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**IN THE EAST AFRICAN COURT OF JUSTICE**  
**1<sup>ST</sup> INSTANCE DIVISION, AT ARUSHA**  
**REFERENCE NUMBER 19 OF 2024**



**BETWEEN**

**EUGENIA WANJIRU GIKONYO.....APPLICANT**

**AND**

**THE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA.....RESPONDENT**

**THE RESPONDENT'S RESPONSE TO THE STATEMENT OF REFERENCE**

*(Made Pursuant to Rule 32 of The EACJ Rules Of Procedure, 2019)*

**INTRODUCTION**

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1. Save as herein expressly admitted, the respondent denies *in toto*, each and every allegation contained in the statement of reference as if the same were herein set out *verbatim* and traversed *seriatim*.
2. The respondent admits the content of paragraphs 1 and 2 of the statement of reference in so far as the same are merely descriptive of the parties herein, save to add that the address of service for the respondent for purposes of this reference shall be care of-

**THE HONOURABLE ATTORNEY GENERAL**  
**ATTORNEY GENERAL'S CHAMBERS**  
**STATE LAW OFFICE & DEPARTMENT OF JUSTICE**  
**SHERIA HOUSE, 7<sup>TH</sup> FLOOR**  
**HARAMBEE AVENUE**  
**P.O. BOX 40112-00100**

-20-



NAIROBI (communications@ag.go.ke ; charles.mutinda@ag.go.ke ;  
jackline.kiramana@ag.go.ke)

### STATEMENT OF FACTS AND LAW RELIED UPON

3. The Respondent notes that the Applicant's claim is on alleged lack of transparency and public participation in implementation of debt swap transactions especially debt for nature swaps and debt for food security swaps to fund the Respondent States financial year 2024/2025 budget deficit and wishes to state as follows-

- i) A debt swap as invented in the mid-1980s, involves creative alternative funding mechanisms to finance sustainable development projects in low-income countries. Although various financial arrangements may be used, a debt-for-nature swap ('DNS') basically leverages the debt of a low-income country to obtain a commitment from that country to protect nature and possibly to help finance that protection; sovereign debt is forgiven in return for the environmental commitment, and the savings in debt servicing are invested in environmental conservation.
- ii) Thus a debt swap exchanges an undesired debt position for a desired debt position with attendance or auxiliary benefits at cost that is not higher than the debt reduction benefit.
- iii) In essence debt swaps could be bilateral or commercial debt. In the former the creditor "forgives" the debt to channel the monies into financing - 20-

mutually agreed projects such as nature. In the latter, which are tripartite swaps debt is bought by new lenders usually intermediated by a NGO in exchange for conditional policy actions and investments such as climate, nature amongst others.

4. In response to paragraphs 4 to 12 of the reference, the Respondent denies the Applicant's averments that articles 6 (a) to (d), 7 (2), 8 (1) (c) and 124 (1) (2) and (5) of the treaty have been breached puts the Applicant at strict proof thereof.

5. In further response to paragraphs 4 to 12 of the Reference, the Respondent avers that at all material times transparency and the principles of good governance have been upheld by the Respondent state's National Treasury which did publish the 2024 Medium Term Debt Strategy (MTDMS) on its website and it states thus in its foreword and paragraph 82: -10-

*"Kenya has also made a deliberate effort to consider diversifying sources of external borrowing in the international capital markets targeting instruments such as green and blue bonds, Samurai bonds, Panda bonds, Sukuk bonds among others....The Public Debt Management Office (PDMO) may also explore the issuance of green, sustainability-linked, and blue bonds to finance climate related or environmental sustainability projects."*

6. The Respondent further avers that section 33 of the Public Finance Management Act Chapter 412A of the Laws of Kenya requires the Cabinet Secretary for National Treasury to, on or before the 15<sup>th</sup> day of February each year, submit to -20-



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Parliament a statement setting out the debt management strategy of the National Government over the medium term with respect to its actual and potential liability in respect of loans and guarantees and its plans for dealing with those liabilities.

7. The Cabinet Secretary for Treasury and National Planning in the Respondent state prepared and in line with the constitutional requirements of transparency and public participation, submitted to Parliament the 2024 Medium Term Debt Strategy (Applicant's Exhibit EWG2), to guide the government in pursuing the desired structure of public debt portfolio which reflects its choice on cost and risk trade-offs in the medium-term.

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8. The Respondent states that-

- i) paragraph 84 of the impugned 2024 MDT5 points out emerging funding sources including debt swaps especially the debt-for-nature swaps and debt for food security swaps as some of the funding sources under consideration between the Respondent state and the United Nations Development Partners to fund the budget deficit for the 2024/2025 Financial Year.
- ii) Paragraph 108 of the impugned 2024 MDT5 identifies debt swaps as among the proposed Liability Management Operations (LMOs) to be applied by the government.

THE EAST AFRICAN COURT OF JUSTICE  
Lodged in the Sub-Registry  
Nairobi  
★ 31 MAY 2024 ★  
at...4:03...am/pm Sign...  
FIRST INSTANCE DIVISION



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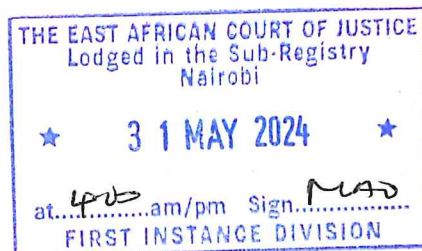
iii) The National Treasury of the Respondent State has also received a proposal on the debt for food security from the World Food Program (WFP) which requires a guarantee from the Development Finance Cooperation (DFC) and an advisory firm for bond issuance.

9. The Respondent categorically states that all these are in the discussion stages and there is no contract or agreement in place on the issue of debt swap operationalization, including the procurement of legal counsel and advisory firms.

10. The National Treasury of the Respondent State ensures transparency public debt by availing information to the public through the print media and online platforms, and the information remains accessible through the National Treasury website, with no restrictions on the accessibility. -10-

11. Further, section 33 of the Respondent State's Public Finance Management Act ensures transparency and public participation of the people directly or through their elected representatives by requiring that the Cabinet Secretary for National Treasury to submit the national government debt management strategy to Parliament annually.

12. The Respondent denies that the National Treasury of the Respondent State has engaged in any debt swap transaction and therefore the allegation that Articles 6(d) and 7(2) of the EAC Treaty as read with Article 9 of the African Charter on Human and Peoples Rights and Articles 10, 35 and 201(a) of the Constitution of Kenya were violated is factually untrue. -20-



- 13. The Respondent avers that the use of the word 'may' indicates the tentativeness of the matter and in fact the issuance of such bonds is an extremely time intensive matter which cannot be facilitated in a vacuum and the same has not even began.
- 14. The Respondent avers that the instant reference is pre-maturely before this court and places reliance on paragraph 50 of the court's judgment in Democratic Party v The Secretary General, East African Community, Reference No. 2 of 2012 where this Court rightly held that Applicants must disclose a viable cause of action.
- 15. The respondent further avers that principles of good governance and public participation being key in this suit have been adhered to and have not been violated.
- 16. The Respondent avers that in response to paragraphs 20 to 27 of the Reference no actions have been taken by the Kenyan Government towards the setting up of a debt for nature or debt for food or any other envisaged debt swap. While cognizance is taken of the Gabon situation the matter is exceedingly premature.
- 17. The Respondent states that information can only be provided if its available. Since there are no debt swap or procurement agreements currently in place, it is impossible to avail the information alluded to in the Reference.
- 18. Without prejudice to the foregoing, the Respondent avers that Articles 10, 22, 27, 48, 159 and 165 of its Republic's Constitution are in harmony with the allegedly

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breached Articles of the treaty and if anything the Applicant should have first exhausted the remedies available in Kenya before approaching this Court.

19. The Respondent avers that the question of access to information is provided for extensively, both in Article 35 of the Kenyan Constitution as well the Access to Information Act, 2016. It is therefore premature for the reference to be filed seeking orders compelling the release of information which has not been sought in compliance with the municipal law. It is important to note that most the information sought is not yet available as the alleged actions have not taken place and what is available is in the public domain.

20. The Respondent further avers that public participation, which is the other key— 10— issue in the reference, is one of the national values provided for under Article 10 of the Constitution of Kenya. The question of public participation has been canvassed greatly in the municipal courts and the principles of the same set out in the case of British American Tobacco Kenya, PLC v Cabinet Secretary for the Ministry of Health and Others [2019] eKLR. The same is not a mere suggestion or proposal but a constitutional requirement, and a factual issue not to be trivialized.

21. The procedure, quality and principles of public participation are well set out by the municipal courts as well as in various statutes.

22. The Respondent avers that the specific issue of public participation on the debt swaps for nature by the communities to be affected, will fall under the— 20— Community Land Act, 2016. This Act governs use of community land and provides



for the public participation procedures touching on community land. Further, the Act provides for benefit sharing when community land is in use.

23. The Respondent further states that the allegations in the instant reference can be conclusively and satisfactorily addressed by application of municipal law, with interpretation by the municipal courts. As we stand, the claim is premature and therefore the remedies sought are impossible to grant.

24. The Respondent denies the averments in paragraphs 35 and 36 of the Reference and puts the Applicant to strict proof thereof.

25. The Respondent admits paragraph 38 in as much as it quotes the law but denies any allegations of breach, violation and lack of adherence or good faith to <sup>10</sup> performance of its obligations under the EAC Treaty, and puts the Applicant to strict proof thereof.

**RELIEFS SOUGHT**

**26. REASONS WHEREFORE** the Respondent avers that the applicants are not entitled to any of the reliefs sought in the reference against the respondent. As such, the respondent prays that the case against the respondent be dismissed.

DATED AT NAIROBI THIS <sup>20th</sup>..... DAY OF <sup>May</sup>..... 2024





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*[Handwritten Signature]*

CHARLES MUTINDA

CHIEF STATE COUNSEL

FOR: THE HONOURABLE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA

LODGED IN THE SUB-REGISTRY AT NAIROBI THIS *31<sup>st</sup>* DAY OF *May* 2024.



DRAWN AND FILED BY:  
THE HONOURABLE ATTORNEY GENERAL,  
STATE LAW OFFICE & DEPARTMENT OF JUSTICE,  
SHERIA HOUSE, 7<sup>TH</sup> FLOOR,  
HARAMBEE AVENUE,  
P.O. BOX 40112-00100,  
NAIROBI

EMAIL: charles.mutinda@ag.go.ke // communications@ag.go.ke // jackline.kiramana@ag.go.ke

**TO BE SERVED UPON:**

**HARRISON OTIENO MBORI & JAMES THUO GATHII**

CARE OF ALMOND PRINT LIMITED

112 SLIP ROAD OLD WAIYAKI WAY

P.O BOX 56095-00200

**NAIROBI.**

EMAIL: [harryocenic@gmail.com](mailto:harryocenic@gmail.com) // [jamesgathii@gmail.com](mailto:jamesgathii@gmail.com)



**IN THE EAST AFRICAN COURT OF JUSTICE**  
**1<sup>ST</sup> INSTANCE DIVISION, AT ARUSHA**  
**REFERENCE NUMBER 19 OF 2024**

THE EAST AFRICAN COURT OF JUSTICE  
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★ 31 MAY 2024 ★  
at 4:00 am/pm Sign. [Signature]  
FIRST INSTANCE DIVISION

BETWEEN

EUGENIA WANJIRU GIKONYO.....APPLICANT

AND

THE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA.....RESPONDENT

**THE RESPONDENT'S LIST OF AUTHORITIES**

1. Section 33 of the Public Finance Management Act, Chapter 412A of the Laws of Kenya.
2. The Community Land Act, Chapter 287 of the Laws of Kenya.
3. National Assembly Hansard for Tuesday 5<sup>th</sup> March, 2024 at 2.30PM (Pg14-41).

—10—

DATED AT NAIROBI THIS 30<sup>th</sup> DAY OF May 2024

.....  
[Signature]  
CHARLES MUTINDA

CHIEF STATE COUNSEL

**FOR: THE HONOURABLE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA**



LODGED IN THE SUB-REGISTRY AT NAIROBI THIS <sup>31<sup>st</sup></sup>..... DAY OF <sup>May</sup>..... 2024.



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STATE LAW OFFICE & DEPARTMENT OF JUSTICE,  
SHERIA HOUSE, 7<sup>TH</sup> FLOOR,  
HARAMBEE AVENUE  
P.O. BOX 40112-00100,  
NAIROBI

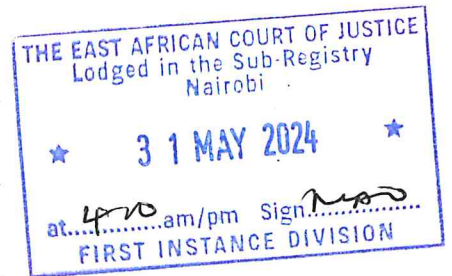
EMAIL: charles.mutinda@ag.go.ke // communications@ag.go.ke // -10-  
jackline.kiramana@ag.go.ke

TO BE SERVED UPON:

HARRISON OTIENO MBORI & JAMES THUO GATHII  
CARE OF ALMOND PRINT LIMITED  
112 SLIP ROAD OLD WAIYAKI WAY  
P.O BOX 56095-00200  
NAIROBI.

EMAIL: harryocenic@gmail.com // jamesgathii@gmail.com





- (c) terms and conditions applicable to that loan, including—
- (i) interest and other charges that are payable in respect of that loan; and
  - (ii) terms of its repayment.

(3) Not later than two months after the end of each financial year, the Cabinet Secretary shall publish and publicise a report giving details of the guarantees given by the national government during that year.

(3A) Notwithstanding the provisions of subsection (2), the Cabinet Secretary shall, with respect to credit guarantees extended to private borrowers who are micro, small or medium enterprises, provide the information specified in section 59A(2) when either House of Parliament makes a request under subsection (1).

[Act No. 16 of 2020, s. 3.]

### 33. Cabinet Secretary to submit national government debt management strategy to Parliament annually

(1) On or before the 15<sup>th</sup> February in each year, the Cabinet Secretary shall submit to Parliament a statement setting out the debt management strategy of the national government over the medium term with respect to its actual liability and potential liability in respect of loans and guarantees and its plans for dealing with those liabilities.

(2) The Cabinet Secretary shall ensure that the medium-term debt management strategy is aligned to the broad strategic priorities and policy goals set out in the Budget Policy Statement.

(3) The Cabinet Secretary shall include in the statement the following information—

- (a) the total stock of debt as at the date of the statement;
- (b) the sources of loans made to the national government and the nature of guarantees given by the national government;
- (c) the principal risks associated with those loans and guarantees;
- (d) the assumptions underlying the debt management strategy; and
- (e) an analysis of the sustainability of the amount of debt, both actual and potential.

(4) Within fourteen days after the debt strategy paper is submitted to Parliament under this section, the Cabinet Secretary shall submit the statement to the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council and publish and publicise the statement.

### 34. The National Treasury to provide Parliament with additional reports when required

Either House of Parliament may request the Cabinet Secretary or the National Treasury to prepare and submit to that House a report on any matter relating to the Cabinet Secretary or National Treasury's responsibilities as the House of Parliament may specify.

#### *National government budget process*

### 35. Stages in the budget process

(1) The budget process for the national government in any financial year shall comprise the following stages—



**THE REPUBLIC OF KENYA**

LAWS OF KENYA

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**THE COMMUNITY LAND ACT**

CHAPTER 287

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[www.kenyalaw.org](http://www.kenyalaw.org)

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CHAPTER 287

COMMUNITY LAND ACT

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- 3. Guiding principles

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- 11. Registration of community land
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Community Land

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CHAPTER 287

COMMUNITY LAND ACT

[Date of assent: 31st August, 2016.]

[Date of commencement: 21st September, 2016.]

An Act of Parliament to give effect to Article 63(5) of the Constitution; to provide for the recognition, protection and registration of community land rights; management and administration of community land; to provide for the role of county governments in relation to unregistered community land and for connected purposes

[Act No. 27 of 2016.]

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PART I – PRELIMINARY

1. Short title

This Act may be cited as the Community Land Act.

2. Interpretation

In this Act, unless the context otherwise requires—

"adjudication officer" means an officer appointed by the Cabinet Secretary under section 10(2);

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to land;

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"cadastral map" has the meaning assigned to it under the Land Registration Act (Cap. 300);

"certificate of reservation" means a certificate issued in the interim by the Registrar pending the registration of community land and acquisition of the certificate of title;

"community" means a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes

- (a) common ancestry;
- (b) similar culture or unique mode of livelihood;
- (c) socio-economic or other similar common interest;
- (d) geographical space;
- (e) ecological space; or
- (f) ethnicity.

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"community assembly" means a gathering of registered adult members of a community convened in accordance with this Act;

"communal use of land" means holding or using land in undivided shares by a community;

"community land" means—

- (a) land declared as such under Article 63(2) of the Constitution;
- (b) land converted into community land under any law;

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Community Land

"community land register" means the community land register established under section 8 of the Land Registration Act (Cap. 300);

"community land registration unit" means an area declared as such under section 10 of the Land Registration Act;

"community of interests" means the possession or enjoyment of common rights, privileges or interests in land, living in the same geographical area or having such apparent association;

"community reserve land" means any land set aside for communal or land allocated by the registered community for individual occupation and use;

"community tenure system" means unwritten land ownership practices in certain communities in which land is owned or controlled by a family, clan or a designated community leader;

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"Commission" means the National Land Commission established by Article 67 of the Constitution;

"county government" means the county government provided for under Article 176 of the Constitution;

"Court" means the Environment and Land Court established under the Environment and Land Court Act (Cap. 8D) or any other court having jurisdiction over land matters as may be prescribed by any written law;

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"customary land rights" means rights conferred by or derived from African customary law, customs or practices provided that such rights are not inconsistent with the Constitution or any written law;

"fragile ecosystem" means an ecosystem hosting threatened biodiversity;

"natural resources" has the meaning assigned to it in Article 260 of the Constitution;

"organised group" includes any or both formal and informal kinds of organization in the community setup;

"Principal Secretary" means the Principal Secretary for the time being responsible for matters relating to land;

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"Registrar" means the Community Land Registrar designated in accordance with section 9 of this Act;

"registered community" means a community that has completed the registration processes and is recognized under this law;

"spouse" has the meaning assigned to it under the Marriage Act (Cap. 150);

"vested interest" means absolute and indefeasible ownership.

**3. Guiding principles**

In the performance of the functions and exercise of powers under this Act, every person dealing with community land shall be guided by the following principles—

- (a) the principles of land policy set out in Article 60 of the Constitution; and
- (b) the national values and principles of governance set out in Article 10 of the Constitution;

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PART II – RECOGNITION, PROTECTION AND REGISTRATION OF COMMUNITY LAND RIGHTS

4. Ownership and tenure system

- (1) Community land in Kenya shall vest in the Community.
- (2) Subject to the provisions of this Act or any other written law, the State may regulate the use of community land in accordance with Article 66 of the Constitution.
- (3) Community land shall vest in the community and maybe held under any of the following tenure system—
  - (a) customary;
  - (b) freehold;
  - (c) leasehold; and
  - (d) such other tenure system recognized under this Act or other written law.

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5. Protection of community land rights

- (1) Every person shall have the right, either individually or in association with others, to acquire and own properly, in accordance with Article 40 of the Constitution—
  - (a) of any description; and
  - (b) in any part of Kenya.
- (2) Customary land rights shall be recognized, adjudicated for and documented for purposes of registration in accordance with this Act and any other written law.
- (3) Customary land rights, including those held in common shall have equal force and effect in law with freehold or leasehold rights acquired through allocation, registration or transfer.
- (4) Subject to Article 40(3) of the Constitution and the Land Act (Cap. 280), no interest in, or right over community land may be compulsorily acquired by the State except in accordance with the law, for a public purpose, and upon prompt payment of just compensation to the person or persons, in full or by negotiated settlement.
- (5) Subject to the provisions of section 46 of this Act, any person who immediately before the commencement of this Act had a subsisting customary right to hold or occupy land shall upon commencement of this Act continue to hold such right.

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6. Role of county governments

- (1) County governments shall hold in trust all unregistered community land on behalf of the communities for which it is held.
- (2) The respective county government shall hold in trust for a community any monies payable as compensation for compulsory acquisition of any unregistered community land.
- (3) Upon registration of community land, the respective county government shall promptly release to the community all such monies payable for compulsory acquisition.
- (4) Any such monies shall be deposited in a special interest earning account by the county government.

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Community Land

(5) The respective county government shall transfer the amount and the interests earned to the communities as may be prescribed.

(6) Any transaction in relation to unregistered community land within the county shall be in accordance with the provisions of this Act and any other applicable law.

(7) Upon the registration of any unregistered community land in accordance with this Act, the respective registered community shall, assume the management and administrative functions provided in this Act and the trustee role of the respective county government in relation to the land shall cease.

(8) A county government shall not sell, dispose, transfer, convert for private purposes or in any other way dispose of any unregistered community land that it is holding in trust on behalf of the communities for which it is held.

- 10 -

**7. Procedure for registration of communities**

(1) A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section.

(2) The community land registrar shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee.

(3) The notice shall also be given to the national county administrators and county government administrators in the area where the community land is located.

(4) The community land registrar may use all available means of communication including electronic media to reach the community members.

(5) The community shall elect between seven and fifteen members from among themselves to be the members of the community land management committee as provided in section 15, who shall come up with a comprehensive register of communal interest holders.

(6) The community land management committee shall come up with the name of the community and shall submit the name, register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration.

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**8. Procedure for recognition and adjudication of community land**

(1) Subject to this Act and any law relating to adjudication of titles to land, the Cabinet Secretary shall, in consultation with the respective county governments, develop and publish in the *Gazette* a comprehensive adjudication programme for purposes of registration of community land.

(2) The Cabinet Secretary shall, in consultation with the county governments ensure that the process of documenting, mapping and developing of the inventory of community land shall be transparent, cost effective and participatory.

(3) The inventory of community land referred to in subsection (2) may be accessed by the county governments for ease of access by members of the community.

(4) The Cabinet Secretary shall issue a public notice of intention to survey, demarcate and register community land.

(5) The notice shall—

- (a) contain the name of the community;
- (b) state which land is to be adjudicated;

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Community Land

- (c) invite all interested persons with overriding interests or any other claim on the land, to lodge their claims;
- (d) specify an area or areas of land to be a community land registration unit; and
- (e) be for a period of sixty days.

(6) The Cabinet Secretary shall cause the land to be adequately surveyed but such survey shall exclude—

- (a) all parcels already in use for public purposes; and
- (b) adjudicated private land.

(7) A cadastral map of the land shall then be produced and presented to the Registrar for registration.

**9. Community Land Registrar**

The Chief Land Registrar shall designate a qualified registrar to be the Community Land Registrar responsible for registration of community land.

**10. Register of community land**

(1) There shall be maintained for each registration unit, a community land register in accordance with section 8 of the Land Registration Act (Cap. 300) in which shall contain—

- (a) a cadastral map showing the extent of the community land and identified areas of common interest;
- (b) the name of the registered community;
- (c) a register of members of the registered community which shall be updated annually;
- (d) the user of the land;
- (e) such particulars of members of the registered community as the Registrar may determine; and
- (f) any other requirement under this Act.

(2) The Registrar shall not register any instrument purporting to dispose of rights or interest in community land except in accordance with this Act or any other written law.

(3) For the avoidance of doubt, until any parcel of community land has been registered in accordance with this Act, such land shall remain unregistered community land and shall, subject to this Act, be held in trust by the county governments on behalf of the communities for which it is held pursuant to Article 63(3) of the Constitution.

**11. Registration of community land**

(1) Community land shall be registered in accordance with the provisions of this Act and the Land Registration Act (Cap. 300).

(2) The Cabinet Secretary shall by a notice in the Gazette, appoint an adjudication officer in respect of every community registration unit who shall—

- (a) facilitate in consultation with the respective county governments the adjudication of the community land including the recording of community land claims, demarcation of community land and delineation of boundaries; and
- (b) perform any other function conferred by this Act.

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*Community Land*

(3) Upon adjudication, the title relating to community land shall be issued by the Registrar in the prescribed form.

**12. Classes of holding community land**

Community land may be held—

- (a) as communal land;
- (b) as family or clan land;
- (c) as reserve land; or
- (d) in any other category of land recognized under this Act or other written law.

**13. Community and reserve land**

(1) A registered community may by a resolution of the majority members of that community in a general meeting, reserve a portion of the community land for communal purposes.

(2) Any land which has been used communally, for public purpose, before the commencement of this Act shall upon commencement of this Act be deemed to be public land vested in the national or county government, according to the use it was put for.

(3) A registered community may reserve special purpose areas including areas for—

- (a) farming;
- (b) settlement;
- (c) community conservation;
- (d) cultural and heritage sites;
- (e) urban development; or
- (f) any other purposes as may be determined by the community, respective county government or national government for the promotion or upgrading of public interest.

(4) An area reserved for special purposes under subsection (3) shall be used exclusively for the intended purpose.

**14. Confirmation of validity of existing customary rights of occupancy**

(1) A customary right of occupancy in community land shall in every respect be equal in status and effect to a right of occupancy granted in any other category of land and shall, subject to this Act, be—

- (a) capable of being allocated by the community to an individual person, family, group of persons, clan, an association, partnership or body corporate wholly owned by citizens of Kenya;
- (b) capable of being of indefinite duration; and
- (c) governed by customary law in respect of any dealings.

(2) A customary right of occupancy on any community land subsisting before the commencement of this Act shall upon the commencement of this Act be a recognisable right of occupancy in the respective community land subject to Article 40(6) of the Constitution.

(3) A person, a family unit, a group of persons recognized as such under any customary law or who have formed or organized themselves as an association, a cooperative society or any other body recognized by any written law, who are

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members of a community may apply to the registered community for customary right of occupancy.

(4) The registered community shall, when considering the application have regard to—

- (a) proposals made by the adjudication team or any sub-committee of the registered community set up for that purpose; and
- (b) equality of all persons including—
  - (i) equal treatment of applications for women and men; and
  - (ii) non-discrimination of any person on the basis of gender, disability, minority, culture or marital status.

(5) Upon approval by the registered community, the registered community shall issue a certificate of customary right of use and occupancy in the prescribed form.

PART III – ADMINISTRATION AND MANAGEMENT OF COMMUNITY LAND

15. Functions and powers of the community land management committee

(1) A registered community shall have a community assembly which shall consist of all adult members of the community.

(2) The quorum for decision making by the community shall not be less than two thirds of the community assembly.

(3) The community assembly shall elect between seven and fifteen members of the community assembly to constitute the community land management committee.

(4) The functions of the community land management committee shall be to—

- (a) have responsibility over the running of the day to day functions of the community;
- (b) manage and administer registered community land on behalf of the respective community;
- (c) coordinate the development of community land use plans in collaboration with the relevant authorities;
- (d) promote the co-operation and participation among community members in dealing with matters pertaining to the respective registered community land; and
- (e) prescribe rules and regulations, to be ratified by the community assembly, to govern the operations of the community.

(5) Any decision of a registered community to dispose of or otherwise alienate community land shall be binding if it is supported by at least two thirds of the registered adult members of the community, while all other decisions of the registered community shall be by a simple majority of the members present in a meeting.

PART IV – NATURE OF COMMUNITY LAND TITLE

16. Interest conferred by registration

Subject to this Act—

- (a) the registration of a community as the proprietor of land shall vest in that community the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

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- (b) the registration of a community or a person as the proprietor of a lease shall vest in that community or person the leasehold interest described in the lease, together with all implied and express rights and privileges belonging or appurtenant thereto and subject to all implied or express agreements, liabilities or incidents of the lease.

**17. Rights of a community as proprietor**

(1) The rights of a registered community as proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act or any other written law, and shall be held on behalf of the community, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject to—

- (a) the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) such overriding interests as may affect the land and are declared by section 28 of the Land Registration Act (Cap. 300).

(2) Nothing in this section shall be taken to relieve a registered community from any duty or obligation to which the registered community is subject to as a proprietor.

**18. Certificate of title to be evidence of proprietorship**

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of community land upon a transfer or transmission by the proprietor community shall be considered by courts as *prima facie* evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and it shall not be subject to challenge, except—

- (a) on grounds of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

(2) A certified copy of any registered instrument, signed by the Registrar and sealed with the seal of the Registrar, shall be received in evidence in the same manner as the original.

**19. Land use and development planning of community land**

(1) A registered community may, on its own motion or at the request of the county government, submit to the county government a plan for the development, management and use of the community land administered by the registered community for approval.

(2) Before submitting a plan to the county government under subsection (1) a registered community shall—

- (a) consider any conservation, environmental or heritage issues relevant to the development, management or use of the land;
- (b) incorporate in the plan a statement that it has considered those issues in paragraph (a) when drawing up the plan;
- (c) consider any environmental impact plan pursuant to existing laws on environment;

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- (d) comply with the values and principles of the Constitution;
- (e) seek ratification from the members of the registered community; and
- (f) be bound by any approved relevant physical development plan.

(3) If a registered community submits a plan to the county government under subsection (1) and the government approves and notifies the registered community of that fact, the registered community shall develop, manage and use the land concerned in accordance with the plan as approved or subsequently varied as the case may be.

(4) The county government shall, in considering a plan submitted to it under this section comply with the relevant law relating to development planning.

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(5) The county government shall on the request of the Commission submit records of development plans lodged with the county government in accordance with this section.

**20. Conservation and management of resources in community land**

(1) For purposes of the sustainable conservation of land based natural resources within community land across counties, every respective registered community shall abide by the relevant applicable laws, policies and standards on natural resources.

(2) With respect to subsection (1), the communities shall establish—

- (a) measures to protect critical ecosystems and habitats;
- (b) incentives for communities and individuals to invest in income generating natural resource conservation programmes ;
- (c) measures to facilitate the access, use and comanagement of forests, water and other resources by communities who have customary rights to these resources;
- (d) procedures for the registration of natural resources in an appropriate register; and
- (e) procedures for the involvement of communities and other stakeholders in the management and utilization of land-based natural resources.

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(3) A registered community shall put in place measures necessary to conserve resources in community land.

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**PART V – CONVERSION OF LAND**

**21. Conversion of community land**

(1) The Community land register shall, in addition to the particulars set out under section 8(1) of the Land Registration Act (Cap. 300) contain the particulars of all conversions involving community land.

(2) A registered community shall, before the conversion of registered community land into any other category of land seek and obtain approval from two thirds of the assembly in a special meeting convened for that purpose.

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**22. Conversion of community land to public land**

(1) Community land may be converted to public land by—

- (a) compulsory acquisition;
- (b) transfer; or
- (c) surrender.

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(2) Nothing in this Act limits the application of the Land Act (Cap. 280) and any other law in relation to compulsory acquisition of land.

(3) Reversionary interest of such land shall lie with the community in the first instance upon expiry of such public use interest.

(4) Transfer of community land shall, subject to the approval of the members of the registered community in a community meeting, be done in accordance with the Land Act (Cap. 280) and any other applicable law.

**23. Conversion of community land to private land**

Registered community land may, subject to the approval of the registered community, be converted to private land through—

- (a) transfer; or
- (b) allocation by the registered community, subject to ratification of the assembly as provided in section 21(2).

**24. Conversion of public land to community land**

(1) Public land may be converted to community land by allocation by the National Land Commission in accordance with the Land Act (Cap. 280).

(2) Conversion of public land to community land under subsection (1) may be effected on a case by case basis.

(3) The National Land Commission may, by an order published in the gazette identify other specific parcels to which subsection (2) shall not apply.

**25. Conversion of private land to community land**

Private land may be converted to community land by—

- (a) transfer; or
- (b) surrender;
- (c) operation of the law in relation to illegally acquired community land; or
- (d) operation of any other written law.

**26. Setting aside community land for public purposes**

(1) A community may set aside part of the registered community land for public purposes.

(2) Where land is set aside for public purposes under subsection (1), the National Land Commission shall gazette such parcel of land as public land.

PART VI – SPECIAL RIGHTS AND  
ENTITLEMENTS IN THE COMMUNITY LAND

**27. Individual rights on community land**

(1) A registered community may upon application and with approval of the members of the registered community, allocate part of its registered community land to a member or a group of members of the community for exclusive use and occupation for such period as the registered community shall determine.

(2) Despite subsection (1), a separate title shall not be issued for such parcel.

(3) An individual entitlement under subsection (1) shall not be superior to community title in any way.

(4) A member granted exclusive use of a parcel of land under this section—



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- (a) shall pay to the registered community such premium or fees commensurate to the use as may be determined by the community from time to time;
- (b) may develop the land subject to the provisions of any laws and regulations relating to land use;
- (c) may not assign or lease the land to a third party who is not a member of the community;
- (d) shall put the land into lawful use;
- (e) shall surrender the land back to the community if the member no longer shall be entitled to quiet enjoyment of the land, requires the land; and

**28. Grazing rights**

(1) The customs and practices of pastoral communities relating to land shall be taken into consideration by a registered community as long as they are consistent with the provisions of this Act or other applicable law.

(2) Community land in a pastoral community shall be available for use by members of the community for the grazing of their livestock, subject to such conditions as the respective registered community may impose, including conditions relating to—

- (a) the kind and number of livestock that may be grazed;
- (b) the section or sections of the land where livestock may be grazed and the grazing in rotation on different sections; and
- (c) a grazing plan;
- (d) the right of the community to utilize the portion of land in accordance with this Act.

(3) The registered community may upon application by any person who is not a member of the registered community, grant grazing rights and upon such grant, that person shall exercise the rights subject to the conditions referred to in subsection (1):

Provided that the registered community shall subject to the approval of the members of the registered community in a meeting convened for that purpose withdraw a grazing right granted under this subsection if, due to drought or any other reasonable cause, the registered community considers such cancellation to be in the interest of the residents of the community concerned.

(4) Notwithstanding subsection (1), a registered community may withdraw the grazing right of any member who—

- (a) fails to observe in a material respect any condition referred to in this Act; or
- (b) contravenes any provision of subsection (2).

(5) A person shall not, except with the written authority of the registered community—

- (a) erect or occupy any building or other structure on the designated grazing land;
- (b) plough or cultivate any portion of the land;
- (c) take up abode on or occupy any portion of the grazing land; and

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- (d) obstruct the access to any watering place on the land, prevent or attempt to prevent any person from drawing water from, or watering stock at a watering place, pollute the water at a watering place or interfere with the operation of any windmill, water-pump, water-pipe, dam or storage tank or other appurtenance installed or constructed at such a watering place.

(6) A person who contravenes subsection (5) commits an offence and is liable, on conviction, to a fine not exceeding one hundred thousand shillings or imprisonment for a period not exceeding six months.

**29. Designation of other land use rights in community land**

(1) A registered community may reserve special purpose areas including—

- (a) farming areas;
- (b) settlement areas;
- (c) community conservation areas;
- (d) access and rights of way;
- (e) cultural and religious sites;
- (f) urban development; or
- (g) any other purpose as may be determined by the community, county government or national government for the promotion of public interest.

(2) An area designated for special purposes under subsection (1) shall be used exclusively for the designated purposes.

**30. Non-discrimination**

(1) Every member of the community has the right to equal benefit from community land.

(2) Equality includes full and equal enjoyment of rights of use and access.

(3) Women, men, youth, minority, persons with disabilities and marginalized groups have the right to equal treatment in all dealings in community land.

(4) A registered community shall not directly or indirectly discriminate against any member of the community on any ground including race, gender, marital status, ethnic or social origin, colour, age, disability, religion or culture.

(5) For the avoidance of doubt, every man or woman married to a member of the community shall gain automatic membership of the community and such membership shall subsist until the spouses legally divorce and the woman remarries or the woman remarries after the death of a spouse.

(6) Subject to Article 159 of the Constitution, the culture of each community shall be recognized in accordance with Article 11(1) of the Constitution in the exercise of community land rights.

**31. Transactions in community land**

(1) Subject to such exemptions as may be prescribed, or unless any condition attaching to a community land right or a right of leasehold under this Act provides otherwise, a customary land right may be dealt with only with the approval of the registered community in a meeting convened for such purpose.

(2) For the purposes of this Act, contracts and transfers over community land shall be carried out in a manner similar to transactions over private land as provided

in the Land Act (Cap. 280) and registered as provided in the Land Registration Act (Cap. 300).

**32. Leases over community land**

(1) A lease over community land shall be on the basis of an agreement between the community and the lessee and subject to such implied conditions, restrictions and covenants as may be contained in any other written law.

(2) Despite section 55(1) of the Land Act (Cap. 280) unless the agreement contemplated under subsection (1) otherwise provides, the general provisions on leases contained in Part IV of that Act shall apply to leases over community land.

**33. Cancellation of rights of leasehold**

In addition to such grounds of cancellation as may be set out in a deed of leasehold, a right of leasehold may be cancelled by a registered community, with approval of the members of the registered community, if the leaseholder fails to comply with the requirements or to adhere to any restrictions imposed by or under any law pertaining to the utilization of the land to which the right relates.

**34. Existing rights to use and occupy community land**

(1) Any person who immediately before the commencement of this Act, held a right to use and occupy any part of community land, whether by virtue of any authority granted under any law or otherwise than under a lease, may continue to use and occupy such land under that right, subject to the same terms and conditions until the lease expires, after which the provisions of sections 28 and 29 shall apply.

(2) Any conversion which commenced before the promulgation of the Constitution shall be deemed to have commenced under this Act, while any conversion commenced after the promulgation of the Constitution shall be null and void.

**PART VII – ENVIRONMENT AND NATURAL RESOURCES MANAGEMENT**

**35. Natural resources on community land**

Subject to any other law, natural resources found in community land shall be used and managed—

- (a) sustainably and productively;
- (b) for the benefit of the whole community including future generations;
- (c) with transparency and accountability; and
- (d) on the basis of equitable sharing of accruing benefits.

**36. Benefit sharing**

(1) Subject to any other relevant written law, an agreement relating to investment in community land shall be made after a free, open consultative process and shall contain provisions on the following aspects—

- (a) an environmental, social, cultural and economic impact assessment;
- (b) stakeholder consultations and involvement of the community;
- (c) continuous monitoring and evaluation of the impact of the investment to the community;
- (d) payment of compensation and royalties;

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- (e) requirement to re-habilitate the land upon completion or abandonment of the project;
- (f) measures to be put in place to mitigate any negative effects of the investment;
- (g) capacity building of the community and transfer technology to the community; and
- (h) any other matters necessary for determining how local communities will benefit from investments in their land.

(2) An agreement relating to investment in community land shall only be made between the investor and the community. - 10 -

(3) No agreement between an investor and the community shall be valid unless it is approved by two thirds of adult members at a community assembly meeting called to consider the offer and at which a quorum of two thirds of the adult members of that community is represented.

(4) The community may request the guidance and assistance of the county government or any other relevant stakeholders in considering the offer of investment.

**37. Rules and by-laws**

Subject to this Act and any other written law, a registered community may make rules or by-laws for regulating the management and administration of their land and such rules or by-laws may provide for— - 20 -

- (a) the regulation of investments on the land;
- (b) the determination of terms of any leases granted for purposes of investment;
- (c) the conservation and rehabilitation of the land;
- (d) land use and physical planning; and
- (e) any other relevant matter.

**38. Regulation of community land use planning**

(1) Pursuant to Article 66 of the Constitution, the State shall have the power to regulate the use of any land, or interest in or right over land, in the interest of defence, public safety, public order, public morality, public health or land use planning. - 30 -

(2) Despite the provisions of Part 1 and pursuant to section 22 of the Fourth Schedule to the Constitution, the management of community land shall be subject to national and county government laws and policies relating to—

- (a) fishing, hunting and gathering;
- (b) protection of animals and wildlife;
- (c) water protection, securing sufficient residual water, hydraulic engineering and safety of dams;
- (d) forestry;
- (e) environmental laws;
- (f) energy policy; and
- (g) exploitation of minerals and natural resources. - 40 -

PART VIII – SETTLEMENT OF DISPUTES  
RELATING TO COMMUNITY LAND

**39. Dispute resolution mechanisms**

(1) A registered community may use alternative methods of dispute resolution mechanisms including traditional dispute and conflict resolution mechanisms where it is appropriate to do so, for purposes of settling disputes and conflicts involving community land.

(2) Any dispute arising between members of a registered community, a registered community and another registered community shall, at first instance, be resolved using any of the internal dispute resolution mechanisms set out in the respective community by-laws.

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(3) Where a dispute or conflict relating to community land arises, the registered community shall give priority to alternative methods of dispute resolution.

(4) Subject to the provisions of the Constitution and of this Act, a court or any other dispute resolution body shall apply the customary law prevailing in the area of jurisdiction of the parties to a dispute or binding on the parties to a dispute in settlement of community land disputes so far as it is not repugnant to justice and morality and inconsistent with the Constitution.

**40. Mediation**

(1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to mediation.

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(2) The mediation shall take place in private or in informal setting where the parties participate in the negotiation and design the format of the settlement agreement.

(3) The mediator shall have the power to bring together persons to a dispute and settle the dispute by—

- (a) convening meetings for the hearing of disputes from parties and keep record of the proceedings;
- (b) establishing ground rules for the conduct of parties; structuring and managing the negotiation process and helping to clarify the facts and issues; and
- (c) helping the parties to resolve their dispute.

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(4) If an agreement is reached during the mediation process, the agreement shall be reduced into writing and signed by the parties at the conclusion of the mediation.

**41. Arbitration**

(1) Where a dispute relating to community land arises, the parties to the dispute may agree to refer the dispute to arbitration.

(2) Where the parties to an arbitration agreement fail to agree on the appointment of an arbitrator or arbitrators, the provisions of the Arbitration Act (Cap. 49) relating to the appointment of arbitrators shall apply.

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**42. Judicial proceedings**

(1) Where all efforts of resolving a dispute under this Act fail, a party to the dispute may refer the matter to court.

(2) The Court may—

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- (a) confirm, set aside, amend or review the decision which is the subject of the appeal; or
- (b) make any order in connection therewith as it may deem fit.

PART IX – GENERAL PROVISIONS

43. Unlawful occupation of community land

- (1) No person shall occupy or use for any purpose any registered community land other than under a right acquired in accordance with the provisions of this Act.
- (2) A person who contravenes this section commits an offence.

44. General penalty

A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years, or to both.

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[Spent]

46. Saving and transitional provisions

(1) Unless the contrary is specifically provided in this Act, any right, interest, title, power, or obligation acquired, accrued, established, coming into force or exercisable before the commencement of this Act shall be deemed to have been acquired under this Act.

(2) Unless the contrary is specifically provided in this Act or the circumstances are such that the contrary must be presumed, if any step has been taken to create, acquire, assign, transfer, or otherwise execute a disposition in community land, any such transaction shall be continued in accordance with the provisions of this Act.

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(3) Any instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and—

- (a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and
- (b) subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act.

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(4) If a lessor or chargor had initiated any steps to forfeit a lease or to foreclose a charge, as the case may be, before the commencement of this Act, a court may on the application of the lessee or the chargee issue an injunction to the lessor or, to the chargor to stop the continuation of any such step.

(5) If a court had issued an injunction under subsection (4), the lessor or chargor to whom the injunction has been issued may commence any action under this Act to terminate that lease or bring that charge to an end.

(6) For the avoidance of doubt, the Cabinet Secretary shall develop the adjudication programme and ensure that the new and existing adjudication programme shall, subject to this Act, be governed by the law applicable to it immediately before to the commencement of this Act and shall be concluded within three years of the enactment of this Act.

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(7) If at the lapse of the time specified by the Cabinet Secretary under subsection (6) there is any adjudication programme not finalized, the Cabinet Secretary shall *gazette* new completion dates and finalize the registration under the provisions of this Act.

(8) The Director of Land Adjudication, an adjudication officer, demarcation officer, survey officer or a recording officer involved in an adjudication programme referred to under subsection (6) shall, for purposes of this section be deemed to be an officer of the national government.

(9) The provisions of this section shall be subject to the provisions of Article 63 (4) of the Constitution and the legislation providing for the review of grants and dispositions.

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**47. Group representatives**

(1) In relation to land held under the Land (Group Representatives) Act (Repealed), the respective group representatives together with the communities they represent shall be registered as a community in accordance with the provisions of this Act.

(2) Upon registration, the respective group representatives shall cease to hold office.

(3) Land held by group representatives referred to under subsection (1) shall not be sold, leased or converted to private land before it has been registered under this Act.

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(4) Title documents issued to group representatives under the Land (Group Representatives) Act (Repealed) shall continue to be in force until new titles are issued in the names of the respective communities or other institutions in accordance with this Act.

(5) The transitional provisions set out in the Schedule shall apply upon commencement of this Act.

(6) The Cabinet Secretary may prescribe regulations for giving effect to this section.

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**48. Regulations**

(1) The Cabinet Secretary, ensuring public participation may make regulations generally for the better carrying into effect of this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet secretary, ensuring public participation may make Regulations prescribing—

- (a) the procedures of recognition and registration of all parcels of community land rights;
- (b) procedure for settlement of disputes arising from the community land registration process;
- (c) the requirements for investor partnerships;
- (d) the procedures of registering any other entity holding community land;
- (e) conversion of other categories of land into community land;
- (f) the fees payable for any application or the issue of any certificate or other document in terms of this Act;
- (g) the conditions, in addition to conditions imposed by or under any other law, under which prospecting or mining operations may be carried out on community land;

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- (h) public education and awareness on the rights of communities over community land;
- (i) the combating and prevention of soil erosion and degradation, the protection of the pastoral resources and the limitation and control of the grazing of stock;
- (j) payment of royalties to communities from income generated from resources within community lands;
- (k) the timelines within which the adjudication programme must be gazetted, including guidelines on how to ascertain community or individual claims of interest in or right over community land;
- (l) the rules and procedure for election of a community land management committee; and
- (m) the procedures for registration of interest in community land as enshrined in Article 63 of the Constitution.

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SCHEDULE

[s. 47(5)]

TRANSITIONAL PROVISIONS

1. Interpretation

In this Schedule—

"appointed day" means the day this Act comes into operation;

"former institution" means the institution by whatever name called registered under any of the repealed laws.

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2. Rights and obligations

(1) All rights, obligations and contracts which, immediately before the coming into operation of this Act, were vested in or imposed on a former institution shall be deemed to be the rights, obligations and contracts of the registered community.

(2) Notwithstanding any provision in this Act to the contrary, all agreements entered into between a community for the use of community land in the interest of defence, public safety, public order, public morality, public health, land use planning or shall continue in force.

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3. Assets and liabilities

On the appointed day—

(a) all funds, assets, and other property, moveable and immovable which, immediately before the appointed day were vested in a former institution, shall, on the appointed day, vest in the registered community;

(b) every public officer having the power or duty to effect or amend any entry in a register relating to property, or to issue or amend any certificate or other document effecting or evidencing title to property, shall, without payment of a fee or other charge and upon request made by or on behalf of the registered community, do all such things as are by law necessary to give effect to the transfer of property referred to under paragraph (a); and

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(c) all rights, powers, liabilities and duties whether arising under any written law or otherwise howsoever, which immediately before the appointed day were vested in, imposed on or enforceable by or against a former institution shall, by virtue of this paragraph, be transferred to, vested in, imposed on or enforceable by or against the registered community.

4. Legal proceedings

On or after the appointed day, all actions, suits or legal proceedings whatsoever pending by or against the former institution shall be carried on or prosecuted by or against the registered community, and no such action, suit or legal proceedings shall in any manner abate or be-prejudicially affected by the enactment of this Act.

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5. Pending appeals to the Minister over community land

The Cabinet Secretary shall prescribe procedures for the determination of all pending appeals to the Minister brought under any of the repealed laws.

6. Reference to written laws

Any reference to a former institution in any written law or in any contract, document or instrument of whatever nature shall, on the commencement of this Act, be read and construed as a reference to the registered community.

7. Directions, orders, etc of former institution

All directions, orders and authorizations given, or licenses or permits issued, or registrations made by a former institution and subsisting or valid immediately before the appointed day, shall be deemed to have been given, issued or made by the registered community under this Act.

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8. Nothing in this Schedule shall be construed as giving exemption to the application of the provisions of Article 63(4) of the Constitution.

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REPUBLIC OF KENYA

THIRTEENTH PARLIAMENT

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to serve in those committees. But they would use that opportunity to engage in those committees actively.

Therefore, I would like to notify Members that it will not be business as usual. The Members of the Liaison Committee have agreed that chairpersons of committees will share with the respective Chief Whips of the Majority and Minority Parties details of Members they have problems with regarding active participation. Immediately after recess, we will ask you to agree with us to enhance the efficiency of the House in processing business by having Members who are keen on attending Committee meetings and participating in the House serving in those Committees.

With those many remarks, I beg to move and request Hon. Junet Mohamed to second once again, since he was very active in the Committee on Selection and also as the Chief Whip of the Minority Party. - 10 -

**Hon. Speaker:** Hon. Junet.

**Hon. Junet Mohamed** (Suna East, ODM): Hon. Speaker, I rise to second. The Members' Services and Facilities Committee is very important. Many Members do not want to serve in this Committee because they think it is just about *mandazi* and tea. This is the Committee that ensures that we have good facilities in Parliament, good tea and *mandazi* and that Parliament is hospitable.

Last week, Hon. Paul Abuor, who serves in this Committee, came to my office. He shed tears, asking how he could only serve on the Members' Services and Facilities Committee. We had to assign him to a Departmental Committee. Members underrate this Committee. - 20 -

I remember the late Hon. Jakoyo Midiwo only served in this Committee in the 11th and 12th Parliaments. He used to say that he only wanted to serve on the Members' Services and Facilities Committee. In the last Parliament, one of the most distinguished Members who served in this Committee was none other than the Leader of the Majority Party, Hon. Kimani Ichung'wah. I remember that when the names of the Members who had been appointed to the Committee were being approved in the House, I told him that if my tea was not very good, he would be in trouble. He took up the task very well, and we had good tea.

Members spend a lot of time away from their homes while in Parliament. They spend almost 12 to 13 hours a day working in Parliament. This Committee should do a good job and ensure that we work in a good environment and that lunch and tea are served on time. - 30 -

I beg to second.

**Hon. Speaker:** Thank you, Hon. Junet.

*(Question proposed)*

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

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

**Hon. Members:** Yes!

*(Several Members stood in the gangways)*

**Hon. Speaker:** Hon. Members who are upstanding, can you take your seats?

**Hon. T.J. Kajwang'** (Ruaraka, ODM): On a point of order, Hon. Speaker. - 40 -

**Hon. Speaker:** Yes, Hon. Kajwang'

**Hon. T.J. Kajwang'** (Ruaraka, ODM): Hon. Speaker, this is a very special Committee to all of us. It is the reason that I am alive today. If somebody wanted me to leave Ruaraka, just a little valium added to my food would get me out of this place. Could you use Standing Order 1 and ask these Members to stand up if they are in the Chamber, so that we can get to know them? No other Committee is more important than this one in the life of a Member of this



House. Would I be asking for too much if you asked them to rise if they are in the House so that we can see them? We do not meet some of them in our usual places because we have not yet familiarised ourselves with each other.

**Hon. Speaker:** I presume that you should know your colleagues.

*(Loud consultations)*

Order, Hon. Members. Hon. Kajwang', you have a duty to know your colleagues and, more so, those who are serving in a Committee that you describe as being your lifeline in the House.

*(Question put and agreed to)*

## MOTIONS

### CHANGES TO COMMITTEE MEMBERSHIP

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Hon. Speaker, I beg to move the following Motion:

THAT, further to the resolution of the House on Thursday, 27<sup>th</sup> October 2022 appointing Members into various Committees and pursuant to the provisions of Standing Order 173, this House further approves the appointment of Hon. Paul Abuor, MP, to replace Hon. Peter Kalerwa Salasya, MP, in the Departmental Committee on Regional Development.

I request the Deputy Chief Whip of the Minority Party, Hon. Mwenje, to second.

**Hon. Speaker:** Hon. Mwenje.

**Hon. Mark Mwenje** (Embakasi West, JP): Thank you, Hon. Speaker. I beg to second.

*(Question proposed)*

*(Question put and agreed to)*

**Hon. Speaker:** The Chairperson of the Committee on Public Debt and Privatisation, Hon. Shurie.

### ADOPTION OF REPORT ON THE 2024 MEDIUM-TERM DEBT MANAGEMENT STRATEGY

**Hon: Abdi Shurie** (Balambala, JP): Hon. Speaker, I beg to move the following Motion:  
THAT, this House adopts the Report of the Public Debt and Privatisation Committee on its consideration of the 2024 Medium-Term Debt Management Strategy, laid on the Table of the House on Thursday 29<sup>th</sup> February 2024 and, pursuant to the provisions of Section 15(4) of the Public Finance Management Act of 2012, and Standing Order 232A(7) and (8):

1. Approves the 2024 Medium-Term Debt Management Strategy.
2. Makes the policy and financial resolutions contained in the schedule to the Order Paper.

## SCHEDULE



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**POLICY AND FINANCIAL RESOLUTIONS RELATING TO THE 2024 MEDIUM TERM DEBT MANAGEMENT STRATEGY**

**A. POLICY RESOLUTIONS**

1. THAT, in the next Medium Term Expenditure Framework (MTEF) cycle, the National Treasury ensures consistency between the Medium-Term Debt Management Strategy and the Budget Policy Statement regarding the optimal borrowing strategy and the fiscal consolidation path;
2. THAT, the National Treasury ensures that the fiscal deficit and subsequent public borrowing projections are realistic by incorporating forecasts on any potential in-year changes to interest rates, exchange rates, and contingency spending; - 10 -
3. THAT, to address the emerging escalation of domestic interest rates alongside domestic interest payments, within 60 days of adoption of the Report, the National Treasury submits a report to the National Assembly providing practical measures to reduce the domestic debt service burden to sustainable levels;
4. THAT, in line with the resolution of the National Assembly on the 2023 Medium Term Debt Management Strategy, the National Treasury publishes guidelines that will ensure that the Treasury Single Account is established and operational by July 1<sup>st</sup>, 2024;
5. THAT, within 30 days of the adoption of the Report, and subject to Section 50 of the Public Finance Management Act, 2012 (Amended in 2023), the National Treasury submits a comprehensive report to the National Assembly on the breach of the debt anchor of 55 percent (+5) of Gross Domestic Product and the remedial measures undertaken to ensure adherence to the debt threshold; - 20 -
6. THAT, in order to promote fiscal sustainability, reduce debt distress and to slow debt accumulation, any deviation from medium term fiscal deficit path designed by both the Budget Policy Statement and the Medium-Term Debt Management Strategy, and any resultant readjustment to loan financing, should be pre-approved by the National Assembly;
7. THAT, the National Treasury ensures the customization of the MTDS for the next MTEF cycle to Kenya's specific debt challenges by providing specific measures to deal with undisbursed loans and related commitment fees, measures to resolve risks emanating from non-performing loans owed by state-owned enterprises, and estimation of contingent liabilities; - 30 -
8. THAT, in order to help enhance public participation in public debt matters, the National Treasury publishes simplified, citizen-friendly documents to accompany the technical reports on public debt submitted to the National Assembly; and
9. THAT, at least two months before the end of the current financial year, the National Treasury submits to the National Assembly:
  - (i) the Annual Borrowing Plan that addresses any deviations from the 2024 MTDS in financing the FY 2024/25 Budget Estimates, attendant cost and risks of the deviations and policy measures to address them; and - 40 -
  - (ii) a schedule of all projects for which borrowing is to be undertaken in the FY 2024/25.

**B. FINANCIAL RESOLUTIONS**

1. THAT, the fiscal deficit target for the medium term is approved and set at 3.9% of GDP for FY 2024/25; 3.3% of GDP for FY 2025/26, and 3.3% of GDP for FY 2026/27, in line with the fiscal consolidation path; and
-

2. THAT, the country's borrowing strategy is approved at 55 percent for net external borrowing and 45 percent for net domestic borrowing as contained in the 2024 Medium Term Debt Management Strategy.

This is the second Report on the Medium-Term Debt Management Strategy that was considered by the Public Debt and Privatisation Committee in the 13th Parliament. I sincerely thank Members of the Committee who diligently worked to ensure that this Report was tabled in this House.

The Medium-Term Debt Management Strategy (MTDS) delineates the strategies and initiatives to be implemented by the National Treasury in financing the fiscal deficit that is projected for the Financial Year 2024/2025, and is projected to amount to Ksh703 billion or 3.9 per cent of the GDP. The 2024 Medium-Term Debt Management Strategy has evaluated four alternative funding strategies and their impact on the inherent costs and risks associated with the current public debt portfolio. Therefore, it recommends a borrowing strategy to finance the fiscal deficit for the Financial Year 2024/2025, comprising a net borrowing ratio of 45 to 55 per cent of net domestic borrowing to net external borrowing, respectively. 10

The proposed strategy aims to maximise concessional borrowing for external financing while minimising commercial borrowing, thereby mitigating the cost of debt. On the domestic front, the strategy seeks to reduce refinancing risk by increasing the issuance of medium-to-long-term bonds. Adherence to this strategy will be key to achieving public debt sustainability. Public and publicly guaranteed debt stood at Ksh1.25 trillion as of January 2024, comprising Ksh5.06 trillion in domestic debt and Ksh6.19 trillion in external debt. In nominal terms, this represents 69.7 per cent of GDP. 20

Kenya's debt indicator, as set under the Public Finance Management (PFM) Act 2012, was adjusted in November 2023 to a debt anchor of a threshold of 55 per cent plus 5 that is to be achieved by 2028. Kenya's public debt stock is projected to reach 67.2 per cent in 2024. The subsequent downward movement to 55 per cent is premised on implementing the fiscal consolidation plan as indicated by the fiscal path and economic growth. In this regard, we urge discipline and commitment to this path.

As we move into the financial year, we should understand that the current debt stock is characterised by elevated costs and risk factors that are evident through rising weighted average interest rates, heightened refinancing pressure and exposure to real exchange rate risks. Consequently, this indicates an overall hardening of borrowing terms that amplify the cost of sustaining fiscal deficits as compared to previous fiscal years. 30

Public debt continues to be a significant driver of our expenses. It is subsequently crowding out development expenditure. Notably, the proportion of interest servicing expenditures as a share of GDP has increased from 3 per cent to 5.5 per cent over the past decade. This could have had a crowding-out effect on development expenditure, which declined from 10.3 per cent to 4.4 per cent over the same period. There is a need to reverse that.

As indicated by movements of the weighted average interest rates of the total debt portfolio, the interest rate risk stood at 7.7 per cent as of June 2023, following a general increase in interest rates that was observed for both external and domestic loans over the past year. Furthermore, the share of debt on fixed interest rates declined while the share of exposure to variable rates increased. This indicated an increase in the interest cost of the debt stock in the coming year. 40

On the refinancing risk, it is noted that the Average Time to Maturity (ATM) of the stock of debt decreased between December 2022 and June 2023, while the percentage of total debt maturing within one year increased slightly. This indicates an increase in the refinancing

pressure and calls for proper implementation of liability and cash management to minimise the impact of implementing the budget.

The Exchange Rate Risk refers to the vulnerability of the public debt portfolio to exchange rate volatility. A review of the valuation effect following the depreciation of the Kenya Shilling against the US Dollar and the Euro, which jointly account for 88 per cent of the denomination of the debt stock, resulted in an increase of the debt stock by over Ksh800 billion.

Given these circumstances, conventional debt management policies may prove inadequate in addressing the challenges faced by the country. Such challenges include the accumulation of undisbursed loans that necessitate annual payment of commitment fees, possible inefficiency in utilising borrowed resources, and a growing level of contingent liabilities. Therefore, heightened vigilance in debt management and adherence to fiscal consolidation measures is imperative.

After deliberation and consideration of contributions by various stakeholders, the Committee gave the following non-financial proposals:

1. That, in the next Medium Term Expenditure Framework cycle, the National Treasury ensures consistency between the Medium-Term Debt Management Strategy and the Budget Policy Statement regarding the optimal borrowing strategy and the fiscal consolidation path.
2. That, the National Treasury ensures that the fiscal deficit and subsequent public borrowing projections are realistic by incorporating forecasts on any potential end-year changes to interest rates, exchange rates, and contingency spending.
3. That, to address the emerging escalation of domestic interest rates alongside domestic interest payments, within 60 days of adopting the Report, the National Treasury submits a report to the National Assembly providing practical measures to reduce the domestic debt service burden to sustainable levels.
4. That, in line with the Resolution of the National Assembly on the 2023 Medium-Term Debt Management Strategy, the National Treasury publishes guidelines that will ensure that the Treasury Single Account is established and operationalised by 1st July 2024.
5. That, within 30 days of the adoption of the Report and subject to Section 50 of the Public Finance Management Act of 2012, as amended in 2023, the National Treasury submits to the National Assembly a comprehensive report on the breach of the debt anchor of 55 per cent plus 5 of GDP and the remedial measures undertaken to ensure adherence to the debt threshold.
6. That, to promote fiscal sustainability, reduce debt distress and slow debt accumulation, any deviation from the medium-term fiscal deficit path designed by both the Budget Policy Statement and the Medium-Term Debt Management Strategy and any resultant readjustment to loan financing should be pre-approved by the National Assembly.
7. That, the National Treasury ensures customisation of the Medium-Term Debt Management Strategy for the next Medium Term Expenditure Framework cycle to Kenya's specific debt challenges by providing specific measures to deal with undisbursed loans and related commitment fees, measures to resolve risks emanating from non-performing loans that are owed by state-owned enterprises and estimation of contingent liabilities.
8. That, in order to help enhance public participation in public debt matters, the National Treasury publishes simplified, citizen-friendly documents to accompany the technical reports on public debt that is submitted to the National Assembly; and,

9. That, at least two months before the end of the current financial year, the National Treasury submits to the National Assembly:

- (a) The Annual Borrowing Plan that addresses any deviations from the 2024 Medium-Term Debt Management Strategy (MTDS) in financing the Financial Year 2024/2025 Budget Estimates, attendant cost and risks of the deviations and policy measures to address them; and,
- (b) A schedule of all projects for which borrowing is to be undertaken in the Financial Year 2024/2025.

Hon. Speaker, the Committee also makes the following financial recommendations:

- 1. That, the fiscal deficit target for the medium term is approved and set at 3.9 per cent of GDP for Financial Year 2024/2025; 3.3 per cent of the GDP for Financial Year 2025/2026 and 3.3 per cent of GDP for Financial Year 2026/2027 in line with the fiscal consolidation path; and,
- 2. That, the country's borrowing strategy is approved at 55 per cent (+5 per cent) for net external borrowing and 45 per cent for net domestic borrowing as contained in the 2024 MTDS.

Hon Speaker, I beg to move. I request Hon. Makali Mulu, the Vice-Chairman of the Committee, to second.

I thank you, Hon. Speaker.

**Hon. Speaker:** Who is seconding you?

**Hon. Abdi Shurie** (Balambala, JP): Hon. Makali Mulu.

**Hon. Speaker:** Hon. Makali Mulu, go ahead.

**Hon. (Dr) Makali Mulu** (Kitui Central, WDM): Thank you very much Hon. Speaker.

Let me start by thanking my Chairman for moving this important Motion. Before I get to the body of the Report on Consideration of the 2024 Medium-Term Debt Management Strategy, let me make some opening remarks.

Hon. Speaker, first, I thank you, your Office, and the Office of the Clerk of the National Assembly for allowing our Committee to present this Report to the House before the Chairman of the Budget and Appropriations Committee presents the Budget Policy Statement. This is very critical because whatever budget deficit we agree on should inform the Budget Policy Statement so that the two Committees, the Budget and Appropriations and the Public Debt and Privatisation, are seen to be aligned.

The other important issue is to remind Hon. Members that we are discussing public debt as a country because we are spending more than we are collecting. When we look at our revenue, the amount we are collecting and the amount we spend, we realise that public debt is a critical issue in this country.

Let me give an example. When we look at the current Financial Year, it is projected that about Ksh2.5 trillion will be collected. In the coming Financial Year, we project to collect about Ksh2.9 trillion in ordinary revenue. When we look at those figures and compare them with where we are today, we realise that we are currently short by about Ksh300 billion. This means that if the trend remains, by the end of the year, we will not have achieved our projected revenue collection, which in turn will increase our deficit. It means the Ksh2.9 trillion projection for the next Financial Year will start with a negative of Ksh300 billion, assuming this year's projection becomes the base year. We need to be more realistic with revenue projections and be thorough in the assumptions that are made to determine them.

The other important point is the issue of expenditure. We have often said that we do not look at the expenditure side of the equation as a country because the more we spend, the more we increase the budget deficit. Therefore, we need to ensure that we focus on core expenditure items. When we spend, we must look at the items we are supposed to spend on and make sure that they will generate more revenue for this country so that we can grow the economy.

Hon. Speaker, we have projected a Ksh3.9 trillion budget this year. In total, we project borrowing about Ksh703 billion. One thing we need to question as a House is whether the amount we are approving today or tomorrow of Ksh3.9 trillion will remain throughout the year. Experience and practice have confirmed to us that there are in-year deviations. For example, this year, we approved a budget with a deficit of 4.4 per cent. As of now, it has been adjusted upwards to 5.5 per cent. In the process of this adjustment, even though it can be justified, was this House involved in making that decision? As a House, if we want to be effective, and since we have a Public Debt and Privatisation Committee, it is important that the in-year deviations are discussed by this House and approved.

In the process of discussing this matter, there are a few things that I want to note. Average interest rates have increased, leading to an increase in the total amount of loans, and the average change to maturity of loans is getting shorter, making it worse for us. Also, we cannot ignore the exchange rate when discussing public debt matters.

The other important issue is that we approved a debt anchor of 55 per cent, and we said we need to see it go down. It was 63 per cent at the time, but it has now gone up to 69 per cent of the GDP. It is increasing instead of decreasing. As a House, we need an explanation as to why the figure is increasing, instead of decreasing. We do not have that explanation.

Hon. Speaker, I second.

**Hon. Speaker:** Order, Hon. Members.

*(Question proposed)*

Before I give the contributors a chance, allow me to acknowledge the following schools in the Public and Speaker's Galleries. We have Moi Girls' School Nairobi, Kibra Constituency, Nairobi County, and St. Francis Secondary School, Subukia, Subukia Constituency, Nakuru Country.

On your behalf and my behalf, I welcome the students and their teachers to the House of Parliament.

Hon. Members, I can see that the screen is full. I believe you have logged in to contribute to this Motion. Hon. Julius Melly, Leader of the Majority Party, do you want to be the first to contribute?

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Yes.

**Hon. Speaker:** Okay.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you, Hon. Speaker. I rise to support the Report on the Consideration of the 2024 Medium-Term Debt Management Strategy.

Hon. Speaker, allow me to begin by thanking...

**Hon. Speaker:** Hon. Members, those who wish to contribute to this Motion should remember that in a Procedural Motion on limitation of debate, the time allocated to each Member to contribute is five minutes, including the Leader of the Majority Party.

**Hon. Kimani Ichung'wah** (Kikuyu, UDA): Thank you, Hon. Speaker. I hope the Clerks-at-the-Table have noted that you have taken about 30 seconds of the five minutes.

*(Laughter)*

I thank the Chairman and Members of the Committee. I particularly thank Hon. Makali Mulu, who is a very diligent member of the Committee, along with the Chairman.

I rise to support this Report and many of the recommendations, especially on our fiscal consolidation process from 3.9 per cent of GDP that is envisaged in the Financial Year 2024/2025 to 3.3 per cent of GDP in the Medium-Term Debt Management Strategy for two years after the next financial year.



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The fiscal consolidation programme will encompass two aspects: Revenue generation and expenditure. The Departmental Committee on Finance and National Planning will bring the Finance Bill, 2025 later in the year that will deal with revenue generation matters. What is more important is expenditure and how we, as a country, can rationalise it. This is where we have a huge challenge. As Hon. Makali Mulu has said, the changes in the medium-term debt management strategy usually emanate from reviews of our expenditure. Every supplementary budget comes with additional expenditure, at the time when there is decline in revenue collection. I hope that the National Treasury will adhere to what the Committee and House recommends this time, should we adopt this Report and its recommendations. If the National Treasury discovers that our revenues are either not performing or improving within the year, then it is imperative that it also reviews the expenditure side of our Budget. This is because it is a challenge that we have. The Chairman of Budget and Appropriations Committee, Hon. Ndindi Nyoro, has been very keen on this. However, I ask him that we actualise the House resolutions this year. - 10 -

This is not only about the National Treasury but also the county Governments. Recently, a Member said that even our counties have borrowed from their big brother, the National Government. County Governments make budgets based on projected revenues that are never realisable. Kiambu County has collected Ksh1 billion in the half year against a projection of Ksh7.98 billion. It is impossible to achieve the revenue targets that they had in the next four months to the end of the financial year. The same happens in the National Government. Therefore, it is imperative that when the National Treasury realises that the Kenya Revenue Authority (KRA) is not up to speed in terms of the projected revenue collection, it should review the expenditure downwards. It is time that the Budget and Appropriations Committee has food for thought on whether we put an embargo on new expenditure. I know this has been there, but we need to make sure that additional capital expenditure is checked. - 20 -

The other thing that we must check is our recurrent expenditure. I often see advertisements for jobs in the Public Service in the newspapers. Many of them may not necessarily be replacement of people who have left office. At the end of the day, this will lead to a very huge recurrent expenditure that will negate the fiscal consolidation that we are trying to pursue. - 30 -

As I conclude, and as I said, the National Treasury must ensure that fiscal consolidation is not only a term that exists in our books and those reports, but it is something that they must actualise this time round.

Hon. Speaker, with those remarks, I beg to support the Motion.

**Hon. Speaker:** Hon. Robert Mbui.

**Hon. Robert Mbui** (Kathiani, WDM): Thank you, Hon. Speaker, for giving me this opportunity to also contribute to this debate. Two things come to my mind on this issue of the 2024 Medium-Term Debt Management Strategy. First, before Members vote on this Motion, we must be very careful to know what exactly we are voting for. This is the beginning of the budget cycle. If we are not clear about what is happening, we may just agree to things and then we start complaining later on. We must note that this is the beginning of the budget cycle and it is part of it. As we vote for it, we must be careful. - 40 -

Secondly, we, as politicians, must also be careful on what we say, even during the campaign time because there are things that we have to do eventually. Sometimes, it is very humiliating and humbling to eat a humble pie. When we passed the Finance Act, 2023, some Members who had voted for it started complaining publicly later on about some sections in it.

Thirdly, passing the 2024 Medium-Term Debt Management Strategy enables and allows the Kenya Kwanza Government to borrow more. The promises they made during the campaign trail were that they were against Government borrowing. They demonised the previous President and said that borrowing was a very bad thing. However, they continue to - 50 -



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borrow. We are planning to borrow more money. This regime can teach the previous one a lot of things on borrowing. This is because they are now going further into using other marketing instruments like Green, Blue, Samurai, Panda and Sukuk Bonds, among others. There is a better and more intention of borrowing from that strategy.

Borrowing is not necessarily a bad thing. Even in our investments, we borrow money so that we can do good things with it. What matters is not what one uses the money for, but how he spends it. If you borrow and put up an investment that gives you good returns, then it is a good one. However, if you borrow money and then you consume it or use it for normal day-to-day operations, then that is a problem. There is also a problem when one borrows to pay bad loans. This is not a good strategy. Unfortunately, I have seen a tendency where the current borrowing is at a much higher cost than the previous one. The Government borrows so that it can settle loans that were borrowed at lower interest rates and thus, they pay higher interest rates based on the current plan. We have to be careful about those things. 10-

It is also unfortunate that there is a lot of borrowing from the local market. The late President, His Excellency Mwai Kibaki, stopped borrowing from the local market. That immediately opened up and stopped crowding out the private sector. Business people took loans from banks. Before the late President Kibaki's tenure, even opening accounts with some of those major banks was almost impossible. That is because the minimum deposits were so high as they were dealing directly with the Government. It is something that we need to look into. Why should we allow our Government to borrow from the local market and crowd out the private sector? 20-

I also want to point out that the National Treasury does not take this House seriously. We are aware that they have told this House several times that they would release funds meant for the National Government Affirmative Action Fund (NGAAF) and National Government Constituencies Development Fund (NG-CDF), but they have not honoured it. This has happened four times. I have said this because the Committee's recommendations confirm the same. Recommendation five says that within 30 days of the adoption of this Report and subject to Section 50 of the Public Finance Management (PFM) Act, the National Treasury will submit a comprehensive report to the National Assembly on the breach of the debt anchor of 55 per cent of GDP. We are at about 70.8 per cent of the GDP. That means that when the National Treasury gave an undertaking, they did not fulfil it. We are now giving them time to go and fulfil something that they did not fulfil, when they had the opportunity. 30-

In the last discussions on the Medium-Term Debt Management Strategy, we talked about the National Treasury opening a single account. We are repeating ourselves.

**Hon. Speaker:** Your time is up. Hon. Joseph Makilap.

**Hon. (Dr) Robert Pukose** (Endebess, UDA): He is not in the Chamber.

**Hon. Speaker:** Hon. Omboko Milemba.

**Hon. Omboko Milemba** (Emuhaya, ANC): Thank you, Hon. Speaker, for giving me this chance to speak on this Motion on the Report on the Consideration of the 2024 Medium-Term Debt Management Strategy. It emanates from the International Monetary Fund (IMF). It is supposed to create awareness in the countries on how to fix the deficits in their budgets. However, I also believe greatly that this must be customised to different countries. In this case, it needs to be customised to Kenya so that it can work well for us. 40-

The deficit in the Report before us is likely to be above Ksh703 billion and this needs to be fixed. This strategy is showing us how the National Treasury will fix this through the policy and financial resolutions. It is very important for this House to discuss this matter, thanks to the fact that it is coming earlier than the budget, unlike last year when the opposite happened.

Hon. Speaker, it is important to understand that there are situations within our system that are creating huge debts for us that can be fixed as indicated in the Report. Looking at Recommendation No.5, it talks about the adoption of a single account by the National Treasury 50-

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commercial banks lend money to the Government because it is offering a good interest rate. The implication is that it becomes very expensive for individuals, commercial enterprises and private companies to borrow from commercial banks. The consequence is that if citizens and business people are unable to borrow from our financial institutions, we will not collect enough taxes to run the economy because the loans are expensive and businesses cannot afford them.

Hon. Deputy Speaker, one proposal we brought through our Chairperson is that we should not get a loan to re-finance another loan but to fund programs. If we borrow money from a financial institution, it must fund a particular program as indicated by the National Treasury so that we can have a positive outcome.

For us to grow our economy, we need to reduce our appetite for huge fiscal debts. As a country, we have to live within our means. For us to continue with our programs, we must reduce the fiscal debts. The source of public debt in Kenya is as a result of high fiscal deficit in our budget. As a country, we need to reduce our development programs and live within our means so that we can grow our economy using our own resources.

Hon. Deputy Speaker, I support the proposals and recommendations that have been made because they will grow our economy and we will have a sustainable...

**Hon. Deputy Speaker:** Hon. Beatrice Elachi, Member for Dagoretti North.

**Hon. Beatrice Elachi** (Dagoretti North, ODM): Thank you, Hon. Deputy Speaker. I also rise to support this Report and appreciate the work that has been done by the Committee in terms of looking at how our country is strained by debt, the risks involved and what we need to do.

When you look at the Report, you realise the Controller of Budget (CoB) has provided serious insights that we need to ask ourselves a few questions whether we like her or not. One thing she has brought out clearly is that there is no way the Government can spend Ksh4 billion or Ksh5 billion on debt interest composed of domestic interest payments. We then come with Ksh300 billion that is foreign interest payments worth Ksh105 billion. She questions us and says that if we continue with this trend, the country will be distressed. Parliament has been given the opportunity to interrogate those reports and the budget but, one thing this House can do to help the country is by looking at different natural resources that we have, like minerals, and determining how we can use them to pay some of those debts.

We agree to pay interest on debts that have not been disbursed. In the last administration, that was the biggest challenge. We borrowed money that we were unable to spend and later found ourselves owing very high interest rates. We thereafter started complaining. Today, we are here and have raised everything we can but, most importantly, how do we balance ourselves and look at the different sectors and parastatals that are ailing. It is time we agreed that there is so much that the national Government can do to create revenue to deal with our current debt.

Additionally, when you read the Report, the Auditor-General in advising the Government and states that the Government continues to pay commitment fees incurred on undrawn amounts regarding loans signed between the Government of Kenya and foreign lenders. If that is what is happening, how do we re-negotiate those loans since we have not spent them? I believe we can re-negotiate. We can take cheap loans to repay the existing ones. This will reduce the strain that is currently affecting the country. The National Treasury has to question the need for some loans and ensure they are spent on the intended purpose. With time, some of them have been overtaken by events. We, therefore, should ask ourselves whether we need the loans. When we get our budgets, we wait to see how the National Treasury will advise us, that, yes, we have our budgets and this is the total amount we want to spend, but we have a framework of how we can re-evaluate and work within the budget regardless of over-estimation. Let us spend what we have. As I support this, I am waiting to see...

**Hon. Deputy Speaker:** Hon. Ndindi Nyoro.

**Hon. Ndindi Nyoro** (Kiharu, UDA): Thank you, Hon. Deputy Speaker. First, I would like to thank and congratulate Hon. Shurie and the entire Committee, including the Vice-Chairperson, Hon. (Dr) Makali Mulu, who is also a member of the Budget and Appropriations Committee.

I will go straight to the point because I want to highlight a few things. When the Kenya Kwanza Government came into power, the President was very categorical that Kenya had to reverse its gears concerning borrowing. The Budget and Appropriations Committee alongside the Public Debt and Privatisation Committee and the Departmental Committee on Finance and National Planning have been able to gradually reduce the deficit. In the last financial year, Kenya had a deficit to GDP ratio of about 5.7 per cent which, at some point, came down to 4.5 per cent and later to 5.5 per cent after the supplementary budgets. Although we will be debating the Budget Policy Statement (BPS) tomorrow, what we have managed to do for the next financial year is to bring down the deficit from Ksh886 billion to about Ksh703.9 billion, which is about 3.9 per cent deficit to GDP ratio. This is a good path in managing our appetite to borrow. 10-

Secondly, we sometimes read in the newspapers about the amount of money that has been borrowed. The truth of the matter is that Kenya does not borrow money outside the budgeted deficit. We have seen an escalation of the debt portfolio due to the fact that 50 per cent of our debt, which is approximately Ksh11 trillion, is domestic, while the rest is foreign. 70 per cent of our foreign debt is dollar-denominated. When the shilling loses its value by 20 per cent, this rolls over to our foreign debt portfolio. This will increase the debt, for instance, by Ksh1 trillion without borrowing a shilling. This is because our debt is in shillings but 50 per cent of the debt is borrowed in external currencies. Whereas Kenya is adopting a conservative model of borrowing less, we have also seen some of the major economies over-borrowing. Currently, the United States of America has a 120 per cent debt to GDP ratio of over Ksh34 trillion, which has also caused a standoff at the Congress. In the United Kingdom, the debt to GDP ratio is over 100 per cent, but we cannot compare our economy to those of the developed economies because our cost and use is different. We will continue to borrow less because we cannot afford to continue digging the hole of debt. 20-

When we talk of debt, we look at several things. For instance, Japan has the highest debt to GDP ratio in the world of over 250 per cent, but we have to look at the cost. In Kenya, the cost of borrowing domestically... Recently, we had an infrastructure bond of over 17 per cent which is tax free. For the last 10 years, Japan has had bonds with negative yield; meaning a negative interest rate. The more reason we cannot compare ourselves to them. The ramifications of Japan over-borrowing have led to inflation which, in turn, has caused their real GDP to remain constant for the last 30 years. Kenya is a gross borrower and, therefore, does not lend to anyone. Some of those big economies report gross borrowing but they also.... 30-

My time is up.

**Hon. Deputy Speaker:** Hon. Njeri Maina, Member for Kirinyaga, just give me a minute to recognise some schools. I wish to recognise two schools seated in the Public Gallery: 40-

1. Milimani Secondary School from Naivasha Constituency, Nakuru County.
2. Nairobi River Primary and Junior Secondary School from Embakasi West Constituency, Nairobi City County.

Before you proceed, Hon. Maina, let me allow Hon. Mark Mwenje to welcome the teams.

**Hon. Mark Mwenje** (Embakasi West, ODM): Thank you, Hon. Deputy Speaker. Let me take this opportunity to welcome Nairobi River Primary and Junior Secondary School students from Embakasi West. I thank the school for the splendid job they have been doing. We have done four additional classrooms in the school. It is good the students are here to see

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this is where we get funds to build their classrooms. I encourage them and believe that there are future Members of Parliament from among the students.

On behalf of the entire House, I welcome all the students. Thank you.

**Hon. Deputy Speaker:** Thank you. You may proceed, Hon. Njeri Maina.

**Hon. Njeri Maina** (Kirinyaga County, UDA): Thank you, Hon. Deputy Speaker. I rise to support the Report by the Committee. This House owes a fiduciary duty to electorates. It is therefore important to examine our Medium-Term Debt Management Strategy to ensure that any monies are applied accordingly. The ideal situation is that the net external borrowing does not exceed 55 per cent and the domestic borrowing does not exceed 45 per cent of the GDP.

We must, therefore, examine key priority areas that need funding by this House. We must also continue to ensure there is continuity in Government projects. Cutting down recurrent expenditure is also something that we should consider. The fiscal policy that we have must reflect the financial constraints of this nation. That is what I call walking the talk. Since the Kenya Kwanza Government took office, it has borrowed less. I want to disabuse the notion that it has borrowed more as the Kenya Kwanza Government. I refer to my good colleague and friend, Hon. Ndindi Nyoro, that when the shilling depreciates, the value of our debt increases too. Around 70 per cent of our debt is in US dollars. That is the net effect we see in the increase of our debt. It is not about the debt; it is about whether the debt is sustainable.

Countries like the United States of America have debts over 128 per cent of their GDP. As of 2023, the US had more than US\$32 trillion debt. The question that we must continuously examine is whether we have a sustainable debt and whether we can manage the same for posterity. The G7 nations like Canada, Germany and the rest have net debts of around 128 per cent. We must continuously engage in this conversation to ensure that we examine policies that do not denigrate our development agenda but ensure that, for posterity, we sustain the same and can pay our debt.

Thank you.

**Hon. Deputy Speaker:** Hon. Donya Dorice, Member for Kisii.

**Hon. Donya Donya** (Kisii County, WDM): Thank you, Hon. Deputy Speaker. I rise to support this Report. There was a time when I was a member of the Board of Management (BoM) at Awendo Sugar Company. I saw over 100 unused vehicles. Those are Government assets. If you moved around the country and identified unused Government assets, they could be sold. You could make the process quicker so that the money collected can be used to run Government activities. Anytime there is borrowing, they say we have to fund such activities, forgetting that we have our own sources from where we can collect money and use it to run Government projects and activities.

Each borrowing must have a purpose and approval. If I took a loan from any bank in Kenya today, I would be given a limit on when to pay, interest and purpose. We are never clear on what we want. It is easier to borrow from other places than to allow the Government to give a clear procedure on how it can have its idle assets sold to limit the amount of money it borrows.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Member for Manyatta, Hon. John Gitonga.

**Hon. Gitonga Mukunji** (Manyatta, UDA): Thank you, Hon. Deputy Speaker. A nation's strength ultimately consists of what it can do on its own and not what it can borrow from others. Around 13 years ago, our debt was less than Ksh1 trillion. Right now, we are talking about close to Ksh1.25 trillion. We need to borrow less as we move forward. The next generation must not find this country in crisis in form of debt. I congratulate the Committee for the Report. As a House, we need to be keener on issues of borrowing in this country and the programmes we are borrowing to finance. I propose that, as we look at handling debt, we need to factor in audits, especially by well-trusted auditors, even international ones, to check on the viability of programmes and projects that we fund with debts. That will help us to get value for



money because we are net borrowers. We cannot say we will live without borrowing. Let us borrow and ensure we maximise the opportunities and value for money.

I will deviate a little bit and go back to the borrowing in Kenya right now. I call upon the National Treasury to look at the interest rates that banks give to ordinary business people. If you borrow from a bank, 20 per cent of your profit goes towards repaying the debt. That means people have a problem financing their operations. I call upon the National Treasury to check on that. I understand inflation, but it is important to have local solutions, especially for our businesses. We also need to review laws. It is always good to say we are a thinking and working nation. We passed the Finance Bill, 2023 last year. Some things are working, others need improvement, while others need to be re-thought. While we are preparing to consider another budget and Finance Bill in June, some of the taxes we introduced and were to increase our collection have not worked right. We must review that as a House and ensure that we come up with ways of raising revenue that are not too much into killing the businesses that are being operated in the country.

On the turnover tax that we introduced to our farmers, it is important because we are asking the House to review it and reduce what is required from farmers, so that we do not have a case where farmers get frustrated and have to use the internet in trying to solve issues.

As I close, we need to work on the savings that this country is accumulating. I am happy that the Government has come out strongly to see how it can improve our savings so that we can stop borrowing too much from foreign entities and get crushed by paying using dollars.

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

*(The Temporary Speaker (Hon. Peter Kaluma) took the Chair)*

We need to work with the Kenyan Shilling and negotiate on our interest rates so that we can have this country sorted out as we move on.

That is my submission. I congratulate the Committee. Thank you.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Mugambi Rindikiri? He is not in the House. Hon. Geoffrey Ruku, Member of Parliament for Mbeere North? He is also not in the House. Hon. (Dr) Robert Pukose, Member of Parliament for Endeless, do you want to contribute to this?

**Hon. (Dr) Robert Pukose** (Endeless, UDA): Thank you, Hon. Temporary Speaker, for allowing me to contribute to the policy and financial resolutions relating to the 2024 Medium-Term Debt Management Strategy.

From the onset, this strategy states that, at least two months before the end of the current Financial Year, the National Treasury submits to the National Assembly the annual borrowing plan that addresses any deviations from the 2024 Medium-Term Debt Strategy in financing the 2024/2025 Budget Estimates, attendant cost and risks of the deviations and policy measures to address. To help enhance public participation in public debt matters, the National Treasury shall publish simplified, citizen-friendly documents to accompany the technical reports on public debt submitted to the National Assembly. As you are aware, many people do not understand some of the technical terms that are used in some of those reports. Therefore, it will be very important that the National Treasury publishes simplified citizen-friendly documents to accompany the technical reports on public debt.

Hon. Temporary Speaker, the country's borrowing strategy is approved at 55 per cent for net external borrowing and 45 per cent for net domestic borrowing as contained in the 2024 Medium Term Debt Management Strategy. We should have some fiscal policies that gives us some discipline that we do not deviate so much. Article 223 of the Constitution allows Parliament to approve expenditure by the Government that was not planned for. The

Government can spend, but we have to look at what is in our collections. It is very important that we do not spend beyond what we can collect. We must stick within a certain level of our discipline in our fiscal policies. It is also important that we do not go beyond such that we have to come to supplementary estimates to try and cut down on our costs. Our budget should be limited to what we can collect within our expenditure. For instance, when you go to a supermarket, you can only spend what you have in your pockets. You do not spend what you do not have in your account.

As a country, we need to have fiscal policies and discipline to spend within our means. We should not over-borrow loans that we will be unable to service.

With those few remarks, I support.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Daniel Manduku.

**Hon. Daniel Manduku** (Nyaribari Masaba, ODM): Thank you, Hon. Temporary Speaker. From the onset, let me inform the House that I am a member of the Public Debt and Privatisation Committee, and it is my wish that the National Treasury adheres to its proposal as stipulated in the Medium-Term Debt Strategy. Ironically, the National Treasury proposes a borrowing strategy of 55 per cent being foreign and 45 per cent being local and yet, in the Budget Policy Statement, they are planning to borrow 63 per cent to 37 per cent this year. Further to that, this House, sometimes back, resolved that the debt anchor be 55 per cent. A few months down the line, our debt anchor to Gross domestic product (GDP) is at 69 per cent. I would have wished to see a situation where that debt anchor gradually starts going down towards a target of 55 per cent. The National Treasury has promised that they should achieve that anchor by June 2028. This House needs to sanction the National Treasury strongly so that from time to time, they are obligated to come and give reports on a quarterly basis.

There is a problem with our debt. When it is borrowed, there is no rule or law on how it is applied in terms of development versus recurrent expenditures. Any good economist will tell you that debt should strictly be applied to development expenditure. It is very sad to see that we have borrowed a lot of money and used it on recurrent expenditure. In my view, going forward, we need to redefine recurrent *vis-à-vis* development expenditure with special emphasis on the development of human resources like teachers, doctors and other people who help in uplifting our social status as a country.

Some Members keep comparing Kenya to countries like Japan and the United States of America, which have exceeded 100 per cent debt to GDP ratios. I want to remind them that those countries have a lot of foreign reserves running to billions of dollars. They also have monies that they have lent to countries like Kenya. So, a comparison to such countries is not appropriate.

Lastly, in all discussions that we have had about public debt, we need to seriously consider having a Public Debt Act so that it can legislate and seal any loopholes that the Public Finance Management Act does not cover. This may reduce the abuse of Article 223 of the Constitution.

Thank you, Hon. Temporary Speaker.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Edith Nyenze? She has stepped out. Hon. (Dr) James Nyikal, Member of Parliament for Seme, do want to contribute to this?

**Hon. (Dr) James Nyikal** (Seme, ODM): Thank you, Hon. Temporary Speaker, for giving me this opportunity. I must appreciate what the Committee has done. It is the second time that we are discussing the Budget Management Strategy during the budget process. It is the first time we are doing it before the Budget Policy Strategy which means that we are seriously taking up the matter of looking at our debts and linking them to our budget because that is where the issue lies. Debts on their own are not a bad thing. However, it is important to look at what we do with the debt. It is necessary that we achieve its purpose because it comes from the budget deficit which could either be our recurrent or development expenditure. We



should agree that we do not borrow for consumption to finance our recurrent expenditure. However, when we borrow for development, we should plan to ensure that it brings revenue later on. Those are the most important issues when you are dealing with debts. What is the source of debt? As I have said, it is basically a budget deficit. The budget deficit is our expenditure against our revenue. Therefore, if we have a large fiscal deficit, we should look at cutting or reducing our expenditure instead of seeking more loans. Debt is good, but it becomes a problem when you cannot repay it. We have too many problems in this country. The cost of living has gone up because we are servicing the debt. We cannot finance our expenditure. We must reduce expenditure.

This Report has two main parts, one is a list of financial resolutions that are directly related to what we plan to do. The fiscal deficit target is projected at 3.9 per cent of the GDP for the Financial Year 2024/2025. The issue is: Can we adhere to these proposals? Last year, we set this target at 4 per cent and now we are at 5.5 per cent of the GDP! We have a deficit. We can come up with all these resolutions but are we going to adhere to them? The country's borrowing strategy is approved at 55 per cent of the GDP for external borrowing and 45 per cent for domestic borrowing. This is a good thing if we stick to it. Last year, we set this at 53 per cent of the GDP and we went up to 68 per cent. We had also set our debt ratio at 55 per cent and we went beyond that.

Therefore, these policy recommendations are key and without them, the financial resolutions in the Report will not work. We should encourage...

*(Hon. (Dr) James Nyikal's microphone went off)*

**The Temporary Speaker** (Hon. Peter Kaluma): Why are you okaying? Will you finish if I add you one more minute?

**Hon. (Dr) James Nyikal** (Seme, ODM): Yes. We have public participation in the budget-making process and the same should apply to the Medium-Term Debt Management Strategy (MTDMS).

In the recommendations, we have stated that we will have a schedule of what we intend to do with the Budget. We should also bring a schedule of what we have accomplished with the debt we took in the last budget and the returns. This is the only way we can have a meaningful approach to debt management.

Thank you, Hon. Temporary Speaker.

**The Temporary Speaker** (Hon. Peter Kaluma): Next is the Member of Parliament for Kitui Rural, Hon. David Mboni.

**Hon. David Mwalika** (Kitui Rural, WDM): Thank you, Hon. Temporary Speaker. At the outset, I support this Report and thank the Committee for bringing it here.

I also thank the National Treasury on how it has handled the repayment of the Eurobond. The situation with the Eurobond brought a lot of anxiety in the financial market. Last year, when I was in Washington DC for the International Monetary Fund (IMF) and World Bank talks, everyone thought that Kenya would be the next country after Zambia and Ghana, in terms of loan defaulting. Now we are off the hook. As a result, the Kenya shilling has appreciated against the dollar. Many people were hoarding the dollars in the hope that the Government would mop up the dollars to repay the Eurobond. At least, the dollar market has stabilised now.

The proposals in the MTDMS are not new. They have been there before. The question is: Have they been implemented? When you look at the Report, the 2023 set fiscal deficit was targeted at 4.4 per cent, but the actual deficit is at 5.5 per cent. This means that we do not follow the proposals. We need to be serious as a country. If we want to fight debt, we have to have balanced budgets. I like the Committee's recommendation that the National Treasury should

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submit to Parliament the list of projects that it intends to borrow for. Currently, we are borrowing for recurrent expenditure. There are no major projects in the country. A country is doing poorly when it starts borrowing for recurrent expenditure and not investments. We need to move towards balanced budgets.

In addition, there have been many roadside promises. When the Head of State makes a roadside promise, it has to be featured in the Budget. This means we have to either re-organise the Budget or bring in Supplementary Budgets further increasing the budget deficit. A budget deficit equals a debt. It is high time those roadside promises stopped and we follow the Budget to the letter. This will reduce the fiscal deficit.

Hon. Temporary Speaker, Article 223 has been over-used and abused. The Auditor-General and the Controller of Budget reported that billions of monies were used under this Article. This creates a deficit and now we have to borrow to fund the projects which the money was budgeted for. It is high time we reduced the use of Article 223.

We need to go for concessional loans which are cheaper than commercial loans. We also need professional negotiators for our loans. I do not think the Eurobond was negotiated by professionals because the US\$2 billion was to be repaid once. I am happy that this has been re-negotiated and it is going to be paid in instalments. Imagine if we had to pay Ksh300 billion in June this year; this country would collapse. We need professional negotiators. I also love the Committee recommendation on...

*(Hon. David Mboni raised his hand)*

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Mboni, what are you signalling to the Chair by raising your hand? I will add you two minutes.

**Hon. David Mwalika** (Kitui Rural, WDM): Okay. As a country, we cannot afford to pay Ksh3 billion. We need professional negotiators who can negotiate so that we pay loans in instalments.

The implementation of the Treasury Single Account is something which was proposed a long time ago. However, there is a lot of resistance from the National Treasury or the Government agencies. I was talking to somebody who was telling me that Government agencies and parastatals have over Ksh200 billion held in private banks. However, the Government borrows money from there and pays interest on it. The Treasury Single Account should be implemented so that all that money is mopped up and put in the Central Bank of Kenya. The Government can then borrow the money, use it and repay when in a position to do so.

Borrowing domestically closes up private investment. I was talking to somebody and they told me the interest rate for the bonds is 18 per cent while the interest rate in the bank now is around 20 per cent. How many Kenyans can afford to borrow at that rate? The proposals that have been proposed should be implemented so that, at least, we can move forward.

I support.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Thuku Kwenya, Member of Parliament for Kinangop.

**Hon. Kwenya Thuku** (Kinangop, JP): Thank you, Hon. Temporary Speaker for giving me the opportunity to contribute to this Report on the Medium-Term Debt Management Strategy.

At the outset, as a Member of the Public Debt and Privatisation Committee, I wish to support our Report. This is a Report that is very important in as far as fiscal planning, Budget, and the Budget Policy Statement are concerned. It is simply a document by the National

Assembly which tries to envision how the National Treasury will manage debts in the coming financial year.

I have taken interest in looking at the Debt Management Strategy of the National Treasury. Parliament must be alive to what is happening in this country, especially the issue of debt. Largely, our budget is financed through borrowing and that is perturbing. Looking back ten years ago, it is sad to say that our borrowing has gone up by around 350 per cent from Ksh2.25 trillion to about Ksh11 trillion to date. That is something that should concern every Member of Parliament because it is our business to oversight the National Treasury. At times, they are just "borrowing happy" to the extent that there are so many loans that have been committed to this country and yet, the absorption rate is so low. The country is made to pay commitment fees for loans that have not hit our coffers! We are borrowing but the money remains in the pockets of the people who lend us the money. I have said it in this House, and I will say it again, that it is a perfect example of walking into a commercial bank, borrowing money but not walking away with the money. You spend the money at the behest of the lender. It becomes a big burden to this country. You can imagine borrowing money but the lender dictates how it should be drawn and yet, you are paying the commitment fee, interest and all that. It, therefore, becomes a trap! We are ensnared in some kind of deep hole or abyss that we are trying to get out of.

It is time for the National Treasury to become serious in as far as debt management is concerned. When we talk about expenditure, the House is always full because people are happy to spend money. But we are not careful to ask where the money is coming from. I have listened to one of the Members contribute and he has ably said that our Budget has two columns as many people would think. That is not so because there is the revenue column which has an aspect of debt and it is quite a chunk! This financial year, we have borrowed close to Ksh1 trillion. It is in this financial year that we passed the Debt Management Strategy that envisaged a situation whereby borrowing would be up to a certain extent. We have surpassed it and no report has come to this House and yet, we resolved that if the National Treasury surpasses the amount that was approved by this House, they should come back with a report explaining why. We have not received that as the Public Debt and Privatisation Committee. Indeed, it should concern us.

On the issue of the Single Treasury Account, whereby all the monies collected by the Government should be deposited in one Government account, allow me to state as follows: As much as we are saying that our borrowing is at 55 per cent this financial year, we cannot live with that. We are borrowing more than is envisaged in this document. We are not living up to the resolutions of this House. I strongly feel that the National Assembly should rise up...

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Thuku, I have recognized the fact that you are speaking to yourself. Let me take it that you have concluded your contribution. I will give you a minute to tie your comments well.

**Hon. Kwenya Thuku** (Kinangop, JP): Thank you, Hon. Temporary Speaker for your magnanimity. As a House, we must live to our calling and responsibility. We must oversight the National Treasury. They should not just be presenting documents to this House and once we interrogate them and pass resolutions, we assume that it is the end of the work of the House. We are not mere spectators in this game. We are not spectators but players; we are part of the budget-making process. The National Treasury must be well advised that any document that they present to this House is for purposes of consumption of this House, which also plays the oversight role. We are going to keep them on their toes so that we bring down the level of debt from wherever it is to a figure that is manageable.

I can see the *Clerk-at-the-Table* is on my case! Kindly be kind to me. The issue of wanton borrowing must be dealt with once and for all by this House. It is only this House that can pronounce itself on the matter. Thank you.

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**The Temporary Speaker** (Hon. Peter Kaluma): The Chairperson, Departmental Committee on Justice and Legal Affairs Committee, and Hon. Martin Owino Peters, I will give you the chance to contribute after Hon. Jackson Kosgei.

Hon. Jackson Kosgei.

**Hon. (Dr) Jackson Kosgei** (Nominated, UDA): Thank you, Hon. Temporary Speaker. At the outset, I wish to support this Report and Motion.

Allow me to reflect on the rise and fall of empires in history of the last 6,000 years. Historians have summarised reasons that make Governments stand or fall. Sound fiscal policy is a Government plan and decision that determines how much money to borrow and collect in taxes and how to spend it to meet expenditure in the country. If this is not done, it can bring down regimes because it has done so.

Hon. Temporary Speaker, it is important to note that the Constitution we are currently using in this country gives Parliament that solemn role to participate in the financial policy of the country. It meant well because this can sustain the country. It has been found that what sustains a nation is national pride. This is where people are proud of their own country. I remember when the late President Kibaki talked about raising of resources in this country. He came from the point of national pride that *'lipa ushuru ujitegemee'*. Tax compliance enhances sustainability. This should make us proud to be Kenyans because we are the ones who are paying the bills of our civil servants in this country, irrespective of any political affiliation. We are all citizens of Kenya.

In conclusion, this House should look at, and analyse in depth, the impact of any newly borrowed money on our economy and how we can deal with it. I cannot over-emphasize this because colleagues have dealt with it. Otherwise, Hon. Temporary Speaker, I support the Motion.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Martin Owino Peters, Member for Ndhiwa.

**Hon. Martin Owino** (Ndhiwa, ODM): Thank you, Hon. Temporary Speaker. I want to support this Report. There are some idioms that teach us. For example, debt is slavery to those who are free. If those who are free are grossly indebted, they become slaves of the lender as is in this case. Hon. Sir George is a friend of mine. If you see him repeatedly biting off what he cannot chew, he will choke over it. The situation in our country is serious when it comes to debt. Somebody said that for fiduciary responsibility of this House, let us stop lamenting but oversee the Executive so that it does not go overboard.

How I understand the Budget Policy Statement is that it is a plan of action. We have now come up with the mid-term strategies as the policy action plan that should be followed when doing stuff. In following that, I think, as a House, we amended our Standing Orders that we should get reports from those Ministries every three months. Let us not rely on auditors' reports. All these yearly reports are done too late when things have already happened. However, if we can follow closely and see what is being done after every three months, then we can prevent some of those things. I think that is the right intervention we should tap into.

There is something here, which I think is very grave as well. The fidelity to the plans which we put in place. For example, over 90 per cent of what we pay is interest; not principle. There is also another animal called exchange rate. Every time our shilling is down, we pay Ksh40 billion to the loan because of the exchange rate. So, the National Treasury should be uptight in making sure that the Kenyan shilling does not fall that gravely to the dollar.

I want to make a point that has been cited many times on contingency spending as stipulated in the notorious Article 223 of the Constitution. This is what puts the Government way over what they are supposed to be spending whenever they are allocated money. Perhaps, we need to amend the Article. I know there will be a lot of resistance, but spending before and



looking for sanitation later is what is causing all these problems. We should stand up as a House and say: "Enough is enough with this Article."

Lastly, there is an omission here that I thought should have been included in this mid-term strategy - debt re-negotiation. Some debts should just be re-negotiated. There is no way one is going to meet them, especially when they commit the money, do not use it, and it continues to accumulate interest. For us to remain relevant in this market, we should sit with the lender to re-negotiate the loan in order to pay it in a certain way. Otherwise, I thank the Committee. Let us stand for the people of Kenya and say no more borrowing to pay for existing debt.

**The Temporary Speaker** (Hon. Peter Kaluma): The Member of Parliament for Wundanyi, Hon. Mwashako.

**Hon. Danson Mwashako** (Wundanyi, WDM): Thank you, Hon. Temporary Speaker. I rise to support the Report on the consideration of the 2024 Medium-Term Debt Management Strategy that has come to this House at the appropriate time. It is important to put things into perspective. Many years back, this country engaged in borrowing both locally and out of the country without involving Parliament. This Report clearly outlines the policy on how the Government intends to engage in borrowing. This is to make sure that the budget deficits for every year, when the budget is passed, can be covered through borrowing. It is important to realize that this debt management strategy is a Government policy. Now that the Government has brought this document to Parliament as per the Constitution and the Public Finance Management (PFM) Act, 2012, it is upon this House to make sure that the policies and aspirations that have been outlined in these documents are fulfilled.

Many times, borrowing in this country has been shrouded in controversy. Remember the times of the Eurobond. It was clear that money came into the country, but one could not trace where it went. Today, as we read this Report, we find ourselves in a situation where there is hope that if this document is to be followed to the letter, as a country, we shall get ourselves a better way of managing our fiscal debts. That way, we will not overburden the current and future generations. There is a principle in the Constitution that talks about inter-generational equity. Today, we may be excited about big projects that are done through money that we borrow from the Chinese and every other partner out there. However, if we are not prudent enough, then we will be over-burdening our future generations to a situation whereby we bequeath our children a country that is not sustainable. Therefore, we will have failed in our duty as people who are supposed to be responsible.

I remember last year the Cabinet Secretary for the National Treasury stated in this House his attempt to change our national debt from an absolute number of Ksh10 trillion to anchoring it at 55 per cent of the Gross Domestic Product (GDP). We raised many issues because it looked like it was just another gimmick to confuse Parliament and the country. This Report indicates that we are currently above a debt to Gross Domestic Product (GDP) ratio of 70 per cent. The Government's ability to reduce debt-borrowing to 55 per cent plus the 5 per cent that it indicated is something that must be looked into, pushed and forced, so that the Government demonstrates that it has the will and heart to bring down the rate of borrowing.

Before I conclude, it is recommended that foreign borrowing should be 45 per cent of the total debt and domestic borrowing should be 55 per cent of the total debt. However, this Report clearly indicates that we have reversed that trend. The rate of foreign borrowing is higher vis-à-vis domestic borrowing. We find ourselves facing huge foreign exchange rate risks since our shilling has lost a lot of value and depreciated against the dollar. Most of our debt is in dollars. Therefore, our debt ends up ballooning without real value coming into the country. Therefore, as we balance between costs and risks, we must ensure that ...

**The Temporary Speaker** (Hon. Peter Kaluma): I will give you two minutes to conclude.

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**Hon. Danson Mwashako** (Wundanyi, WDM): Thank you, Hon. Temporary Speaker. We must look at the trade-offs. If we borrow more foreign loans, we face huge foreign exchange rate risks. At the same time, if we borrow more locally, we may crowd out investors and the private sector in the country. This trade-off must be well calculated.

I like the part in this Report that states that after its adoption, the Ministry of National Treasury and Economic Planning must submit its debt sustainability analysis to this House so that we know whether our debt as a country is sustainable, and if we can manage it and pay it off.

I sit in the Budget and Appropriations Committee. The Principal Secretary for the National Treasury and Economic Planning appeared before us yesterday and told us that they wish to make the fiscal consolidation path that they have been following friendly, so that we can cover our budget deficits. At the same time, we must continue paying our debts in good time. As we do so, we should not sacrifice cheap debt for expensive debt like we did recently, where we raised the Eurobond at 6.75 per cent and we will be paying it at 10 per cent and yet, we call that sustainability. -10-

It is my hope that this policy will be followed and Parliament will keep the Government in check so that we can get good dividends from this Report. I support.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. David Gikaria, Chairperson of the Departmental Committee on Environment, Forestry and Mining.

**Hon. David Gikaria** (Nakuru Town East, UDA): Nakushukuru sana, Hon. Temporary Speaker, kwa kunipatia nafasi hii ya kuchangia mjadala huu kuhusu madeni. -20-

Hakuna mtu, familia au nchi isiyo na deni. Huwa unakopa pesa ili ufanye nini? Kuna pesa zinazokopwa zisizo na faida yoyote nchini. Hata unapokopa pesa kwako nyumbani, lazima ujiulize utalipa vipi. Lazima uwe na mshahara wa kutosha. Kama ni Serikali inayokopa, lazima ikusanye pesa na iwe na mikakati ya kukusanya hela ambazo zitasaidia kulipa madeni hayo. Lazima ujiulize pia unakopa kutoka kwa nani? Ni nini kitakachofanyika ikiwa utashindwa kulipa? Tunapaswa tujiulize maswali mengi wakati tunakopa hela, iwe ni mtu binafsi au nchi. Wizara ya Fedha imetuelezea kuwa hatujatenda vizuri na tunajua hiyo ni kweli.

Mhe. Spika wa Muda, unakumbuka kuwa pesa zilikuwa zinachukuliwa kufanya miradi ambayo haikuwa ya kuwekeza hela tu, ila ilitoa mapato pia. Hakuna wakati tuliambiwa kazi ambayo hela hizo zilifanya au njia zilizotumika ili tuseme kwa Kiingereza kuwa tumepata value for what we have borrowed. -30-

Nashangaa kuwa Wizara ya Fedha bado inaweka mikakati ya kupunguza madeni tangu tupate *Independence*, mikakati ambayo tunaendelea kukiuka. Wenzetu wachache hapa wamesema kuwa tuweke mikakati hiyo na tufanye kazi yetu kama Wajumbe. Hiyo siyo kazi ya *Executive* hata kidogo. Tumepitisha mambo haya yote katika sheria zetu. Chochote ambacho *Executive* inataka kufanya, sana sana kuhusiana na haya maneno, lazima kipitie katika Jumba hili. Ikiwa Jumba hili litapitisha mambo hayo, hatuwezi kumlaumu mtu mwingine. Lawama ni kwetu sisi Wajumbe. Lazima tukae chini na tujiulize pesa tunazokopwa ni za kufanyia nini. Tutapata mapato gani tukikubalia Serikali ikope pesa ili ifanye miradi? Tutaweka mikakati gani ya kupunguza madeni? -40-

Tunaishukuru Kamati husika kwa kazi nzuri iliyofanya katika Ripoti hii. Tunaomba kuwa isiwe tu matamshi na kuandika maneno kwenye karatasi kisha turudi kufanya kinyume na ile mikakati tulioweka.

Kuna njia nyingi ambazo ndugu zetu katika Wizara ya Fedha na Kamati ya Bajeti wamezingatia lakini ni muhimu tusipitishie madeni haya kwa watoto ambao bado hawajazaliwa. Tunapoyachukua haya madeni, ni lazima kila mtu abebe mzigo wake kwa wakati unaofaa. Ni makosa sana mimi nibebe mzigo na nimwachie mwingine aje alipe kama vile ilivyotendeka. Nitaubeba mzigo wangu kwa sababu najua nina miaka fulani ya uhai, na nikimaliza miaka yangu, atakayekuja kulipa sio shughuli yangu. Bunge hili lina jukumu la -50-



kusimamisha fikira kama hizo katika siku zijazo. Isikuwe kuwa mimi kama Mjumbe sijali kile nitakachofanya katika miaka mitano nitakayokuwa hapa kwa sababu yule atakayekuja baada yangu ataubeba mzigo huu.

Tunaomba Wizara ya Fedha na Kamati ya Bajeti kuweka mikakati ya kupunguza madeni. Tunapigia upato Ripoti hii ili ipite lakini ikishapita, tusiambiwe kuwa madeni yetu yamefika Ksh15 trilioni kisha tuanze kuilaumu Bunge ya mwaka jana au mipango ya yule Rais wa awali. Tunapaswa tuzingatie mambo hayo na kuweka mikakati. Yale mambo ambayo wameahidi wana...

**The Temporary Speaker** (Hon. Peter Kaluma): Member for Bomet County, Hon. Linet Chepkorir. On a very special request, make your contribution. -10-

*(Hon. Linet Chepkorir consulted with Hon. Josses Lelmengit)*

Is she consulting with Hon. Josses Lelmengit? It is normal for some of the best leaders we have in the country today to consult. Make your contributions.

**Hon. Linet Chepkorir** (Bomet County, UDA): Thank you, Hon. Temporary Speaker. I was still consulting. I have just come to the House but I will contribute before the end of this debate.

**The Temporary Speaker** (Hon. Peter Kaluma): I did not get you well, Member for Bomet County. Are you waiting to contribute on the next one? Let us have Hon. Stephen Mogaka. Before Hon. Stephen Mogaka contributes, Hon. Josses Lelmengit had made a request.

**Hon. Josses Lelmengit** (Emgwen, UDA): Thank you for giving me this opportunity to add my voice on this debate and to let you know that I support this debate. I also thank the Public Debt and Privatisation Committee for coming up with this Report on the Medium-Term Debt Management Strategy. -20-

First, I thank the President. During the last financial year, he tried and persuaded the Committees of this honourable House to cut down the Budget by close to Ksh300 billion. In this case, the principle is: Do not spend money you do not have. Truly, we need to cut down on the Budget because we understand the challenges we have as a country, especially the extent of borrowing we have done over the years. Right now, close to Ksh73 of every Ksh100 we collect goes to debt payment. The rest, less than Ksh30, goes to recurrent and development expenditure. We are on the red line. We have a big challenge. -30-

The other question is to the National Treasury. Do we prudently use the money we borrow on projects within the country? Is it allocated to different regions in this country fairly? That is so that we can see a fairer distribution of those resources across board whenever we pay debts as a country or through the taxpayers' money. All Kenyans are paying taxes. This is the big question for the National Treasury.

Again, are we budgeting for corruption? This is the hardest thing we need to deal with. As much as we need to borrow this money, we need to use it prudently. We need to cut down on luxurious expenses within our Ministries. For example, one time I asked the President where we would get money to finance the operations of this Government. He said that running a Government is like running a family. What do you do whenever you do not have money as the breadwinner of the family? One easy way for a lazy person is to continue borrowing without considering the generations to come that will be required to pay the foreign debt. The other way is cutting down expenses and living within our means. For example, instead of buying a 300 ml Coca-Cola that goes for Ksh400 in a very expensive and luxurious hotel, you can still buy the same in a local or retail shop at Ksh50. I support the Motion that we need to cut down expenses and borrowing. -40-

I would like to encourage and persuade the National Treasury to stick to the previous guidelines we provided—borrowing up to 65 per cent from external sources or foreigners, and

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up to 35 per cent from domestic sources. Why do we go overboard? We need to be true to our word so that we can win the Kenyans' trust.

Lastly is on expenditure. We need to ask the Executive to spend this money prudently so that we can stop budgeting for corruption. This entire time, people within our constituencies have been asking why we budget for corruption. People are exaggerating the expenditure of money towards different projects. Just as the President put it last time: *tumeishiwa na wajinga* in this country. People understand the cost of constructing a certain road, a classroom and so on. They question whenever they see we have hiked the tendering prices for particular projects. We need to ask the Executive.

**The Temporary Speaker** (Hon. Peter Kaluma): Member of Parliament for Karachuonyo Constituency. The best finance mind we have in the House. Proceed. —10—

**Hon. Adipo Okuome** (Karachuonyo, ODM): Thank you for the compliment.

Let me start by saying that before we borrow, we should first find out why we are borrowing. Let us not borrow money for recurrent expenditure. Let us borrow money that will help us invest in this country. That is very important. If we know what we are borrowing for and we borrow for what purpose, we should be able to follow up on the progress of implementation. We should be receiving reports quarterly, on the progress of the work as it is going on, so that we make sure that the project which has been started using a loan is completed. This is very important. Many times, we have spent a lot of money on a project that cannot be completed. —20—

The other important point is the cost of borrowing. We should be very conscious of the cost of borrowing, which is interest. This is when we can see whether to borrow locally or from external sources. When our money goes down in value when we have borrowed from external sources, the loan increases in amount without any benefit. This is because of the value of the money as we pay the loan we borrowed. When we look at that cost, it will call upon us to see how our Kenya Shilling behaves. We expose ourselves to more debts if the Kenya Shilling is not protected. We expose ourselves to local problems in our purchases, especially purchases from without the country, meaning buying from outside Kenya. That also becomes expensive.

What I really want to emphasise is that we should also look at the time we are borrowing. If we are borrowing at a time when the Kenya Shilling is very weak, we will be getting dollars at a very high cost. That gives us a repayment burden. In fact, I would even think of the possibility of borrowing at a time when the Kenya Shilling is strong even if the excess can go to our reserve so that we use this reserve when things get worse with our money. —30—

The other thing that is also increasing the problem of borrowing is the so-called pending bills. That is another borrowing. Let us call it what it is. We are borrowing from the wrong people. We are borrowing locally from contractors. This adds to our burden when we are repaying our debts. Therefore, I wanted us to be holistic in looking at these issues to avoid the possibility of creating a burden that is impossible for us to pay.

Thank you for giving me time to contribute to this noble debate. I support.

**The Temporary Speaker** (Hon. Peter Kaluma): The Member of Parliament for West Mugirango, Hon. Stephen Mogaka. —40—

**Hon. Stephen Mogaka** (West Mugirango, JP): Thank you, Hon. Temporary Speaker, for giving me this opportunity and for also giving my elder a chance to go ahead of me. I want to support the Report of this Committee and give my input.

It is commendable that this Report complies with the Public Finance Management Act as well as the Standing Orders. To that extent, *kudos* to the Committee.

What is a bit disappointing about the Committee is their observation about the level of public participation during the consideration and preparation of this Report. Public debt is a matter of public concern. To have a Report in the National Assembly without public participation quite undermines public interest. I do not know why the public did not get to know —50—

that there was this session going on and if they knew, why they kept off from it. Going forward, I suggest that the Committee goes an extra mile to ensure that even if we are going to conduct our proceedings live, the public should be involved. This is very important because it is the public that puts pressure on the Government to fulfil its election manifesto and election pledges which end up in the Appropriation Act and which invariably creates a budget deficit that has got to be filled through both external and domestic debt. Therefore, going forward, I want the public to be an integral part particularly in x-raying the level of public debt so that they give their input on the strategy that we need to employ, as a nation, to manage debt.

My second observation is that there is no doubt that the National Treasury presided over the creation of the public debt, and it is the same National Treasury we are going to rely on going forward to implement the Medium-Term Debt Management Strategy (MTDS). I urge this Committee to go the extra mile for the sake of the Republic to ensure that the recommendations in this Report are followed to the letter. If we get off the road, we will suffer the public wrath and default on our financiers which will interfere or bring down the credit rating of this country that has a stellar performance in redeeming the Eurobond and meeting its international obligations.

I also want to suggest to the Committee that, now that we are in the ICT era, let us create a platform for making online surveillance of what is happening with our public debt. The last I heard is that the public debt register is manual. Let us live the current age and let the Committee be upbeat to help us do the right thing.

I call upon ourselves, as a House, to do our oversight role because, at the end of the day, this MTDS is extremely good. Let it not be yet another policy paper that will be gathering dust in the archives of our good Government offices in the Executive. Above all, I urge members of the public to be patriotic and support the country and the Budget because those debts were incurred to do projects. When duty calls upon the citizens of this country to make their contribution through taxes and to redeem those debts as well as support the development agenda, I call upon us all to rise to the occasion and do our obligations.

I thank you, Hon. Temporary Speaker, for allowing me to contribute.

**The Temporary Speaker** (Hon. Peter Kaluma): The Hon. Julius Melly.

**Hon. Julius Melly** (Tinderet, UDA): Thank you, Hon. Temporary Speaker. First of all, I laud the Chairperson and the Public Debt and Privatisation Committee, Hon. Shurie and his Committee, for doing a wonderful job. I hope that the National Treasury is going to stick to the issues that have been raised. Every other time, the National Treasury issues a very good Budget Policy Statement and a very good framework on MTDS. However, there is no consistency between the two. The other day, as a House, we sat and went through the Budget Policy Statement because it forms the basis under which we fund our Budget. It gives the policies, frameworks and programmes that underpin the estimates that we are going to have. But we realise that it has become a circus. We have a very good document, but it lacks the programmes underpinning the funding. So, we want the National Treasury to be consistent on that. The Medium-Term Expenditure Frameworks (MTEF), the Debt Management Strategy and the Budget Policy Statement should speak to one thing so that we move on as one.

The National Treasury should come to this House to get approvals especially on issues that make us borrow and increase debt. The other day, we had issues with borrowing because our debt went up because of interest rates, exchange rates and contingency spending. The US Dollar at one time was Ksh120, but it is now Ksh160. As a country, we are going to pay more in the international market. Those are the issues we are now telling the National Treasury to look into so that when they make a forecast to borrow, they should know how the interest rates are moving and the contingencies at hand. This will, therefore, enable them to borrow within a framework that they understand very well.

The other issue is that it is very clear that the National Treasury shall submit a report to the National Assembly providing practical measures to reduce the domestic debt service burden to a sustainable level. If this is not done, borrowing within the local market is going to be a problem. The interest rates will go through the roof if we do not have a capping. Capping will spur development and borrowing by ordinary people. If we cannot do that, interest rates will go very high and the banks will not have any money to lend. They will only lend the Government because it will be the only one that will be able to pay.

I thank the Committee for recommending that the National Treasury shall submit a comprehensive report to the National Assembly on the breach of the debt anchor of 85 per cent. This has been said severally. The National Treasury is a very important Government department that has the responsibility of ensuring that public debt is managed and does not go beyond the 55 per cent or plus five digits. That is the reason why we are saying that it has a very big role to play in ensuring that, that aspect is kept and they report to this House because we represent the people.

Because the issues raised here are very important, I ask the Committee on Implementation and the Budget and Appropriations Committee to look into this particular issue. Every time we pass important policy matters that are placed before this House, let them be stuck to and let the relevant committees ensure that they are implemented to the letter.

I thank you, Hon. Temporary Speaker.

**The Temporary Speaker** (Hon. Peter Kaluma): Member for Taita Taveta County.

**Hon. Haika Mizighi** (Taita Taveta County, UDA): Ahsante, Mhe. Spika wa Muda, kwa kunipatia nafasi nchangie Hoja hii. Naunga mkono Ripoti ya Kamati ya Deni ya Umma na Ubinafsishaji. Kukopa na kukopeshana kupo. Lakini ni lazima tujue tunakopa fedha kwa malengo na mikakati gani ya kuhakikisha tunaboresha maisha ya wananchi. Tumeona pesa zimekopwa mara nyingi na zinafika nchini. Baadaye, tunapata manung'uniko kwamba hazikufanya ile kazi ama hazikwenda kwa walengwa. Wakati tunakopa zile pesa, ni vyema tuwe na mikakati dhabiti ya kuzifanyia kazi.

Jambo la pili ni kwamba wakati hizo pesa zinafika, ni vizuri ziboreshe wananchi wote kwa jumla. Zisitumiwe katika upande mmoja wa nchi na zikose kufika upande mwingine na wakati wa kulipa, wananchi wote wanajumuishwa.

Nikimaliza kwa sababu ya muda, dawa ya deni ni kulipa. Tuna mpango mzima wa kukopa pesa. Pia, ni vizuri tuwe na mikakati mizuri ya ni vipi pesa hizi zitalipwa, ili tusije kulimbikizia madeni vizazi vijavyo. Mtoto hajazaliwa lakini tayari anadaiwa kwa sababu tulikopa pale mbele bila mipango mizuri. Naunga mkono Ripoti hii. Ni jambo njema tunazungumzia hapa Bungeni masuala haya ya kukopa na kukopesha pesa kutoka kwa nchi mbalimbali ama za nje.

Ahsante.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Commissioner Mishi Mboko.

**Hon. Mishi Mboko** (Likoni, ODM): Thank you, Hon. Temporary Speaker. I stand to support the Motion on Report on the Consideration of the 2024 Medium-Term Debt Management Strategy. As Members of Parliament, we need to ensure that the strategies and policies which are being laid down should be implemented and enforced, so that we rescue our country from sinking due to public debts. Before we take any kind of a loan, we need to know its purpose. Sometimes, we borrow so that we can finance Government's budget or some projects. However, do we ask questions? Are the projects which we will build finance the loans we have taken? That is a question we need to answer.

Secondly, we should also ensure that there is no corruption. We borrow money to finance development projects. Some people do some deals or use shortcuts to allocate more money so that they can have their 'cut' which makes the country lose a lot. Before we borrow some money, we need to know the kind of a loan we are borrowing. Is it a concessional or



commercial loan? A commercial loan keeps on accruing some interests and it will reach a time when we will not manage to repay it. Concessional loans are taken under multilateral and bilateral arrangements. Sometimes, we can renegotiate and maybe get a waiver or be given more time to repay them. We need to know the kind of loans we are borrowing.

We also need to do cost-benefit analysis. If we borrow a loan, we need to know whether we would benefit or lose. We should not be enticed to borrow a loan any time. Some organisations like International Monetary Fund (IMF) and World Bank influence us to borrow loans. If we agree to borrow from them without cost-benefit analysis, it can be very risky. We also need to cut our expenses. This is what other Hon. Members have said, which is paramount. We need to do so to ensure that we do not lose any money.

The public debt in the country is very high right now. Before we borrow some money, we should know the debt sustainability. How are we going to sustain it? Will we do so by knowing the total public debt right now? What will be the risk of borrowing new debts? Those are the questions we need to discuss and agree on before borrowing some money.

We should reduce borrowing money because our debt is in trillions. We are not even talking of billions. We need to put a pause on our borrowing. If we borrow to finance projects, let us just complete those that are there. Let us also emphasise and target the ones which can generate some income or funding, and finance the loans we, as country, have taken. I also want to emphasise on what other Members have said. We keep on borrowing loans which burdens Kenyans and future generations. Our economy is going down each and every day.

When we are borrowing money, we need to know the currency that we are using. Are we using the lender's currency or ours? This affects us because our currency is depreciating. It has become a challenge for us because we have been borrowing using foreign currencies. This is an area we need to emphasise on.

Otherwise, I support this Report.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. John Mutunga, you have less than five minutes.

**Hon (Dr) John K. Mutunga** (Tigania West, UDA): Hon. Temporary Speaker, I wish I could tell somebody else to protect me from you. I have been raising my hand since I arrived here. Something has gone wrong.

The 2024 Medium-Term Debt Management Strategy has been brought to the House so that we can look at it. I like the mood in the House. Today, I have listened to Hon. Members speak on this Motion. I wish this is how we debate issues touching this country. The Committee Members have given their comments. The National Treasury is mandated to develop a strategy to manage debts, as per the Constitution and laws of Kenya, specifically the Public Finance Management (PFM) Act which prescribes how it should be done.

It is purposely meant to manage the cost of debt. It is not only an expose' of how much debt we have and an outlay of the extent to which we have borrowed but, it is also supposed to enable us manage debt. The goals of this particular strategy are basically to reduce debt costs, lengthen the maturity period and support the domestic market. If we have to reduce the debt costs, we must be conscious of how our trend moves. We, as a country, often get into very high debt levels. We already have them. Rising debt levels raises the sustainability concerns. Are we able to sustain very high debts? Right now, we can speak to the fact that Kenya's public debt is sustainable. However, there are very high risks of distress which need to be looked into. If the National Treasury will listen to what Members have said today in this House, then it will keep on monitoring the public debt to the extent that they will make sure that it is managed to levels where the risks are not extremely high or distressful.

It also needs to bring in measures to include fiscal consolidation and optimising funding to mitigate risks. When we have fiscal consolidation... Sometimes, I marvel at the extent to which we are not conscious of fiscal consolidation. We talk about it a lot but when you ask

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mitigated if the coordination of monetary policies is managed properly, and we become more accountable to Kenyans when it comes to foreign and domestic debts. We will also know when to limit ourselves in borrowing locally or internationally.

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Gathoni Wamuchomba.

**Hon. Gathoni Wamuchomba** (Githunguri, UDA): Thank you, Hon. Temporary Speaker. I rise to support the adoption of the financial resolutions but with a caution. The story of deficit is deafening. Every time we speak about loans and budgeting processes in this House... I was reading an article – and I do not know how credible it was – that was written by somebody who is not in Kenya. That article made me feel scared. The article outlined the extent to which Kenya has borrowed. We have borrowed loans that will be comfortably repaid after 29 years from the day the article was written. That really scares me. That means that, any child that will be born today will have to wait for 29 years to be off the debt. That is not very good news. 10 -

This House must interrogate and inter-interrogate the processes of borrowing in this country. Other countries have moved away from deficit to something we call “national sovereign wealth.” It is sad that in Kenya, we no longer talk about sovereign wealth; we talk about debts. In other words, what we are investing for our young generation is not generational wealth but generational debt. That means that the future of this country will be sunk in debts. So, even as we speak in this House and say that the Auditor-General must be fired because she highlighted a lot of issues that concern Kenyans in debt, we must ask ourselves if we are being fair to the future generations of this country and to what extent have we created generational wealth that young Kenyans will forever enjoy. Otherwise, the story of deficits and loans is really saddening. As I support this policy and recommendations, I want to be on record to put a caution that, it is time to we start moving from deficit to what we call “national sovereign wealth.” 20 -

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Edith Nyenze.

**Hon. Edith Nyenze** (Kitui East, WDM): Thank you, Hon. Temporary Speaker for giving me this opportunity. Every financial year, the National Treasury or the Government borrows to finance its fiscal deficit as it is stipulated in the Budget Policy Statement. It also borrows to pay off the maturing debts. However, unstable debt can lead to debt distress where a country is unable to fulfil its financial obligations. If our country reaches that point of distress, it will be pathetic to Kenyans. That is why this calls for debt restructuring so that we can avoid the distress. 30 -

There should be control of cashflows to ensure there is no leakage or corruption because money borrowed to do a project will not be well utilised. We should negotiate with our creditors so that we are able to pay our debts in good time to avoid embarrassment and distress. We also need to pay more than the minimum amount required and prioritise paying debts which attract higher interests. We look forward to a time when our country will be stable and debt-free. Even if we have debts, they should not distress Kenyans by being over-taxed to pay them. We look forward to such a time. 40 -

Thank you, Hon. Temporary Speaker.

**The Temporary Speaker** (Hon. Peter Kaluma): Mover.

**Hon. Abdi Shurie** (Balambala, JP): Thank you, Hon. Temporary Speaker. I wish to thank all the Members for their contributions. I am glad that this Report generated a lot of interest and, as a Committee, we truly appreciate. I want to put it on record that we did public participation on the Medium-Term Debt Management Strategy (MTDS) which we published in the dailies, although we did not receive any direct contribution from members of the public.

As a House, we are making progress because this is the second time we are debating the MTDS on the Floor. I am sure you have seen the kind of interest it has generated. This has not been the case in the past and we appreciate it.



Hon. Temporary Speaker, I beg to reply and request that pursuant to Standing Order 53(3), you defer putting of the question to another day. Thank you.

**The Temporary Speaker** (Hon. Peter Kaluma): I consent to the request made by the Mover. The question on this Motion, will be put the next time it is scheduled on the Order Paper by the House Business Committee.

*(Putting of the question deferred)*

Next Order:

## BILL

### *Second Reading*

#### THE NATURAL RESOURCES (BENEFIT SHARING) BILL (Senate Bill No.6 of 2022)

**The Temporary Speaker** (Hon. Peter Kaluma): Mover.

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

I beg to move that the Natural Resources (Benefit Sharing) Bill, (Senate Bill No.6 of 2022), be now read a Second Time.

Hon. Temporary Speaker, I want to start by advising the House that this is a Private Member's Bill from the Senate, that was brought by Senator Mungatana of Tana River County. The Bill went through First Reading on 17<sup>th</sup> August 2023 and was thereafter, committed to the Departmental Committee on Environment, Forestry, Climate Change and Mining, for consideration and reporting in the House, pursuant to the provisions of the National Assembly Standing Order 143.

In accordance with Article 118 (1)(b) of the Constitution and Standing Order 127(3), the Committee sought views from the public by way of written memoranda and further conducted public participation hearings on the same Bill. Organisations and institutions that made their presentations to the Committee on the Bill included the following: The Ministry of Environment, Climate Change and Forestry, which objected to the Bill for various reasons that are...

*(Hon. Kimani Ichung'wah consulted with Hon. Naomi Waqo)*

**The Temporary Speaker** (Hon. Peter Kaluma): Leader of the Majority Party, the point being made by the Chairperson of the Departmental Committee on Environment, Forestry, Climate Change and Mining is very critical. I request you as the leader in the House and all Members to attend to that point.

**Hon. David Gikaria** (Nakuru Town East, UDA): Thank you very much, Hon. Temporary Speaker. I know how critical this is. Over and above being in the House, when you and I are in the field, we see how critical it is for people to concentrate. Otherwise, you know what happens when one stops concentrating. You concede too many goals and lose!

The National Treasury also came before the Committee. The State Department for Mining...

**The Temporary Speaker** (Hon. Peter Kaluma): Hon. Gikaria, the point you were making is that the ministry in charge of environment matters opposed this Bill.

**Hon. David Gikaria** (Nakuru Town East, UDA): Yes, it opposed this Bill.