

# PARLIAMENT OF KENYA

## THE NATIONAL ASSEMBLY

### THE HANSARD

Thursday, 7<sup>th</sup> November 2019

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

**Hon. Speaker:** Hon. Members, we do not seem to have the required quorum. Can you ring the bell?

*(The Quorum Bell was rung)*

Hon. Members, I am informed by the Serjeant-At-Arms that we now have quorum. We can commence business

PAPERS LAID

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

Six Reports, one Bill and one Resolution adopted by the East African Legislative Assembly (EALA) at its 1<sup>st</sup> Meeting of the 3<sup>rd</sup> Session of the 4<sup>th</sup> Assembly held in Arusha, United Republic of Tanzania, from 16<sup>th</sup> September to 5<sup>th</sup> October, 2019 as follows –

(i) Report of the Committee on Accounts on the oversight activity to the Lake Victoria Basin Commission (LVBC) to assess the status of implementation of the Assembly recommendations on the EAC audited accounts;

(ii) Report of the Committee on General Purpose on the oversight activity to assess the level of preparedness of partner states in the management of *Ebola* and Dengue fever epidemics;

(iii) Report on the Committee of General Purpose on the Petition from East African Civil Society Organisations Forum (EACSOFF) on matters of crucial importance to the Community;

(iv) Report of the Committee on Communication, Trade and Investment on the Status of Ratification of the amended Article 24(2)(a) of the Protocol on the Establishment of the East African Customs Union to provide for the establishment of the Trade Remedies Committee;

(v) Report of the Committee on Regional Affairs and Conflict Resolution of the oversight activity on the proliferation of small arms and light weapons in the East African region;

(vi) Report of the Committee on Agriculture, Tourism and Natural Resources on the oversight activity on the performance of the tourism sector in the region;

The East African Community Customs Management (Amendment) Bill, 2019;  
Resolution of the Assembly commemorating 20 years of the East African Community;  
and,

Report of the Auditor-General on the Financial Statements of the Council of Governors (CoGs) Secretariat for the year ended 30<sup>th</sup> June 2018 and the certificate therein.

Hon. Speaker, I am sure that Hon. Members will look at how much money was spent by the CoG's Secretariat. This is money meant for devolution.

**Hon. Speaker:** Next Order.

### ORDINARY QUESTIONS

**Hon. Speaker:** The first Question is by the Member for Kajiado Central, Hon. Memusi.

*Question No.463/2019*

#### METHODS USED IN WEATHER FORECASTING BY METEOROLOGICAL DEPARTMENT

**Hon. Memusi ole Kanchory** (Kajiado Central, ODM): Hon. Speaker, I rise to ask the Cabinet Secretary for Environment and Forestry the following Question:

(i) Could the Cabinet Secretary explain the methods used in weather forecasting in the country, including any technology that is being utilised on the same?

(ii) Is the Meteorological Department well equipped and staffed with experts and specialised personnel to handle accurate forecasting of weather and advising the country on weather matters?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is referred to the Departmental Committee on Environment and Natural Resources.

The next Question is by the Member for Mathioya, Hon. Kimari Kihara, who has requested for its deferment and the request has been acceded to.

*Question No.479/2019*

#### COMPENSATION FOR LAND ACQUIRED FOR CONSTRUCTION OF KIRIAINI-KAIRO ROAD

*(Question deferred)*

We move to the next Question, which is by Nominated Member, Hon. Gideon Keter.

*Question No.480/2019*

#### ROLE OF KENYA BUREAU OF STANDARDS IN PROMOTING STANDARDISATION OF COMMODITIES AND CODES OF PRACTICE

**Hon. Gideon Keter** (Nominated, JP): Hon. Speaker, I would like to ask the Cabinet Secretary for Industry, Trade and Cooperatives the following Question:

(i) Could the Cabinet Secretary explain the role of Kenya Bureau of Standards (KEBS) in promoting standardisation of specification of commodities and codes of practice, in light of the recent reports of the existence of fake antibiotics in Kenya by the World Health Organisation (WHO)?

(ii) What measures has the Ministry put in place to ensure enforcement of post-surveillance of pharmaceutical drugs and medication in the country?

**Hon. Speaker:** The Question is referred to the Departmental Committee on Trade, Industry and Cooperatives. The last Question is by the Member for Kuria East.

*Question No.481/2019*

DISBURSEMENT OF MONEY FOR COFFEE CHERRIES TO FARMERS

**Hon. Marwa Kitayama** (Kuria East, JP): Thank you, Hon. Speaker. I rise to ask Question No.481/2019 to the Cabinet Secretary for National Treasury and Planning.

(i) When and how is the Ministry disbursing Kshs.3 billion allocated to coffee farmers for coffee cherries yet there is no existing fund to administer the said funds?

(ii) Could the Cabinet Secretary explain why the funds are not being channeled through the Commodities Fund under the Ministry of Agriculture and Livestock for the benefit of the farmers as envisaged in its formulation?

Thank you, Hon. Speaker.

**Hon. Speaker:** The Question is referred to the Departmental Committee on Finance and National Planning.

That marks the end of Question Time.

STATEMENTS

DELAY IN DISBURSEMENT OF EQUALISATION FUND

**Hon. Speaker:** The first one is by Hon. Paul Katana, Member for Kaloleni.

**Hon. Paul Katana** (Kaloleni, ODM): Thank you, Hon. Speaker. I rise to request for a Statement on disbursement of funds from the Equalisation Fund.

Hon. Speaker, pursuant to Standing Order 44(2) (c), I wish to request for a Statement from the Chairperson of the Budget and Appropriations Committee, regarding disbursement of money from the Equalisation Fund.

Hon. Speaker, Article 204(1) of the Constitution, 2010 establishes an Equalisation Fund into which shall be paid one half per cent of all the revenue collected by the national government each year, calculated on the basis of the most recent audited accounts of revenue received, as approved by this House.

Hon. Speaker, it is worrying to note that for the last three consecutive financial years that is, 2016/2017, 2017/2018 and 2018/2019, funds from the Equalisation Fund have not been disbursed for implementation of projects as contemplated in Article 204 (2) of the Constitution. Funds from the said Fund were only disbursed in one financial year and currently, most projects earmarked in the marginalised areas have stalled or not initiated.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson of the Budget and Appropriations Committee on:

(i) What is the status of disbursement of funds for implementation of projects, as contemplated in Article 204(2) of the Constitution?

(ii) When are the funds expected to be disbursed?

Thank you, Hon. Speaker.

**Hon. Speaker:** Well, I do not see the Chairperson of the Budget and Appropriations Committee. I suppose today being 7<sup>th</sup> November there is something happening within the City of Nairobi. I have heard some of you whisper that he could be in somebody's bedroom. Is the Vice-Chair there? Maybe the Leader of the Majority Party will take up the Statement sought by Hon. Katana, Member for Kaloleni on disbursement of Equalisation Fund together with the Chair of Budget and Appropriations Committee.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, the Bill by Hon. Kamket on Equalisation Fund is ready and we will bring it next week. I will also pass the message to Hon. Ichung'wah because there are people who are in Kibra and they have a stake there. Hon. Speaker, now that we stood for family values and there will be no alteration of the Calendar then next Tuesday we will give a Statement.

**Hon. Speaker:** Hon. Members, before we proceed allow me to recognise the presence in the Public Gallery of pupils from Muhindi Primary School, Gatundu North Constituency, Kiambu County. They are welcome to observe the proceedings in the House this afternoon.

Next Statement is by the Member for Laikipia County, Hon. Waruguru Catherine.

#### DELAY IN DISBURSEMENT OF AFFIRMATIVE ACTION FUND

**Hon. (Ms.) Catherine Waruguru** (Laikipia CWR, JP): Thank you, Hon. Speaker.

Hon. Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Budget and Appropriations Committee regarding delay in disbursement of National Government Affirmative Action Fund.

Hon. Speaker, the National Government Affirmative Action Fund is part of the National Government's design in addressing the plight of vulnerable groups in our society. This is to enhance access to financial resources for socio-economic empowerment among women, youth, people living with disability, needy children and the elderly.

Hon. Speaker, further, it is through the National Government Affirmative Action Fund that many of our young men and women have found a reliable avenue for promoting their enterprises and value addition initiatives. Following the critical role of the affirmative action initiatives in our societies, it is important to ensure timeliness and efficiency in the disbursement of such funds.

Hon. Speaker, it is against this background that I seek a statement from the Chairperson of the Budget and Appropriations Committee on when the National Government Affirmative Action funds meant for the first and second quarters of the 2019/20 Financial Year are expected to be disbursed?

Thank you, Honorable Speaker.

**Hon. Speaker:** Yes, Hon. Omulele.

**Hon. Christopher Omulele** (Luanda, ODM): Hon. Speaker, you have just given direction for a Question that has been asked by my brother and nominated Member, Hon. Korir, to the Kenya Bureau of Standards in regard to substandard or ineffective pharmaceutical products.

Hon. Speaker, the proper body that deals with standards concerning pharmaceuticals is the Pharmacy and Poisons Board. I think that Question will not be effectively dwelt with by the Kenya Bureau of Standards. The proper direction would be that the Question be directed to the Pharmacy and Poisons Board under the Ministry of Health.

**Hon. Speaker:** Fortunately, the Hon. Member had also drawn my attention to that fact. In fact, I had told him to place a request for an intervention but I think he decided to sit on that right. Hon. Keter, you cannot play around with my mind. You either have your card or not because you are not the Member for Baringo. How is it that your card is not showing on intervention?

Hon. Keter proceed.

**Hon. Gideon Keter** (Nominated, JP): Thank you, Hon. Speaker. Due to the notification by my fellow Member that this Question might fall on the wrong body, I would like it to be referred to the Ministry of Health.

**Hon. Speaker:** So, you have agreed with Hon. Omulele that this Question should be referred to the Departmental Committee on Health?

**Hon. Gideon Keter** (Nominated, JP): Yes, because it talks about post-surveillance of pharmaceutical drugs.

**Hon. Speaker:** Yes, that is the policy point you had raised which is what Hon. Omulele has said. Therefore, the Clerk's Office is accordingly directed to refer the Question to the Departmental Committee on Health to deal with.

**Hon. Gideon Keter** (Nominated, JP): Thank you, Hon. Speaker.

**Hon. Speaker:** The Statement by Hon. Waruguru was directed to the Chair of the Budget and Appropriations Committee (BAC), noting the same circumstance with the first one. What I do not know is whether the Chair is going to be ready with the Statement by Tuesday as the Leader of the Majority Party has said. Maybe the Leader of the Majority Party can confirm that also. It is also to the BAC on the release of the National Government Affirmative Action Fund (NGAAF).

**Hon. Aden Duale** (Garissa Township, JP): I think NGAAF is under Hon. Wario. That is the Committee that oversees that Fund. The Chair of the Committee on the National Government Constituencies Development Fund (NG-CDF) is here. The BAC just appropriates. So, Hon. Wario should tell us when the NGAAF will be released because the Cabinet Secretary in charge of that reports to that Committee. The NGAAF comes under the Departmental Committee on Labour and Social Welfare. The Statement will come from the National Treasury to the BAC and maybe if the Statement can be given to me, I will send it to the CS to sign.

**Hon. Speaker:** Just like the other one.

**Hon. Aden Duale** (Garissa Township, JP): We will tell the Chair to read the Statement on Tuesday. The last request for a Statement is by Hon. (Maj) (Rtd.) Bashir Abdullaih, Member for Mandera North.

REQUEST FOR STATEMENT ON NATIONAL POPULATION  
AND HOUSING RESULTS OF 2019 CENSUS

**Hon. Major (Rtd.) Bashir S. Abdullaih** (Mandera North, JP): Thank you, Hon. Speaker. This is a request for Statement on the National Population and Housing results of 2019 Census.

Hon. Speaker, pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Finance and National Planning regarding the National Population and Housing results of 2019 Census recently released by Kenya National Bureau of Statistics (KNBS). The recent figures released by the KNBS have elicited complaints and protests across the country. The statistics do not reflect the findings of a pre-census report released early this year by KNBS, which indicated the various regions as having registered growth.

Hon. Speaker, it is against this background that I seek a Statement from the Chairperson of the Departmental Committee on Finance and National Planning on the following:

1. Could the Kenya National Bureau of Statistics (KNBS) provide the raw data of the census as captured by enumerators across the country and specifically Manderu County?
2. Why has the Director General of KNBS edited the figures as mentioned during the official handover of the results of 2019 Census?
3. Why is there demographic difference between male and female population in Manderu County?
4. Why are there drastic population disparities between the 2009 and 2019 Census despite the population and household growth?

I thank you, Hon. Speaker.

**Hon. Speaker:** The Statement request goes to the Departmental Committee on Finance and National Planning. Hon. Limo is the Chairman. The Vice-Chair is Hon. Ndirangu Waihenya, who represents a constituency in Nairobi and might, therefore, got hypnotised to go into some other place within Nairobi. Again, the burden falls on the Leader of the Majority Party.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, the Chair for Departmental Committee on Finance and National Planning, Hon. Limo was around. I am sure he is not in Kibra. He will also give the Statement maybe next week Thursday. This is a straightforward Statement.

**Hon. Speaker:** Before we move to the next Order, the Leader of the Majority Party will give the Statement.

#### BUSINESS FOR THE WEEK COMMENCING ON 12<sup>TH</sup> TO 14<sup>TH</sup> NOVEMBER 2019

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, pursuant to the provisions of Standing Order 44(2)(a), I rise to give a Statement on behalf of the House Business Committee (HBC) following its meeting held on Tuesday, 5<sup>th</sup> November 2019 and the withdrawal of the Motion on the alteration of the Calendar yesterday. Now we are back to our business next week.

On Tuesday next week, the House will consider the following Reports of the Committee on Delegated Legislation because they have timelines:

- (a) The Annulment of the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 and the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019;
- (b) Annulment of the Public Service Commission Regulations, 2019 (*Legal Notice No. 65 of 2019*).
- (c) Approval of the Value Added Tax (Amendment) Regulations, 2019 (*Legal Notice No. 86 of 2019*).

(d) Annulment of the Private Security (general) Regulations, 2019 (*Legal Notice No. 108 of 2019*), and

(e) Annulment of the Political Parties (Funding) Regulations, 2019 (*Legal Notice No. 143 of 2019*).

We will also consider the following Bills at Second Reading:

1. The Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 45 of 2019) sponsored by Hon. John Mbadi;
2. The Parliamentary Pensions (Amendment) (No.3) Bill (National Assembly Bill No. 57 of 2019) sponsored by Chairperson, Parliamentary Pensions Management Committee;
3. The Competition (Amendment) Bill, 2019; and
4. The Insurance (Amendment) Bill, 2019.

Hon. Speaker, in accordance with the provisions of Standing Order 42A (5) and (6), I wish to convey... Following your direction, I have asked CSs to communicate in writing to the Clerk if they are not available and they are sending their Chief Administrative Secretaries (CASs). So, if a CAS has to appear to answer Questions, the CS must do it in writing to the Clerk so that it becomes formal.

The first CS is the one for Interior and Coordination of National Government. He has confirmed to me that before the end of the day the letter allowing the CAS to appear will be with the Clerk. He has 15 questions by the following Members:

1. Hon. Yegon, MP.
2. Hon. David Sankok, MP.
3. Hon. Alfa Miruka, MP.
4. Hon. Joseph Manje, MP.
5. Hon. Nasri Ibrahim, MP.
6. Hon. Peter Masara, MP.
7. Hon. Sylvanus Maritim, MP.
8. Hon. Moses Injendi, MP.
9. Hon. Halima Mucheke, MP.
10. Hon. Ruweida Obo, MP.
11. Hon. Benjamin Washiali, MP.
12. Hon. Beatrice Nkatha, MP.
13. Hon. Kamoti Mwamkale, MP.
14. Hon. Kawira Mwangaza, MP.
15. Hon. Aduma Owuor, MP.
16. Hon. Tindi Mwale, MP.
17. Hon. Gladwell Cheruiyot, MP, and
18. Hon. John Kanyuithia, MP.

This will be very good because I am sure once we start the live broadcast of Committees, then Members will have an opportunity where their voters and constituents will see the Questions they are asking and CSs answering. I forgot, the last person on the list is Hon. Jones Mlolwa, MP.

The CS for Defence and Foreign Relations will appear before the Departmental Committee on Foreign Affairs on Tuesday, 12<sup>th</sup> November 2019, to answer a Question from Hon. Kubai Iringo.

The CS for Water and Sanitation will appear before the Departmental Committee on Environment and Natural Resources on Tuesday, 12<sup>th</sup> November 2019, to answer Questions from Hon. George Murugara and Hon. Tom Odege.

Lastly, the CS for Environment and Forestry will appear before the Departmental Committee on Environment and Natural Resources on Thursday, 14<sup>th</sup> November 2019, to answer a Question from Hon. Michael Kingi.

Hon. Speaker, the HBC will reconvene on Tuesday, 12<sup>th</sup> November 2019, at the rise of the House to schedule business for the rest of the week. Hon. Ochanda is not here. Members who want to attend the conference next week, please, attend it at the Kenyatta International Convention Centre (KICC). Those who are invited, there is nothing wrong. It is going to be opened by the President. The agenda that was discussed here in the House will not be discussed. The Speaker has been assured by the Cabinet Secretary for the National Treasury. If they come for tea and lunch, please, accord them, but the Chamber is now restricted. We will have our Tuesday afternoon sitting, Wednesday full day sittings and Thursday afternoon sitting.

I now wish to lay this Statement on the Table of the House. The Catholics, Muslims, Protestants, Anglicans and all those who believe in God and who are Republicans by political affiliation and believe in family values, have won.

**Hon. Speaker:** Hon. Wamalwa, you have an intervention.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD – K): Hon. Speaker, I take this opportunity to thank you for the decision. I just got a text message from one of my friends who is a Member of Parliament in America and is a Republican. He has just told me to congratulate you and Hon. Duale for standing up for the family. I did not know that that clip had gone viral. I was just sharing it with Nuncio who is the official ambassador of the Vatican and he was very excited. As Africans, we must stand for family values. I salute you for that and thank Hon. Shamalla because she brought this matter up.

As His Excellency the President said before, this country has a Constitution which we cannot go against. We respect the family. We have no business with issues of gayism, lesbianism and abortion. We are not there. I thank every Kenyan for that. There is freedom of association. We will be there to listen to them. Besides that, we will have some side activities that will be going on at the Holy Family Basilica and the Catholic University of East Africa. You are also invited.

**Hon. Speaker:** I see an intervention from Hon. (Dr.) Eseli.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD – K): I would like to congratulate you and Hon. Duale, the Leader of the Majority Party. I wish we had the same enthusiasm with regard to family values, Christianity and Islam when we are fighting thieves and tribalists. Otherwise, it all sounds like hypocrisy to me.

**Hon. Speaker:** Let us have Hon. Jude Njomo.

**Hon. Jude Njomo** (Kiambu, JP): Thank you, Hon. Speaker. I want to add my voice to this as a Member of the Pan African Parliament.

It is very clear that this meeting was destined for Africa for particular reasons. It is only the African continent that has a positive population growth. All the other continents are declining. It is only in Africa where lesbian, gay, bisexual and transgender (LGBTQ) and all those businesses are not appreciated. We do not even have a vocabulary for it. Those people are trying to bring a meeting here so that we can start talking about it. As we talk about it, we think it is becoming easier and easier. They want to make it a habit. It is abhorred by our culture. We do not have a place for it. We should not appreciate it at all. I ask the Members of Parliament who will go for those meetings to make it clear that there is no room in Kenya or Africa for gayism. There is no room.

Secondly...

**Hon. Speaker:** Sorry. There is no debate on this, Hon. Jude Njomo. I thought it was an intervention as if something was out of order.

**Hon. Jude Njomo** (Kiambu, JP): I just wanted to enlighten the Members.



**Hon. Speaker:** No need. They are very enlightened. Anybody you see walking through that door getting into this hallowed Chamber is very enlightened. Those that brought them here know that the person is very enlightened. Let us just leave it there. Thank you for your comments.

Next Order.

## CONSIDERATION OF REPORT AND THIRD READING

### THE DATA PROTECTION BILL

#### *Re-committal of Clause 25*

*(Several Hon. Members walked into the Chamber)*

**Hon. Speaker:** You can take a seat near there so that we conclude business. Very well, Hon. Members.

Not many Members look at the Order Paper because it is not on paper. You can still get it through your tablets. What I am holding is available on the tablet before you.

The issue I want Members to understand is that the Question is to be put for agreement with the Committee of the whole House but there is a proposed amendment for re-committal. Therefore, I want to first put the Question for agreement to the proposed amendment for re-committal. If that is carried, the House will go into the Committee of the whole House after which we will go back to the whole House for agreement. I hope every Member is fully enlightened on the first Question.

*(Question put and negatived)*

The proposed amendment is defeated. Therefore, that having been lost, the House takes a decision. We now revert to the original Motion.

*(Original Motion resumed)*

**Hon. Aden Duale** (Garissa Township, JP): Hon. Speaker, even the owner of the re-committal is not in the House. Hon. Osotsi is in Kibra. It is good that it has suffered that fate. The owner is not here.

Hon. Speaker, I beg to move that the Data Protection Bill (National Assembly Bill No.44 of 2019) be now read the Third Time. I also request the Chair of the Departmental Committee on Communication, Information and Innovation, Hon. Kisang, to second.

**Hon. William Kisang** (Marakwet West, JP): Hon. Speaker, I take this opportunity to second and thank all the Members of my Committee and all those who contributed to this Bill.

I beg to second.

**Hon. Speaker:** Let me just repeat as I have said in the recent past. I also congratulate all the Members that remained in the House during the Committee of the whole House to consider the various proposals contained in this Bill. If everybody has read through the Bill, they would understand its importance and would have been around. I have requested the media to now

concentrate more on the business transacted when the House resolves into the Committee of the whole House because that is the time when we make laws. The Second Reading is debate where Members give intentions of what they propose to amend later. The actual business of making the law is when the House resolves into Committee of the whole House.

*(Question proposed)*

Sorry, Hon. Members. I have just proposed the Question. Maybe there are Members who desire to make comments.

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

**Hon. Speaker:** Can I put the Question?

**Hon. Members:** Yes.

**Hon. Speaker:** Very well. I have already confirmed through the Clerks-at-the-Table that the House has quorum as it is required by the Constitution.

*(Question put and agreed to)*

*(The Bill was accordingly read the Third Time and passed)*

**Hon. Speaker:** Next Order.

## MOTION

### RATIFICATION OF AGREEMENT BETWEEN KENYA AND SOUTH AFRICA ON DEFENCE CO-OPERATION

THAT, this House adopts the Report of the Departmental Committee on Defence and Foreign Relations on its consideration of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation, laid on the Table of the House on Wednesday, 16<sup>th</sup> October 2019, and pursuant to Section 8 of the Treaty Making and Ratification Act, 2012 approves the ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa.

*(Hon. Katoo ole Metito on 5.11.2019)*

*(Resumption of Debate interrupted on 6.11.2019)*

**Hon. Speaker:** Who was on the Floor?

*(Hon. Speaker consulted the Clerks-at-the-Table)*

*(Hon. Vincent Tuwei spoke off record)*

Hon. Members, the HANSARD record differs with what I have heard the Member for Mosop whisper. It shows that Hon. Katoo ole Metito, who is the Chair of the Departmental Committee on Defence and Foreign Relations, moved the Motion and was seconded by Hon. Peter Mwathi, Member for Limuru. The Question was proposed. Then, a Member rose in his place claiming that there was no quorum and, indeed, it was not realised. So, any other Member is at liberty to contribute to this Motion. If I go by what is on the screen here, the Member for Tharaka is on top.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Speaker. I rise to support the Motion which is before the House on the Ratification of the Agreement between the Government of the Republic of Kenya and the Government of the Republic of South Africa on Defence Co-operation. This Agreement is very important for this country in security matters. We have to co-operate with other nations at all times on matters that touch on security and safety of our country, and especially on defence.

It is very important for the country and the citizens to note that ratification of international agreements do not make them automatically enforceable in the country as law, even if they are ratified by our Government. They take the force of law once they are brought into this House. The House debates them and approves that they should be ratified to become part and parcel of our international treaties. This is what is happening here. Kenya and South Africa have entered into an agreement to co-operate on defence matters. This is the reason this House was asked to ratify this Agreement. In view of the importance of this Agreement and what this House has to do, I support the Motion and urge the House to adopt it.

Thank you.

**Hon. Speaker:** Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Speaker. I rise to support the Motion. I am aware that negotiations on defence co-operation have been going on since 2007. It was re-signed by South Africa in February 2019. I was assured by the Departmental Committee on Defence and Foreign Relations that the issues and reservations that the Government of the Republic of Kenya had were addressed.

With those few remarks, I support the Motion.

**Hon. Speaker:** Member for Nyando.

**Hon. Jared Okelo** (Nyando, ODM): I thank you, Hon. Speaker. I am here to support the adoption of this Motion. It is true the new world challenge today is security with the emergence of indoctrinated groupings such as *Al Qaeda*, *Al Shabaab* and many others. Considering that South Africa operates on a larger economic pie than us, this ratification on defence co-operation will go a long way to address these emerging challenges.

I thank you, Hon. Speaker. I support the Motion.

**Hon. Speaker:** Member for Sotik.

**Hon. Dominic Koskei** (Sotik, JP): Thank you very much, Hon. Speaker. I also rise to support the Motion. The world is changing a lot. The Motion comes in handy in that perspective to look at what is happening around the world.

I support the Motion. Thank you very much.

**Hon. Speaker:** Member for Kiminini.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Speaker. I rise to support this Motion. It is important to know that any international treaty or agreement that Kenya is part and parcel of must be ratified by this House for it to enjoy the full force of law. Many international treaties or agreements take too long to come to this House for ratification. So, it is my humble request that the Executive - I am sure they are listening - expedites their ratification, so that after they are signed, they do not take long to be brought to this House.

For instance, this Agreement will add a lot of value in the improvement of defence. There will be technological transfer and benchmarking. We know that South Africa has an advantage that Kenya can learn from. I am requesting the Members to support this Motion. It seems that everyone is supporting it. If possible, we can move to the next business.

I thank you, Hon. Speaker. I support the Motion.

**Hon. Speaker:** You have spoken for one minute and seven seconds. Member for Kirinyaga Central.

**Hon. Munene Wambugu** (Kirinyaga Central, JP): Thank you, Hon. Speaker for giving me this chance to add my voice to support this important Motion. We all know that security and defence matters are very important to the country. It is always important for countries to talk and have bilateral agreements.

With those very few remarks, it is really important for us to ratify this Agreement. I support it. Thank you.

**Hon. Speaker:** You have spoken for 25 seconds. Member for Mwingi West.

**Hon. Charles Nguna** (Mwingi West, WDM-K): Thank you, Hon. Speaker for giving me the opportunity to support this Motion. I have noted that the ratification of this Agreement is very important when it comes to technological transfer and benchmarking. We have been facing a lot of insecurity challenges which are mainly caused by our neighbouring countries. By ratifying this Agreement between Kenya and South Africa, which has more technological advancement than us, we will benefit more.

We have many agreements that need to be passed. I request the Cabinet Secretaries and the relevant committees to make sure that these agreements are expedited for the benefit of our country and other bilateral agreements.

Thank you very much, Hon. Speaker. With those few remarks, I support the Motion.

**Hon. Speaker:** You have spoken for 57 seconds. I expect that Members have read the Report. However, it looks like we are speaking generally. In Kiswahili, they say “*mazungumzo baada ya habari*”. Proceed, Member for Lamu.

**Hon. (Ms.) Ruweida Obo** (Lamu CWR, JP): Asante Mhe. Spika. Naunga mkono. Usalama ni muhimu. Tushirikiane tusonge mbele.

Mbali na kule South Africa, hapa Kenya ukosefu wa usalama unachangia mambo mengine ambayo hayatusaidii. Kwa mfano, kwenye shughuli ya kuhesabu watu, wakazi wa Lamu tumeathirika sana kwa sababu ya hali mbaya ya usalama. Maafisa wahusika hawakuenda kuhesabu watu katika sehemu nyingine wakihofia usalama wao. Hivyo basi, watu wa Lamu County tunaonekana kuwa wachache. Tuko wengi lakini kwa sababu ya ukosefu wa usalama maafisa wahusika hawakuenda katika sehemu za Msitu wa Boni kama vile Sadan na Vumbe kuhesabu watu. Kuna sehemu nyingi ambazo watu huenda mashambani kulima. Maafisa wa *census* hawakufika huko kuwahesabu watu. Kisha wakasema watu wa Lamu ni wachache zaidi Kenya. Hiyo inaenda kutuathiri sana. Kihistoria, Lamu tumekuwa na maeneo Bunge mawili. Tunatishiwa na hiki kiwango cha watu. Tuko taabani na matatizo mengi. Hayo maeneo Bunge mawili yakiondolewa, itatuathiri zaidi.

Ni muhimu kuunga usalama mkono. Asante.

**Hon. Speaker:** Afrika Kusini wanakuja kutusaidia kuhesabu watu?

*(Laughter)*

Hoja hii haina mambo hayo. Member for Mathioya.

**Hon. Peter Kimaru** (Mathioya, JP): Thank you, Hon. Speaker, for giving me a chance to speak on this Motion. I rise to support.

Collaborations and agreements between nations on security, information technology and in particular defence training, are critical to any nation. Kenya in the past has been involved with many other countries. We have had agreements with the British Army, Americans and our military access training to get more advanced technologies. In a changing world where security is extremely critical, it is important for nations to continue collaborating. Kenya has been at the forefront even in peace keeping missions across the world. We want to see a transformed world that is moving in the same direction.

With those remarks, I support.

**Hon. Speaker:** You have one minute and five seconds, Member for Ainabkoi.

**Hon. William Chepkut** (Ainabkoi, Independent): Hon. Speaker, I rise to support. With a lot of humility, I urge the Members that we move with speed since defence is key in any Government. An ICT platform, infrastructure, globalisation and training are key. South Africa is number one in Africa, and we are number two in ICT infrastructure.

*(An Hon. Member spoke off record)*

**Hon. William Chepkut** (Ainabkoi, Independent): Hon. Speaker, that is my statement. The Member can Google it. The great Socrates once said that true wisdom is in knowing that you know nothing. Therefore, let us not volunteer information. Instead, let us learn more than we volunteer.

I support with a lot of speed.

**Hon. Speaker:** One minute ten seconds. Hon. Members, I still see requests. I do not know how much you can say in 25 seconds.

Member for Kilifi North.

**Hon. Owen Baya** (Kilifi North, ODM): Hon. Speaker, I also support this Motion. The way the world is moving, there is need to have defence and security, so that the world is brought together and people can co-ordinate in many things. Coordinating and working together with South Africa gives this country an edge in security. Kenya is faced with a lot of security challenges emanating from the activities of *Al Shabaab*, Islamic State of Iraq and Syria (ISIS) and other terrorist groups. All these things give the world a problem and can only be won when we work together within the African Continent.

In that spirit, I also want to support, with speed, like my brother, Hon. Chepkut.

**Hon. Speaker:** Forty six seconds. Hon. Members, let me refresh your memory about a Motion you passed here on 13<sup>th</sup> February 2019, which is based on the provisions of Standing Order 97. That Motion reads as follows: -

THAT, notwithstanding the provisions of Standing Order 97(4), each speech in a debate on any Motion, including a Special Motion (those who may want to know what a Special Motion is, refer to Standing Order 66) shall be limited in the following manner:

A maximum of three hours with not more than twenty (20) minutes for the Mover and ten (10) minutes for each other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each and that ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and that priority in speaking shall be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Departmental Committee, in that order.

That was your own resolution on 13<sup>th</sup> February 2019. So, 10 minutes. That is why I am pointing out when you speak for 25 seconds. I thought you had forgotten that resolution.

The next Member on the list is Hon. Tuwei, Member for Mosop.

**Hon. Vincent Tuwei** (Mosop, JP): Thank you very much, Hon. Speaker. I am a Member of the Departmental Committee on Defence and Foreign Relations. The ratification of this treaty will be of great importance to this nation because the *modus operandi* of foreign military force giving a framework of how the host nation can undertake the relationship between the two. The treaty is concerned about the rights of citizens from the foreign force.

South Africa and Kenya have a cooperation that we all cherish. Recently, we saw how South Africa divers came in handy to help us when we had the tragedy of the ferry incident. We saw South Africa expertise, knowledge and skills that we wish to have transferred to us through this treaty.

This treaty will also give us the opportunity to know how to dispose military ware or fire force. If, today, a foreign country is given the opportunity to be in Kenya, they must be governed by the laws of this country in their undertakings. Therefore, this treaty recognises that we must respect the laws of the hosting country.

It gives the opportunity for every mission the military will undertake to be gazetted. They must be given a specific area of operation to avoid issues where military forces from outside, through exchange programmes, undertake their own military trainings and eventually leave dangerous weapons in a given area. Therefore, the Agreement ratifies that for any joint operation or singular by an accepted foreign military force must have a gazetted area. The said Treaty also provides a framework within which compensations have to be made and liabilities borne. There are liabilities to be borne by the hosting country and there are some to be undertaken by the foreign military that has been given permission to join in any operation. In Kenya, as we know it, we have challenges to do with *Al-Shabaab*. We have technological issues to address. We are now trying to upscale and modernise our forces. Most of our officers who are flying our military jets are trained in South Africa. Transfer of skills and joint practices will enhance this country's expertise. In the military world, it is training that enhances an officer's skills and workmanship.

Lastly, technologies are also changing. We use various technologies in the military to safeguard our security and to protect our borders and waters. Those who use modern technologies like satellites also come in handy. As a developing country, we found that this Treaty will be of help to us, especially now that we are going through modernisation. We thank the ministry so far. This issue has gone through public participation, got assent from the President through the Cabinet. We are now on the final stage of making it enforced through this Parliament.

As a Member of the Departmental Committee on Defence and Foreign Relations, I request my colleagues to note that for us to improve our forces and improve in all spheres of our power, we must co-operate with the nations which have gone ahead in technology.

With these few remarks, I support.

**Hon. Speaker:** It is not that I have not noticed that you used five minutes. The Member for Kwanza, you have the Floor.

**Hon. Ferdinand Wanyonyi** (Kwanza, FORD-K): Hon. Speaker, I rise to support this Motion. I wish to remind the House that South Africa and Kenya have had a long history of technological co-operation. I can remember because I read the history of this country that South Africans trekked all the way and ended up into my county of Trans-Nzoia. That is where they landed. I think that is the farthest they went towards the north. Of course, they started farming there. Most of the farming technology came from South Africa.

As my colleague has just mentioned, we had a problem in Mombasa where we were unable to retrieve bodies from the ocean for almost two weeks. We had to get assistance from South Africa. That means we cannot shy away from the fact that South Africa is technologically more advanced than us. Therefore, exchange in this programme is timely. I think it is upon us as a House to ratify this agreement. That will assist us to look at our current status in technology and awareness. I am aware some people have trained in South Africa in terms of military advancement. I know of somebody from my area, in fact, a relative, who has been in South Africa for almost four years and he is now based in Eastleigh. It is timely for us to ratify this Treaty, so that we can advance. Given the fact that Kenya is one of the fastest growing countries in technology, pairing with South Africa will be the right thing to do in order to move forward. We cannot advance in isolation. Picking on a country that is on this continent is a good thing to do. I want us to ratify this Agreement, so that it can take effect as soon as possible.

I support.

**Hon. Speaker:** Let us hear Hon. Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Thank you, Hon. Speaker. I too rise to support this Motion. I think it is important that the law provides that all treaties pass through Parliament, so that the voice of the people of Kenya can be heard in whatever treaties we may engage with as a nation.

We know the world is becoming a global village. It is now a global village. We all need each other to advance and learn from each other. Looking at the partnership between Kenya and South Africa, which is way ahead in terms of economy and technology, it is important for us to have this partnership, so that we can gain from them. I also believe South Africa has a lot to learn from Kenya. If you are to look at it seriously, in terms of real engagement out there, in the AU and Somalia, I think Kenya has more experience than South Africa. Therefore, there will be lessons learnt and best practices that they can exchange. Because of the sensitivity of that partnership, it is important that there are clearly laid down regulations and rules that must be followed, so that we do not end up in an engagement that can cause conflict between two very friendly nations.

In the implementation of this Treaty, I hope we will see better performance and a better running of our defence systems as a nation. We have seen that, even in terms of fighting terrorism, we have really advanced. We have better trained security officers who know how to engage and how to respond fast to such situations. We had the experience of the Dusit Hotel attack that happened just the other day and the way they responded showed that we are better trained and more equipped to deal with such situations than we were during the Westgate attack.

I hope that this engagement will make things better for our officers here in Kenya and even learn from experiences in South Africa which may not be having challenges like we have of terrorism. Obviously, they will also learn a few things because you never know about tomorrow as terrorism continues to spread across the globe.

With those few remarks, I beg to support.

**Hon. Speaker:** Hon. Mutavi, you have the Floor.

**Hon. Charles Kilonzo** (Yatta, Independent): Thank you, Hon. Speaker. As a Member of the Committee, I can state that we did a thorough study on the Defence Agreement between Kenya and South Africa. Defence agreements are very important to any country. They, among other things, enable transfer of knowledge, capacity building and sharing of information. This is not the first agreement this country has entered into. To mention but a few, we have an agreement with the East African Defence Protocol, the Western Indian Ocean Maritime Agreement and agreements with Denmark, the United Kingdom, among others. All these agreements are two-way. They are for the benefit of the signatory countries.

The Committee confirmed that the Attorney-General had reviewed the agreement and gave his approval. So, in terms of issues of legality, it does not contradict any of our laws.

On the benefits, South Africa is a regional economic and military power. Kenya is an economic power on the East African side. We also invest heavily in our defence forces. One of the objectives of this Agreement is to counter-piracy and other maritime safety activities. We know that on the war against drugs and piracy, nations must cooperate. On the war against terror, countries must put their resources together. So, one of the main objectives of this Agreement is to fight those wars.

Again, if we are to say this is a middle income economy, we must also industrialise. One of the objectives of this Agreement is to encourage and facilitate industrial cooperation between respective industries in the two countries in the fields of defence and related research development and procurement of defence equipment. We are looking at a situation where in some years to come, not far from now, this country must be able to manufacture its own basic equipment like armoured vehicles and ships.

Another benefit of this Agreement is exchange of military information and development of security training. So, without repeating what other Members have said, I urge this House to support the ratification of this Agreement because it is for the benefit of this great nation.

I support.

**Hon. Speaker:** Let us now hear the Member for Central Imenti.

**Hon. Moses Kirima** (Central Imenti, JP): Thank you, Hon. Speaker. I support the Motion as it is. This Motion deals with the relationship between Kenya and South Africa militarily. As it is, Kenya is a developing country. It is a third world country compared to South Africa, which is advanced militarily, economically and technologically.

There will be many advantages if Kenya relates with South Africa military-wise. If we ratify the Agreement that is before this House, we will gain a lot. Military-wise, South Africa has advanced. It can be equated to first world countries. Militarily, South Africa is a nuclear country and we are far from that. On advanced training, there are some conflicting reports that the divers who came to assist us in Likoni to retrieve the bodies and the vehicle that fell into the ocean were trained at the Kenya Navy Mtongwe Base in Mombasa. They were South African divers trained in Kenya. After getting the basic training here, they went to South Africa and advanced their training. That is why they were able to come and assist us. That means that we have basic knowledge, but how to advance it is the problem. If we have a relationship with South Africa, we will be able to advance this basic knowledge.

This Agreement is well articulated. It gives each partner country a responsibility of what it is supposed to do in case of any eventuality when they relate. For example, on medical facilities, in case South African personnel are in Kenya and they incur some injuries, it is



articulated that the mother country will take care of its personnel. So, South Africa will take care of its personnel and Kenya will do the same to her personnel. In the Agreement, we do not expect the Kenya military personnel to establish camps in South Africa. However, we expect South Africans to come and establish some military camps in Kenya because we are behind them in military advancement. If they establish military training camps in Kenya, we will gain a lot economically, medically, militarily and agriculturally. The personnel that will be in Kenya will enjoy what we have here in terms of agricultural products.

If you look at the Agreement thoroughly, Kenya is meant to gain. For example, when we have a problem in our maritime field, like we have a problem along our coast with Somalia, the Agreement says that at some stage, we can have agreements that will involve South Africans in our own issues. Therefore, this Agreement is to the advantage of Kenya.

I support it.

**Hon. Speaker:** Very well. There being no other request to contribute, the only request that is there is by a Member who has already spoken, namely, the Member for Kirinyaga Central, I hereby call upon the Mover to reply. Hon. Mwathi, you are the one to reply on behalf of the Committee. Proceed.

**Hon. Peter Mwathi** (Limuru, JP): Thank you, Hon. Speaker. I rise to reply. I thank all the Members for the overwhelming support they have given to this Agreement in terms of the provisions that are contained herein. That means that they really care about the security of this nation. They want our forces to advance, exchange information and do capacity building with our partners, South Africa. I want to echo the sentiments of Hon. Mbarire that we will also learn from our forces on what they are better off than South African forces.

Just like I said when I seconded this Motion, it is important for the Members to know that this Motion was subjected to public participation. It was advertised in two local dailies. We never received any memorandum from the public. That means that if there were issues, they would have come through. So, even as we pass and ratify this Agreement, we are sure that the public saw it and it had nothing to say in terms of any issues it would have raised.

We also engaged the Cabinet Secretary. She came and gave us her insights on the Agreement and why they came up with it. The nation requires some expertise that South Africa has. I want to remind the Members that it is only the other day that South Africans assisted us at the Likoni Ferry incident. They came in handy. I am sure we will learn something from them once we have the Agreement in place. We also engaged defence experts from the Ministry of Defence, who looked at the 15 Articles and told us that all the areas that were provided for in that Agreement are water tight and beneficial to the nations. We engaged the Attorney-General who had gone through the Agreement and told us that it largely complies with what we have in our statutes and our supreme law; the Constitution.

I want to allay some fears that probably we are entering into an Agreement that is going to cost us in terms of finances. It is important for the Members to know that none of the nations will use their finances to finance the other nation. So, we shall finance our own forces and South Africa will do the same for their forces. It is also important to know that this five-year Agreement allows for a renewal after five years. There is an exit clause. If any nation will feel that they need to leave after the five years, they can use that clause. But for the five years, I want to imagine the wisdom of the ones who crafted and put it intact, so that members are able to exchange and transfer knowledge between the two nations. So, the five years marriage of that agreement will then result in benefits to our troops.

It is also important to mention one aspect. We know soldiers from South Africa may come here. In our laws, we provide for capital punishment while in South Africa they do not provide for that. In this agreement, we have two ways of dealing with those who are found culpable and are residents or soldiers of South Africa. We try them here but do not go the route of capital punishment. If we would find it difficult, then we have agreed that we shall repatriate those back to their country to be tried under their law. But it is agreed generally that most of the parts of the statute of South Africa, other than that one, in defence and military operation, are similar.

Members have spoken about the challenges we have. The sophistication of crime that is happening around the world, issues of terrorism, issues of Al Shabaab and piracy, which South Africa had already started addressing in their maritime boundaries as at now. We anticipate benefiting largely from what the South Africans are doing in that area.

Hon. Speaker, without taking much time, as I thank Members once more, I ask them, as the question is being put, let us ratify this agreement for the benefit of our troops.

With those many remarks, I beg to reply.

**Hon. Speaker:** I keep to the provisions of Article 121 of the Constitution. We may not be able to put the question. So, we will defer putting of the question and move to the next order.

*(Putting of the Question deferred)*

## MOTION

ANNULMENT OF RETIREMENT BENEFITS (OCCUPATIONAL RETIREMENT BENEFITS SCHEMES)  
(AMENDMENT) REGULATIONS AND INSURANCE (MOTOR VEHICLE THIRD PARTY RISKS)  
(CERTIFICATE OF INSURANCE) (AMENDMENT) RULES

**Hon. Speaker:** The Chairperson or representative or the Vice-Chair. Hon. Murugara.

**Hon. George Gitonga** (Tharaka, JP): Thank you, Hon. Speaker. I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 (Legal Notice No.88 of 2019) and the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (Legal Notice No.92 of 2019), laid on the Table of the House on Wednesday, 2<sup>nd</sup> October 2019, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b), annuls in entirety—

- (i) The Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations, 2019 (Legal Notice No.88 of 2019); and
- (ii) The Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (Legal Notice No.92 of 2019).

The Committee on Delegated Legislation is established pursuant to provisions of Standing Order 210, with the power to scrutinise all statutory instruments that are submitted to the House and certify and ensure that those instruments comply with the Constitution and/or other applicable laws. The Committee is expected to consider in respect of any statutory instrument whether it is in accordance with the provisions of the Constitution, the parent Act pursuant to which it is made or other relevant laws. Standing Order 210(3) and Section 13 of the

Statutory Instruments Act further provide that scrutiny of any published instrument shall be guided by the principles of good governance, rule of law and various considerations such as any defects in drafting, expenditure from the Consolidated Fund and other public revenue, unjustifiable delay in publishing or laying the instrument before parliament, among others.

Today, it is important for this Committee to state what it has done. It is considered that the work of the Committee is to annul statutory instruments when they come before the House, which is not the case. So far, out of the 74 instruments submitted in this Session, we have approved 25 of them, 38 are under consideration and we have recommended that seven be annulled, four of which have already been annulled so far. I wish to observe that in the recent months, we have witnessed an upsurge in submission of statutory instruments to the House. This is a clear indication that the Executive has finally woken up to the realisation of Parliament's important role in the oversight of statutory instruments. It goes without emphasising that all the statutory instruments that have been brought by the Executive to the House must be considered and scrutinised to either be approved or annulled.

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

*[The Temporary Deputy Speaker  
(Hon. Patrick Mariru) took the Chair]*

On the 21<sup>st</sup> June 2019 and on the 2<sup>nd</sup> July 2019, the Principal Secretary for the National Treasury and Planning submitted a total of 14 pieces of legislation, being statutory instruments, relating to the 2019/2020 Financial Year. These were actually in the Budget and they were tabled before the National Assembly. The regulations were subsequently committed to the Committee on Delegated Legislation on 21<sup>st</sup> June and the 4<sup>th</sup> July 2019. I do emphasise that the Committee, pursuant to its mandate, scrutinised all those 14 pieces of legislation and pursuant to the law that the Committee works under, specifically Section 16 of the Statutory Instruments Act, decisions were made on those 14 pieces of legislation. For the information of the House, the following were the regulations that were approved:

- (a) The Insurance (Valuation of Technical Provisions) Regulation.
- (b) The Insurance (Capital Adequacy) (Amendment) Guidelines.
- (c) The Tax Procedures (Unassembled Motor Vehicles and Trailers) Regulations;
- (d) The Miscellaneous Fees and Levies (Forms) Regulations.
- (e) The Value Added Tax (Amendment) Regulations of 2019.
- (f) The Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) Regulations.
- (g) The Retirement Benefits (Individual Retirement Benefits Schemes).
- (h) The Public Finance Management (National Government) (Amendment) Regulations.
- (i) The Insurance (Policy Holders Compensation Fund) (Amendment) Regulations.
- (j) The Insurance (Amendment) Regulations 2019.
- (k) The Excise Duty (Amendment) Regulations 2019, and
- (l) The Capital Markets Securities (Public Offers) (Listings and Disclosures) (Amendment) Regulations, 2019.

Pursuant to Section 16 of the Act, the Committee held a meeting with the regulation-making authority on the 19<sup>th</sup> of August 2019 in Mombasa, where the regulation-making authority made a presentation to the Committee on the proposed changes in the various regulations.

It is important that I move that we now consider the Report on the Retirement Benefits (Occupational Retirement Benefits Schemes) (Amendment) Regulations of 2019. These regulations were made pursuant to Section 55 of the Retirement Benefits Act (No.3 of 1997). The Regulations were published in the Kenya Gazette via Legal Notice No.88 of 2009 on 13<sup>th</sup> June, 2019. They were received by the Clerk of this House on 21<sup>st</sup> June, 2019 and Tabled on 21<sup>st</sup> June, 2019. The purpose of the Regulations, briefly, was to expand the requirements of the content of the Schemes Rules to include distribution of reserve funds to existing members, where the Scheme maintains a Reserved Fund. This is where a Scheme has a Reserve Fund, part of which can be distributed to the Members in accordance with Rules and Regulations of that Scheme.

Two, Regulation (19)(5)(a) of the Principle Regulations allows a person who opts out to retire early to access his or her own contribution and 50 per cent of the employer's contribution. The investment income that has accrued in respect of those contributions where he or she is a Member of a defined contribution, the amendment now seeks to delete those benefits to a person opting to retire early.

We received a Memorandum (an explanatory Memorandum). Thereafter, we received another one from Mr. Eliud Ogotu addressed to the Committee for consideration of the objections to the Regulations. He observed that the amendment would deny him access to the investment income accrued from his own contributions which, in essence, means he has contributed to the Scheme and is being denied the use of his own funds. He also made a complaint that there was no adequate public participation regarding the Regulations. The Members weighed the pros and cons and the impact of the amendment with some supporting while others expressing concerns that the amendments would frustrate members of pension schemes who wish to exit and use their contributions to increase their income or sustain themselves in the absence of any other source of income.

Again, we laid emphasis to the fact that the purpose of benefit schemes is to ensure that the contributor is comfortable at all times. The comfort must also be enjoyed during the lifetime of a contributor. There would be little point in contributing purely to die and leave behind the contributions to be enjoyed by the beneficiaries. The Committee's observations were as follows:

- (i) The Regulations were submitted to the National Assembly in time;
- (ii) The Regulations failed to demonstrate sufficient public participation contrary to Articles 10 and 118 of the Constitution and Section 5 and 5(a) of the Statutory Instruments Act on the Regulations;
- (iii) There was a complaint through a Memorandum which was addressed by Mr. Ogotu to the House. Mr. Ogotu is a lawyer and a member of Stanbic Kenya Retirement Benefits Scheme detailing lack of public participation – and the Committee upheld that objection;
- (iv) That the Regulations were likely to impose significant costs on the person who may opt to retire early because they would not be accessing their money;
- (v) Contrary to Section 13(k) of the Statutory Instruments Act, the Regulations make rights, liberties and obligation duly dependent upon non-reviewable decisions. These are decisions by authorities on who we have no control over; and when those decisions are made, they are actually binding. That is to the detriment of the contributors; and,
- (vi) Contrary to Section 13(m) of the Act, the Regulations make rights, liberties or obligation on newly independent insufficiently defined administrative powers as most of those decisions would be by the Pension Fund Managers. These are actually the controllers of the contributions.

Having considered all that, the Committee thus arrived at a decision which we will now communicate to this House under the various relevant laws. That the House annuls in its entirety the said statutory instruments because of the following reasons:

(i) Insufficient public participation. This is a very vital factor while considering these instruments;

(ii) These Regulations were not accompanied by a Regulatory Impact Statement as required by Sections 6, 7 and 8 of the Act which should have been notified in the Gazette and a newspaper likely to be read by members of various occupational retirement benefits schemes under the Act as required by the Statutory Instrument Act; and,

(iii) Contrary to Section 13(k) of the Statutory Instruments Act, these Regulations make rights, liberties and obligations duly dependent upon the decisions we have said.

In view of all the reasons we have given, I urge the House to agree with this Report and annul these Regulations in their entirety.

Hon. Temporary Deputy Speaker, allow me to briefly comment on the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (Legal Notice No. 92 of 2019). The essence of these Regulations which were made by The Cabinet Secretary for the National Treasury, pursuant to Section 18 of The Insurance (Motor Vehicles Third Party Risks Act)... They were published on 13<sup>th</sup> June, 2019, received in the House on 21<sup>st</sup> June, 2019 and tabled the same day within the timelines of the Statutory Instruments Act, Section 11(1).

The purpose of the Regulation was to provide for insurance of motor vehicles used by fare-paying passengers such as *matatus*, buses, taxis, private and public hire and the self-driven vehicles. Rule 3(1)(d) provides for insurance of motorcycles and motorised three-wheeled used for social, domestic and leisure purposes. In essence, fare-paying passengers on *boda bodas* and *Tuk Tuks* must be insured. Currently, motor vehicles such as *boda bodas* and *Tuk Tuks* are the preferred mode of transport especially for low income citizens. It is a very important mode of transport which is actually endorsed in all parts of the country.

There has been a high rate of accidents occasioned by *boda bodas*, thus leaving the injured fare-paying passengers with no recourse or access to medical services. That is a very important observation. This is because once you get injured on a *boda boda* or on a *Tuk Tuk*, you are likely to bear your own medical expenses if you survive the incident.

The most important issues that came up when we scrutinised these Instruments were, first and foremost, the lack of adequate public participation. The consumers of these particular Regulations are actually the same people the Regulations are seeking to assist. These are the *boda boda* riders together with the one million passengers and the *Tuk Tuks* with their passengers. Having examined these Regulations, and the extent of public participation, the Committee was not satisfied that this was actually adequate. As a result, and even on that point alone, this Committee recommends to this House that the Insurance (Motor Vehicles Third Party Risks) (Certificate of Insurance) (Amendment) Rules, 2019 (Legal Notice No.92 of 2019), do offend the Constitution of Kenya, the Interpretation and General Provisions Act, the Insurance (Motor Vehicles Third Party Risks) and finally, the Statutory Instruments Act. As a result of that, this Committee recommends that the House annuls in entirety the said Regulations for failing to demonstrate that sufficient public participation was undertaken and that offends both the Constitution and the Statutory Instruments Act.

Hon. Temporary Deputy Speaker, allow me, as I conclude, to acknowledge the tireless efforts of the Members of the Committee on Delegated Legislation. This is demonstrated by the fact that this Committee has been meeting regularly, has been scrutinising these instruments and

we have been bringing our reports to the House in a very timeous manner and for that, I thank all the Hon. Members and the secretariat. As I have said, I am honoured and humbled to be a member of this Committee.

Hon. Temporary Deputy Speaker, I beg to move and request Hon. Jennifer Shamalla to second the Motion. Thank you, Hon. Temporary Deputy Speaker.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second the Motion to adopt the Report on the annulment of these two legal notices herein before mentioned by Hon. George Murugara.

Very shortly and not to belabour the point, I wish to state that with regards to the retirement benefits, these are a social security network. They are a network that is akin to food security and even national security. It is owed to those who, while working, have diligently kept their part of the bargain and under various benefits schemes and while working for the employer. So, it stands to reason that the employer too must keep their part of the bargain. Indeed, in the presentation made by Eliud Oguto before the Committee on Delegated Legislation, it was clear that an amendment to unreasonably withhold contributions made by an employee even after that employee has opted to retire would be an injustice to that employee.

Furthermore, not to engage in public participation which has been a continuous oversight with regards to the various statutory instruments that have been brought to us is really going against the national values and principles as spelt out in Article 10 of the Constitution of this country. It is for these reasons that I second that the Committee do annul in its entirety these statutory instruments.

Also with regards to the crucial issue of *boda bodas* and *Tuk Tuk* business, we recognise as Members of Parliament and representatives of the people that, indeed, they must be regulated not only for the sake of the driver and the investor, but also for the fare-paying passenger.

However, any attempt to do this without the engagement of the crucial stakeholders is really unacceptable. The Committee noticed that, indeed, it was only one county, the County of Kiambu, that had engaged in some sort of consultations.

It is for these few remarks that I want to recognise and appreciate the fact that if regulations are not done in accordance with the Statutory Instruments Act, then we are left with no option but to recommend annulment.

With these few remarks, I second.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Members! It is very important what Hon. Murugara indicated earlier about the statistics of the instruments that have been considered and annulled and others passed because it is important for the House to have that information.

*(Question proposed)*

Hon. Members, there seems to be only two Members who are keen to speak to this. From my screen here, we have Hon. Seroney and Hon. Wambugu. I guess any other Member who would like to speak to this would register that interest.

Shall we start with Hon. Seroney?

**Hon. Sammy Seroney** (Nominated, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to speak to this Motion. I stand here as a member of the Committee on Delegated Legislation. I sincerely thank you to have allowed me to serve in this Committee because initially, I thought that this Committee was a dumping ground and I did not

like it. However, I have learnt much through this committee as far as the laws and regulations are concerned.

As I support this Motion, I want to confirm to the House that any regulation that does not have sufficient evidence over the issue of public participation with this Committee, we do not entertain it at all. That is because we will be violating Articles 10 and 118 of the Constitution of Kenya by not observing that there was evidence of public participation on that particular regulation. My free advice to all regulation-making authorities is that it could be easier for them to do what we call pre-publication scrutiny with the Committee before publishing it so that it can enable them to have their regulations passed in a very easy way. Instead, we have witnessed authorities rush to publish regulations before scrutinising. So, I urge all of them to engage the Committee before publishing the regulations.

I support the Report. I thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Shall we have Hon. Wambugu Munene.

**Hon. Munene Wambugu** (Kirinyaga Central, JP): Thank you, Hon. Temporary Deputy Speaker for giving me this chance to also add my voice and urge the House to adopt this Report and support the call for annulment.

At the outset, it is clear that our own Constitution requires sufficient public participation. When you come to Legal Notice No.88 on retirement, there was a very serious issue which requires that if the amendments were carried, they were meant to deny the people who retire early their full benefits. This is because the current Act provides that if you go on early retirement, you are entitled to your full benefits and 50 per cent of the employer's contribution. But the proposed amendment is going to remove those rights that, if you go on early retirement, you are not entitled to your contribution and 50 per cent of the employer's contributions until you reach the retirement age.

Therefore, we thought with this kind of proposal, it was imperative for the regulation-making authority to ensure enough Kenyans participated. You will note that most Kenyans opt for early retirement. Therefore, it was important to reach as many Kenyans as possible. So, we thought this was too much and we should not go this way. More so, in the Regulations, there was an issue about cost. If you opt for early retirement, it means you will lose your benefits while you are waiting. These Regulations required an impact assessment to be done so that we could know the outcome. We have realised that this was not done and there was no Impact Assessment Report attached.

With those few considerations which are paramount and constitutional, we thought that it is not proper for us to allow these Regulations to go through. Therefore, we urge the House to annul them as recommended.

Going to the *boda bodas* and *tuk tuks*, it deals with insurance of the rider, owner and passenger. But we realised that there was no public participation done apart from Kiambu County and another amorphous organisation called the National *Boda Boda* Association which lacked proof of existence in law.

We know that *boda bodas* are everywhere in this country and the people who are in that business are young Kenyans in all counties. So, these kinds of regulations have a far-reaching impact on the population of Kenya. They only involved very few stakeholders while the real consumers - the *boda boda* riders - were not involved in making them. So, we thought the public participation done was very mediocre and thought that the regulations should be annulled.

Hon. Temporary Deputy Speaker, I beg the House to support this Report and annul these Regulations - especially the ones on *boda bodas* and *tuk tuks* because most *boda boda* riders and owners were not consulted. So, this will be an injustice to Kenyans and contrary to our laws and especially the Constitution, which requires adequate public participation.

I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, I saw Hon. Wamuchomba, Hon. Mwathi and Hon. Wambugu in a discussion. I suppose they were discussing these Regulations? It was the next one. I could tell there was a very animated discussion on the next item in the Order Paper. Hon. Members, there seems to be no other interest registered to speak to this particular one. We will go to the next one since quite a number have registered interest. In that case, I call upon the Mover to reply. Hon. Murugara.

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Temporary Deputy Speaker. Let me begin by thanking the Members who have contributed towards supporting this Motion. These two Regulations are very important. However, our law is very clear that regulations made must comply with the Constitution, the parent Act and all the other Acts.

As Hon. Seroney has said, it is vitally important that public participation takes place because this is a constitutional right that has been given to every Kenyan such that, when we make laws as Parliament, the National Assembly and august House, every Kenyan must have a hand and say in the laws that we make. This is one way of ensuring that every Kenyan knows which laws are passed by the representatives they elected.

It is also important to note that the *boda bodas* and *tuk tuks* in Mombasa are used countrywide in the rural areas by citizens who are in the lower cadre of the economy. They rely on those *boda bodas* for transport. Nobody wishes an accident to himself or herself. It just happens. But if they are to be insured and safe then, people should participate in making Regulation so that, as they pay for insurance, they say they conceded to it. When they do not pay, they know they are breaking the law.

So, it is not closed for this Regulation-making authority. They should go back to the drawing board, comply with the law and bring back these Regulations. I can confirm to them that, if they are compliant, they will be approved by this House.

Thank you, Hon. Temporary Deputy Speaker. With those remarks, I beg to reply.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well Hon. Murugara. We shall pend putting the Question on that particular item to a subsequent time.

Next Order!

*(Putting of the Question deferred)*

## BILLS

### *Second Readings*

#### THE PARLIAMENTARY PENSIONS (AMENDMENT BILL)

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, this was to be moved by the Leader of the Minority Party. I have got notification that he had written about his unavailability today. So, in the circumstances, we shall step this down until such other time that the House Business Committee will slot. So, the three Members who were waiting for this item,



there will come a time when this agenda will be in the Order Paper. Ensure you keep your thoughts around this fresh. There is nothing to revisit on this one.

Next Order!

*(Bill deferred)*

#### THE PARLIAMENTARY PENSIONS (AMENDMENT) (NO.3) BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): This was to be moved by the Chairperson, Parliamentary Pensions Management Committee. Where is he? He seems to be somewhere we do not know and yet, this Bill is in the Order Paper. No! Hon. Mwathi, we cannot rule him out of order. But it is unfortunate that the person is not here and yet, this item is in the Order Paper. In the circumstances, we shall step it down.

Next Order!

*(Bill deferred)*

#### THE COMPETITION (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Yes, Hon. Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): Hon. Temporary Deputy Speaker, I wish to request that we step down this Order because the Leader of the Majority Party did not expect us to get here and he is not in to take us through the Second Reading.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Save for the reason that the Leader of the Majority Party was not expecting us to reach here is not as convincing but, anyway, we shall step this down as well. I guess we stepped down Order No.11 and moved faster than expected. We will step this down as well.

Next Order!

*(Bill deferred)*

#### THE INSURANCE (AMENDMENT) BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): For the same reasons, I wish that we step down Order No.14.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We shall step that down as well. Next Order!

*(Bill deferred)*

#### THE COUNTY GOVERNMENTS (REVENUE RAISING PROCESS) BILL

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Mbarire.

**Hon. (Ms.) Cecily Mbarire** (Nominated, JP): The same fate befalls this particular Order. So, I request that the Order be stepped down until the next allotted day.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I will order as I had for the previous orders that, it be stepped down as well until such a time when the HBC shall reschedule again.

*(Bill deferred)*

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, there being no other business, and the time being 4.31 p.m., this House stands adjourned until Tuesday, 12<sup>th</sup> November 2019, at 2.30 p.m.

The House rose at 4.31 p.m.