



REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

NATIONAL ASSEMBLY

THE HANSARD

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THE HANSARD

Wednesday, 27th September 2023

The House met at 9.30 a.m.

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

PRAYERS

QUORUM

Hon. Deputy Speaker: Serjeant-at-Arms, I now direct that you ring the Quorum Bell for 10 minutes.

(The Quorum Bell was rung)

You may proceed to ring the bell for another five minutes.

(The Quorum Bell was rung)

We now have quorum. We may proceed.

PAPERS

Deputy Leader of the Majority Party, Hon. Owen Baya, you are presenting the Papers on behalf of the Leader of the Majority Party.

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

1. Reports of the Auditor-General and financial statements in respect of the following constituencies for the year ended 30th June 2022 and the certificates therein:
 - (a) Homa bay Town.
 - (b) Kamukunji.
 - (c) Lari.
 - (d) Mathare.
2. County Governments Budget Implementation Review Report for the Financial Year 2022/2023 from the Office of the Controller of Budget.
3. The Performance Audit Report on Conservation of Water Towers in Kenya by the Kenya Water Towers Agency from the Office of the Auditor-General.
4. Reports of the Auditor-General and financial statements of the Public Sector Accounting Standards Board for the year ended 30th June 2023 and the certificates therein.

Hon. Deputy Speaker, I thank you.

Hon. Deputy Speaker: Thank you. Next Order.

PROCEDURAL MOTION

EXEMPTION OF BUSINESS FROM STANDING ORDER 40(3)

Hon. Owen Baya (Kilifi North, UDA): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, this House resolves to exempt the business appearing as Order Nos.14 and 15 in today's Order Paper from the provisions of Standing Order 40(3), being a Wednesday Morning, a day allocated for business not sponsored by the Majority or Minority Party or business sponsored by a committee.

We have important business that we started and it behoves on us as a House to finish, specifically, the report on the Committee of the whole House on the Sugar Bill and other businesses. This is a Procedural Motion to request that we finish that business as we proceed. Other businesses can come later on.

I ask Hon. Chepkonga to second.

Hon. Samwel Chepkonga (Ainabkoi, UDA): Hon. Deputy Speaker, I second.

(Question proposed)

Hon. Members: Put the Question!

Hon. Deputy Speaker: It looks like it is the mood of the House that I put the Question.

(Question put and agreed to)

Next Order.

MOTION

CONSIDERATION OF REPORT ON THE SUGAR BILL

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Sugar Bill (National Assembly Bill No.34 of 2022).

(Moved by Hon. Emmanuel Wangwe on 26.9.2023)

(Resumption of consideration interrupted on 26.9.2023)

(Question put and agreed to)

BILLS

Third Reading

THE SUGAR BILL

(National Assembly Bill No.34 of 2022)

Hon. Deputy Speaker: I call upon the Mover to move the Bill.

Hon. Emmanuel Wangwe (Navakholo, ODM): Hon. Deputy Speaker, I beg to move that the Sugar Bill (National Assembly Bill No.34 of 2022) be now read a Third Time.

I request Hon. Kakai Bissau to second.

Hon. Bisau Kakai (Kiminini, DAP-K): I second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Deputy Speaker: Before I put the Question, let me allow Hon. Emmanuel Wangwe to make a few remarks.

Hon. Emmanuel Wangwe (Navakholo, ODM): Thank you, Hon. Deputy Speaker. My colleagues took a lot of time on this Bill. They invested their time and energy. It is, therefore, important that I appreciate them, right from the Departmental Committee on Agriculture and Livestock, especially the Hon. Chairman, Vice-Chairman and the Membership. I will not forget the secretariat who traversed the country to discuss this Bill until its maturity today. I request them to accept my appreciation. Their input was valued.

Hon. Deputy Speaker, allow me to most sincerely appreciate the Speaker of the National Assembly who really supported the course of this Bill all round, and made it possible for it to be here today. Allow me to also appreciate the taskforce which held 17 sittings across the country. All the information we gathered for this Bill is a product of this taskforce.

Allow me to appreciate the Sugar Caucus which is a team of colleagues in this House. They took their time to make the Bill a success. Allow me to appreciate the Western Parliamentary Caucus which held a seminar in Kakamega to discuss the Bill.

Finally, I must acknowledge that this Bill has come to the House for the second time. The first time it appeared here was through Hon. Wamunyinyi. We were here with you. Allow me to recognise his efforts. He made a build-up of this Bill in his capacity as a Member of this House.

I thank you very much, Hon. Deputy Speaker, for giving me the time to appreciate my colleagues.

(Applause)

(Question put and agreed to)

(Applause)

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

Hon. John Kiarie (Dagoretti South, UDA): Congratulations.

(Applause)

Hon. Deputy Speaker: Next Order.

First Readings

THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL
(National Assembly Bill No.48 of 2022)

THE INSTITUTE OF SOCIAL WORK PROFESSIONALS BILL
(National Assembly Bill No.17 of 2023)

THE KENYA ROADS (AMENDMENT) BILL
(National Assembly Bill No.34 of 2023)

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THE NATIONAL LAND COMMISSION (AMENDMENT) BILL
(National Assembly Bill No.43 of 2023)

*(The Bills were read a First Time
and referred to relevant Committees)*

MOTION

ADOPTION OF REPORT ON UNIVERSITIES REGULATIONS

Hon. Deputy Speaker: Hon. Chepkonga, you may move the Motion.

Hon. Samwel Chepkonga (Ainabkoi, UDA): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Universities Regulations, 2023, laid on the Table of the House on Thursday, 14th September 2023, and pursuant to the provisions of Section 18 of the Statutory Instruments Act, 2013 and Standing Order 210(4)(b), annuls in entirety the Universities Regulations, 2023, published as Legal Notice No.56 of 2023.

This was a very vibrant discussion with the Cabinet Secretary for Education. We made too many recommendations for them to effect amendments. We wanted them to withdraw the regulations, so that we do not need to annul them. Since they have refused to do so, we are recommending to the House to annul them for the following reasons.

Firstly, with regard to the question of certificates, diplomas and degrees. Part 11 of the regulations provides for recognition and equation of degrees, diplomas and certificates conferred or awarded by foreign universities and institutions among others. The regulation seeks to serve the roles and functions of the Kenya National Qualifications Authority (KNQA) which was established under an Act of Parliament – the Kenya National Qualifications Framework Act No.22 of 2014. This is a body which is responsible for establishing standards for harmonisation and recognition of national and foreign qualification. It advises and supports any person, body or institution which is responsible for the award of national qualifications. It also defines the levels of qualifications and competencies. There is, therefore, need to consult with KNQA to demonstrate consultation on the regulation and its impact on the national qualification regulations. The KNQA provides very explicitly or clearly. It does not leave any room for another institution to purport to take over its functions. To that effect, these regulations are in contravention of Section 13(A) of the Statutory Instruments Act, 2013, which requires that all regulations must conform to all other written laws. They do not conform to all other written laws.

Hon. Deputy Speaker, the second one is that the statutory-making body did not provide any regulatory impact statement. This is important in the sense that the university regulations as promulgated by the Minister (Cabinet Secretary) in a big percentage affects the citizens and families of this country, not only economically, but socially. This affects parents, guardians and sponsors including workers employed by the universities.

Section 6, 7 and 8 of the Statutory Instruments Act, 2013 requires that where regulations are likely to impose significant costs on the community, then they ought to conduct a regulatory impact statement and submit a regulatory impact statement to the Committee. They failed to conduct and publish a Regulatory Impact Statement in the Gazette or newspapers of wide circulation and thereby contravening Sections 6, 7 and 8 of the Statutory Instruments Act, 2013. On that note, we are, therefore, recommending that since they did not comply with the Statutory

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Instruments Act, 2013, that governs the making of all regulations, these regulations must be annulled in their entirety.

The third is that the Committee noted that the regulations fall short of complying with the minimum threshold set out in Articles 10, 118 and 259, sub article 11 of the Constitution, as read with Section 5 and Section 5(a) and 13 of the Statutory Instruments Act, 2013 in relation to conducting public participation prior to the publication of the regulations. We consider this very important. This is a very important tenet and doctrine of the Constitution that public participation must be conducted where it intends to affect any person in this country. These regulations were promulgated without carrying out public participation as required by Article 10, 118 and 259 of the Constitution. In bringing these regulations, they are illegal in the first instance, so we should annul them. They should comply and conduct public participation so that they can hear what the citizens and all those who will be affected want to say concerning these regulations and they should, therefore, amend as necessary.

The fourth, is non-compliance with relevant policies to improve standards like the report of the Presidential Task Force on the recommendations of the university's education. One of the cardinal questions that we asked them is that we have a task force which has made certain recommendations and those recommendations are being implemented right now. You are submitting regulations which should have included those recommendations which you are now implementing and those recommendations are in the form of a guideline. The Statutory Instruments Act, 2013 requires that anything that is promulgated in the form of a guideline or a policy or a regulation must be brought to this House for approval. Those regulations, recommendations and guidelines are being implemented without this House approving them. They are highly illegal. It is affecting the education sector in this country. It is affecting people. It could be good policies. For instance, the funding for the universities should follow a certain trajectory. Those regulations have not been brought to this House yet they are implementing them. This is affecting our students. If we go to our constituencies, they are asked to pay over Ksh500,000. We, as Members of Parliament, do not know what to tell them. Those regulations have not been brought here and they are affecting the people. What we recommend is that these regulations should be annulled and those recommendations be included in the next regulations, which will be brought to the House.

Hon. Deputy Speaker, some people think that they are very important. During your time as the Chair of this Committee, you annulled the Judiciary Fund Regulations and the Judiciary appreciated because the regulations themselves were unconstitutional. Pursuant to the recommendations that you made, they went further and amended those regulations that they brought back and you approved the regulations. We are asking those who are regulating authorities to comply with the Statutory Instruments Act, 2013, the enabling statute, and the Constitution. We cannot allow people to usurp the role of Parliament. Article 95 of the Constitution is very clear. There is no person in this country who has been given the power to make laws except this House. We will take a dim view of anybody who purports to usurp it.

The regulations do not, therefore, provide for the notice of the intention to revoke the interim letter of authority which negates the right to fair administrative action. These regulations provide for revocation of charters or letters of authority that have been granted by universities. They do not provide for mechanism of due process provided under Article 47 of the Constitution. Where you want to take away the right of people, you must have due process in which you then take away that particular right that has been granted to that particular institution to that person. These regulations do not confer that right in contravention of Article 47 of the Constitution. Therefore, we are recommending to this House that these regulations be annulled in their entirety, and that the statutory making body makes the necessary amendments and brings back those regulations. It is not for them to imagine that because we have annulled the regulations they are going to sit on them. We are going to call for these

regulations because they are affecting students, parents, guardians and university employees. So, they must be brought to the House.

The Committee wishes to express its gratitude to you and the Clerk of the National Assembly for the support that was given to it. I would like to single out a particular Member who took time to go through these regulations with a tooth comb; Hon. Ruku.

(Applause)

He had too many proposals on the things that were wrong with the regulations. In fact, we gave the Cabinet Secretary and he was shocked he had to request for an adjournment. Hon. Ruku was passionate about pointing out the inconsistencies in the regulations with the Statutory Instruments Act, 2013 and the Universities Act, 2012. I know a question has been asked as to what will happen to the digital universities that we approved here because part of it was anchored on these regulations. As you know, anything that has been made pursuant to these regulations cannot be null and void. Secondly, Section 70 of the Universities Act, 2012 gives the Cabinet Secretary powers to grant charters to universities. Digital university is part of the university although it is a digital university. It is operating in the cloud, but it is still a university in its form. Section 70 of the Universities Act, 2012 still preserves it. Thirdly, this House approved the Charter itself. When the House approved the Charter, it was in a form of regulations. There is nothing that is inconsistent with what we did.

I would like to sincerely thank the Members of my Committee for the support they have given to the Committee in ensuring that these regulations are considered in a tenuous manner. It is, therefore, my pleasure and duty to present to the House the Committee's Report on the consideration of the University Regulation 2023, Legal Notice No.56 of 2023 that recommends that it be annulled in its entirety.

I beg to move and I would like to call upon the former powerful Cabinet Secretary for Interior and National Administration, Hon. Sunkuli, the Member of Parliament for Kilgoris, and a Member of this Committee, to second.

I thank you, Hon. Deputy Speaker.

Hon. Julius Sunkuli (Kilgoris, JP): Hon. Deputy Speaker, I want to thank my learned friend and Chairman of the Committee for the kind introduction about my historical past and to describe power that I no longer have. The University Regulations 2023 do not meet many requirements. They fail both in matters of procedure as well as matters of substance.

We as a Committee looked at these regulations with a tooth comb. We also had conversations with the Cabinet Secretary and his officers who came before us. We did inform them what we thought was wrong with those regulations. I do not want to repeat what the Mover has said, but in short, firstly, these regulations are guilty of duplicity of roles. Once you give one authority power, you cannot take that power to another authority. That will be contravention of the law. So, we wanted the functions that they wanted to give themselves to be left intact. The regulations should not, therefore, attempt to transfer powers that were properly seated in another organisation.

The second thing is that these regulations were published without public participation. Public participation is a principle on which many things fall on now in Kenya. It is no longer just a procedural requirement, but a constitutional requirement. These regulations should have been published in the newspapers as required and the public invited to come and give their input. These regulations have failed on that ground.

The big problem that Hon. Chepkonga has brought forward is the idea that Parliament can only be informed in form of regulations of the things that are already happening in the ministries. Parliament, like law, cannot operate in vain. What precedes action is the regulations; regulations do not come after the action. If the Presidential Task Force Report is already being

implemented, why would it be necessary for Parliament to be told to make regulations about things that are already being done? That is in breach of the law because the Statutory Instruments Act clearly says that Parliament must examine all the regulations that are made by the Executive. The Executive cannot anticipate the activities of Parliament by saying it can anyway implement the regulations because Parliament will rubberstamp it. It is the responsibility of this House to stamp its authority any time it sees such actions so that when Parliament makes laws, they are obeyed. Nobody else should think that they have authority to make laws. This House must guard its role jealously and tell the Ministry of Education that it did not do the right thing. My dear Members, let us annul these regulations and allow the Ministry to come back through the front door because it did not come before us with clean hands.

I beg to second.

Hon. Deputy Speaker: Hon. Members, before I propose the Question, allow me to recognise the presence of the following schools in the Public Gallery: Thika Road Christian School from Roysambu Constituency, Nairobi County; and Bishop Morrow Primary School, Maragwa Constituency, Murang'a County. I also wish to welcome students from Mwangaza Secondary School from Maragwa Constituency, Murang'a County, seated in the Speaker's Gallery.

(Applause)

On my own behalf and that of the entire House, I wish to welcome the students and teachers of these schools. Welcome to Parliament.

(Question proposed)

Hon. Members: We want to debate.

Hon. Deputy Speaker: It is okay if you want to debate. Hon. Dido Raso, Member for Saku.

Hon. Ali Raso (Saku, UDA): Thank you, Hon. Deputy Speaker. I wish to support the annulment of these regulations. As you know, this House is the supreme body that makes the laws of this land. Article 94(5) of our Constitution clearly says that nobody other than this House has the authority to make regulations or laws that are binding. That is the reason everything that has to do with governance, regulations and policy must come before this House. I would like to support the Committee, particularly in line with Article 118 of our Constitution that extols the virtue of public participation. Public participation does not mean that people gather in a hall and decide on a whim on the need of a certain thing. It means that the public is given full hearing on what it is that it really wants about a particular law. For that reason, public participation is one of the areas where the Constitution - continuously in different Articles - says that people must participate in the laws that are going to govern them.

When you look at university education - my colleagues will bear me witness - new universities are coming up. Universities are increasing fees and introducing courses that particular lecturers would like to run without due regard to the large masses of very poor Kenyans who are seeking higher education in this land. We actually allowed the Ministry of Education and the universities to get away with that crime.

When you increase the universities' fees from Ksh20,000 to almost Ksh50,000-60,000, where will Kenyans get this money from? This is the reason as Members of Parliament we must guard the country against any vices, particularly in terms of laws and regulations. Our National Government Constituencies Development Fund (NG-CDF) has become a harbinger of bursaries because we cannot do anything. If youngsters who have qualified to go for higher

education are not able to pay college fees, why put money in projects? Actually, we should put most of our money in bursaries so that none of these youngsters remain in the villages. What we experience nowadays is the privatisation of education in Kenya without serious regulatory framework. Those with money come up with schools and colleges and run them the way they want as long as they have paid the “right” individuals at the appropriate levels. There is very little protection for the Kenyan citizens.

Therefore, if these regulations that have been proposed to be annulled are not consistent with our Constitution and are inconsistent with the existing policies for university education, they will not stand the test of time.

With those remarks, I support the Committee’s Report that these regulations be annulled.

Hon. Deputy Speaker: Thank you, Hon. Member. I want to bring to your attention Standing Order 97, which means we have two-and-a-half hours for this Motion. Other than the Leader of the Majority Party and the Leader of the Minority Party, each Member will have an opportunity of five minutes to speak. I now call upon the Member for Mandera West, Hon. Adan Haji.

Hon. Yusuf Adan (Mandera West, UDM): Thank you, Hon. Deputy Speaker, for giving me this opportunity. I also support this Report. I congratulate Hon. Chepkonga and his team for bringing this timely Report to annul regulations that are not useful to Kenyans.

Kenyan universities have become too much commercialised, without regard to any sort of benefits to communities. The type of graduates we are churning out will show or tell you that what is happening there is of very low standards. Regulations are just made left and right without passing them through this House. Different universities have different regulations. All this is compromising the quality of education.

I advertised some positions for my small company recently, and conducted interviews, and if you look at the papers the students have, you will wonder what type of papers they are. They are so good and nice. You long to see those interviewed working. The way those that come in front of you talk, the quality of their English is wanting. If you give them a small written test, qualifications on their papers are contrary to what they write and talk to one another. You wonder which type of universities they went through. Because of that, Parliament should make sure proper regulations are passed. Regulations that are not beneficial to the education sector of this country and are already in place should be annulled. That is what we are doing now.

For that matter, I support the annulment of these regulations and many others that have similar characteristics that do not help the citizens of Kenya in any way.

Hon. Deputy Speaker: Thank you. Hon. Samuel Atandi, Member for Alego Usonga

Hon. Samuel Atandi (Alego Usonga, ODM): Hon. Deputy Speaker, I am not ready to talk on this.

Hon. Deputy Speaker: Okay. Hon. Mangale Chiforomodo, Member for Lungalunga.

Hon. Chiforomodo Mangale (Lungalunga, UDM): Thank you, Hon Deputy Speaker. I rise to support the Report of the Committee on Delegated Legislation that these regulations need to be nullified because the powers of this House have been abused. If we allow such acts to take place in Kenya, we will find ourselves not useful to the country. Of course, it is our mandate to regulate and legislate in this country.

The new regulations that were set are detrimental because they introduced new issues right from funding to management of capitation and loans. That has brought a lot of confusion to students and parents in this country. I do not wish to take a lot of time, but stress that legislation should be left to the National Assembly, and not any other entity. I stress and assert that I support the proposal by the Committee to nullify these regulations.

Hon. Deputy Speaker: Thank you. I think many of us would contribute if everybody would take a short time as Hon. Mangale. I hope you take cue from him. Hon. Agnes Pareyio, Member for Narok North.

Hon. Agnes Mantaine (Narok North, JP): Thank you, Hon. Deputy Speaker, for giving me this opportunity to discuss the regulations.

It is the mandate of this House to come up with regulations. It is us, Members of Parliament, who are supposed to set what we need followed by our ministries or departments. I feel that they have taken the responsibilities of legislators to come up with legislation so that they have the control of all that happens in departments. I support the decision the Committee has come up with of saying that legislation should be left to Parliament.

Hon. Deputy Speaker: Hon. Rachael Nyamai, Member for Kitui South.

Hon. (Dr) Rachael Nyamai (Kitui South, JP): Thank you very much, Hon. Deputy Speaker, for giving me this opportunity.

First, I would like to thank the Chair of the Committee, Hon. Chepkonga, for doing a very good job for this House and note that I have been following the work the Committee has been doing. They have given very good recommendations to the concerned institutions when they annul a regulation. They have also done the same on this. They identified areas of weakness, areas of contradiction, and gave a very good way forward on how these regulations can be brought back to this House so that they can be passed the right way.

Looking at the annulled regulations, we see an institution initially given roles taken away from them through regulations not brought to the House properly. The institution is the KNQA that was created in 2015 with the purpose of ensuring that there is proper harmonisation and coordination of training, assessment, education generally, and ensuring there are proper standards in the education sector. It is not right for this institution to be denied its role through these regulations and its roles given to another entity. For that reason, I support the annulment and agree with the Committee that the ministry should go back and look at where it went wrong and ensure it does not contradict existing laws and other regulations so that it can bring it to the House properly.

In this Report, the Committee has also indicated clearly that these regulations are bringing extra costs not only to universities, but also to all other institutions that are within universities including our businessmen and businesswomen who operate in universities. It is affecting lecturers, students, researchers, and many others who work in universities. The Committee Chairperson has also clearly explained that no survey was done to show the impact of the regulations to all communities within universities. For that, I agree with the Committee that we cannot pass regulations that have not clearly provided a report to show that a survey was done to indicate the impact of the regulations on the people who brought us to this House. This being the institution that represents the common people, we must say that these regulations do not qualify. The Chairperson very importantly and clearly elaborated the matter of public participation, which this House has taken seriously including in the budget-making process. It is clear that we cannot pass anything without asking for the opinion of the people we represent.

When these regulations are brought here, public participation was not done. Therefore, we do not know what universities and their leadership and all other entities think. Based on those three points, I would like to agree with the Chairperson, Hon. Chepkonga, and the Committee, that these regulations must be annulled and taken back to the universities so that they can be brought through the front door and not through the back door.

Thank you, Hon. Deputy Speaker, for the opportunity.

Hon. Deputy Speaker: Hon. Moses Injendi, Member for Malava.

Hon. Malulu Injendi (Malava, ANC): Thank you, Hon. Deputy Speaker. As the Vice-Chairman of the Departmental Committee on Education and Research, we feel embarrassed because part of our function is to oversee universities. It is very surprising that regulations

governing universities have come straight to the House through the Committee on Delegated Legislation. I would urge that we look at how we develop these regulations. It will be very important that before such regulations are presented before the House, they pass through the relevant Committee for input before being taken before the Committee chaired by Hon. Chepkonga. We cannot have this kind of situation where regulations for the entire university system are annulled on the Floor of the House.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Member for Rarieda, Hon. (Dr) Otiende Amollo.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Deputy Speaker. I support the Motion on the consideration of the Report by the Committee on Delegated Legislation.

Just to make some quick points, it must be remembered that Articles 94 and 95 of the Constitution have always remained very clear. Nothing will have the force of law in this country unless it is passed by Parliament. Sometimes people forget that. They think they can hide under subsidiary legislation or regulations and pass anything that will have the effect of law. They must remember that will not happen. I would like to commend the Committee for this kind of move. However good intention one has, it is not sufficient to consult some people outside or even those in the Executive, Judiciary or any other arm of the Government and assume that you can overlook Parliament. I am even shocked to hear that such regulations could be proposed without engaging the Departmental Committee on Education and Research. That is outrageous. It is something that must be discouraged at all levels. Regulations made under any particular sector must involve the relevant committee before they are presented for adoption.

It is important to note that there is so much going on in the education sector. There are too many committees. As we speak, I am aware that a committee was appointed to look into various areas especially in re-engineering the education sector. To the best of my knowledge, that report has not been considered by this House to either amend the Act or Regulations. I am surprised to learn that my very good friend, Prof. Odote, and a team, have been appointed as the implementing committee. They have already started implementing something that has not been passed as law or even considered as a regulation. I think that is utter contempt for the National Assembly. That is the perfect example of why we must send a warning to all those who think they can bypass Parliament by developing policy and implementing it before it becomes law. These regulations must be rejected with a very clear message that if you bring another set without consulting the relevant committee or the public, they will be rejected until doomsday.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Member for Dagoretti South, Hon. John Waweru.

Hon. John Kiarie (Dagoretti South, UDA): Thank you, Hon. Deputy Speaker. The English say that you have not succeeded until your successor succeeds. You performed exemplarily well on the Committee on Delegated Legislation and you are succeeding further because your successor is actually doing an impressive job.

I would like to start by congratulating the Committee on Delegated Legislation for such a good Report that it has brought to us. We are convinced that these regulations ought to be annulled in their entirety. If these regulations were just offending some regulations, policy or a legislation, maybe this House would have been kinder. These regulations offend the supreme law - the Constitution. The Constitution requires that there should be robust public participation. This House has spoken several times on the matter. The seat you are sitting on has pronounced itself several times that public participation cannot be seen to just be a public relations exercise. Substantive public participation on these regulations did not happen. Not only did public participation not happen on an issue that affects very many students, parents,

and families, but there was also no demonstration that there had been a regulatory impact assessment done on the regulations. On that count, these regulations must be annulled.

There is a lot happening in the education sector. One key thing is that the presidential taskforce is making proposals which would have found their way into some of these regulations. The taskforce recommendations were blatantly ignored in these regulations. That forms another basis for the annulment of these regulations. There is a whole issue of the revocation of chartered universities. That issue denies the right that universities and learning institutions have in being able to enjoy the privileges that come with the charters that have been accorded to them. If they are revoked without due process, it is injurious to institutions, learners and the entire communities.

Finally, the premium we have put on university education in this country ought to be rethought. We are a developing country and we should start thinking about technical secondary schools, universities and polytechnics so that every learner that goes through high school should not be willing to just take up a professional course in the name of a degree. The degree products that we have in this country have become a burden. If we liberated our education in a way that some students take up professional courses as others take up technical courses, you will find there will be use for the youth who end up in technical courses in the development of our country. Today, every learner wants to go to university and get a degree that will condemn them to tarmacking for years. Even as we annul these regulations, maybe it is a wake-up call for us to rethink the entire policy around how we train our population for the future and the development of our country. I support the proposal by the Committee to annul these regulations in their entirety.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Julius Melly, Member for Tinderet Constituency. Before you speak, allow me to recognise La Salle Catholic School from Lang'ata Constituency, Nairobi County. Welcome to the National Assembly.

Hon. Julius Melly (Tinderet, UDA): Thank you, Hon. Deputy Speaker. I rise to support the Chair of the Committee on Delegated Legislation, specifically the membership. If you look at most of the regulations that are brought to this House, in most cases, they speak to issues that are very important to the running of the various sectors of this country. One thing that has surprised many Members of this House is that many officers will always try to develop regulations that are completely out of touch with reality.

Let me point out that, as a requirement, there is need for public participation in developing any regulation. The Universities Regulations, 2023, which the Committee seeks to annul, did not even come to the Departmental Committee on Education as part of public participation, inputting and discussions. There is a lot of impunity on the part of the Ministry and, more so, the State Department. They know very well that the Members of the Departmental Committee on Education and the members of the education fraternity have to speak about every aspect of regulation because it is very important that these regulations are discussed by the public, by the various stakeholders, and even the Committee on Delegated Legislation.

If you look at the regulations, you will find that some things that were passed in the Presidential Working Party are supposed to be aligned because these regulations are alive to those issues. But you will realise that the regulations are so stale that they do not speak about the issues of the Presidential Working Party. A number of issues that the Universities Regulations 2023 are speaking to have actually been overtaken by events.

Hon. Deputy Speaker, the Chairman of the Committee on Delegated Legislation did it very well. I commend and ask him that every other Committee and, more so, the departmental committees, should speak to every regulation in future. The regulations on transport, maritime

authority, agriculture, crops and all the rest shall go to the relevant departmental committees for discussion and adoption, so that the public is aware and is brought into line.

Looking into the issues, there are a number of reforms that are going on in the education sector. We are looking into the funding formula, the Competency-Based Curriculum (CBC) and all that. If you look at the Universities Regulations, 2023, they have spoken very little about them. These regulations are supposed to be annulled because they are outdated.

I support the annulment. Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you. Hon. Member for Karachuonyo, Hon. Andrew Okuome.

Hon. Adipo Okuome (Karachuonyo, ODM): Thank you, Hon. Deputy Speaker, for giving me the opportunity. I note that the Constitution is paramount and it is important. It lays down what must be done to enhance and improve our education system.

University is the final institution where people obtain their degrees for growth and for this country to develop and achieve many other goals. The procedure was almost ignored when we were discussing the regulations. There was no public participation, which is essential and is in the Constitution. That alone is reason enough to nullify these regulations before going further. Again, in Parliament, we have a procedure. We know which Committee handles what for the purposes of being in order. Because the procedure was not followed and public participation was not done, I support the nullification of these regulations.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Thank you, Hon. Member. I kindly request the Hon. Member for the Dagoretti South, Hon. KJ, to pull out his card because he has spoken. Hon. Amollo Otiende, kindly pull out your card so that I am left with only those who have not spoken. That will make it easier for me. Hon. Atandi, remove your card because you had a chance, and you passed it. Pull out your card too.

Hon. Owen Baya, Member for Kilifi North.

(A Member spoke off the record)

No! Let us go on. You have now dropped down the list. Member for Kilifi North. Hon. Owen Baya. Then, next, we will have Hon. Anthony Oluoch.

Hon. Owen Baya (Kilifi North, UDA): Hon. Temporary Speaker, thank you for giving me this opportunity. I also pass my appreciation to the Committee on Delegated Legislation for the work they have done.

While I agree with the Committee that we should annul these regulations in their entirety, certain questions beg some answers. Yes, Parliament has Article 95, which states that we are the sole House to make laws. But again, the establishment of the Committee on Delegated Legislation in this National Assembly shows that it is possible to have another body make law with the authority of this House. That is why the Committee on Delegated Legislation looks at those laws and passes them.

We even have something called subsidiary legislation. Subsidiary legislation does not usurp the legislative authority of the House. That is why regulations must always come to the House. But what keeps me asking myself this question is this, and I want Hon. Chepkonga, the Chairman, to listen to this. For how long will this House continue to annul all regulations? This is because every time Hon. Chepkonga stands to speak on regulations, he always says, 'annul in its entirety.'

Hon. Deputy Speaker, you once served as the Chair of this Committee. I know you also brought many annulments, but there are times when you also said approve. Now...

Hon. TJ Kajwang' (Ruaraka, ODM): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Let us allow Hon. TJ Kajwang'. What is your point of order?

Hon. TJ Kajwang' (Ruaraka, ODM): Hon. Deputy Speaker, you know, learning does not stop in this House. But the Deputy Leader of the Majority Party, whom I greatly respect, seems to have misconstrued the Standing Order, which is very clear. In all instances where Hon. Chepkonga comes to approve or accept legislation, those sets of legislation will not arrive before this House. They will just write a letter to the Executive. In very many cases, more than half of what they are doing, they approve those legislations. But you will never see them before the House. It is only when we annul legislation that it comes to this House. No wonder you now see very many nullifications rather than approvals. I think he is forgetting that. Thank you.

Hon. Owen Baya (Kilifi North, UDA): Thank you. It is true. I agree, but I also want to know why the Ministry of Education developed these regulations. Because there is a lacuna somewhere, and we need to fill certain gaps. When they do it wrongly, and the Ministries continue to do it wrongly, it beholds us, as Parliament and Chairpersons of Departments, to also sit with the Executive and tell them what needs to be done.

Many times, when we have these annulments, it is because of issues of procedure. Procedure that would have been corrected even before this matter came to this House for annulment. I urge Chairpersons of Departmental Committees to understand that some Cabinet Secretaries are new and greenhorns. They may not understand a lot of things. At the same time, technocrats in the Ministries may not properly advise them.

The Cabinet Secretary for Education was a Member of this honourable House. He is a fine gentleman. I do not think he would fail to listen to Hon. Chepkonga if he called him aside and told him that the regulations have issues which we could help to thrash out so that they can be useful to the country. A lot of time has been spent on the process, only for us to annul the regulations. The education system will not get better because we have annulled the regulations. Issues in universities will not be solved because we have annulled the regulations. We will not bring solutions to issues that demand that subsidiary legislation be made because we have annulled the regulations. Those issues can only get better if we consult and look for solutions so that our young people in universities do not continue to suffer because a Cabinet Secretary did not follow procedure.

I ask Hon. Chepkonga and his...

Hon. Samwel Chepkonga (Ainabkoi, UDA): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Chepkonga, what is your point of order?

Hon. Samwel Chepkonga (Ainabkoi, UDA): Thank you, Hon. Deputy Speaker. The Deputy Leader of the Majority Party is my good friend. Our Committee is very progressive. When we bring regulations to the House for annulment, we have exhausted all procedures, including recommending to a Cabinet Secretary that he or she amends the regulations. The Deputy Leader of the Majority Party may not be aware that Hon. Duale brought the Peacekeeping Regulations to the Committee for consideration, and we told him that they were bad. He purported to support the Regulations agreed with the Committee and withdrew the Regulations. He amended them and brought them to the House for approval. We advised the Cabinet Secretary for Education that the Regulations were not good and asked him to amend them. He came back with a justification. How do you justify not engaging in public participation or not doing a regulatory impact assessment?

We want to support ministries, but they must comply with the law. We are not here to help them to comply with the law. They know what the law says. When you are appointed as a Cabinet Secretary, one has the Attorney-General and State counsels at their disposal. He or she should consult them. We even have legal counsels within Parliament.

Hon. Deputy Speaker: You may proceed to complete your contribution, Hon. Baya.

Hon. Owen Baya (Kilifi North, UDA): Let me complete my contribution. We need to find a solution for universities. There is a problem in universities. Many of our children are not joining universities today because of the issues these regulations were trying to address. One of our roles as Members of Parliament is that of legislation. Instead of waiting for subsidiary legislation, I urge the Chairperson and his Vice-Chairperson, who have spoken on the Motion, to take up their legislative role and give us a clear direction. That is our role. If the Cabinet Secretary fails to legislate, it is not him who has failed; it is Parliament that has failed. Parliament would have failed in its role if our children continued to suffer because of lack of proper legislation or regulations. We should not depend on Cabinet Secretaries to make laws. That is not their mandate.

While the Committee has recommended the annulment of the regulations, I ask Hon. Melly and Hon. Malulu Injendi to take up their legislative role and solve the problems in the university sector.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): On a point of order, Hon. Deputy Speaker.

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

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon. Deputy Speaker. I would not like to be informed.

(Laughter)

Hon. Deputy Speaker: You have exhausted your time. Proceed, Hon. Otiende.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Is it in order for the Deputy Leader of the Majority Party to condemn Parliament for having failed in its role when he knows that making regulations is not Parliament's role? Every piece of legislation indicates who makes the regulations. Those who make regulations do so, and then they consult Parliament. It is not the other way around.

Hon. Deputy Speaker: Let us proceed. We are making progress.

Hon. Owen Baya (Kilifi North, UDA): On a point of order, Hon. Deputy Speaker.

(Hon. TJ Kajwang' spoke off the record)

Hon. Deputy Speaker: Hon. TJ Kajwang', that is for me to decide. It is not your place to do so. I will give you exactly one minute to contribute, and then we can move on to Hon. Antony Oluoch.

Hon. Owen Baya (Kilifi North, UDA): Hon. Deputy Speaker, the Senior Counsel knows that there are problems in the education sector, and he has even mentioned them. The role of making laws in this country belongs to this House. I challenge him to develop a law to solve the issues in the education sector, so that the country knows he is a good lawyer in court and a useful legislator.

Hon. Deputy Speaker: Things are going very well. If we have a few points of order, everyone will have an opportunity to contribute. I have 11 requests from Members. We will now listen to Hon. Antony Oluoch, the Member for Mathare; then we will go to Hon. Mugambi, the Member for Buuri, and Hon. Julius Rutto, the Member for Kesses. Everyone will get a chance to speak.

Hon. Julius ole Sunkuli, please remove your card. You have already spoken to this Motion.

Hon. Anthony Oluoch (Mathare, ODM): Thank you, Hon. Deputy Speaker. Let me also join my colleagues in thanking Hon. Chepkonga and the Committee for coming up with this Report. I also join Hon. John Kiarie in thanking the Deputy Speaker, who is the predecessor

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of the current Chairperson of the Committee on Delegated Legislation, for a job well done in the 12th Parliament because it set a very good basis for what they are doing now.

As Hon. TJ has said, we are constantly learning. I have the benefit of learning from my senior, Otiende Amollo, on whether the House has no role in making regulations. My respectful view is that the role of all law-making pursuant to Article 94(5) of the Constitution belongs to this House. All other persons who exercise that role only do so in a delegated format. That does not mean that they become lawmakers. Thank you, Senior Counsel.

I will now proceed to my main point. The Committee on Delegated Legislation plays a very important role in checking Government entities, including Cabinet Secretaries and board chairs, all of whom exercise that delegated role of making subsidiary legislation. That role is especially important when they make a bad law. Unless the Committee on Delegated Legislation recommends that the House annul a subsidiary legislation, it would become law.

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

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

I have heard the distinguished Chairperson, Hon. Chepkonga, say that the Committee on Delegated Legislation brings regulations for annulment only as a last resort. They only bring them for annulment after begging the Cabinet Secretary to amend them. That is very absurd. I do not say that it is absurd because I disagree with the Chairperson; it is so because under Article 94(5) of the Constitution, we are the law-making organ and yet, we have to beg a Cabinet Secretary to relook at the regulations and bring them back in an acceptable format. For this reason, the Statutory Instruments Act and our Standing Orders need to be looked into.

Hon. Owen Baya and I sit on the Procedure and House Rules Committee. The Deputy Speaker who has just vacated the Chair chairs that Committee. The Committee has accepted my recommendation to amend the Statutory Instruments Act and our Standing Orders to require that all positive or negative regulations find their way to this House by way of a report so that the House can stamp its authority on whether they should proceed or not. That is the only way we can affirm our role under Articles 94(5) and 95 of the Constitution.

Hon. Temporary Speaker, I also say this in light of the provisions of the Constitution, which I hope we will be able to relook into at some point. Under Article 115(7) of the Constitution... Hon. Otiende Amollo was there, and he will give us the benefit of what was the reasoning. We allowed the President to make law and act as a lawmaker through the back door by allowing what you call Presidential Reservations. So, when we cannot raise the two-thirds requisite as a House to disagree with the President, that provision becomes law. It should be the other way round; when we pass a law, the President should raise two-thirds to disagree with us. That is when we will exercise the supremacy of this House. We borrowed the model of the United States of America (USA) Presidential System, which has said time without number... I want to quote the United States Supreme Court on Clinton versus New York, where it said, "line veto amendment is unconstitutional." You cannot allow part reservations or line amendments of the law we have made...

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Point of information, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Rachael Nyamai): Hon. Anthony Oluoch, would you like the Hon. Otiende Amollo to inform you?

Hon. Anthony Oluoch (Mathare, ODM): Yes.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you very much, Hon. Oluoch. Hon. Temporary Speaker, I want to inform Hon. Oluoch on two issues. One is in respect of what he sought my concurrence on. Indeed, I agree with him, and Hon. Owen Baya is wrong.

Under Section 70 of the Universities Act, the power to make regulations is for the Cabinet Secretary. He must propose and bring those regulations to the Committee on Delegated Legislation. It is not for the Committee on Delegated Legislation to generate them because it would be unconstitutional. That is the first piece of information.

The Temporary Speaker (Hon. Rachael Nyamai): Hon. Otiende Amollo, I know you are very smart, but are you informing the Member for Mathare or the Deputy Leader of the Majority Party?

Hon. (Dr) Otiende Amollo (Rarieda, ODM): I am informing the Member for Mathare because he concurred with the Deputy Minority Whip. Anyway, the second piece of information to Hon. Oluoch is that the Constitution does not allow the President to make any law. It allows him to make reservations about any law that we have passed. The bad practice that the presidents have had of proceeding to amend the law and present it is not in tandem with the Constitution. So, please, do not blame the Constitution but condemn the practice and us, as a House, who allowed that to happen. Thank you.

Hon. Owen Baya (Kilifi North, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Rachael Nyamai): Just for neatness, I hope that the information Hon. Otiende Amollo has given you enriches your debate. What is out of order, Hon. Baya?

Hon. Owen Baya (Kilifi North, UDA): Thank you, Hon. Temporary Speaker. Now that Hon. Otiende Amollo has mentioned me, I would like to agree with the...

The Temporary Speaker (Hon. Rachael Nyamai): What is out of order, Hon. Baya?

Hon. Owen Baya (Kilifi North, UDA): What is out of order is that he imputes improper motive that I do not know what Section 70 of the Constitution says. I know, and I am alive to it. I know that the Cabinet Secretary is supposed to make new regulations.

I also know that if the Cabinet Secretary fails to make regulations, this House can stamp its authority and make law. It is not just subsidiary regulations that can be done by the Departmental Committee on Education. He should not think that I do not know. All he needs to be...

The Temporary Speaker (Hon. Rachael Nyamai): Well, thank you very much, Hon. Baya. This is a House of Debate, and he got an opportunity to stick to what he had said. Member for Mathare, please proceed to conclude.

Hon. Anthony Oluoch (Mathare, ODM): Thank you, Hon. Temporary Speaker. I thank Hon. Otiende Amollo for that information.

The reason I was bringing the Clinton versus New York case was to demonstrate what they said. When you cherry-pick a particular line in proposed legislation that is sent to you for assent and propose amendments, what they call line vetoing is considered unconstitutional. It is unconstitutional to the extent that we have a provision in our Constitution that allows a similar mischief. I say this overly in the context that we cannot allow Cabinet Secretaries and other entities to use the avenue of regulations to sneak in unconstitutional things and go contrary to our powers under Article 94 of the Constitution. I support the Committee.

Thank you very much, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Rachael Nyamai): Thank you very much, Member for Mathare. Hon. Members, I would like to acknowledge, Enkasiti Primary School, Kajiado East Constituency, Kajiado County that is seated in the Public Gallery this morning. Help me to welcome the pupils to the House. We also have Joy Nairobi School from Kikuyu Constituency, Kiambu County. They are welcome to the National Assembly to observe the proceedings of the House. Hon. Members, I would also like to welcome our students seated in the Speaker's Gallery this morning. They are from Kabiru Secondary School, Dagoretti North Constituency, Nairobi County. They are welcome to the National Assembly.

Hon. Members, I would also like to communicate that Order No.16 is a Motion on the Expansion of Drug and Substance Abuse Rehabilitation Centres by Hon. John Makali. He requested that it be dropped, and this was assented to by the Speaker. Therefore, it is dropped.

EXPANSION OF DRUG AND SUBSTANCE ABUSE
REHABILITATION CENTRES

THAT, aware that, according to the National Protocol for Treatment of Substance Use Disorders in Kenya by the Ministry of Health, drug abuse has been increasing in Kenya especially among the youth, with statistics indicating that more than half of drug users are aged between 10 and 19 years; further aware that, research released by the National Authority for the Campaign Against Drug Abuse (NACADA) in December 2022 placed western region as the leading region in alcohol and substance abuse at 23.8%, followed by the coast region at 13.9% and the central region at 11.9%; recognizing that, the high level of drug abuse in the western region is attributable to illegal entry points from neighbouring countries and unlicensed establishments especially in Bungoma and Busia counties, with statistics indicating two out of every five establishments in Bungoma operate illegally; further recognizing that, a majority of the consumers of illegal substances are school-going children who end up dropping out of school; cognizant of the fact that the Alcoholic Drinks Control Act, 2010 established the Alcoholic Drinks Control Fund whose purpose is to, among other things, facilitate the dissemination of information on alcoholic drinks and promote rehabilitation programmes in the country; this House urges the Government to institute intensive programmes for the dissemination of information on alcohol and substance abuse in line with the Alcoholic Drinks Control Act, 2010, and to increase the number of rehabilitation centres across the counties

(Motion dropped)

The Temporary Speaker (Hon. Rachael Nyamai): Hon. Members, going back to the debate, we have Hon. Mugambi Rindikiri, Member for Buuri.

Hon. Mugambi Rindikiri (Buuri, UDA): Thank you, Hon. Temporary Speaker. I want to join the rest of the Members in arguing that we annul these regulations in totality. Let me thank the Committee in charge for being hawk-eyed on irregularities and illegalities in decision-making, particularly when the law is involved. It is very disturbing! As much as we would like to defend the position of Cabinet Secretaries and the Government, there are some obvious things we cannot do as a House. We cannot have a situation where one Arm of the Government is not respecting the other Arm in making decisions. The Kenya National Qualifications Authority is an established institution under the law. Therefore, when the Ministry ignores their input when making regulations, it leaves much to be desired. This Authority has the capacity to advise and consult when it comes to regulations on how best to run universities.

Therefore, it is imperative that the Cabinet Secretary reverts to his desk and starts making proper decisions. Any action with an element of cost to the community must be taken very seriously.

We have students, parents and guardians, and when we make a regulation that imposes costs on those people, it is very bad and should not be allowed to happen. This animal called public participation is in the Constitution. I wonder what special preference the Ministry has

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that it cannot conduct public participation when making regulations. That is a critical element in the law-making process and when developing regulations.

The Cabinet Secretary for Education, a technocrat within the Ministry, has failed to conduct public participation. Therefore, these regulations cannot be passed. It is high time Parliament took up this issue as far as decision-making is concerned.

Hon. Wanjiku Muhia (Kipipiri, UDA): On a point of order, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Rachael Nyamai): What is out of order, Hon. Wanjiku Muhia, Member for Kipipiri? Please pass the microphone to her.

Hon. Wanjiku Muhia (Kipipiri, UDA): Thank you Hon. Temporary Speaker. I rise pursuant to Standing Order 95. Looking at the debate, everyone agrees that a matter like this without public participation is null and void, and continuing to debate will be repeating ourselves. So, I request that you call upon the Mover to reply.

Hon. Mugambi Rindikiri (Buuri, UDA): Can I proceed, Hon. Temporary Speaker?

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): I will give the Member for Buuri a chance to finalise. I will then find out if it is the mood of the House that we call upon the Mover to reply.

(Loud consultations)

Order, Hon. Members. The Member for Buuri shall be heard in silence.

Hon. Mugambi Rindikiri (Buuri, UDA): Thank you, Hon. Temporary Speaker. The future of education in this country will solely depend on the decisions we make, specifically those in charge of education. As it is now, the education sector is facing many problems. We have had commissions, and the President has even formed a Taskforce, but their reports are never considered. I urge that these regulations be dropped in totality.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Members, I still have ten requests. I want to find out whether it is the mood of the House that we use Standing Order 95.

Hon. Members: Put the question!

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

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): I call upon the Mover to reply.

Hon. Samwel Chepkonga (Ainabkoi, UDA): Thank you, Hon. Temporary Speaker. I want to thank all the Members who have contributed and those who intended to do so because they have all supported this Motion. I want to assure the House that before we bring a regulation for annulment, we usually approve it as a Committee. We have approved about 13 or 15 other regulations. We report to the House every three months of all the regulations that the Committee has approved, and we usually table them here. We recommend the annulment of regulations in extreme cases where the regulation-making authority refuses our proposal to revoke and amend the regulations.

For instance, even on this one, I am not very pro-annulment. I was only recommending what they needed to do. However, when they refused to justify why public participation was not held, and regulatory impact assessment was not conducted, we said we would not agree. This is something that is affecting the people, and it is in contravention of Articles 118, 10, 259 and 47 of the Constitution.

Thank you.

(Question put and agreed to)

ADOPTION OF REPORT ON THE PROPOSED REDUCTION
OF PROJECTED CEILINGS FOR KeRRA FOR THE
FINANCIAL YEARS 2024/2025 AND 2025/2026

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Chairman of the Departmental Committee on Transport and Infrastructure, Member for Ndia.

Hon. George Kariuki (Ndia, UDA): Hon. Temporary Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Departmental Committee on Transport and Infrastructure on its consideration of the Proposed Reduction of Projected Ceilings for the Kenya Rural Roads Authority for the Financial Years 2024/2025 and 2025/2026, laid on the Table of the House on Tuesday, 26th September 2023.

Hon. Temporary Speaker, I would like to give a background on this matter. On Tuesday, 22nd August 2023, the Committee noted and deliberated on the contents of a communication from the Kenya Rural Roads Authority (KeRRA) Head Office to regional directors regarding the reduction of projected funding ceilings to the constituency roads from 22 per cent to 15 per cent and to the critical road from 10 per cent to 6.8 per cent in the Financial Years 2024/2025 and 2025/2026. The Committee resolved to invite the Director-General of KeRRA and the Director-General of Kenya Roads Board (KRB) to a meeting to deliberate on the matter.

In the afternoon sitting of the same day, Tuesday 22nd August 2023, while rising on a point of order, the Member for Nyando, Hon. Jared Okello, raised the matter in the House and sought the direction of the Speaker. The Speaker directed that the Leader of the Majority Party follows up on the matter and respond to the House. The Leader of the Majority Party issued a Statement to the House in the Afternoon Sitting on Thursday, 24th August 2023. In his Statement, he read a submission by the Cabinet Secretary for Roads and Transport, Hon. Kipchumba Murkomen, which indicated that the lower ceiling issued to KeRRA was made under caution to safeguard the Authority from early procurement of works and the resulting pending bills that may arise if the county governments are funded.

The Leader of the Majority Party also informed the House that the matter was before the Departmental Committee on Transport and Infrastructure, which will further consider the matter and report back to the House.

The Committee via a letter dated 28th August 2023, invited the Director-General of KeRRA and Director-General of KRB to a meeting on 6th September 2023. However, the Director-General of KRB, via a letter dated 1st September 2023, requested that the meeting be rescheduled to a later date. The Director-General of KRB gave a written submission. The Director-General for KeRRA also, via a letter dated 5th September, requested that the meeting be rescheduled, but concurring with submissions from KRB.

The Committee, having considered the submissions, received the 9th National and County Governments Coordination Summit held in February 2023 in Naivasha resolution that Road Maintenance Levy Fund (RMLF) allocation to the counties would be considered in the Financial Year 2024/2025 through a restructured process.

Implementation of the resolutions would entail amendments to the KRB Act, 1999, which still needs to be done. Article 95 of the Constitution gives the National Assembly the mandate to enact legislation and determine the allocation of national revenue between the levels of government.

Hon. Temporary Speaker, according to the submission by the KRB and the Statement by the Leader of the Majority Party tabled in the House on 24th August 2023, the Legal Notice No.2 of 2016 classified the county road network into national trunk roads - Class S, A, B and

C and county roads - Class B, E, F and G. In this classification, Kenya Rural Roads Authority (KeRRA) was given the responsibility of Class C roads. As such, counties became beneficiaries of the fund effective Financial Year 2015/2016 based on the County Allocation of Revenue Act, 2015, and instructions from the National Treasury issued on 28th August 2015.

In this regard, KRB allocated 15 per cent of funds to the counties as conditional grants for six years up to the Financial Year 2020/2021. However, the effective Financial Year 2021/2022 maintenance of county roads was incorporated into the equitable share. Hence, KRB stopped the conditional grants from the Road Maintenance Levy Fund to the counties and reverted to the original formula, as provided in Section 6 of the Kenya Roads Board Act, 1999. KeRRA gets an allocation of 32 per cent, which we call 22 per cent and 10 per cent. Kenya Urban Roads Authority (KURA) gets 15 per cent. Kenya National Highways Authority (KeNHA) gets 40 per cent. Kenya Wildlife Service (KWS) gets 1 per cent. There is an allocation which we call emergency interventions to the Cabinet Secretary of 10 per cent. KRB gets an administration allocation of 2 per cent.

Hon. Temporary Speaker, having considered the submissions by KRB and the Cabinet Secretary for Roads, Transport and Public Works, the Committee observed that the communication by KeRRA on the lower ceiling was only cautionary to prevent the ending Bills that may arise in the event that the county governments are funded from Road Maintenance Levy Fund in the Financial Years 2024/2025 and 2025/2026. The allocation for the Financial Year 2023/2024 has not and will not be affected by the communication. The Committee notes that the communication by KeRRA on the lower ceiling is inconsistent with Section 6 of the Kenya Roads Board Act, 1999, which provides for how the KRB will allocate funds.

Section 6 of the Kenya Roads Board Act, 1999, says that the Board shall allocate funds from the Road Maintenance Levy Fund as follows. I gave the percentages. So, I do not have to go back there. The Committee also recommends that the Director-General of KeRRA withdraw the memo to regional managers and report back to the House within seven days of adopting this Report. Further, public officers should refrain from issuing communications or circulars that have legal implications before the approval of Parliament. We agreed yesterday that only Parliament has the mandate to change or make laws. Additionally, the Committee also recommends that the KRB expedites the release of funds for the Financial Year 2023/2024 to the road agencies.

Having stated the above, I request the Vice-Chairman of the Departmental Committee on Transport and Infrastructure to second the Motion. Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Chairman, please move the Motion before you call the seconder.

Hon. George Kariuki (Ndia, UDA): I beg to move and ask the Vice-Chair of the Committee to second. Thank you.

Hon. Didmus Barasa (Kimilili, UDA): Thank you, Hon. Temporary Speaker. The Committee is very clear that the communication to lower the ceiling was inconsistent with the law. It has recommended that the said memo should be withdrawn immediately. After withdrawal, they should report back to this House.

Even as I second, it is very important for the House to know that any Government agency that will purport to usurp the powers of this House in either making laws or regulations is basically impunity. This House must say no. We should not allow agencies and civil servants to waste our time debating issues that are inconsistent with the law. They should stick to what the law says. People who met somewhere in Naivasha are not legally recognised by any laws in this country. Therefore, their recommendations cannot just be copied and pasted to mean that it is the true position.

Hon. Temporary Speaker, without belabouring the point, I second the Motion.

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

(Question proposed)

Hon. Members, on my left side, I will give the first opportunity to Hon. Otiende Amollo.

Hon. (Dr) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Temporary Speaker. For the avoidance of doubt, these regulations are for annulment but not withdrawal, as the Vice-Chairman has spoken about. They are for immediate annulment. They are of no legal effect once we are done.

The reasons are simple. Firstly, this constitutes an encroachment and overreach by the National and County Government Coordinating Summit. You cannot purport to make decisions that affect constituencies and Members of Parliament who are not represented at that forum. Whatever forum that was in Naivasha, it should have done what took them there, but not touch our jurisdiction.

Secondly, Section 6 of the Kenya Roads Board Act, as captured by the Chair, is very clear. You cannot make regulations that contradict a substantive provision of the Act. That is a preserve of Parliament. To purport to do so is actually in contempt of Parliament. The rationale cannot be deciphered. You cannot purport to reduce these provisions to make some provisions for the counties. County governments are given money to make county roads. However, they do not do it most of the time. The citizens keep coming to us asking us about the very many roads that are not passable. If any case was to be made, it would be of increasing this allocation but not decreasing it.

Let county governments use their funds for the county roads that they ought to make. In most occasions, county roads are affected because most counties subject that to the discretion of the Members of the County Assemblies (MCAs), who prioritise other things other than roads. That is not the mistake of the Members of Parliament or KeRRA in this funding.

Hon. Temporary Speaker, I want to submit that this Fund, under this scheme, just like the National Government Constituencies Development Fund (NG-CDF), is one of the very few verifiable important funds for the citizens. Without the NG-CDF and these funds, the citizens would suffer immensely. I want to submit in closing that to the extent that these regulations are made in contradiction of the Act, or they are made without consultation of those affected, or they are made without rationale, then they are for total rejection with a caution that they must not try to do something like this again.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you, very much Senior Counsel. Let us have the Hon. (Dr) John Mutunga.

Hon. (Dr) John Mutunga (Tigania West, UDA): Thank you, Hon. Temporary Speaker for the opportunity to speak to the adoption of this Report. Right from the outset, it is okay for the counties to meet and talk. It is okay for them to make proposals. It is okay for them to come up with structured processes of getting their own money, but it is not okay at all to encroach on boundaries that they should not. The money that we get through the KeRRA as an apportionment of resources as per this Report has been used very effectively. In fact, this is about the second most successful project that we have in this country. Besides the NG-CDF, I think the KeRRA projects, which we implement under their regional offices, have been extremely successful. First, we agree they can sit down and discuss their own issues but they should not encroach on the boundaries that they should not.

Secondly, as Hon. Otiende Amollo has stated, we cannot have regulations purporting to change laws. It is supposed to be the other way round. Regulations implement laws; they should be making it easier for laws to deliver and not having regulations coming in to change laws.

On the other hand, the communication seems to state that there is a likely impact on the 2024/2025 allocation. In that case, we completely refuse any action in that particular direction. We would like this particular provision withdrawn and we do not want any impact in that particular direction.

We would like to propose that even in the other sectors which have not been performing... I have in mind the water and electricity sectors which do not have specific allocation. They should go this direction. We should have some money for water supply to our people. Let us use equity to supply water to our people. There should be an allocation which is reliably and verifiably available every year so that we can plan for them. Even on the part of electricity, if you look at some of the areas in this country, you will find that they are below 40 per cent in terms of household coverage with electricity while Kenya is at 75 per cent. The question is, who is at 75 per cent? It means if the average is 75 per cent then some people are already at 100 per cent, others are at 90 per cent or 20 per cent. And you wonder whether we are still living in the same country. Why does this even happen? Because of this discriminatory way of apportioning resources, we would like some equity.

The only way we can ascertain equity is by ensuring that people are given some resources that they can determine how they are going to be utilised. The only way we can determine that is by having these resources regularly channeled to us. We can then decide where they should go. I fully support the annulment of that particular provision and that particular regulation and also the return to normalcy. There should be total withdrawal of the communication done by the Director-General of KeRRA on this communication. As a House, we do not accept such side shows. We would like the Director-General of KeRRA to also acquaint himself with the laws that are in this country that basically guide on how resources should be utilised. He should be guided on the processes and functions of different institutions, especially in his docket. I support.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. TJ Kajwang’

Hon. TJ Kajwang’ (Ruaraka, ODM): Hon. Temporary Speaker, there are too many competing interests. There are too many people trying to compete with us in the space of law-making. You start with the President, he wants to make laws through reservations and vetoing. You go to the Cabinet Secretaries, they want to clone the space of making laws through delegated legislation. There is one Constitution which states clearly that Parliament, under Articles 95 and 96, has the sole authority of legislating. We have to speak on the rooftops and in every political pulpit that we get. We must preach this message so that they know that it is the function of the National Assembly and Senate to make laws and nobody else.

If you look at this issue that we are talking about, it came by way of a memo or a circular. I would like to call out the Director-General of KeRRA. That is the person who actually penned this thing. He knows the law. He knows that he cannot make regulations out there. He knows that a memo or a circular, if it has the force of law, is a law-making instrument. That is why when we were debating earlier here on delegated legislation, we said that even guidelines must not be issued out there if they have a force of law, without passing through this House. So, if you want to make law, for heaven’s sake change the law. Just amend the law and we will be peaceful. Everybody will be happy.

Look at this Report. There are these people called 9th National and County Coordinating Summit. It is a body unknown to law. Which law incorporates this body calling itself 9th National and County Coordinating Summit? Then I have a problem with these people called 9th Intergovernmental Relations Technical Committee. If you read the Report, you will realise that it is these people who actually told the Cabinet Secretary to amend the law. Even looking at the thinking, it is that the Cabinet Secretary can change the law. The Cabinet Secretary cannot change the law. Of course, it is us who must change the law. So, this kind of people who want to feel big when they are themselves small should be resisted at all costs.

But let me go back to the Director-General of KeRRA who wrote this thing. He must know wherever he is that we can even remove him from office for violating the law. This circular is in violation of the law. We can have a Motion before this House to remove him and deal with him because he is violating the law. He could not have accepted to write this regulation.

I look at the recommendations and I agree entirely with Hon. Otiende Amollo that this is not something which should be withdrawn. This thing should be obliterated. It is null and void. There is nothing to withdraw in a null and void piece of guideline. I also want to say that public officers should refrain from issuing communications. I think they just have to keep the law. If next time we find something like this, then I urge Hon. Members that we should not go this direction. We should bring a Bill here to impeach that officer for not following the law and trying to make the law through the backdoor.

I have a last recommendation, which I think Members of this House must agree to. Instead of talking about all these things, let them release funds for the Financial Year 2023/2024. This is what they should do instead of making politics from nothing. Therefore, I support that we take this direction and very seriously censor the person who wrote this thing and the people conniving behind him.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Drtr) Rachael Nyamai): Thank you very much, Hon. Member for Ruaraka. Hon. Members, on this screen I realise we have Hon. Members who may not be in the House. Is Hon. Julius ole Sunkuli in the House? He is not in the House. In that case, I call upon Hon. KJ, John Waweru. Member for Dagoretti South.

Hon. John Kiarie (Dagoretti South, UDA): Hon. Temporary Speaker, I thank you profoundly.

What we are doing here this morning is remedying a mischief. We ought to ask ourselves what mischief it is that we seek to remedy. When the Hon. Member for Nyando brought this matter to the Floor, we realised that a number of things are happening. The first thing is, of course, that the Executive is trying to legislate. Even more tragically is the attempt by governors to try to reform the law to benefit counties from a national government coffer. It is well understood that there are roads placed under the jurisdiction of the National Government. There are those placed under the jurisdiction of county governments. Now, what is happening is that the county governments we had envisioned to be centres of economic development are failing in raising their own revenues to a point that they are not able to attend to the needs in their counties. They now want to dip their hand in national government coffers.

The Cabinet Secretary in question is a good friend of mine. He is a great champion of devolution. When he would teach us about devolution, Hon. Kipchumba Murkomen would tell us that we are seeking to have devolution so that counties are able to generate revenue on their own to take up development from the county level. What we have seen during the last 10 years is that counties have become overly dependent on Division of Revenue monies allocated by this Parliament. That is to the extent that the whole devolution conversation has been turned into how we share the cake and not how we bake the cake. We are trying to cure that mischief this morning. That mischief informed the move towards reducing the KeRRA monies on the National Government's Vote so that they can be redirected to county governments.

If not for any other reason, those two reasons allow us to support the Report tabled here by the Departmental Committee on Transport and Infrastructure. If it was fairness, the natural thing that would be happening is that these monies would be either constant or increasing. It is even against the rights of the people of Kenya to reduce the Vote of these monies that we know are very well superintended under KeRRA.

Beyond agreeing with this Report, we are asking the Departmental Committee on Transport and Infrastructure to take further action to inform KeRRA to make sure that they

withdraw the letters written to regions and correct the mischief. In fact, going forward, it should only be actioned by Parliament through the Departmental Committee on Transport and Infrastructure. The very good Cabinet Secretary has been a legislator. He understands that we are the House that has the power to make legislation. If we want devolution to work, we should be strengthening revenue-raising ability of counties, not making counties totally dependent on the National Government. We ask the Cabinet Secretary that instead of joining the bandwagon of dividing the national cake, he should help these counties bring in the ingredients that will help bake national revenue.

I stand to support the Report and say a big thank you to the Departmental Committee on Transport and Infrastructure under the leadership of the Hon. G.K. Kariuki.

Thank you very much, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much, Hon. Kiarie. Before I give an opportunity to our senior, Hon. Keynan, I would like to welcome, seated in the Public Gallery this morning, students from the following schools:

1. Olkejuado High School, from Kajiado Central in Kajiado County;
2. Light International School, from Lang'ata Constituency in Nairobi County.
3. Students of the University of Nairobi, from Starehe Constituency in Nairobi County.

You are all welcome to observe proceedings in the National Assembly.

(Applause)

Hon. Members, the next opportunity now goes to the Member of Eldas. Hon. Adan Keynan.

Hon. Adan Keynan (Eldas, JP): Thank you, Hon. Temporary Speaker.

This House is under threat. Some of us have been in this House for quite some time, since the Eighth Parliament. Some of the key institutions that have benefited Members of Parliament and their constituencies are the National Government Constituencies Development Fund (NG-CDF) and KeRRA. I do not want to delve into the politics of the formation of KeRRA, the KURA, KeNHA, and KRB.

As Members of Parliament, we have reached a stage where, today, any busybody attempts to take away the constitutional mandate of Members of Parliament. This trend started during the 11th Parliament and the 12th Parliament. I am glad that the Chairman is here. Here we are in the 13th Parliament and a mere entity, instead of discussing this thing during pre-budget debate, these issues are now being made a debate after the Budget is passed. That in itself tells you that there is mischief. If you look at the framers of our Constitution and Article 1, sovereignty has been equated to representation. Here is an entity that does not want to know the existence of the Statutory Instruments Act. They do not want to know the four key constitutional mandates of a Member of Parliament. They just sit in an office and negate what has already been given.

I will tell you of where Hon. Saney and I come from. The only roads we have seen since Independence are KeRRA roads yet here is an entity that just decides, out of the blues, to withdraw what we got. In fact, there was an attempt to merge KeRRA with KeNHA during the 11th Parliament. Those who were in Parliament will tell you this. We refused. We refused and said "No KeRRA, no representation". There was a justification. For those of you who were here six years ago, if you asked a child from my village what a tarmac road is, the definition was "a black substance found down in Kenya." That definition has to be negated while I am still the representative of those people. This is not the attitude.

I want to tell you Members of Parliament and all of us here that we have lost our mandate and grip on national issues slowly. It is not right when a non-constitutional entity in

the name of an amorphous group that brings together governors and other groups decides to sit under a tent and say, “withdraw the constitutional mandate of Members of Parliament.” Even this Report by the Chairman and Members of the Departmental Committee on Transport and Infrastructure is mild. It should have sanctioned an individual and dealt with people so that it serves as a lesson to other would be intruders. We are asking for the withdrawal. So what? You are asking them to release funds. So what? These issues ought to have been done. We must resist these attempts in future. Once upon a time when we were elected, even staffers here were police officers. Your Clerk was a Criminal Investigation Department (CID) officer. The Deputy Clerk was a special District Officer (DO). We have over the years fought to give Parliament its true independence. Do not allow it during your time.

For those of you who are serving under this very important Committee, the Departmental Committee on Transport and Infrastructure, do not allow this negation. I am glad that my friend Saney is here and he comes from that area. Hon. GK, do not allow this. It does not matter the consequence. That is what it truly means to be a representative of the people of Kenya. Attempts will be made. If you ask Biden right now, they had a challenge and a stalemate just last week. No elected government is ever happy with a functioning and truly democratic Parliament.

As you do this, I urge you that these recommendations are a bit mild. I am sorry to say this. July, August and September are gone. We are now headed to October. What do we expect, Chairman, yet the first quarter of the financial year is already gone and we are already dealing with pre-budget issues? What are you telling us, Chairman? Bring these individuals to book. Let our allocations increase. The issue of governors should not arise because we have given them enough allocations. Let them deal with what they have. In future, no entity, in whatever name, should be allowed to make decisions on behalf of Members without representation. If it is the issue of roads, the Chairman and his team should be called to represent Members in that particular entity. Otherwise, that group seated somewhere and making decisions on behalf of Parliament will be an affront to our existence.

I want to conclude by saying that each one of us is here for a purpose. That purpose must not be lost simply because someone is not happy with our existence here.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): I give you one minute to wind up because of your seniority, having served in this House for 25 years.

Hon. Adan Keynan (Eldas, JP): Thank you, Hon. Temporary Speaker. The Executive is not represented here. Chairman, you and your Committee are our embodiment. Stop being mild. Our representatives at NG-CDF and this Committee must truly represent the interest of Members and the electorate at all times regardless of political pressure.

(Applause)

So, after seven days, what next? With that communication and bureaucratic approach, the first six months will be over. So, what will Members do? Chairman, we really want you to do this. This Report is mild. I want to urge my friend Hon. Otiende Amollo that... If time allowed, we would have brought an amendment to name some of the individuals and introduce timelines. We need to say that within the first quarter, this amount of money should reach constituencies.

I thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much, Hon. Keynan. Hon. Members, bear with me. I can see a lot of interest in this Motion. I know that you have five minutes each to debate. If you decide to speak for less than five minutes, then more of you will get a chance to speak.

I was looking for Hon. Gikaria on my right but I can see that he is seated somewhere on the left. You may proceed, Hon. Gikaria.

Hon. David Gikaria (Nakuru Town East, UDA): Thank you, Hon. Temporary Speaker.

(Hon. Ibrahim Saney spoke off the record)

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Order, Member for Wajir North. Hon. Gikaria came to this House much earlier than you, so he will be allowed to speak.

Hon. David Gikaria (Nakuru Town East, UDA): He is still a young man, so forgive him.

(Laughter)

Thank you, Hon. Temporary Speaker. First of all, I thank Hon. TJ Kajwang'. Last week we were in a seminar in some place and Hon. TJ Kajwang' taught me the jurisdiction of the lower courts, the High Court, the Court of Appeal all the way up. We thank you, Hon. TJ, because you have stated the facts of law. I want to state facts on the ground as they are. In the 11th Parliament, as Hon. TJ Kajwang' has indicated, we tried to propose that some of these roads be classified through the normal process of legislation. But the Council of Governors (CoG) went to court to stop the process of legislating to classify those roads. There is no way that roads that were being used in the 1960s and 1970s are still in use currently. There are some roads which need to be upgraded to bitumen standards because they have become very important. The CoG went to court and tried to stop the process. That is the reason for the current poor state of our roads.

In August 2015, as indicated in the Report, county governments were given a conditional grant of 15 per cent. But as a few of my colleagues have indicated, if you visit the counties and see the reality on the ground, you will be shocked. I know you know what they do in your county because you are a Member of a single constituency. I believe it is not different from what happens in our counties. The status of our roads is very bad because when county governments undertake to do those works using money from the KRB, they do a shoddy job. For example, in my constituency in the ward where I come from, civil engineers indicate the spacing if you are dumping, say, 20 tonnes of murrum. But you will be surprised that a truck of 20 tonnes goes for around 50 metres. Once it is spread, what happens to that road? Within a week, it goes back to its previous status yet money, equivalent to what KeRRA is doing currently, has been used. That is the horrible status on the ground.

I want to agree with Hon. KJ that counties have become overly dependent on what is sent from the National Government. This is because of the revenue allocations through the formula that we have passed here in Parliament. So, they put in their pockets what they collect. They also do not care whether they collect or not, as long as some money will be sent down to the counties on a monthly or quarterly basis for them to use. They have become dependent on money that they do not even care to collect. Thanks to devolution, they have to be given money all the time.

I happened to be a mayor back in 2010. The Local Authorities Transfer Fund (LATF) was the only money. It was around Ksh50 million. It made a huge difference then. Yesterday I had to give Ksh10,000 to a Member of County Assembly (MCA), who had been given trucks with no facilitation. What has happened to the counties? They have bought trucks and graders. The money from KRB goes towards repairing the same graders and trucks. Unfortunately, these trucks and graders are never taken to the ground for maintenance of these roads. That is the worst status. In my county, they have bought some equipment for repairs yet there is no repair.

A repair of a battery costs around Ksh100,000 and things like that. As I said earlier, yesterday I had to give Ksh10,000 to the MCA who was given a truck with no fuel. He had to get that money for fuel, get some sand and dump it on the road. That is the situation on the ground. I totally agree with the Committee. Please, do not allow these things to happen, otherwise our roads will not be roads anymore but something else.

Thank you, Hon. Temporary Speaker.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Ibrahim Saney, Member for Wajir North, it is now your opportunity.

Hon. Ibrahim Saney (Wajir North, UDA): Thank you, Hon. Temporary Speaker. I am dissuaded from discussing county governments, but I am rather perplexed at the disdain which statutory organs have for the rule of law. That speaks to KRB and other entities. As my Chairman has put it, the lower ceiling is not really cautionary; it is an abuse of the existing law. There is a hierarchy of laws in Kenya: the Constitution, statutes passed by this Parliament and subsidiary laws. Thereafter, precedents and other things follow. There cannot be any other laws. Regulations are too inferior to statutes. I cannot see how a subsidiary legislation by a non-entity, an amorphous body in Naivasha, can overturn a statutory statement in our laws. My argument is that corruption has gone to a level where impunity against the law is at the centre. We cannot allow this to happen as a Committee. The Cabinet Secretary is duty bound, being a lawyer, to make sure that there is fidelity to the law. This is neither a bargain nor is it negotiable.

The biggest monster in the roads sector is KRB. This is an entity whose income is not identifiable to the extent that we cannot really know how much they make. It throws money left, right and centre. It distributes resources yet this House is not seized of that matter. We do not know their budget and how it distributes money to each constituency in this country. It is a multi-billion-shilling entity. It is too rich yet it is taxpayers' money. The so-called Roads Maintenance Levy Fund (RMLF) must be dealt with once and for all. If it is not brought to the Floor of this House, legislated upon and dealt with, then the Kenya Kwanza Government will never deal with corruption.

With those few contributions, I support this Report. Thank you.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Nelson Wamboka.

Hon. Wanami Wamboka (Bumula, DAP-K): First of all, Hon. Temporary Speaker, I must say I am very disappointed. You keep asking why we do not have quorum in this House...

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Wamboka, you are out of order.

Hon. Wanami Wamboka (Bumula, DAP-K): Just allow me to express my disappointment.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): I will encourage you to go direct to the debate.

Hon. Wanami Wamboka (Bumula, DAP-K): But you know, you cannot gag me, Hon. Temporary Speaker. I must express my disappointment. We cannot be coming here very early and people come very late and you allow them to speak before us.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): You are out of order, Hon. Wamboka. Please proceed with the debate.

Hon. Wanami Wamboka (Bumula, DAP-K): At least, you have heard me. I want to support...

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Please take note that earlier I had wanted to give you an opportunity and you were out of the House. You were in the list of those who were out of the House. I give you an opportunity and with a lot of respect. Please proceed with the debate.

Hon. Wanami Wamboka (Bumula, DAP-K): Hon. Temporary Speaker, I want to support this Report by the able Chairman, Hon. GK. Indeed, I want to pick it up from where our senior, Hon. Keynan, left it. Hon. Chairman, make it very difficult for someone next time to try and joke with this House. Please do not stop there. You know a kangaroo gathering somewhere cannot sit to usurp powers of this House and on that strength, a Director-General makes far reaching recommendations that are going to affect our operations as Members of this Parliament.

In our constituencies, the KeRRA performs better than counties in terms of roads. Many times, we have been forced to do county roads. I am doing about five of them this time under special funds from KeRRA. We do not see where the money for counties goes. In fact, Hon. Chairman, look at ways of how we are going to increase this Fund because it is the only working Fund on the ground. It is shameful that governors are unable to manage that which they have and they feel they can come and grab that which we are trying to manage. The KeRRA money is the only money that works on the ground. In many of county roads, governors are hiding behind us because we are the people who are asked in meetings. When you stand anywhere in a function, when a road is bad, people do not even go for the governor, they come for the Member of Parliament. Let us legislate effectively to ensure that we have a way of this Fund increasing periodically, after a year or two. Let the money keep increasing so that not only can we be handling earth roads, but we are able to even handle the tarmac roads.

It is absurd and unimaginable how this Director-General is still in office. Hon. Chairman, crack that man. In fact, we want that Director-General to come to your Committee. Summon him here so that he answers questions, *ili iwe funzo kwa wale* Director-Generals *wengi wakora ambao wanafikiri watatumiwa na Executive kuendelea kudunisha Jumba hili*.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Wamboka, please use parliamentary language. *Wakora* is unparliamentary.

Hon. Wanami Wamboka (Bumula, DAP-K): Hon. Temporary Speaker...

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): You are also mixing languages. I know that you have waited for a long time. Just compose yourself and finalise your debate.

Hon. Wanami Wamboka (Bumula, DAP-K): I am well guided.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): First of all, please withdraw *wakora*

Hon. Wanami Wamboka (Bumula, DAP-K): I withdraw the *wakora*. We want to serve a bitter lesson to anybody who would imagine that they can use the Executive to try and micromanage this House. I support this Report. Thank you very much.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much, Hon. Nelson Wamboka. Hon. Members, I am going to give an opportunity to the female legislators. I am giving an opportunity to Hon. Wanjiku Muhia.

Hon. Wanjiku Muhia (Kipipiri, UDA): Thank you, Hon. Temporary Speaker. Just for the information of the House, I had stepped outside because there are some unusual things at the gate of Parliament where the deaf community is gathering claiming to see all of you, but I have attempted to see them on your behalf because they want you to embrace the sign language and make it a Bill in both Houses.

Having said that, I support this Report from the Departmental Committee on Transport and Infrastructure, but I want us, as a House, to take a minute and think if we really use parliamentary time appropriately. We have just ended the debate on Universities Regulations where the Cabinet Secretary and the team have made regulations and published them in spite of the Chairman informing them of the right manner.

Here we are again, and this House has been putting questions, statements and the Leader of the Majority Party has been speaking of the same. The Departmental Committee on

Transport and Infrastructure had to sit down on a matter like this while the country is suffering on many other avenues just because someone in an office wrote a memo or a letter without consultation. The principle of public participation in the Constitution must be adhered to by all leaders.

The Ksh42 million that goes to the constituencies is too little and in fact, I have a Bill in front of this Committee I should be presenting tomorrow, for us Members of Parliament to have substantive road network in our constituencies. We have some counties where rain falls year in, year out. For instance, where I come from, we have rains until January. We have some counties in the northern part of Kenya where an estimated road of three kilometres will require double or triple the amount of money allocated because of the length and all these issues have never been considered.

As we discuss, we should be discussing how to increase this money. We can see the percentage as enumerated from the KeRRA, KURA, KWS and KRB, but there is some money for emergency, some 10 per cent. It is time, as a House, we revisited the use of this 10 per cent. This is where the increase should come from. If calculations are done very well, and I am sure we have good mathematicians in this House, we can get 5 per cent from this. This can work as an affirmative action to counties where rain patterns are frequent and to those where the length of the road network are also very long in terms of the distance.

If we get the affirmative increment of 2.5 per cent to each county, the ones in the dry areas, those with significant distance, those which have rain all the time or those whose topology is black cotton and the like, then we will be in a better position.

Having said that, while I restrain myself from discussing about counties, it is time that they also demonstrate their leadership. Time and again when there is a *matanga* there, you will find a Member of Parliament is the one making that small road. When there is any emergency, you will find the Member of Parliament is the one making those roads from the small savings, yet those roads clearly belong to the counties, but we have not seen them make the small roads of one or two kilometres to make our constituents transport their food produce to the markets and enjoy their businesses.

I have one road called Captain Wanjohi-Geta-Ndunyu Njeru Road which is a nightmare and KeRRA is aware of this. The road has been constructed for seven to 10 years and it is not complete. Members in this House are suffering because they maintain roads that are even made by KeRRA and it can only be fair if this money is increased and not reduced by one shilling.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much, Wanjiku Muhia. Hon Julius Ruto, Member for Kesses.

Hon. Julius Ruto (Kesses, UDA): Thank you, Hon. Temporary Speaker, for giving me this opportunity to support the Report by the Departmental Committee on Transport and Infrastructure.

We come from constituencies and day-in-day-out we engage with our electorates. Bad roads are a common challenge in all constituencies. The proposal to reduce KeRRA allocation is wrong. The KeRRA has done tremendous work. We need to see the audit reports undertaken by the Kenya Roads Board (KRB) on KeRRA compared to the other agencies and roads done by county governments. Reducing the allocation ceilings for KeRRA in the quest to increase the allocations going to county governments is defeating. In any case, the functions and the goals are not competitive because all these are geared towards serving the common mwananchi.

County governments are privileged in terms of their allocation. Every county government has acquired enough equipment. However, they are still facing many challenges in terms of policy implantation and management of the same assets. Most of this equipment is abused or misused. The output of these counties cannot be compared to what KeRRA has done. This is a calling to all agencies to uphold competency in their work.

The KeRRA was established with a clear mandate and responsibility by law, under the Kenya Roads Board Act of 2007. Negating the possibility and the provisions of the same law that was given by this Parliament by coming up with subsidiary legislations that defeats the powers from the same Constitution, is null and void. Therefore, even this debate is a waste of time. We need to communicate to the Cabinet Secretary that that communication should have been cancelled within seven days and a new communication should have been issued. The agencies need to do their work plans for the 2024/2025 Financial Year based on the increased projections. Our revenue increases day-in-day-out. Compared to last year, revenue collection is on a positive trajectory. Therefore, even allocations and ceilings should be increasing.

Hon. Temporary Speaker, I support that what KeRRA did is against the principal laws of this Republic. As a House, we need to stand and ask them to stick to their role and mandate. Matters to do with budgeting should be left to this House. Going forward, let every government agency do its work accordingly. The county governments should not scoop what is in the national Government's coffers. Let them stick with the resources they have been provided for. If it is about increasing their resources, then that should not be done by suppressing the work of the other agencies. Reducing other agencies' allocations does not meet their demands. Let them work on their source revenue. As the national Government revenue is growing, let the Constitution of Kenya be upheld. County governments allocations should be increased constitutionally but not by suppressing other agencies.

Thank you very much.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Dick Maungu, the Member for Luanda.

Hon. Dick Oyugi (Luanda, DAP-K): Thank you, Hon. Temporary Speaker, for the opportunity. I rise to support the Report by the Departmental Committee on Transport and Infrastructure, regarding a letter that emerged from KeRRA and sent to regional directors that led to the reduction of proposed funds to our regions.

As it has been said, KeRRA does a lot of good work in our constituencies. Therefore, any attempt, deliberate or otherwise, that may move towards reducing what KeRRA gets, will be detrimental to the welfare of our communities, the progress of our societies and the goods of networks at the grassroots. It is good to note that the Kenya Roads Act of 2007 brought into existence the KeRRA and other road agencies. The Kenya Roads Board Act of 1999 provides for the role of KRB. It is very clear that KeRRA's mandate is to maintain the road network in rural areas. Therefore, ever since coming into existence in 2007, KeRRA has done great. What KeRRA has achieved is clear across the country. Any time you visit a constituency in this country, you will see significant improvement in road management courtesy of KeRRA. The best we can do is to support or properly finance KeRRA so that they can improve on the good work.

Therefore, a caucus sitting in Naivasha on the 8th of August—a kangaroo sitting—proposed legislation that reduced the amount going to KeRRA. This should not be allowed. Having said that, the 32 per cent that KeRRA has been receiving over the years has done much. Hon. Muhia, the Member for Kipipiri has mentioned that 10 per cent is left to the Cabinet Secretary. We wish that money would be added to KeRRA so that it can make better roads in the constituencies and improve our networks.

The originator of this memo, as captured, should be called to withdraw it with immediate effect. He should never take instructions from a kangaroo sitting or from a meeting that is not anchored in law. It is only this House that is mandated to make laws and instructions on matters law. Any governing agency can draw authority from the resolutions of this House. Therefore, any caucus meeting cannot purport to give instructions on how funds can be managed. With all humility, I rebuke this. It should never be allowed again. Going forward, we

need to ringfence this. The county governments cannot stretch their hands into what is not within their ambit.

That notwithstanding, this House was not represented in that meeting held in Naivasha. Therefore, a meeting that excludes us cannot interfere or direct what this House should do. I support the Committee. We should never allow such resolutions outside this House to instruct our Director-Generals and accounting officers other than what appears in law.

Thank you, Hon. Temporary Speaker for the opportunity.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Nyakundi, Member for Kitutu Chache North.

Hon. Japheth Nyakundi (Kitutu Chache North, UDA): Thank you, Hon. Temporary Speaker for the opportunity. I also want to support the Departmental Committee on Transport and Infrastructure on this issue. There is no way IEBC can make laws and budgets for this House. This House is the only one mandated to make laws and the Budget. We were not consulted on the meeting held in Naivasha and so we are not aware of it. Money for KeRRA, especially the 22 per cent that goes to our constituencies, cannot be reduced to 16 per cent. The 10 per cent was also reduced to 6 per cent. That is not the work of KeRRA. The Director-General of KeRRA should have appeared before the Departmental Committee on Transport and Infrastructure by now to answer questions. The Cabinet Secretary for Roads, Transport and Public Works, who is my good friend, is not supposed to make laws. There is a 10 per cent allocation which is supposed to go to counties if funds are needed for roads. We will not accept these reductions. Parliament's mandate should not be given to any other person. The KeRRA has been doing a very good job on our roads in the last couple of years. There is no way that county governments can be given this money because we do not see the work that they do. We allocate a lot of money to county governments but we do not see the work that the money does. Even small roads that are one kilometre or two kilometres long that are supposed to be constructed by county governments have not been done. County governments have bought equipment that is supposed to construct roads but they are doing nothing.

We will not accept the proposed reduction of the projected ceilings for KeRRA. I commend the Departmental Committee on Transport and Infrastructure led by the Member for Ndia. We will support them through thick and thin.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): The next opportunity goes to Hon. Gideon Ochanda, Member for Bondo.

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Temporary Speaker. From the outset, I support the Report. However, I want to go on record that I am not happy about the recommendations because they are too mild.

There are issues of malice and illegality in the Report. There is malice in the sense that the DG of KeRRA went ahead and issued letters to regional managers on 22nd August based on a proposal. Who informed the DG to start issuing administrative orders once the proposal had been generated? Secondly, the Summit dealt with the 2024/2025 Financial Year. Why should the DG make changes in the 2023/2024 Financial Year? Those two issues indicate very clearly that there is malice in this proposal.

The very clear illegality that Members have spoken to is in the sense that there is a law in place yet the DG put it aside and issued letters to his junior officers. That is illegal.

The other thing that we need to look at is the Summit. The Summit recommended eating into funds that belong to the Kenya Roads Board or the Road Maintenance Levy Fund. If you look at that recommendation against the premise that counties have their own monies which they budget for annually like the national Government, why do they not have that in their budget? On the other hand, why did the Summit look at the audit in terms of the six years when there were grant funds to county governments? What did those monies do in the six years? If they did not do that audit and bring us a proper report on how counties used the grant funds for

the six years before 2021, there is no reason why any other monies should be allocated to counties from the Road Maintenance Levy Fund.

In my view, the recommendations are a little bit mild. We need to come up with tougher recommendations so that the DG of KeRRA is punished beyond what is recommended in the Report.

Finally, if there is a fund that all departments ought to have borrowed from, it is the Road Maintenance Levy Fund. If the budgets for all State departments had a portion that is directly allocated to constituencies, even if all of them were just talking about 10 per cent or 5 per cent in principle, that would be the best thing that we can do for this country. That is how the Road Maintenance Levy Fund is helping a great deal. The 32 per cent allocation that goes to KeRRA is the only money that is used for roads in rural areas. There is nothing else. I can tell you that there are certain constituencies that do not have anything to do with the KeNHA, and the KURA. The only funds available for roads are the 32 per cent allocation. It is illogical for somebody to talk about reducing something that is already not enough.

I support the Report. However, it is not clear how the recommendations were done because they are very mild.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Mary Emaase, Member for Teso South.

Hon. Mary Emaase (Teso South, UDA): Thank you, Hon. Temporary Speaker. I was about to rise on a point of order because I heard you say that you were giving an opportunity to female Members of Parliament.

I join my colleagues in supporting the Report of the Departmental Committee on Transport and Infrastructure. The importance of this 32 per cent Road Maintenance Levy Fund allocation cannot be over-emphasised. It is saddening for county governments to purport to reduce the amounts allocated to counties through a kangaroo or amorphous outfit that has no authority in law within which any allocation can be anchored on.

Hon. Gikaria is lucky to get a vehicle and fuel it. When I speak to my MCAs and ask to borrow a vehicle to fuel a grader so that we can construct roads in inaccessible areas when we go for funerals, I have to go into my pocket for funds just to prepare a road for them to transport bodies. It is unheard of and unacceptable for the DG of KeRRA and the Intergovernmental Budget and Economic Council (IBEC) to make a proposal to reduce the allocation to counties. In fact, I agree with the Member who said that the recommendations are a bit mild. When we summon the DG, let it be a plenary sitting so that all Members can ask questions on the Floor of the House. That allocation needs to be enhanced and the only body that has the authority, power and mandate to make any legislation is this House. No one can purport to usurp our powers.

I support the sentiments by other Members. That money has to remain where it is and it has to be enhanced. We cannot tolerate otherwise.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Members, before we go to Hon. Jessica Mbalu, I would like to take this opportunity to welcome ESVAK Community School from Embakasi Central Constituency in Nairobi County, and Najile Boys Secondary School from Kajiado West Constituency in Kajiado County, who are seated in the Public Gallery this afternoon. You are welcome to the National Assembly.

Hon. Jessica Mbalu.

Hon. Jessica Mbalu (Kibwezi East, WDM): Thank you, Hon. Temporary Speaker, for giving me this opportunity to add my voice to the Report of the Departmental Committee on Transport and Infrastructure led by the very able Member, Hon. George Kariuki.

Allow me to thank the Committee for coming up with this Report to annul the reduction of KeRRA funds. I was in the 11th and 12th Parliaments, and now the 13th Parliament. Only

Parliament can make and amend laws. In the process of amending the law, we can propose to increase the allocation to KeRRA from 32 per cent.

In most constituencies in the country, only 22 per cent of constituency roads and 10 per cent of critical link roads are visible. These are the only visible roads and there are engineers and people who inspect them. I think this was an attempt to kill or disrespect Parliament. The Cabinet Secretary was a former Senator and he understands the importance of roads. The President was a Member of Parliament and he knows what roads mean to the people.

Section 6 of the Kenya Roads Board Act, 2019 provides that the Board shall allocate funds from the Roads Maintenance Levy Fund. It has outlined as follows: KeRRA 32 per cent and KURA 15 per cent. I can tell you that most constituencies benefit only from KeRRA. I come from Kibwezi East Constituency where people from Nzambani, Kambi ya Munyu, Daraja-Mbili to Lukenya University have benefitted from KeRRA and the roads are smooth. The women are taken to hospital by ambulances on smooth roads. Bodaboda people are using the new roads done by KeRRA and of course, they are using little money in terms of fuelling and maintenance.

Hon. Temporary Speaker, this must be an abuse. To reduce the KeRRA funds, I think every Member in this House says no. I do not know who advised the Director-General in his Memo. I am sure he is watching and has seen Parliament is not supporting him. He must get a different adviser to advise him on Parliament's work and how to separate duties of the Executive, Legislature and Judiciary. This House must be respected. We have been elected by people to represent them. That is why I am saying on the Floor of the House that I support the Committee in annulling the Report.

In fact, the funds as I said should be increased and released. The rains are about to start, the roads are pathetic and our people need to use them. I agree with my fellow Members of Parliament, that these recommendations are very mild. We should have strong recommendations including having a Kamukunji and calling upon the Director-General to explain to him how the law is made and give him a report on the benefits of KeRRA roads, to our constituents and the people of Kenya.

The county governments should do their work. They have been allocated money. They should not interfere with the national Government. The Kenya Roads Board recommends that they expedite the release of funds for the Financial Year 2023/2024 to the road agencies and especially KeRRA so that it can work for our people.

Hon. Temporary Speaker, with those few remarks, I support my fellow Members of Parliament. This is null and void and I support the Committee. Congratulations to the Chairperson and his Committee.

The Temporary Speaker (Hon. Rachael Nyamai): Thank you very much, Hon. Jessica. The Member for Buuri, Hon. Rindikiri Mugambi.

Hon. Mugambi Rindikiri (Buuri, UDA): Thank you, Hon. Temporary Speaker. There are some hecklers here but they are my friends. I also had the advantage of being a Member of the Departmental Committee on Housing, Urban Planning and Public Works in the last Parliament. I understand the roles and responsibilities of the Director-General of KeRRA and those of the Cabinet Secretary. I stand to support the conclusion of the Committee. According to the law, you cannot reduce the percentage of allocations. It must be presented to this Parliament for approval. The Kenya Roads Board makes recommendations on the movement of percentages based on the volume of money they collect.

The Kenya Roads Board also makes recommendations on how much is allocated to the Cabinet Secretary. In this case, he is allocated 2 per cent. Any reduction must follow the approval of this Parliament. I see a lot of impunity and want to inform the Cabinet Secretary that the National Assembly is not the Senate. If he feels it is good to be in court with the

governors, let him do that but he should not interfere with the operations of KeRRA and the responsibilities of the National Assembly.

A committee of governors cannot appropriate money on behalf of the National Assembly. It has never happened and should not be given any opportunity. We know the volume of fuel levy is increasing and the percentage needs to remain if not increased. Why are they scared of the constituencies being given more money? We need it because Members have expressed themselves that it is only KeRRA money that is in operation in our constituencies. I would like to challenge the Director-General of KeRRA, governors and the Cabinet Secretary to provide a list of all the roads that counties have done over the last six years.

We will present the roads we have done for the last six years. Let Kenyans know that the only roads they see are those done by KeRRA through Members of Parliament. The problem we are having is we are creating centres of power for people to be seen to be working. The Director-General of KeRRA from the last report I have is not supposed to be in office. The problem is not only the Director-General, this must have come from somewhere else. That is what we need to deal with as a House. I have a lot of respect for the Cabinet Secretary for Roads as far as the law is concerned and also because he is very responsive on social media. But on this specific matter, I have no regard.

Let nobody cheat you Cabinet Secretary, you cannot reduce the percentage as a person. It must be documented thorough this National Assembly. The law of Kenya Roads Board is known and written. It is the only one that can initiate the process and not the Cabinet Secretary. Hon. Temporary Speaker, I rise to support the sentiments and recommendations of the Committee and say their recommendations are mild. We need more concrete ones. Let us say enough is enough.

Thank you very much, Hon. Temporary Speaker.

The Temporary Speaker (Hon. Rachael Nyamai): Thank you very much, Member for Buuri. Hon. Harrison Kombe, Member for Magarini.

Hon. Harrison Kombe (Magarini, ODM): Asante sana, Mhe. Spika wa Muda. Nimesimama kuunga mkono Kamati kwa kazi nzuri iliyofanya. Uhuru ulipatikana kote nchini baada ya kubuniwa kwa Halmashauri ya Barabara za Mashambani. Punde tu, ndipo tulipata kuona sehemu zile ambazo hazipitiki zinarekebishwa na hivi sasa tunajivunia kwamba tuna barabara.

Mhe. Spika wa Muda, ningependa na kupendekeza kwamba badala ya kupunguza hela hizi za Halmashauri ya Barabara za Mashambani asilimia 10 iongezwe hadi asilimia 15. Asilimia 22 iongezwe hadi asilimia 25 na asilimia 32 iongezwe hadi asilimia 35. Hivyo, Kenya nzima itakuwa na barabara za kujivunia huko mashambani.

Hivi sasa, matunda na vyakula vingine vinaharibikia mashambani kwa sababu hatuwezi kuvisafirisha hadi soko kwa sababu ya hali mbaya ya barabara tulizonazo. Mhe. Spika wa Muda, ningependa kusema kwamba tusifunike blanketi kaunti zote. Ningependa kuitenganisha Kaunti yangu ya Kilifi kwa sababu kile kidogo wanachopata kinaonekana. Wamejaribu kurekebisha barabara nyingi ijapokuwa Halmashauri ya Barabara za Mashambani imefanya vyema zaidi kuliko hizo kaunti. Sehemu nyingi zimerekebishwa isipokuwa barabara moja kutoka GIS kwenda Ramada. Lakini habari zilizoko ofisini kwangu ni kwamba mwanakandarasi atafika hivi karibuni.

Vile vile, Halmashauri ya Barabara Kuu inafaa kutekeleza mpango wake: barabara kutoka Marikebuni kuingia Ngarashi mpaka Baricho iweze kuinuliwa hadhi yake na kupata lami. Ni mipango ambayo yapo, lakini ikiwezekana, tungeomba fedha zile za mwaka 2023/2024 ziachiliwe mara moja ili kazi hizi ziendele. Hayo yakifanyika, ninatumai kwamba kila mmoja atafurahia kazi njema inayoendelea.

Ningependekeza pia Mkuu wa Halmashauri hiyo afike mbele ya Kamati na kujibu yale yote aliyokuwa ameyanakili na maagizo aliyoyatoa. Ni lazima abebe msalaba wake.

Mhe. Spika wa Muda, kwa hayo machache, asante kwa kunipatia nafasi. Ninaunga mkono.

The Temporary Speaker (Hon. (Dr) Rachel Nyamai): Asante sana, Mbunge wa Magarini. Ningependa kumpa nafasi hii Mbunge wa Mbeere North, Mhe. Geoffrey Ruku.

Hon. Ruku GK (Mbeere North, DP): *Niko hapa.*

Thank you very much, Hon. Temporary Speaker. I rise to first of all congratulate the Chairperson of the Committee for this Report. Those in the Executive have in several instances taken this House for granted. That is a very bad way of working. I want to rebuke with the strongest terms possible the Cabinet Secretary for Roads, Transport and Public Works in the Republic of Kenya. In my view, he can only be the one who is issuing these instructions to the Director-Generals of the parastatals under his Ministry to come up with such kind of recommendations. By so doing, he is demeaning the powers bestowed upon this House and its Members – that we cannot oversee the implementation of road works in our constituencies. If such a recommendation is passed, in the next few years, we will see a further decrease of resources allocated to the Kenya Rural Roads Authority (KeRRA), which is extremely critical to development of roads in the constituencies. This is something which needs to be cut at the nip as soon as possible because if we proceed with this trajectory, many parts of our country will be impassable.

Hon. Temporary Speaker, at the moment, we have many roads in the constituencies that require routine maintenance. This needs to be done in the most appropriate way. They need murraming, graveling as well as compacting. This can only happen if that money which has been allocated in the past continues in the same way. Actually, in the recommendation of this Report, I thought it was wise to ensure or to call the Cabinet Secretary in charge to come to the Floor of the House and answer some of these questions of the Members. We cannot start talking about the Director-General of KeRRA or other institutions.

These are employees who receive instructions from the Cabinet Secretary and the Permanent Secretary. So, it will be important if the Report recommends the Cabinet Secretary to appear on the Floor of the House so that he can answer some of these questions. We need to give him and his team a notice to never repeat such an act of making arbitrary recommendations to ensure that Kenyans are not going to enjoy roads which are motorable within different constituencies in the Republic of Kenya. I support this Report and I urge the Chairman of the Committee to make further recommendations. We need the Cabinet Secretary to come here so that he can be held accountable by the House.

By the way, the reasons why the Cabinet Secretary is quick to sit down with governors is because there is the notion amongst senators and governors that Members of the National Assembly are just junior elected politicians. You know, this is the only House that can enact laws in this Republic of Kenya, which the Senate cannot amend. It can only propose laws. The Cabinet Secretary is brainwashed, having sat in the Senate before.

Hon. Temporary Speaker, we recommend that the Cabinet Secretary be called here to answer questions.

Thank you, Hon. Temporary Speaker. I support.

The Temporary Speaker (Hon (Dr) Rachael Nyamai): Hon. John Waluke Member for Sirisia.

Hon. John Koyi (Sirisia, JP): Thank you, Hon. Temporary Speaker for giving me a chance to contribute to this very important Report. First, I support the Committee and thank the Chair and his Committee for bringing up this matter although it is not on time.

Hon. Temporary Speaker, tough action must be taken on the issues raised in this serious Report. For many years, some public officers have taken the law lightly without thinking. The only money that is used on roads in our constituencies is KeRRA money. The roads are passable because of this money. The 15 per cent that was given to the county governments is

nowhere to be seen. Their roads are impassable. That is why in some areas, like where I come from, we worked on the roads with KeRRA and later on, the county governments came and took over those roads. For the last 10 years, those roads have not seen even a grader to grade them, and governors are still looking for money from KeRRA to make sure that they eat it. The little Ksh100 million or Ksh200 million can be seen in terms of work done but the billions of shillings that are given to the county governments every year are not seen in any work that they are doing.

Hon. Temporary Speaker, the Chairman should summon the Director-General to appear before the Committee and give the reasons why he is joining a kangaroo committee trying to transfer money from KeRRA to the county governments so that it can be squandered. The county governments have a lot of money. It is in billions. The National Government Constituencies Development Fund (NG-CDF) was in court last time because the county governors wanted the money from the NG-CDF to go to the county governments. We, as a House, are not going to allow the Director-General of KeRRA to move even one cent. We want him to immediately cancel the letter he wrote to the county governments during his meeting in Naivasha. Action should be taken against that cocoon meeting. The meeting in Naivasha was by a kangaroo committee, and it has no effect. The law is made in this House and used in this country. The law is not made in Naivasha. They should follow the Constitution of this country, which is very clear. The mandates of every sector are provided accordingly. This House makes laws.

The last thing I can say is that the letter that the Chairman wrote was mild. He should write a very tough letter to them summoning them to appear before the Departmental Committee on Transport and Infrastructure.

With those few remarks, I support.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Thank you very much. Hon. Anthony Oluoch, Member for Mathare.

Hon. Anthony Oluoch (Mathare, ODM): Thank you very much, Hon. Temporary Speaker.

Let me begin by saying what my professor of law, PLO Lumumba, taught me – that, you do not respond to a mosquito bite with a sledgehammer. I want to tell the Chairman, my good friend Hon. GK and my former Vice-Chairman in the Departmental Committee on Communication, Information and Innovation during the 12th Parliament that this was not a mosquito bite. This was an atomic bomb directed at this House and Members of Parliament. It is directed at the legislative function, which is our core function under Article 95 of the Constitution.

I agree with those who have said that your Report is a little gentlemanly like yourself. I have known you for a while. You are, indeed, a gentleman. However, *hii haitaki ugentleman* my good friend and Chairman. *Kwa hii toa* gloves. We must deal with these people perpendicularly.

Secondly, although this memo is purported to be affecting the 2024/2025 Financial Year, this House will be painfully aware that our CRCs have already been asked to submit their reports for review. I personally asked my CRC not to submit because the moment we do so, it will give legitimacy to what this House has already called null and void.

Hon. Temporary Speaker, I join those who have said that the entity called Intergovernmental Budget and Economic Council (IBEC) is not recognised in law and, therefore, cannot purport to substitute the House's role of law-making under Articles 94 (5) and 95 of the Constitution. It cannot make laws through the backdoor. Article 203 of the Constitution stipulates a clear path on how revenue shall be divided between the two levels of government. If, for some reason, this entity wants to find a way of increasing revenue allocation to the counties, there are clear ways on how it can do so through the Senate. It cannot be done

through the backdoor by taking monies that have already been appropriated between the two levels of government. That money was already earmarked for constituencies. There is no way for it to go to the counties.

I agree with the Members who have said that, just like the NG-CDF, the 22 per cent and 10 per cent allocation to KeRRA is one of the most visible and transparent funds that have been implemented in any development sector in the country. Not only should it be preserved, but it should also be increased, if necessary.

My last two points are that our predecessors in the 11th Parliament fought very hard for the 22 per cent and 10 per cent allocation. That allocation continued to be safeguard in the 12th Parliament. Section 6 is very clear that the formula of how this money is to be utilised or allocated is embedded in law. The only way to reverse it is for Parliament to introduce an appropriate section in the law through an amendment Bill. In any case, if there was to be any reversal, this House would increase that allocation from 32 per cent to a higher percentage. It would not reduce the allocation.

In conclusion, the Cabinet Secretary and KeRRA should not only be asked to withdraw this proposal, but should also be summoned to the House. I asked for a Kamukunji on the issue of university education and the Cabinet Secretary was summoned here to a Members' Kamukunji. When there was an issue about Worldcoin and data collection, the Cabinet Secretary was summoned here. This matter is serious enough for us to call the Cabinet Secretary to not only respond to it, but also to many other issues that Members have raised, including whether monies will be remitted to us on time so that we can begin to work on roads in our constituencies before the rains. We should not just sanction the matter by way of a withdrawal,

I support the Report.

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Thuku Kwenya, Member for Kinangop.

Hon. Kwenya Thuku (Kinangop, JP): Thank you, Hon. Temporary Speaker, for the opportunity to weigh in on the Report by the very honourable Departmental Committee on Transport and Infrastructure led by Hon. GK.

I echo the sentiments that I have heard from my colleagues, specifically on the issue of attempts by the Executive to legislate. The Roads Act of 1999 clearly stipulates how this money should be shared between the different agencies, especially monies that are allocated to constituencies. The 22 per cent and 10 per cent allocation makes a total of 32 per cent.

Any attempt to give any directive is not only an impunity in itself, but also total disrespect and disregard for this House. As Hon. Tom has just said, if there is any need to amend this law, it must come to this House so that the House pronounces itself on it. We have not seen any attempt to amend the same. Therefore, any communication to that effect should be annulled.

Roads that are constructed in constituencies through funds allocated to KeRRA under the oversight of Members of Parliament are the only visible ones. The KeRRA money and the roads that are built by Members of Parliament, through their oversight role, are the only ones that are visible. Therefore, whether the county governments have been promised by the Commission on Revenue Allocation (CRA) that there will be an increase...

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Order, Hon. Kwenya Thuku. Thank you very much, Hon. Kwenya Thuku and Hon. Members. The balance of time for Hon. Kwenya Thuku, who was on his feet, is three minutes. This Motion will have another 46 minutes when this debate resumes. Those who have expressed a lot of interest – I can see that the screen is almost full – will have opportunity to contribute.

ADJOURNMENT

The Temporary Speaker (Hon. (Dr) Rachael Nyamai): Hon. Members, the time being 1.00 p.m., the House stands adjourned until this afternoon at 2.30 p.m.

The House rose at 1.00 p.m.

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