting of the Question to the next time when we will have the Motion slotted in the Order Paper.

(Putting of the Question deferred)

Next Order!

REPORT ON BENCHMARKING VISIT TO UNITED
KINGDOM AND NORTHERN IRELAND

THAT, this House notes the Report of the Committee on Members' Services and Facilities on a benchmarking visit to the Parliament of the United Kingdom and Northern Ireland Assembly held between March 12th and 16th March 2018, laid on the Table of the House on Tuesday, 24th April 2018.

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, we may have to defer this particular Motion because the Chair of this Committee is not available right now.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well, the Motion stands deferred.

(Motion deferred)

REPORT ON IMPROVEMENT OF SERVICES AND FACILITIES FOR MEMBERS

THAT, this House adopts the Report of the Committee on Members' Services and Facilities on the Improvement of Services and Facilities for Members, laid on the Table of the House on Tuesday, 24th April 2018.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): I believe it will be the same thing for this Motion because the Chair is the same one. I, therefore, rule that this Motion also stands deferred.

(Motion deferred)

Next Order!

BILLS

Second Reading

THE FINANCE BILL

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Hon. Temporary Deputy Speaker, it is the same issue on this Bill because we have not received the report from the Committee. That may be the same case with the subsequent Bills.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): You mean down to Order No.18?

Hon. (Ms.) Cecily Mbarire (Nominated, JP): Yes.

(Bill deferred)

Second Reading

THE WAREHOUSE RECEIPT SYSTEM BILL

(Bill deferred)

Second Reading

THE URBAN AREAS AND CITIES (AMENDMENT) BILL

(Bill deferred)

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) BILL

(Bill deferred)

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, the time being 6.30 p.m., the House stands adjourned until Wednesday, 15th August 2018, at 9.30 a.m.

The House rose at 6.30 p.m.