

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 4th March, 2014

The House met at 2.30 p.m.

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

PRAYERS

PETITION

CONSUMER REPRESENTATION IN REGULATORY AGENCIES

Hon. Speaker: Hon. Members, Standing Order 225 (2) (b), requires that the Speaker reports to the House any petition other than those presented through hon. Members.

I, therefore, wish to convey to the House that my office received a petition regarding the implementation of Section 16(3) of the Finance Act, 2013, and Section 94 of the Consumer Protection Act, 2012.

The Petition, which is signed by Mr. Stephen Mutero, on behalf of the Consumers Federation of Kenya (COFEK), prays that Parliament requires the Executive to comply with the provisions of Articles 46 of the Constitution and Section 94 of the Consumer Protection Act, 2012, to ensure that consumers have representation in all regulatory agencies. It asks for amendment of Section 16 (3) of the Finance Act, 2013, relating to payment of a deposit tax, in case of disputes.

Hon. Members, this Petition, therefore, shall stand committed to the Departmental Committee on Finance, Planning and Trade for consideration. The Committee is, therefore, requested to consider the Petition and report its findings in accordance with Standing Order 227(2).

PAPERS LAID

Hon. Speaker: Yes, Leader of Majority Party.

Hon. A.B. Duale: Hon. Speaker, Sir I beg to lay the following Papers on the Table of the House, today Tuesday, 4th March, 2014:-

Report of the Auditor-General on the Financial Statements of the Cotton Development Authority for the year ended 30th June, 2013

Report of the Auditor-General on the Financial Statements of the Retirement Benefits Authority for the year ended, 30th June, 2013

Budget Implementation Review Report for the First Quarter of 2013/2014, from the Office of the Controller of Budget

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Annual Anti-Corruption Report by the Director of Public Prosecutions in respect of the prosecution of Anti-Corruption and Economic Crime-related cases, pursuant to the provisions of Section 37 of the Anti-Corruption and Economic Crimes Act of 2002, for the period of 1st January to 31st December, 2013 Annual Report of the National Gender and Equality Commission for 2012/2013.

Hon. Speaker: Very well. Any other hon. Member with a Paper to lay on the Table of the House? Hon. Idd Mustafa from Kilifi South?

(Hon. Mustafa stood next to the Chair)

What is wrong with you? You cannot come to the Chair! You have placed a request and you think you are going to whisper to me. The request is for the House, not the Chair. If it is information about the hon. Member who authorized you to lay the Paper, I have it and I approved it.

(Hon. Mustafa resumed his seat)

NOTICE OF MOTION

MEASURES TO LIBERALIZE AIR FARES IN KENYA

Hon. Shimbwa: Hon. Speaker, I beg to give notice of the following Motion:-

THAT, aware that air transport in Southern and Eastern Africa is growing with three major African carriers, including Kenya Airways Limited, dominating international and domestic flights of international traffic in the region; having grown at an annual average rate of 6.2 per cent between 2001 and 2007; further aware that Kenya Airways provides 70 per cent international traffic through Nairobi compared to South African Airways and Ethiopian Airlines at 33 per cent and 83 per cent respectively in their hubs; noting that Kenya Airways Limited enjoys monopoly in air transport in Kenya, thus determining the rate of fares at will due to the monopoly that they enjoy, and that demand for air travel has increased tremendously; given that there is no regulatory body in place to supervise and ensure fair opportunity for competition by different airlines to ensure checks on the excesses of the airlines, and that a number of airlines that applied for licences to operate domestic flights are yet to be given approvals, this House resolves that the Government puts in place measures to fully liberalize the air fares, including awarding licences to other operators to make air travel affordable as a result of fair competition.

REQUESTS FOR STATEMENTS

Hon. Speaker: Is there any hon. Member who has been requested by hon. Shebesh to read a Statement for her?

Yes, hon. Ijendi Malulu,

IMPLEMENTATION OF REPORT ON PYRAMID SCHEMES

Hon. Injendi: Thank you, hon. Speaker. With your permission, I wish to make an amendment to my Statement request. The request on the Order Paper is directed to two committees, namely the Committee on Justice and Legal Affairs, and the Committee on Budget and Appropriations, whereas the one I have is directed to the Committee on Implementation.

Hon. Speaker, pursuant to Standing Order No.44 (2)(c), I wish to request a Statement from the Committee on Implementation regarding the status of implementation of the Report of a taskforce on the pyramid schemes, led by hon. Francis Nyenze. We are aware that the taskforce recommended that prominent persons in the scheme be prosecuted and victims compensated. Subsequently, the Parliamentary Committee on Budget and Appropriations sought Kshs7 billion from the Supplementary Budget in February, 2011/2 to compensate victims of the pyramid schemes. The schemes were Desi, Clip, Sasanet and Fino, amongst others. The Chairperson should inquire into and report on the following:-

- (a) the status of implementation of the Committee's recommendations; and,
- (b) when the victims of the pyramid schemes will be compensated and justice done.

Hon. Speaker, some of the victims of the pyramid schemes are paralysed; some are divorced, while others are dead. I am aware that the Report is ready because this is a Statement that I sought on 26th September, 2013. I have met some of the Members of the Committee, who told me that the Report is ready.

Hon. Speaker: Then if the Report is ready, just go for it and read the answer.

Yes, hon. Chepkong'a.

Hon. Chepkong'a: Thank you, hon. Speaker. I think the Statement request is misdirected to the Justice and Legal Affairs Committee. It ought to be for the Committee on Implementation because the matter requires implementation. It has nothing to do with law, but I could as well communicate to the Chair. Alternatively, there are Members of the Committee on Implementation in this House.

Hon. Speaker: Are they the ones dealing with the Statement request?

Hon. Chepkong'a: Yes, hon. Speaker. In fact, the amendment was made by the person who requested the Statement. He said that he was seeking to make an amendment to his request to re-direct the request to the Committee on Implementation.

Hon. Speaker: So, hon. Injendi, you requested that the Statement request be re-directed to the Committee on Implementation. Who is the Vice-Chairperson of the Committee? I am informed that the Chairperson is indisposed. I do not know whether that is the correct situation. Let us get leadership. Who is the Vice-Chairperson of the Committee on Implementation? If the Chairperson is not here, there should be a vice-chairperson. Who is the Vice-Chairperson of the Committee on Implementation – that one chaired by hon. Saipan? I have said that I know that hon. Saipan is indisposed.

An hon. Member: --- (off-record)

Hon. Speaker: Who is Kalia? Is she not indisposed?

An hon. Member: No, she is on maternity leave.

Hon. Speaker: Maternity leave is not the same as being indisposed?

(Laughter)

Okay, the appropriate correction has been made. She is on the leave that you have mentioned.

If the Vice-Chairperson is not ready, can we get hon. Danita Ghati?

Hon. (Ms.) Ghati: Thank you very much, hon. Speaker. It is good that hon. Malulu Injendi has re-directed his request to our Committee. I want to assure him that we have discussed the matter, and that the Report is actually ready. We were at a Committee meeting in Mombasa where we discussed the pyramid schemes saga. We have the Nyenze Report. We have come up with our own report. We will be able to provide that report within the next one week. I should be able to communicate to the Vice-Chairperson of our Committee. So, we should be able to get the Report.

Hon. Speaker: Hon. Injendi, I believe that a week is good enough.

Hon. Injendi: Since the Chairperson and the Vice-Chairperson are not here, one week is okay. I understand that she has to report.

Hon. Speaker: Yes, hon. Samuel M. Nderitu. If hon. Nderitu is not here, let us proceed to the request by hon. Gunda Mwinga, who has requested hon. Idd Mustafa to seek it on his behalf.

ESTABLISHMENT OF RONALD NGALA UTALII COLLEGE

Hon. Mustafa: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Finance, Trade and Planning regarding the status of the establishment of Ronald Ngala Utalii College in Kilifi County.

Hon. Speaker, the Government approved the construction of Ronald Ngala Utalii College as the second national tourism institution. The said college was proposed in 1996 and eventually approved as a Kenya Vision 2013 flagship project to be financed by the National Treasury. However, the project failed to commence on time, and so the cost of the same rose from Kshs1.9 billion at the time of the proposal in 1996 to Kshs8.9 billion at the time of the award of the contract. The contract was awarded, and the contractor went on site but the project has since stalled.

Hon. Speaker, the Chairperson of the Committee should inquire into and report on the following:-

- (i) why the project has stalled;
- (ii) when the National Treasury will avail funds for the on-going construction of the proposed project; and,
- (iii) when the expected completion date of the said project is.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Mustafa, you said that no funds have been allocated for the project, and that it has stalled. You then went ahead to seek to be told when funds will be made available, and the completion date. Let us have an undertaking from hon. Benjamin Langat or his Vice-Chairperson, hon. Nelson Gaichuhie.

Hon. Gaichuhie: Hon. Speaker, I want to confirm that the Committee has visited Ronald Ngala Utalii College. We have also engaged the Ministry responsible for tourism,

and also allocated some money for the project in the Supplementary Budget. We are now asking hon. Mutava Musyimi, through the Budget and Appropriations Committee, to allocate some more funds to the project. So, we will be able to bring a report next week, on Tuesday afternoon.

Hon. Speaker: Yes, hon. Mustafa Idd.

Hon. Mustafa: Hon. Speaker, he has not given an indication on the last bit of the request.

Hon. Speaker: Very well, but also remember that there are days allocated for responses.

Yes, hon. Mathew Lempurkel.

DROUGHT MITIGATION MEASURES IN LAIKIPIA NORTH

Hon. Lempurkel: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to seek a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the drought situation in Laikipia North.

Hon. Speaker, the situation in the area is scaring, with about 50,000 people affected by the on-going drought. The communities in that area comprise mainly of pastoralists, who are now moving to the neighbouring Nyeri and Samburu counties in search of pastures, leaving their families behind to face the ravages of the drought. Further, Laikipia North does not benefit at all from the World Food Programme despite the fact that the area does not receive sufficient food supplies from the Department of Special Programmes.

Hon. Speaker, the Chairperson should inquire into and report on the following:-

(i) what the Government is doing to resolve the situation, including the timelines for food supplies and other supplies that are needed by the community; and,

(ii) plans by the Government to ensure that this problem does not recur in future in that area and in other parts of the country.

Thank you, hon. Speaker.

Hon. Speaker: Yes, hon. Kamama.

Hon. Abongotum: Hon. Speaker, I sympathise with the people of Laikipia North, who are actually my neighbours. I wish to confirm that what the hon. Member has stated is true. The docket for drought and famine relief has traditionally been domiciled in the Office of the President but has since be re-directed to the Ministry responsible for devolution. So, I want to recommend that the Statement request be transferred to the Departmental Committee on Finance, Trade and Planning, so that action can be taken immediately.

Thank you, hon. Speaker.

Hon. Speaker: It is true that the function is now handled by the Ministry of Devolution and Planning.

Hon. Lempurkel, perhaps you need to re-direct your request to that Committee because hon. Asman Kamama may not be of much help to the situation.

Hon. Lempurkel: Hon. Speaker, I am guided.

Hon. Speaker: Hon. Gaichuhie, this request---

(Loud consultations)

Hon. Members, who are consulting loudly, let us be able to transact business.

Hon. Gaichuhie, this request is not directed to the departmental committee in charge of national security. Please, take it over because it is a function under your Committee. Are you operating through hon. Benson Mutura of Makadara? Have the people of Makadara decided to accommodate you?

Hon. Gaichuhie: Hon. Speaker, I live in his constituency.

Hon. Speaker: When are you going to bring a response?

Hon. Gaichuhie: Hon. Speaker, we will bring a response in two weeks' time.

Hon. Speaker: Yes, hon. Lempurkel.

Hon. Lempurkel: Hon. Speaker, the people of Laikipia are suffering. They really need food. Food is a basic necessity for the people. Therefore, the sooner they respond to my request, the better. I will appreciate if they can do so in a week's time.

Hon. Speaker: Hon. Gaichuhie, are you able to do what he is requesting?

Hon. Gaichuhie: No, hon. Speaker. Food relief has a budgetary constraint. When the Ministry came to us, they told us that they were underfunded. They requested Kshs2 billion to be able to buy relief food supplies. So, we will liaise with the Ministry. Since the matter is very urgent, maybe we can give an answer in a week's time. We can give the matter priority.

Hon. Chairman: Hon. Lempurkel, what is your reaction?

Hon. Lempurkel: Hon. Speaker, I believe that in this country, there are emergency food stocks. So, I agree with him if they are going to respond in a week's time.

Hon. Speaker: Hon. Samuel M. Nderitu for the second time. The Member for Gilgil Constituency is not desirous of being present. Therefore, the request for Statement is dropped, and will not be raised in the House for the next 30 days. Clerk's Office, please, note this. People cannot afford to put requests and then decide to take leave of absence.

Hon. Members, the request by hon. Rachael Shebesh is deferred on account of indisposition. She is indisposed and that information has been communicated to the Speaker.

COMMUNICATION FROM THE CHAIR

EXECUTION OF ORDER ON STATEMENTS

Hon. Speaker: Hon. Members, before we conclude Order No.7, on Statements, I wish to update you on some recent developments regarding the execution of this Order.

Statements have continued to elicit great interest from hon. Members. In the last Session, there were over 400 requests for Statements. In this Session, within only three weeks of our sittings, we have had over 120 requests for Statements, most of which are still awaiting approval.

You will all agree with me that the manner in which this House has continued to discharge this Order is not only inadequate, but also does not meet the acceptable

standards of holding the Executive to account. The system of requesting answers on very important national matters from Chairpersons of Committees has been tested for about one year now. However, the efficacy of the system is very uncertain. In addition to overloading the committees with work outside their core mandates, the Chairpersons cannot be held accountable for information given or even on commitments given on the Floor of the House.

Hon. Members, it is on this basis that the Procedure and House Rules Committee, under my chairmanship, is conducting a comprehensive review of the usage of Statements. Indeed, a task force, acting under my guidance, was given 27th February, 2014 to 1st March, 2014 to look into ways of actualizing provisions of Article 153 of the Constitution. Paragraph (3) of the said Article requires Cabinet Secretaries to attend before committees to answer any questions concerning matters under their competence. On the other hand, Paragraph (4) of the same Article requires Cabinet Secretaries to provide Parliament with full and regular reports concerning matters under their control.

It is the view of the Committee that the framers of the Constitution left it to the House to determine how to actualize these two paragraphs of the Constitution. Without pre-empting the work of the Committee I wish to inform hon. Members that the effect of the proposed review of the Standing Orders is to have special sessions of the House to enable Cabinet Secretaries to appear in the House to respond to Members' queries directly.

(Applause)

It will also afford the Cabinet Secretaries a forum to explain any aspect of Government policy in addition to those aspects enunciated by the Leader of Majority Party in the House. For those not responded to on the Floor, requests will either be forwarded to the relevant committee where the Cabinet Secretaries will continue to appear to answer the queries or give written responses sought from the concerned Cabinet Secretary.

Hon. Members, the House may wish to note that initial findings by the task force have revealed that although presidential systems do not possess the same procedures for the routine questioning of Ministers as parliamentary systems do, such systems have a variety of devices for obtaining responses from Ministers, including regular question times. This is the case in Rwanda, Senegal, Chile, Brazil and the Philippines, to mention just a few.

Hon. Members, my Committee will be informing you of this new development as soon as the work is concluded and necessary transitional issues finalized. In this regard, Members are invited to make written submissions to the Committee on how to improve Part X of our Standing Orders. Since the proposed changes also touch on the functioning of other arms of Government, the Committee will conduct sufficient stakeholder consultations, including engaging the Executive on this matter.

Finally, when the report is concluded, it will be brought to this House for debate and decision. The changes envisaged are likely to take effect after the first break in this Session. The review envisioned will be in line with my commitment to ensuring that our

Standing Orders and operations remain dynamic, true to the spirit of the Constitution and, most importantly, responsive to Members' needs. I seek your support in this regard.

In the meantime, Members should continue to exercise patience regarding requests for Statements that have been submitted as it is not possible to schedule them as Members may desire, because at this time, as you all know, we are already in the Budget-making cycle, and all committees are engaged in that process. I, therefore, appeal for your utmost patience and consideration.

I thank you.

(Applause)

Hon. Speaker: Order, Members! Hon. David Were, the Chairperson of the Departmental Committee on Labour and Social Welfare!

Hon. Members, I wish to draw your attention to the existence of a Supplementary Order Paper which I believe has been circulated so as to guide you on the Motion

Hon. Were: Hon. Speaker, before I move this Motion, allow me to first congratulate students, teachers and parents of Matungu for the exemplary performance in the just announced results, where as a constituency, Matungu emerged number eight nationally. I want to thank them for the good performance and confirm that I will continue supporting them in the next year.

I also want to take this opportunity to congratulate our daughter, Lupita Nyong'o, for the exemplary performance and achievement of receiving the Oscar Award yesterday. She has made us very proud.

MOTION

ADOPTION OF REPORT ON NOMINEES TO GENDER AND EQUALITY COMMISSION

Hon. Were: Hon. Speaker, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Labour and Social Welfare on the Vetting of Nominees to the National Gender and Equality Commission laid on the Table of the House on Wednesday, February 26 2014, and pursuant to provisions of Section 11(7) of the National Gender and Equality Commission Act 2011, approves the appointment of Florence Nyokabi Wachira as member of the National Gender and Equality Commission; and,

1. rejects the appointment of Abdillahi Alawy as member of the National Gender and Equality Commission.

Hon. Speaker, on 11th February, 2014 in this House you read a Message from His Excellency the President in which he proposed nomination of two members to the National Gender and Equality Commission---

(Hon. Ababu walked into the Chamber)

Hon. A.B. Duale: Hon. Speaker, the new Secretary-General of ODM is causing jitters. We want to hear the Report. I want to welcome him for being the first young SG. We salute you.

(Applause)

Hon. Were: Well, I did not see the new Secretary-General coming in, but if he is in then we also congratulate him.

Hon. Speaker: Hon. Gumbo, what is out of order, suddenly?

(Laughter)

Hon. (Eng.) Gumbo: Hon. Speaker, is the Leader of the Majority Party in order to imply that ODM has a new Secretary-General when---

(Loud consultations)

Hon. Speaker, is he in order to imply that when we all know that the elections aborted on Friday and we are organizing to carry out new elections?

(Loud consultations)

Hon. Speaker: Hon. Members, I am sure most of you, if not all of you, are familiar with the provisions of the Political Parties Act, No.10 of 2011. That function surely should be left to the Registrar of Political Parties and not the Speaker.

(Laughter)

Let me not engage in that, but there is nothing wrong in welcoming hon. Ababu Namwamba into the Chamber. I think it is more important to welcome him as the Chairman of the Public Accounts Committee (PAC)---

Hon. Members: SG! SG! SG!

Hon. Speaker: Hon. Members, just allow hon. David Were to present his report. Hon. Mpuru Aburi.

Hon. Aburi: Bw Spika, naunga mkono Bw. Ababu Namwamba. Mimi nilianza na chama cha ODM kutoka 1991 na mpaka sasa nasukumana na hawa watu, lakini hawa watu wamekuwa wakora wasioshiba. Wanafaa kuongezwa *kaquarter ka* matumbo ndio wasisikie njaa tena. Mimi si mtu wa kufungiwa nje. Mimi ni mtu wa kuwafungia nyinyi nje. Ki kitendo---

(Laughter)

Hon. Speaker: Order, hon. Members! I see nothing to excite the entire House. Let us now concentrate on the business at hand and allow hon. David Were to move his

Motion. If you want to participate in the debate, I am sure you will say what you wish to say during your time. Let us deal with the business at hand. It has a deadline.

Hon. Were: Thank you, hon. Speaker. As I was saying, on 11th February you read a Statement from His Excellency the President in which he sought to nominate Dr. Florence Nyokabi Wachira and Dr. Abdillahi Alawy as members of the National Gender and Equality Commission. According to the Standing Orders, this was finally---

Hon. Speaker: Hon. Joel Onyancha, you know you can pardon the freshers. Hon. Maison, please do not impede my view.

Hon. Were: Hon. Speaker, I think Members are excited; I think they also understand why they are excited.

As I was saying, this was finally committed to my Committee as required by the Standing Orders.

Hon. Speaker, as per the requirements of the Constitution, public participation was sought and it was put in the newspapers but at the close of the deadline we received no communication from any member of the public on the persons who were nominated for appointment and approval by this House.

Hon. Speaker, following that the two nominees by the President were invited to appear before the Committee and they both appeared on 20th February as directed by you. The two were Dr. Florence Nyokabi Wachira, who appeared at 10 a.m. on 20th of February. Dr. Nyokabi is working with the Public Service Commission (PSC) and from the information that we got from her, she holds a PhD in Human Resource Management from Jomo Kenyatta University of Agriculture and Technology (JKUAT). I will just give a brief and not all the information on her.

We also realised that she holds a Masters degree in Human Resource Development from Middlesex University Business School in London, and another Masters degree in Gender and Development Studies from the University of Nairobi attained in the year 2004. Right now she is the Director, Recruitment and Selection in the PSC – a position that she has been holding since June 2008. She also informed us that she worked as the Deputy Secretary-General in the Kenya National Commission for the United Nations Educational, Scientific and Cultural Organisation (UNESCO) between the years 2000 and 2002.

Hon. Speaker, we also learnt that Dr. Nyokabi was also honoured with the award of MBS by His Excellency the President on 12th December, 2012. We further learnt that she has three published materials that she has authored or edited.

Hon. Speaker, she also informed us that she has conducted *pro bono* and charity work, advanced donations to charity organisations such as Dr. Barnados Childrens' Home; finally, she has never been charged in any court of law.

Hon. Speaker, having vetted the nominee, the Committee came up with the following: She has no potential political conflict of interest in the position for which she was nominated. Two, she has never been adversely mentioned in any investigatory report of Parliament or any other commission of inquiry. Three, she is well knowledgeable and has a passion for gender issues as demonstrated by her philanthropic activities towards the girl-child and equal measure of concern to the boy-child.

Hon. Speaker, she is well versed with the issues of gender and equality in the country. We also confirmed that she will no doubt add value to the Commission, given

the fact that she has a vast experience gained from the PSC to handle diverse communities in the country. This lady has worked in the PSC the whole of her life. Actually she has worked there since she left college. So, she is very well versed with public institutions. We also realised that she meets constitutional and requisite statutory requirements pertaining to the job she is nominated for.

Hon. Speaker, Nyokabi is turning 60 years of age this year. So, there was a concern by Members that she was too old for the position, but having discussed with her we realised that age is just but a number because she just completed her PhD last year. She convinced us that she is ready to take up new challenges that will come up with the new appointment.

Hon. Speaker, finally, pursuant to Article 7 of the Public Appointments Act, the Committee found Dr. Florence Nyokabi Wachira suitable to be appointed as a member of the National Gender and Equality Commission.

Hon. Speaker, the second nominee is Dr. Abdillahi Alawy who appeared before the Committee on 20th of February at 11 a.m. and I will give briefly the information that we got regarding him. One was that he holds dual citizenship. He is an American as well as a Kenyan. He has lived in America for the last 23 years starting 1989. He holds a PhD in Agricultural Education, specialising in women development research methods and programme evaluation from Ohio State University in the United States (US). He has worked in Alawy Consulting Group based in Mombasa as a Principal Scientist, Programme Evaluation and Research officer since June 2013.

Hon. Speaker, we also learnt that he has not conducted any *pro bono*, charity work, or advanced donations to any charity; but he is working with Friends of Wasini Island to develop a framework for the establishment of a maternity hospital on the island. He also informed us that right now he has a divorce case going on at the Family Court in the USA. This is his second marriage.

(Loud consultations)

We are just informing you what we got from him.

Hon. Members: That is not a problem!

Hon. Were: Hon. Speaker, all the information I have given is not a problem; so I am only indicating the information that we got from him; when I said he has a PhD, no one said it is not a problem. I am only indicating what we got from him. Finally, he has never been adversely mentioned in an investigatory report of Parliament or any other commission of inquiry.

I have indicated that Dr. Alawy has a dual citizenship as he became a citizen of the USA in 2005. As we know, during that time dual citizenship was not recognized here or was not legal. Anybody who became a citizen of another country, lost citizenship here. So, we asked Dr. Alawy to tell us if he regained his citizenship because as per the requirement of the Constitution, there are some procedures to be followed to acquire or re-acquire the citizenship that was lost due to the requirement of the Constitution at that time. When we requested him to prove this, he indicated that given time, he could present the relevant documents and requested to be allowed to present the same the day after. The Committee granted him the chance and he subsequently presented a declaration on dual

citizen under Section 8(3) of the Kenya Citizenship and Immigration Act, 2011, signed on 21st February, 2014. This was one day after he had appeared before the Committee. What we realized was that the form that he forwarded to us as per the Act, Section 8(3), was meant for dual citizens by Kenyans who got citizenship after the enactment of the Constitution. It reads:

“Every dual citizen shall disclose his or her other citizenship in the prescribed manner within three months of becoming a dual citizen.” This was actually a form that needed to be filled by somebody who became a dual citizen or a citizen of another country after the promulgation of the Constitution. So, we realized that this particular form that he presented to us was not of assistance to us in establishing how he regained his citizenship. We required forms that indicated that he was a dual citizen previously before the Constitution was promulgated.

Regaining citizenship is provided for under Section 10 of the Kenya Citizenship and Immigration Act, 2011. Section 10(1) reads:

“(1) A person who was a citizen of Kenya by birth and who ceased to be a citizen of Kenya because he or she acquired the citizenship of another country may apply in the prescribed manner, to the Cabinet Secretary to regain Kenyan citizenship.

(2) The application under subsection (1) shall be accompanied by—

(a) proof of applicant’s previous Kenyan citizenship;

(b) proof of citizenship of the other country;

(3) Upon receipt of an application made under subsection (1), the Cabinet Secretary shall cause the application to be registered and keep a record of such application.

(4) The Cabinet Secretary shall, after registering an application, issue a certificate in a prescribed form to the applicant.

(5) The Cabinet Secretary may issue an extract of the register to the applicant and such further extracts to such third parties as shall be entitled upon application and payment of such fees as may be prescribed.”

It was the feeling of the Committee that it was up to the applicant or the nominee to prove to us how he re-acquired his citizenship. The only document that he sent to us was a document that referred to people who acquired citizenship after promulgation of the Constitution. We also wrote letters to the Cabinet Secretary for Interior and Coordination of National Government to give us any information on Dr. Alawy. Unfortunately, by the time we wrote the report and up to now, we have not received any communication from the Cabinet Secretary; it was our feeling that it was up to the nominee to tell us how he re-acquired citizenship. So, it was the feeling that he was unable to prove that due diligence was followed in regaining his citizenship as required in Article 14(5) of the Constitution, which states that: “A person who is a Kenyan citizen by birth and who, on the effective date, has ceased to be a Kenyan citizen because the person acquired citizenship of another country, is entitled on application to regain Kenyan citizenship”

He was unable to tell us how he re-acquired his citizenship; to us it looked like he had continued holding both citizenship and he did not re-apply as per the requirements of the new Constitution.

Hon. Speaker, we also realized that Dr. Alawy was out of touch with Kenya's gender and equality challenges to an extent that he could not identify even one minority group in Kenya. We even gave him examples of the Njemps, El Molo and the most interesting one was the Tesos. We were surprised that he confessed to us that he did not know of any of these tribes, or where they were located in the map of Kenya. He also failed to convince the Committee that he had exposure and expertise to handle gender and equality issues in Kenya. In the list of the nominees that was sent to the President, Dr. Alawy was number six in terms of ranking. Currently, we have some hot debate on the issue of gayism and we asked Dr. Alawy about it because I believe that this is also an issue of equality. We asked him what his position was on matters related to gayism but he went round the point and finally told us "do not ask; do not tell". So we decided that maybe it was not for us to determine what "do not ask; do not tell" means and we left it at that.

In his application for this particular job, which was properly addressed to the Chair of the Select Panel for the Appointment of Members of the National Gender and Equality Commission, which was undated, we realized that in the body of the letter, he actually applied for Chairmanship of the National Land Commission. This is annex 19, which is part of the report which shows what he actually applied for. We asked him how come his application indicated chairmanship of the National Land Commission, yet he attended the interview for the National Gender and Equality Commission. He said that it was the nature of job applicants---

Hon. Kang'ata: On a point of order, hon. Speaker. When the Chairman was referring to the discussion on gayism, he said that they asked the person his view on gays on the basis that gay issues are issues of equality. I would kindly ask him to clarify whether he meant that gay rights are synonymous with equality---

Hon. Speaker: That is not a point of order!

Hon. Were: Hon. Speaker, I think that is a point of interruption.

I was referring to the application for the position. He has said the letter was undated but correctly addressed to the Chair of the Select Panel for the Appointment of Members of the National Gender and Equality Commission. But in the body of the letter, he was referring to chairmanship of the National Land Commission. So, when we asked him about that confusion, he said that it was common with jobseekers. You write many applications and copy-paste some others. I think this one must have escaped his mind and so, he did not change it. It means that he had made many applications for various jobs. The resolution of the Committee was as follows:-

Pursuant to Section 78(1) of the Constitution, which states that a person is not eligible for election or appointment to a State office unless that person is a citizen of Kenya and under Section 7 of the Public Appointments (Parliamentary Approval) Act, the Committee found Dr. Abdillahi Alawy unsuitable for appointment as a Member of the National Gender and Equality Commission.

Finally, the recommendations of the Committee were as follows:-

(i) That, pursuant to Section 11(7) of the National Gender and Equality Commission Act 2011, the House approves the nomination of Dr. Florence Nyokabi Wachira for appointment as a member of the National Gender and Equality Commission.

(ii) The House rejects the nomination of Dr. Abdillahi Alawy for appointment as a Member of National Gender and Equality Commission.

I know there are things which, if this Motion goes through, are required to be done from your office up to the President's Office. I really do not need to go into that.

I beg to move and request my Vice-Chair, hon. (Ms.) Tiyah Galgalo, to second.

Hon. Speaker: Hon. (Ms.) Tiyah Galgalo.

Hon. (Ms.) T. G. Ali: Okay. Thank you, hon. Speaker. I stand to second the Motion. I think when we did the interviews all the relevant documents were provided. Dr. Florence Nyokabi had all the required academic qualifications. She has a Bachelor of Education degree and a post-graduate diploma. She has two Masters degrees, one in gender development studies and the other one in human resource development. She has a PhD in Human Resource Management. We also noted that she has relevant experience. She rose through the ranks from an Assistant Director to Director of Recruitment and Selection in the Public Service Commission. She also has hands-on experience in management and running of institutions. She also has vast experience in policies, laws and the Constitution that will guide her work in the gender commission. She has vast knowledge in the subject matter of gender.

She has never been charged in a court of law and she is a member of various professional institutions. For example, she is a member of the Chartered Institute of Personnel and Development in UK from 2004. She is also a member of Kenya Institute of Management from 2007 to date. She is also an executive member of Africa Public Sector Human Resource Network. She is also a member of FAWEK, that is Forum for African Women Educationists - Kenya Chapter. She has three publications that she has authored and edited.

Hon. Speaker, with regard to Dr. Abdilahi Alawy, I think as said by my Chair, clearly he did not really demonstrate that he had come back to Kenya and that he is a Kenyan. It was clear that he was an American citizen and to date, he has not obtained documentation to show that he is a Kenyan.

I second the Motion.

(Loud consultations)

Hon. Speaker: Order, hon. Members! Hon. Shill, if you listened to the Seconder, then you would know that after that, I would have to propose the Question. So, why do you not take your seats? Hon. Z.K. Cheruiyot!

(Question proposed)

Leader of Minority Party!

Hon. Nyenze: Thank you hon. Speaker, for giving me this opportunity to contribute to this very important Motion. I want to start by thanking the Committee on Labour and Social Welfare for the good work that they have done. Committees are well Constituted; they have members from across the political divide.

It took a lot of work and consideration to come up with these recommendations. I just want to support their recommendations because we see both candidates are very well

educated. But Dr. Florence Nyokabi impressed the Committee more. On the contrary, Dr. Abdillahi Alawy is not a Kenyan and we cannot give a job to a non-Kenyan when there are many Kenyans who are suffering. So, I do support these recommendations and urge the House to adopt the Report.

I also want this House to consider the face of Kenya in all appointments. The Report that came out the other day showed that 60 per cent of the people who have been given jobs, since the formation of the Jubilee Government, come from Jubilee stronghold areas - Mt Kenya and Rift Valley regions. They are more favoured because they have produced all the Presidents whom we have had and most of the resources have gone to them. Next time, we will have to adopt an affirmative action, so that areas that have been marginalized since Independence – areas like Turkana, Coast, North Eastern, Lower Eastern, Luo Nyanza, Kisii and others - can be given a chance to come up. That way, we will not select people from politically-correct areas.

Hon. Speaker, I just want to say that even areas that have been marginalized like Luo Nyanza, have produced the first black American President - President Obama. They have also produced the first African Oscar Award winner.

(Laughter)

It shows that they have potential. It is good to support those areas because they have produced what other regions have never produced and they cannot even believe that.

I just want to say this: ODM elections that were to take place at Kasarani elicited a lot of excitement in this House. I just want to say that this was an internal matter of the oldest party that has never changed. You know the others have been vehicles to take people to State House and after that they are disbanded. However, the Orange Democratic Movement (ODM) has outlived all the others. I would like to advise you to give ODM time to finish its elections. This is an internal thing.

Last Sunday, I read an article by---

Hon. A.B. Duale: On a point of order, hon. Speaker.

(Hon. Mwaura was applauded as he entered the Chamber)

Hon. Speaker, hon. Mwaura should tell us the guys who were in black suits.

(Laughter)

Irrelevance is a serious sin in the Standing Orders. This Report does not talk about the ODM completely; it talks about two nominees with the face of Kenya and not Uganda; they are a subject of debate in the House. However, the hon. Member is offering advice not sought by the leadership of ODM; it has already had a coalition government in the form of a political party. The only person missing was Kofi Annan; he was not there yesterday. Could the hon. Member discuss the Report and not ODM elections?

Hon. Nyenze: Thank you, hon. Speaker. There is an article I read by Ahmednassir analyzing this Government; it said that URP has swallowed the TNA, and

that the URP people are the ones who are pushing the agenda of this country. I do not want to get into that; I want to support this Motion. I urge the House to adopt the Report.

Hon. (Ms.) Abdalla: On a point of order, hon. Speaker. The hon. Member has misled the House by saying that the ODM party formed in 2006 is the oldest party in this country, yet we know that KANU, which is well represented here by hon---

Hon. Members: He is not here!

Hon. (Ms.) Abdalla: No; he is still in the House.

(Loud consultations)

Hon. Speaker: Honestly, hon. Members, can we now pay attention to the debate, so that those who want to wear blue or black suits, and what have you, are at liberty to wear them? Anything you choose to wear, including red, as hon. Ghati has done, is acceptable. It is all welcome.

Yes, hon. Nyenze.

Hon. Nyenze: Thank you, hon. Speaker for protecting me. I do agree with *mheshimiwa* that KANU is the oldest party followed by ODM; it has outlived all the other parties.

Hon. Speaker: Hon. Nyenze, the Motion is not about which party is older than the other. That is irrelevant.

Hon. Nyenze: Thank you, hon. Speaker. I just want to support the Committee's recommendation that we adopt this Report because, there are very qualified Kenyans.

Hon. Speaker, I support this Motion.

Hon. (Dr.) Pukose: Thank you, hon. Speaker, for allowing me to contribute to this Motion. I rise to support this Motion for the appointment of Florence Nyokabi Wachira, and the rejection of Abdillahi Alawy. I want to thank the Committee for doing a good job, in that it has talked about Abdillahi Alawy as having not been a Kenyan citizen. Secondly, his social life seems to have informed the Committee on the decision it made.

At times, it is good to read a report that is prepared by a committee; more often than not when we make our comments, as the Minority Leader did and he tried to bring in pedestrian arguments from a columnist in the streets who writes very unfavourable remarks, I do not think that, that is an issue that needs to be debated in this House. As you know, the views of that fellow are not the views of Kenyans.

Hon. Speaker, we know that URP and TNA have a working relationship which is cordial, and that is how we formed the Jubilee Coalition that formed this Government to deliver on our mandate as given by Kenyans. When I look at this list that was presented by the President, there is nobody from the Rift Valley; it has been put well in the argument by my senior colleague. Therefore, this is representative of Kenyans. When people's names are brought here, we think they are Kenyans who deserve the various positions, and we should discuss them as Kenyans on the basis of applications which they have made; we should give them due respect and a chance to serve this Government.

Hon. Speaker, on the various qualification, we think that Florence Nyokabi, when appointed to this position, due to her educational background and considering her vast experience in---

Hon. Mwaura: Hon. Speaker, Sir---

Hon. (Dr.) Pukose: Could you protect me from hon. Mwaura? I think he is in the process of shouting and we do not know whether the men in black will walk in. I can see him shout across the House.

Considering Dr. Nyokabi's vast experience in the public service, we think that if given this opportunity she should be able to look at the issue of national gender and equality, so that those who are marginalized in various areas can also be given opportunities.

(Applause)

Now that this Commission is active, it will look at the face of Kenya. The El Molo and other marginalized communities like the Dorobo, Somali, Sabaot---

Hon. Ng'ongo: The Suba!

Hon. (Dr.) Pukose: Yes; also the Suba are marginalized, hon. Speaker. To make the Government more inclusive, these small communities need to be considered and given opportunities, so that they can also feel part and parcel of the national Government.

Hon. Speaker, with those few remarks, I support the Motion.

Thank you.

Hon. Oyoo: Thank you very much, hon. Speaker. I want to add my voice to that of my colleague on this very good debate on the Committee's recommendation. I want to confirm that I am a Member of this Committee, and that I appeared before the interviews with a lot of focus and passion.

Initially, when I got the list, I went through it and I had intended to shoot down the name of Dr. Nyokabi on account that she comes from Nyeri. In the recent appointments, many Nyokabis and Wangaris have been brought on board. I intended to support Dr. Alawy on the premise that, as much as I am not in ODM, there is umbilical cord that ties the people of Kwale, where he comes from, the people of Nyanza, and by extension Muhoroni, which is a tribe almost similar to the Kipsigis. However, when I delved deep into the Report, I found Dr. Nyokabi had very strong academic achievements. The same applies to Dr. Alawy.

When time came and we called them, I had regrets because Dr. Nyokabi, whom I had reservations about--- Even if you did not want her for personal reasons; even if she had bewitched your daughter, the way she articulated her passion for the job, the way she answered her questions and presented herself, you had to hold your breath and say that this lady deserves it, even if she is 60 years old. The lady is 60 years old but she looked 50 years old. Her computer software is active.

(Laughter)

(Hon. Mwaura consulted loudly)

Hon. Speaker, hon. Mwaura should give me time because he is fond of disrupting serious events; I am on the verge of giving a serious presentation.

Dr. Nyokabi is 60, but when she reasons before you, her software is very active.

(Laughter)

When time came for me to look at the papers of Dr. Alawy, I was the first person to find fault with them. I realized that in the ranking, he had been put number six. In the order of ranking, Nyokabi was the best. Then there was Dr. Susan Mwangela, who was the second best, but I believe she could not be given the opportunity because of gender parity. So, they had to bring a man on board. Number three was Dr. Charles Owuor Olunga, who is from Siaya. We did not have an advance report showing why he was not given the job, but my guess was that, maybe, it was due to geographical reasons, or where he comes from. I am not a tribalist and I co-exist with many Kenyans. Numbers four and five were also fellow Kenyans, very qualified ladies, but they were either Meru or Kisii. So, for gender parity and comparison, they could not come in. Somebody skipped names and went to Number six and picked Dr. Alawy, who was my darling, but when he appeared before us, he did not meet our threshold.

This is the man who wants to go and head the Gender and Equality Commission. We want the dying tribes to be revived. When we asked him whether he knows of minor tribes called Nebus and Teso--- Even the Teso, who are almost the size of the Kisiis, he did not know where they live. Dr. Alawy appeared to know only America, Kwale and a bit of Egerton University where it is and whom he met there.

We want a serious person who is going to represent the interests of this country in this serious Commission. I would advise that in future, before we even start juggling names--- I know this is not the President's issue; he deals with many issues. Before you bring names here, stop this cheap *ukora* of inserting some names of your friends. I mean to refer to those who help the President run the country. The committees are awake. I have realized that through committees, when it comes to this serious business, they all become Kenyans and they reason very well. We are not shooting down the name of Dr. Alawy because he is a Muslim or because he is not a friend of any of us, we are shooting it down because he did not meet the threshold. I would advise those sitting outside there, busy interviewing people and taking names to the President, to take note from this that many of us are going to be very awake and make sure that Kenyans get the right people at the right time.

I want to finish by taking this opportunity to congratulate the hardworking and focused teachers of Muhoroni, the District Education Board and myself for making Muhoroni No. 7 in the country and beating many giants in Kiambu, Murang'a and Kirinyaga. Those big names are now history.

Thank you and I beg to support.

Hon. Gichigi : Thank you, hon. Speaker. I rise to support this Motion. I am also a Member of the Committee that has prepared this Report. As some of my colleagues have indicated, when we set out to do the vetting, my position was against another 60 year old. When Dr. Nyokabi came before us, despite my misgivings, she won over not only I, but also other Members of the Committee. This is not to say that the Jubilee Government should not look for more youthful appointees and bring them on board. I know they are also qualified, but this lady fits the description given in the Act and the Constitution. She has what it takes to work for this constitutional commission.

She has wide experience as a public servant. Her work in supporting the girl-child is a plus for her. When I pinned her down by asking her whether she is just looking at the interests of the female gender in this Commission, she indicated that she had taken up the issue of the boy-child, who is increasingly becoming marginalized, especially in some areas in this country. I have no hesitation in recommending to the Members of this House to approve the appointment of Dr. Nyokabi.

It is very important that we understand the legal position that informed the Committee in deciding not to approve the second nominee, Dr. Alawy. When the new Constitution was enacted, it found many people who had lost Kenyan citizenship, because of having acquired citizenship of other countries. Dr. Alawy, in 2005, became a US citizen. Automatically, under the legal regime that was in force then, he lost his Kenyan citizenship. The new Constitution provided for dual citizenship; it also said that those who had lost their Kenya citizenship could regain Kenyan citizenship. It was important for them to follow certain procedures. This was to go to the Cabinet Secretary in charge of citizenship; you were declare that you are a citizen of another country, and also that you were born in Kenya or you were a citizen of Kenya before the new Constitution was enacted, but you had lost your citizenship. Once you make that declaration and then you apply for resumption of your Kenyan citizenship, the Cabinet Secretary registers you and then issues you with a certificate of citizenship.

When we asked Dr. Alawy whether he followed this procedure, he said that he remembers filling in some forms in December, 2012. Then we told him that we would give him time to go and bring those documents to show that he had resumed Kenyan citizenship. Subsequently, he brought some papers showing that he had gone and applied for resumption of his Kenyan citizenship after his vetting. That is when he went and tried to fill in the forms but, because he was in a hurry, instead of applying to resume Kenyan citizenship, he made an application that was supposed to be made by Kenyans who lost their citizenship after the promulgation of the new Constitution. If you now become a citizen of another country, you do not lose your citizenship; you get dual citizenship; for instance you become a citizen of both the USA and Kenya. But you are supposed to make a declaration within three months that you have also acquired the citizenship of another country. He filled a form, but did not apply for dual citizenship. He was an American citizen and he had to go through the steps of becoming a Kenya citizen. He has not done that even as we speak. By the time we prepared this report, no certificate from the Cabinet Secretary showing that he had become a Kenyan again had been provided to us.

So, in as much as we had no personal issues with him, he is technically unqualified under Article 78 of the Constitution that says that no person who is not a Kenya citizen should be given a public position or office in this country, unless it is for consultancy purposes. I, therefore, urge this House to support this Report.

I beg to support.

Hon. (Eng) Gumbo: Thank you, hon. Speaker forgiving me this opportunity to support this Motion. I have noted that the nominee is going to serve in the National Gender and Equality Commission, which is important. You are aware that when this country got Independence over 50 years ago, we set out to achieve three very noble simple goals, which were to fight poverty, ignorance and disease. Over the years, one of the impediments to achieving those goals has been lack of equality in Kenya.

When the nominee who has been appointed settles into the Commission - and I am hoping the House will also approve Florence Nyokabi Wachira - let us look critically at the issues which have made it impossible for us to realize the promises made to Kenyans, and one of them being equality. It is not acceptable that, as we speak today, a recent report which was released shows that 53 per cent of all public appointments in Kenya are occupied by members of three communities only and yet, in terms of numbers, those three communities account for just about 40 per cent of the population.

These are matters that are not political. They are a reality and if we cannot confront them, we will not be able to achieve the ingredients for a country moving forward, which is societal conviviality between the various tribes in Kenya. Even as we pass these nominees, let us re-look at the composition of this Commission. I note with concern that as constituted today, the Gender and Equality Commission has functions which overlap with the Kenya National Commission on Human Rights (KNCHR) and Office of the Ombudsman. These are matters that this House, going forward to the future, must courageously confront.

If they are not confronted, we are going to have a situation like the one which is appertaining now, where the country is literally groaning under the weight of constitutional commissions. As we speak, the country today has about 12 constitutional commissions and the truth of the matter is that, in total composition, the total number of commissioners in those commissions is probably more than the total membership of the Senate. That, in my view, is not tenable.

Apart from that, those commissions are too bloated and I think that their terms of engagement need to be re-looked into afresh. Why are most of those commissioners, for example, working on a full-time basis? This is a matter that we need to look at critically. It is important that, in the long run, we have commissions that, not only perform their functions, but are efficient.

It must concern us that when those commissions were being constituted, we looked at the upper constitutional limit which says a mark between three and nine. We have come to a stage where we must ask: Should we go for the maximum constitutional provisions? A case in point is the Independent Electoral and Boundaries Commission (IEBC). Kenya has a population of about 40 million people and yet, it is managed by nine electoral commissioners and more than 1,000 members of staff. If you compare that with India, which has a population of nearly 1.6 billion people, it is only managed by a commission comprising of three people and a staff of no more than three hundred.

These are matters that, as a House, we must courageously confront. These are issues which we must lead the way in addressing. We are going to have commissions which are littered with people who are badly under-worked and over-paid and all this ends up as a public wage bill, which all of us have an interest to reduce.

As I conclude, I know many of my colleagues are interested in this matter. I think the National Gender and Equality Commission has got a huge task ahead. The issue of equality in Kenya today cannot be wished away. It is a known fact that, as long as citizens do not feel that they have a stake in the affairs of their country, it is very difficult for them to feel a sense of belonging. Kenya will move forward the moment most Kenyan citizens will feel that they have a stake not only in the affairs, but in the future of their country.

When we run a system which tends to privately encourage exclusivity, we are breeding a ground for unnecessary tensions and hatred in society. In fact, we will be impeding our own progress. It must be understood now that our goals as a country, even in achieving Vision 2030, will depend on how much we can include every Kenyan to feel a sense of belonging. We must make every Kenyan, even those from the smallest communities, to believe that so long as they perform their best, they have a right to believe in their dreams.

If we have a situation whereby everything seems to be going to the majority, it is not good for societal conviviality and harmony in Kenya. It is a matter that this Commission must confront courageously. I know, of course, that those who are probably benefiting from that arrangement may find it unacceptable to have equality between the different communities. But there are some who strongly believe in this country. When every Kenyan feels that he or she is being treated fairly, then all of us will stand to benefit.

With those remarks, I support.

Hon. Speaker: Yes, hon. (Ms.) Amina Abdalla.

Hon. (Ms.) Abdalla: Thank you hon. Speaker. I want to join my colleagues in supporting this Motion. But from the outset, allow me to take this opportunity to congratulate Lupita Nyong'o for winning the Oscar Award.

(Applause)

I just want the owners of political parties to learn from the initiators of the Oscar Awards, that they let people choose. That is why our daughter Lupita was able to win an Oscar. I want to congratulate the Committee for embracing due diligence while vetting the two candidates. It is important that hon. Jakoyo Midiwo stands up here and says that he came up with pre-conditions but, when he listened to the candidate, he was convinced that she was the right one. I want the people who sit in those panels to hear the Leader of Majority Party on this matter. If we give the best person a job, we do not need to use the tyranny of numbers to help them get a job.

(Applause)

Ms. Florence Nyokabi was supported by a member from the Minority side of this House because her credentials spoke for her. We want to urge the people in the recruitment panels and those who handle the letters that go to the President to note that when they give us the right person for the job, we do not need to use our tyranny of numbers.

Secondly, I want to also congratulate our Committee for the work they did on the citizenship of Mr. Abdillahi Alawy. My first reaction was: Why should we not let people from the Diaspora have some representation?

We have no problem in receiving remittances from the Diaspora. Why should we have problems giving persons who have left an understanding of what is happening in Kenya because of the time they have been away? But following the fact that due diligence requires that those positions be held by individuals who hold Kenyan citizenship; mine would be to add a further recommendation that the Ministry in charge

of Immigration should have a desk that would help our brothers and sisters in the Diaspora re-apply for their citizenship so that they are not left out in all the institutions that we are setting up.

Finally, this is a follow-up on the issue regarding Nyokabi Wachira. One person who was left out in one of those recruitments had the following to say about the facts that jobs in this country are distributed unequally. He said:-

“The inequality in this society is very depressing really. Some years back, there were real opportunities for upward mobility. Today, majority of the people seem to be reproducing poverty and consequently inequality“.

I am happy that this Committee has made sure that when we give a person a position, it has done enough due diligence that we can know it is the right person who has been given the job.

With those many remarks, I beg to support.

Hon. (Ms.) Kajuju: On a point of order, hon. Speaker. Would I be in order to cite Standing Order 95 and request that, in view of the fact that there seems to be consensus because nobody has opposed this Report, the Mover be called upon to reply? The reason being---

(Loud consultations)

The reason being that we have two Reports that we have to go through and there are deadlines that have to be met. So far, there has not been any opposition to the Committee Report.

Therefore, I request that the Mover be now called upon to reply.

Hon. Speaker: Hon. Members, including those walking in one way or the other, you must make a decision. You know that the two Reports have a deadline of today. I appreciate that there are over 36 requests to speak. Even if all the 36 requests were to speak, we cannot finish the list. So, one way or the other, you must either support or not support. The procedure to be adopted here is slightly different in that one of them talks about a rejection and it is important when you are making this approval. I intend to put the Question twice on this Motion so that you make up your mind one way or the other, when you are making this approval.

Hon. Members, it is not fair that everything, including discussing the Calendar, 120 hon. Members want to contribute. We must make up our minds on what we want to do because there is a lot that has to be done. I appreciate, but one way or the other, you must cut debate, if we have to deal with all the business that is on the Order Paper and it is a lot.

Therefore, I will put the Question twice as I have indicated. I want to tell you, hon. Members that it is totally out of order when the Speaker is on his feet for hon. Members to purport to claim to raise on points of order. It is not possible.

(Question put and agreed to)

Hon. Members, I have already indicated that I am going to put the Question twice. Indeed, even in the next Order, we will follow the same procedure. It is the same procedure that is going to be followed.

(Question put and agreed to)

(Hon. Were stood up and nodded)

Just before we go to the next Order, let us hear from hon. Dr. David Eseli.

Hon. (Dr.) Eseli: Thank you, hon. Speaker. I am just wondering, after the hon. Member asked for the Mover to reply, the Question was put. We skipped the part of the Mover replying and moved to the next Order. That is what I wanted to catch your eye on.

Hon. Speaker: You know, you must be attentive all the time; with both your eyes and ears. The Mover nodded. If you want to dispute, you are at liberty to do so.

MOTION

ADOPTION OF REPORT ON VETTING OF KNCHR NOMINEES

Hon. Chepkong'a: Hon. Speaker, it is my honour and, therefore, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of Nominees to the Kenya National Commission on Human Rights laid on the Table of the House on Thursday, February 27, 2014 and pursuant to the provisions of Section 11 (7) of the Kenya National Commission on Human Rights Act, 2011:-

(i) Approves the appointment of Kagwiria Mbogori as the Chairperson of the Kenya National Commission on Human Rights;

(ii) approves the appointment of Suzanne Shatikha Chivusia, George Morara Monyoncho and Jedidah Wakonyo Waruhiu as Members of the Kenya National Commission on Human Rights;

(iii) Rejects the appointment of Vincent Suyanka Lempaa as a Member of the Kenya National Commission on Human Rights.

Hon. Speaker, this comes out of your Communication to the House in which you committed the vetting of the names that I have just mentioned to the Committee on Justice and Legal Affairs. This was pursuant to a letter that was written to you dated 31st January, 2014, from His Excellency the President, Uhuru Kenyatta, on the nomination of persons named as chairperson and members of the Commission, respectively.

Hon. Speaker, we commenced the process in haste knowing that time was of essence. A newspaper advert was placed in the respective newspapers, at least, two dailies. We invited comments from members of the public. At the close of the seven days, we did not receive any adverse comments from members of the public, except a letter of support from the Kenya National Commission on Human Rights Chief Executive Officer (CEO) and staff. We commenced the process of vetting of the Chairperson. We found, as

a fact, that Madam Kagwiria Mbogori is qualified for the position of Chairperson. Her education and professional training speaks for itself. She has obtained two Masters degrees; one from the University of Notre Dame, and another LLM specializing in international and regional human rights protection and issues on feminist jurisprudence, gender perspectives in anthropology *et cetera*. She graduated from the prestigious University of Nairobi.

Hon. Speaker, she has wide and extensive experience in terms of work. She has worked with the United Nations Development in Sudan and Liberia. The Committee found that the candidate, who is quite proficient in both English and the manner in which she presented herself before the Committee, is competent, suitable and qualifies to be appointed as the Chairperson of KNCHR. We were convinced that she has what it takes to be the Chairperson and, particularly her being a lady, this balances with Articles 59 and 15 regarding Commissions with regard to gender parity.

The second nominee who was recommended to this House was Susan Shatikha. She holds a Masters degree in International Studies from University of Nairobi. She is currently employed by KNCHR and heading one of the departments. We considered her credentials in terms of work experience and many other experiences and found that the nominee is suitable and qualifies to be appointed as a Member of KNCHR.

The third nominee who was recommended for appointment as Member of KNCHR was George Morara Monyoncho. He holds an MA in Political Science from University of Windsor in Canada. He also holds a BA from Toronto University in Canada. He also holds an MA in Legal Studies from Carleton University in Canada. He has a Bachelor of Education from Egerton University in Kenya. We considered his work experience. He is currently employed by the Kenya Human Rights Commission as a Programme Officer in Civil and Political Rights. This is a civil society and not KNCHR. So, we considered his work experience and what he has done in the human rights field and we found that he is competent, suitable and qualifies to be appointed as Member of KNCHR.

The fourth nominee is Jedidah Wakonyo Waruhiu. We found, as a fact, that she holds a Masters degree in International Human Rights, Refugee and Humanitarian Law and Comparative Justice and Penal Law Systems from Nottingham University, UK. She graduated from University of Nairobi with an LLB. She has been involved extensively with resource mobilization and networking, policy entrepreneurship, training in advocacy and policy development and its application in Kenya. We considered her work experience and professional qualifications and found that she is, indeed, very qualified to be recommended for approval by this House as Member of KNCHR.

Finally, we also had an opportunity to interview Vincent Suyianka Lempaa. As a matter of fact, he holds a Masters in Laws in International Human Rights Law from University of Essex. He also holds an LLB from University of London, which was an external degree. We found that he has some work experience that would possibly make him a Member of KNCHR. We considered his presentation and various issues touching on the Selection Panel. The majority in our Committee found the nominee not suitable for appointment as Member of KNCHR on the following grounds:-

(i) The nominee is not in the list forwarded by the Selection Panel to His Excellency the President for appointment.

(Loud consultations)

Hon. Speaker: Order, Members! Yes, consult if you must, but, please, lower the decibels so that we can hear and follow what the Chairman is saying.

Hon. Chepkong'a: Hon. Speaker, we found that although the candidate has some knowledge with regard to human rights issues, he lacks the full grasp and competence on those matters. So, we considered the letter that was forwarded to the former President, hon. Mwai Kibaki on 28th August, 2012 from the Chairperson of the Selection Panel appointed to interview persons and recommend them to the President in accordance with the law for appointment as Chairperson and members of KNCHR and found his name missing. On the letter dated 28th August, 2012, the name of Vincent Suyianka Lempaa is missing. It does not exist in that particular letter. In the letter that was also written by the Chairperson of the Selection Panel, Mr. Erick Mutua, dated 18th September, 2013 addressed to His Excellency Hon. Uhuru Kenyatta, the name of Mr. Vincent Suyianka Lempaa is also not appearing.

Hon. Speaker, Members considered the precedent that has been established in this House. In the Departmental Committee of Education, Research and Technology, such a scenario arose in which names of persons who were forwarded to this House were not originally in the list of the Selection Panel. There were also names of persons who had attended the interviews, but not recommended for appointment. In both instances, this House summarily decided that they were not suitable because there is already an established criterion. In the spirit of natural justice, it was found that it was not fair to appoint or recommend for appointment for the approval of this House someone who had not participated in the interviews, and a person who had not been recommended by the Selection Panel to the appointing authority.

So, consequently, the Committee unanimously agreed that, that person cannot, therefore, find any footing in terms of recommendation to this House for approval of appointment. This Committee, therefore, recommends that Vincent Suyianka Lempaa is not suitable for appointment as Member of KNCHR as his name was not forwarded by the Chairperson of the Selection Panel.

Hon. Speaker, I would like to rest my case there and request the Leader of Majority Party to second.

Hon. Speaker: Leader of the Majority Party.

Hon. A.B. Duale: Thank you, hon. Speaker. I stand to second the Report of the Departmental Committee on Justice and Legal Affairs on the nomination of Chairperson and Members to the Kenya National Commission on Human Rights (KNCHR). This Committee has eminent lawyers like the Member for Homa Bay Town, hon. Peter Kaluma. Pursuant to Section 11(7) of KNCHR Act 2011 and Standing Orders No.216(5)(f) and 199, this Committee approves Mrs. Kagwira Mbogori as its Chairperson.

Hon. Speaker, Mrs. Kagwira has a very impressive Curriculum Vitae (CV), just like other members like Susan, George and Jedidah, for appointment as members of KNCHR. KNCHR is one of the commissions under Chapter 15 of the Constitution and in fact, under Article 248(2)(a). This Commission must be different from the previous one.

The history of previous commissions is to safeguard the interests as far as human rights violations are concerned.

Hon. Speaker Article 249(a) of the Constitution talks about the objects, authority and funding of commissions, and this is one of them. It states that:-

“Protect the sovereignty of the people of Kenya.”

Hon. Speaker, by association, I happen to be a victim of the International Criminal Court (ICC). I have never appeared before it. I do not intend to appear there but by association, I carry the tag and this is the Commission which by then - in 2005 to 2008 - was involved in coaching of witnesses. It is so shameful that you use taxpayers' money to follow the interests of foreign powers. I know that when I say this, some people will get irritated. They may be from the *Kalasi* or any of the factions of Orange Democratic Movement (ODM).

Hon. Ng'ongo: On a point of order, hon. Speaker.

Hon. Speaker: What is your point of order, hon. Mbadi?

Hon. Ng'ongo: Hon. Speaker, I am really not so concerned about the ICC or whatever but, the point of order I want to raise is this: Our Standing Orders talk about statements of facts. The Leader of Majority Party has spoken very affirmatively and with confidence that the Commission was involved in coaching the witnesses for the ICC. Could I ask the Leader of Majority Party to substantiate that serious allegation leveled against a commission which does not have the capacity to defend itself on the Floor of this House? If he cannot substantiate that, then he has no choice but to withdraw and apologize!

Hon. A.B. Duale: Hon. Speaker, that statement is one of facts. It has been said by the same coached witnesses and not hon. Duale. I have never had the privilege of becoming a witness. But the same coached witnesses named more than ten Non-Governmental Organisations (NGOs), and KNCHR is one of them.

Hon. Speaker: Let them engage in arguments.

Hon. A.B. Duale: Hon. Speaker, that is beside the point because I was coming to the element of credibility of a reformed KNCHR. This Eleventh Parliament will approve the budget for that organisation. This House today is approving or disapproving men and women who are supposed to steer that organisation. Its functions and roles are well documented in Article 249(1) of the Constitution. The Constitution says commissions of this type must promote constitutionalism.

Hon. Speaker, this same Constitution gives us the power--- Let us not get irritated. We are on a path of reconciliation. Events are unfolding. Coached witnesses are speaking. Ocampo himself has spoken and he was the father of the whole project. So, let us not get irritated. So, this Commission must live both to the letter and spirit of Article 249.

Hon. Speaker, there is a member who has been rejected and I support the rejection on the basis of two facts. One, the member's name has been sneaked in without due process. The member was not part of the process. If you drive from the Airport onto Mombasa Road and when you are somewhere on Enterprise Road or Nyayo Stadium you find somebody in your car, you will ask: “Where did this guy board my car?”

Hon. Speaker, this Lempaa man was found late in this process and the Committee found out that he was not on the list that came from the Office of the President. The days

when people were sneaked in, letters were forged and back-dated ended with the Grand Coalition Government. This is a Government that believes in the rule of law. Even my Jubilee colleagues will not agree with the sneaking in of names whether they are from the President, the Deputy President or from my side. Kenyans should be given due advantage.

Hon. Speaker, the same thing was to happen in Kasarani but hon. Mwaura saved the country. That is because a serious sneaking in exercise had been done. I want to thank him and the men in black for saving democracy.

(Laughter)

You saved democracy and a party that I respected. We love the Orange Democratic Movement (ODM). It is a serious opposition party, but we do not want men in black and other characters to sneak in people who do not have the popular will of the people. There was a whole line up which was being sneaked in. I am sorry to say that if you were one of the people who were being sneaked in - like one of the gracious ladies - then there will be another election after three months.

Hon. Speaker: There is a point of order from hon. Chachu Ganya.

Hon. Ganya: Hon. Speaker, is the Leader of Majority Party in order to keep on referring to issues of political parties like ODM, when he is not even a member? What business does he have in ODM? Let him restrict his contribution to his issues and business. Is he in order?

Hon. A.B. Duale: Hon. Deputy Speaker, I served ODM in a better position than hon. Ganya because I was its vice-chairman at one time. He was one of my subjects and I want him to follow suit. He should either join the newly elected set-up or join the *Kalausi* since there is an alternative.

Hon. Speaker, so, I am saying that we have nothing against my good friend Lempaa. But my friend, you have been sneaked in within the process. That, in itself, will not allow you and I want to thank the Committee for it.

Secondly, this member is the one who said - and I do not know what type of a lawyer he is - that Members of Parliament cannot be patrons of Constituencies Development Fund (CDF). He said it is un-constitutional. He said it. It is not me who said it. It is not in the report and he is already in court.

Hon. Speaker, so, I am sure the same *Katiba* Institute must have sneaked him in through the process. So, he cannot be a very fair guy at KNCHR, if he is interpreting the law in the wrong way. He is saying that CDF should go to the governors. I think he should join the Judiciary and become a judge or a judicial officer and then he can interpret the law.

The Kenya National Commission on Human Rights cannot - and I am sure those who were in the last Parliament will tell me - coach witnesses. We want them to protect human rights of our people in the villages - in Suba, Migori or Garissa. We do not want them to work for foreign powers. We do not want them to take a few dollars from ICC. We do not want them to take a few dollars for those who want to fix others. If they do, this House will not give them a budget.

Hon. Speaker, finally, I want to thank the former Prime Minister for bringing sanity to ODM and for allowing the two camps to share power. Sharing power is the best thing we can do in this country.

Hon. Speaker: Do you support?

Hon. A.B. Duale: I second!

(Question proposed)

Hon. (Maj-Gen.) Nkaiisery: Hon. Speaker, let me, first of all, thank the Committee for bringing this Report. This House is a House to consider and take the rights of Kenyans very seriously. It seems that today, the most marginalized communities are to be further marginalized through the reports of these Committees. We have just rejected the appointment of Dr. Alawy on the flimsy basis of having dual citizenship. Our Constitution, since 2010, allows for dual citizenship. So, majority of those who have been rejected come from the minority communities. So, this afternoon, the Departmental Committee on Justice and Legal Affairs, just like the Committee on Labour and Social Welfare, went along and gave very flimsy reasons to reject the appointment of Mr. Suyianka Lempaa. The Committee made recommendations and my friend, the Leader of Majority Party, has just alluded to that. He is opposed or supports the rejection of Mr. Lempaa because of his personal views on CDF. That is a personal view; it is not law. This is a House that makes laws. Whether it is Mr. Lempaa or somebody else in the bush there - in the *kichaka huko* – who makes an opinion that this House may not agree with, we should not be afraid of people's views.

As I speak here, this Committee alleges that Mr. Lempaa was not in the Selection Panel. I have two judgments from courts. One judgment was made---

Hon. (Ms.) Tobiko: On a point of order, hon. Speaker. Is the good General in order to insinuate that the Departmental Committee on Labour and Social Welfare brought flimsy reasons in rejecting the candidature of Dr. Alawy, when we brought a report that quotes the Constitution of this country and what is required to be done? Secondly, it is a Report that has already been adopted by this House. It was properly in order and we convinced the House. I think the good General is out of order and should apologize.

Hon. Speaker: Hon. (Maj-Gen.) Nkaiisery, I think it is not right that you must refer to what another Committee has said as flimsy, especially when the House has already adopted the report.

Hon. (Maj-Gen.) Nkaiisery: Hon. Speaker, I withdraw the word "flimsy" and replace it by saying that the Committee brought a Report which was adopted by the House. However, all of us do not believe in that Report.

I know my sister is going to support what I am saying. I have two court reports here. One of the reports quotes a court judgment that was made on 16th August, 2013, by hon. Justice Mumbi Ngugi saying that, that fellow; Mr. Vincent Lempaa, was duly nominated by a selection panel. The second one is from hon. Justice Isaac Lenaola on 21st January, 2014.

Hon. A.B. Duale: On a point of order, hon. Speaker. I want my good friend, the General to tell us: Are we discussing a Judicial Service Commission (JSC) report or a

Report by a Parliamentary Committee? That is because Justice Mumbi Ngugi does not serve in this arm of Government. Whatever verdict she gave on the said Lempaa is from another arm of Government. What we are discussing is what a Committee of the Eleventh Parliament has brought before the House. So, if today we have a report on hon. Mbadi, we would not consider what the Executive and the Judiciary have said. So, can he tell us what to do because we do not want to discuss a JSC recommendation? That is not what is before us. Is he in order?

Hon. Speaker: Hon. Mbadi, the Leader of Majority Party appears to have a liking for you and so, he gives you as an example. Hon. (Maj-Gen.) Nkaissery, perhaps you could also indicate as to whether those judgments were made available to the Committee because then, you also cannot be expected to use those judgments and taking the Committee by---

Maybe, hon. Chepkong'a can help.

Hon. Chepkong'a: Hon. Speaker, I rise on a point of order, pursuant to Standing Order No.107 on the question of correctness of facts. Justice Mumbi Ngugi, first and foremost, was not part of the Selection Panel. Secondly, and that is why we have said court orders, at times, are faulty, she has not even told us where she got these names which she purports to have lifted from the Selection Panel. The documents that were availed to this Committee from the Selection Panel do not contain the name of Suyianka Lempaa. Thirdly, the question as to whether Suyianka Lempaa had been properly nominated was not a judicial issue in those particular proceedings.

The question at that time was that the minorities and people with disabilities had been left out. In fact, the decision or what we normally refer to in law as *ratio decidendi* of the court was that you look at Article 15 holistically and see whether all those minorities and people with disabilities have been taken into account in all the commissions that fall within Chapter 15. That matter was never brought before the presiding judge. The judge said in a decision that, since the matter was not pleaded, she could not, therefore, decide whether people with disabilities were all represented. That is because they never took into account all the Chapter 15 commissions in their pleadings.

So, the question of Suyianka Lempaa was not a matter in contention; neither was it something that was to be decided upon. So, the documents that the Committee was working on are the documents that were forwarded by His Excellency the President. So, we are working on those documents that were forwarded by the President from the Selection Panel and so, the Committee is saying that there is already an established precedent in this House which is binding upon hon. (Maj.-Gen.) Nkaissery himself and he must go by it. That, if someone has not been recommended by the Selection Panel, then there is no business of that person being approved for appointment by the President.

Thank you, hon. Speaker.

Hon. (Maj-Gen.) Nkaissery: Thank you, hon. Speaker. The Leader of Majority Party, whom the media refers to as the "Hawk of the Jubilee Government" and the Chairperson of the Committee are just trying to defend their positions. That was a petition which was taken by those gentlemen to court. We are always talking about court orders. If I can read Paragraph 45 of this Judgment just for the sake of the House:-

“Similarly, nothing has been presented before me by the Petitioner on the basis of which I could find reason to impart the decision of the Selection Panel in selecting the candidate---”

Hon. Ng’ongo: On a point of order, hon. Speaker. Though I am reluctant to interrupt the General - you can see the way he is looking at me and I am almost getting scared. I know the General might not win this war now. The General keeps on reading a document here, which I am not sure whether it is admissible. This needs to be confirmed by the Chair; whether the document that the General is reading is admissible. Otherwise, this House will be entertained by an inadmissible document. So, could we have the document first certified and then we can gladly listen to the General reading it.

Hon. Speaker: Hon. (Maj-Gen.) Nkaissery, is the document properly before the House?

Hon. (Maj-Gen.) Nkaissery: I am supposed to present it and then I table it.

Hon. Speaker: Now, you have started reading some document which you purport to be some judgment extracted from some court. How do I know it is a judgment actually? How do I know the document you are reading is a judgment?

Hon. (Maj-Gen.) Nkaissery: I can table after reading.

Hon. Speaker: No! No! No! You cannot read before tabling.

Hon. (Maj-Gen.) Nkaissery: I can table it now then continue.

Hon. Speaker: Since you are an experienced person, you ought to have carried an extra copy.

Hon. Kaluma.

Hon. Kaluma: Hon. Speaker, I am standing on a point of information. The judgment being read by hon. (Maj-Gen.) Nkaissery is one of the documents which were placed before us. But what was said in the judgment was that the Selection Panel should consider enlisting and considering amongst the people, Erick Ogwang, Lempaa and others.

What happened is that the Selection Panel, indeed, considered those individuals, they were interviewed and I think the document that the good General lacks is the one that accorded them the score sheets. In those score sheets Mr. Lempaa was at position 11. They picked the top eight and they are all in the documents which were placed before us, really. I can give it to the General because I believe this is the document that he does not have. What we are saying is that a letter was sent to the former President hon. Mwai Kibaki, of the top eight, but Lempaa was at No. 11. The second letter was to President Uhuru and we have all the documents. In the two letters, Lempaa, having not being in top eight, is not shortlisted for vetting by Parliament. That is what we are saying. What the judgment said is that they should be considered by the Selection Panel and that was done. But he came at position 11. The documents are here. He failed.

Hon. Speaker: Hon. (Maj-Gen.) Nkaissery, you may be flogging a dead horse. He is now sufficiently informed.

Hon. (Maj-Gen.) Nkaissery: Hon. Speaker, I think I am fighting a losing battle here.

(Laughter)

And you know, generals do not like fighting losing battles. So, in this case, I support.

(Applause)

Hon. Speaker: Hon. (Ms) Kajuju. Hon. Members, I think it would be fair to say that if you are in some judgment by a particular judge, let us just restrict ourselves to only that fact. Let us not go beyond what it is that the judges may have said, because that could be a topic for another day.

Hon. (Ms) Kajuju.

Hon. (Ms.) Kajuju: Thank you, hon. Speaker. I rise to support the Report that has been tabled in this House today and also thank the Committee, of which I am a Member, for the work they did within a very limited time. They were able to go through all the reports that were tabled before us. One of the key things that I noted in the persons that were sent to us for vetting, especially the chairperson was the fact that they understood the functions of the Commission. There have been situations where most of the people who have been put in a position of that nature do not understand the functions that are supposed to be performed by that particular Commission.

When we put it to the candidate for the position of Chairperson as to whether she understood the provisions of Section 8, Act No. 14 of 2011, in as far as public awareness is concerned she was able to respond to issues of public awareness. If you look at the Constitution, one of the central items that is there is public participation. There are several institutions and commissions that deal with human rights that have been established under Article 59 of the Constitution. But she promised that she is going to ensure that her Commission, being a complementary commission, is able to work with the other commissions, especially the National Gender and Equality Commission and the Commission on Administrative Justice.

Looking at the other candidates especially Susan, she has the institutional memory, having worked at the Kenya National Commission on Human Rights for quite some time. Therefore, she is well prepared to take up the duties of a commissioner. Even on the other candidate, George Monyoncho, we were able to see that he is well trained and he is able to articulate the issues. All the candidates that were approved by the Committee were able to understand that issues of human rights are key to the Constitution. All the parties must abide by the Constitution.

I, therefore, stand to support the Report as it is and the rejection as it were of the person who was not initially in that list. I therefore support.

Hon. Anami: Thank you, hon. Speaker. I rise to support the Report of the Committee on the appointment of the Chair and the members namely, Suzanne Shatikha Chivusia, George Morara and Jedidah Wakonyo. I also support the rejection of Vincent Suyianka Lempaa for the reasons that have been highlighted.

Hon. Speaker, I also wish to add my voice to the issue of child rights. It is very important that this Commission revisits the provisions of the Constitution on child rights. Children of this country need our attention and the Constitution has made what they need very clear. I hope that this Commission will prioritize the need to support children access to free and compulsory education.

We have orphaned children in this country who have the right to free and compulsory education but, every now and then, they are sent away from school by school authorities. This is a very important concern that the Commission must take seriously.

There is the other concern of the visibility of Kenya National Commission on Human Rights (KNCHR). The Commission, once appointed, should endeavour to sensitize the public on its role. The Commission needs to come out and sensitize people about human rights so that we are all at par.

Hon. Speaker, I support the Motion.

Hon. Lentoimaga: Thank you, hon. Speaker for giving me this opportunity. I rise to support the Report of the Committee. I would like to say that the Committee had ample time to deliberate and come up with clear information about the candidates who appeared before it. Therefore, I support the appointment of Mbogori, Suzanne and George. I also support the rejection of the last member because of what has been said by the Committee.

My expectation is that these members will play their critical role at KNCHR, going by what we have experienced in previous Governments, especially in the last Government. The members who were in the Commission at that time had over-stepped their mandate and involved themselves heavily in politics. They veered off from the normal work that they were supposed to do. There are very many issues affecting Kenyans in terms of human rights but, going by experience, they did not play their role very well on that matter.

On the candidate that was rejected, it is very clear that he did not know what he was doing because we are not managers of the Constituencies Development Fund (CDF). Our role is clearly stipulated in our laws. There is an Act of Parliament that states our roles.

Besides that, I want to take this opportunity, first of all, to congratulate my home county, Samburu, for topping in the Kenya Certificate of Secondary Education (KCSE) results that was released yesterday. Samburu County has been, for a long time, associated with bad news because of the challenges that we have been facing, especially last year. There were conflicts and drought but because of the hard-work by parents, teachers, management committees and students, we are ranked number one in the country. I think--

Hon. Cheboi: On a point of order, hon. Speaker. Having heard and seen the mood of the House--- You can see even hon. Lentoimaga is already veering into issues of education, which is very good, but we have a handful of business in this House. Would I be in order to request that we dispose of this matter? That is because we really do not need to speak if we are all in agreement.

Hon. Speaker, there does not seem to be anybody who is giving a different opinion, including the General who stated his position and changed his mind. Would I be in order to request that the Question be put and the matter be disposed of?

Hon. Members: No!

Hon. Speaker: Well, let hon. Lentoimaga finish his contribution.

Hon. Lentoimaga: Hon. Speaker, to conclude, I want to congratulate the students of Samburu for doing well in KCSE. I want hon. Members of this House to concur with us and support us. As a county, we are doing well now. The people of that county are

hospitable and you are welcome so that we put behind the issue of cattle rustling and conflict.

Hon. Speaker, I support the Motion. Thank you very much.

Hon. Speaker: Honestly, hon. Members, let us also be fair to ourselves. The Motion is about the adoption of a Report of a Departmental Committee. Those other issues, obviously, have no bearing.

Yes, Agostino Neto!

Ho. Oyugi: Thank you, hon. Speaker. First, I want to say that I am a Member of this Committee. Of course, this Report comes from my Committee and I am inclined to support it.

However, if you look at Article 254 of the Constitution, you will find that it states very well that consideration of the face of Kenya shall be taken into account. Ethnicity and several other things shall be taken into consideration too. This afternoon, we have just adopted a Report of the Departmental Committee on Labour and Social Welfare. Before us now is the Report of the Departmental Committee on Justice and Legal Affairs. If you look at the various persons who have been selected to Chair the various commissions, you will agree with me that we are making them not be the faces of Kenya.

However much I am a Member of the Departmental Committee on Justice and Legal Affairs and I would like to support this Report, I think let us be fair to other Kenyans. There are people who merit to be appointed to these positions. If you look at the Report of the Departmental Committee on Justice and Legal Affairs - which we looked at properly - you will find that the people who were ranked number one and two were not picked for the post of chairperson. I have in mind my very good teacher, Jaoko, who actually led. The reasons for her not being appointed as the Chairperson are not known because the President and the appointing authorities settled for No.3. If you look at the various persons who were supposed to be Commissioners, you will find that a very robust human rights crusader, Henry Maina, topped the list with 79.1 per cent, while the second person was three points below him.

Hon. Speaker, he was not appointed as a commissioner and the reasons for his not being appointment were not given. The persons who were appointing settled for the third person. Whereas I am a Member of the Committee and I am inclined to support this Report, I am just saying that it is a worrying trend in terms of the country not giving chance to meritocracy for whatever reasons. I think if we allow this sort of trend to continue, it will be one that is unfortunate.

The other aspect is that Article 55 of the Constitution gives credence to the fact that young persons and people from minority communities should be given a chance. If you look at the persons who have been appointed, none of them fits within the particular bill of being a young person, whereas in my opinion, there are people who are young and ought to have been given a chance to represent Kenyans in that particular Commission. Whereas we agreed as a Committee and because I am bound by the Committee Report, I am requesting the other selection panels that are going to be formed in the near future to select chairpersons and members of various committees to take into consideration the other Kenyans so that, at least, through Article 10 of the Constitution that talks about values and representation of various Kenyans, we will give all Kenyans a chance. We

should give a chance to those who are qualified to represent Kenyans without giving reasons for purposes of purported bias in any of the ethnic communities of this country.

With those remarks, I support because I am bound to support this Report as part of my Committee Report.

Hon. Kombe: Ahsante Mhe. Spika. Nasimama kuunga mkono Ripoti iliyo mbele yetu ya kuwachagua Makamishina Bi. Kagwiria Mbogori kuwa Mwenyekiti wa Tume ya Kitaifa ya Haki za Kibinadamu pamoja na wenzake. Pia naunga mkono kukataliwa kwa Bw. Lempaa.

Kwa hakika, tuna matarajio kwamba Tume hii itafanya kazi yake vyema. Nimepitia Ripoti hii na nikaona kwamba baadhi ya wahusika hawa wamefanya kazi nzuri sana, hasa kwa kuzingatia dhuluma za kihistoria. Hivi tunavyozungumza, natoka kwa Kamati ambayo imeweza kufuatilia Ripoti ya NEMA, lakini ni dhuluma tupu ambayo imeendelea pale ndani. Mashamba ambayo kwa hakika yanastahili kuwa ya wenyeji yamechukuliwa na hivi sasa, badala ya kuwachiliwa kwa kilimo, yanatumika kupanda miti ilhali wawekezaji hawakuyaitisha mashamba hayo kwa kupanda miti. Waliyaitisha kwa kutengeneza chumvi.

Watu wamepigwa risasi katika maeneo hayo wakitetea haki zao. Basi, ni matumaini kwamba Tume hii itaweza kuangazia hasa Ripoti ambayo imeandikwa na Tume iliyotangulia kulingana na mashamba yale ya chumvi na mapendekezo yake yatekelezwe kikamilifu ili watu wa eneo lile la Marereni, Kanagoni na Msumarini waweze kupata mashamba yao.

Mhe. Spika, naunga mkono Hoja iliyo mbele yetu ili walio mbele yetu wakaweze kuhudumu katika Tume hiyo. Asante.

Hon. (Ms.) Ghati: Hon. Speaker, I rise to state that I oppose. The Constitution of this country is very clear. With all due respect to this Constitution, Article 250(4) talks about the composition of members in any commission in this country. I want to read it:-

“Appointments to commissions and independent offices shall take into account the national values...and the principle that the composition of the commissions and offices, taken as a whole, shall reflect the regional and ethnic diversity of the people of Kenya.”

This afternoon, we have just approved the appointment of Florence Nyokabi who is 60 years old. This is a shame to the youth of this country. It is a shame to the people with disabilities in this country. We are coming here to talk about members who, to me, seem to come from a certain region of this country. Where is the face of this country? We are here to approve the appointment of Kagwiria, the appointment of Jedida Wakonyo and we are rejecting the appointment of just one Lempaa. To me, it is completely unconstitutional. I really oppose.

If you look at the members here, we have one person with disability, who came fifth---

Hon. (Ms.) Kajuju: On a point of order, hon. Speaker.

Hon. Speaker: There is a point of order, hon. Ghati. Also, when you rise on a point of order to claim that something is unconstitutional, expect that the Chair will give you a ruling. So, you must, therefore, go ahead and point out the unconstitutional bit, so that I can give you a ruling. I have no quarrel with you reading whatever Articles of the Constitution. I am quite at home with any of them. I am always very comfortable doing

that. So, when you say that something is unconstitutional, we do not also want to engage in something that is going to make us appear like we are breaching the law. So, you state the exact provision---

Hon. (Ms.) Ghati: I am not on a point of order.

Hon. Speaker: Sit down. Do not be annoyed. This is not a place where you can afford to be annoyed, hon. Ghati. Here, you debate. You have your point and another one has theirs. You either agree or you do not agree and people vote. So, do not even get agitated about anything.

Hon. (Ms.) Ghati: Okay.

Hon. (Ms.) Kajuju: On a point of order, hon. Speaker. Is the Member in order to use un-parliamentary language by saying that it is a shame on matters that have already been debated by this House? Again, is she in order to refer to the areas from where the persons originate as one region? This country has diversity. The persons that we have just approved in the Gender and Equality Commission come from a totally different region from the persons that we are now presenting to this House, as the Committee on Justice and Legal Affairs. There is the Meru County and other counties. So, I do not want that collective condemnation that persons who have been brought before this House come from one region. Meru County is diverse and very far away from any other region that the Member is referring to. Is she, therefore, in order to collectively condemn individuals on the basis of their origin?

Hon. (Ms.) Ghati: Hon. Speaker, I do not know what region means. Maybe, I do not understand. We are talking about GEMA here. I am talking about GEMA here---

Hon. Speaker: Hon. Dennitah Ghati, what is it that you have just said? You are prosecuting your matter very well and I do not know why you want to get derailed by---

Hon. (Ms.) Ghati: Hon. Speaker, I am talking about regional representation. I stand in this House as one person who comes from a minority community. I have never--- I look forward to an opportunity and a day that this Government of Jubilee will deliberately pick persons from the minority communities to represent this country. That is why it is very painful. To me, the Constitution is clear. I am not seeing the face of Kenya. We have approved this one, the other and we are yet to approve another one. We are becoming a House of approvals---

Hon. Chepkong'a: On a point of order, hon. Speaker. I stand pursuant to Standing Order No.107 on false accusations and un-substantiated statements.

The 29 Members of the Committee on Justice and Legal Affairs come from all communities, including hon. Ghati, herself. All those matters were conversed within the Committee. I do not see why she is casting aspersions on Members of the Committee, which includes Members from the Minority and Majority Parties. In fact, if this matter went to court, it will be decided that those minorities are also included in Chapter 15 of the Constitution on commissions and independent offices. The Independent Electoral and Boundaries Commission (IEBC), National Commission on Gender and Equality and the Ombudsman will find their minority there.

You cannot fit all the 42 tribes in one commission, in which only about five or seven people are required. For instance, in this Commission, only four people are required as members and Chairperson. So, all the 42 tribes cannot fit in the five slots for commissioners to be appointed by KNCHR. This is inflaming tribal sentiments. I am

sure she knows where I come from and she has not seen one of my people here. Hon. Peter Kaluma was, in fact, livid about this issue, until we reminded him about Otiende Amollo. He said that it is only that the name sounds like a woman's and he accepted. I think all the tribes are represented within Chapter 15 of the Constitution.

(Laughter)

Thank you, hon. Speaker.

Hon. Speaker: Hon. Members, of course, the House deliberates and resolves issues of concern to the people of the constituencies, just to remind you. That is in Article 95(1) of the Constitution. So hon. Dennitah Ghati, deliberate issues of concern to the people you represent.

Hon. (Ms.) Ghati: Hon. Speaker, my concern again is on the issue of inequality that I am consistently seeing in appointments to parastatals, commissions and everywhere. I also see a hidden hand. Why did the Committee allow us to have a name here of Lempaa? Who sneaked his name in? Why are we even discussing him? How did his name just leak into this? Then we are coming to disagree and reject it. Someone is fixing the Jubilee Government and the President. How do we handle this? How do we find a name here that the Committee had not seen or sent to the President? On what grounds did his name find itself here?

I want this Committee to consider issues of people with disability. We have a guy here who became number five. Why was he not shortlisted or even listed here to be considered, so that we avoid this whole issue of having people from one region forming a commission? The nominees for the National Gender and Equality Commission have passed. Now we have these other nominees to pass. I am finding something funny about this Commission and that is why, with all due respect to this House and the Committee on Justice and Legal Affairs, I want to say that from the outset, I have disagreed with the Report. I am opposing the appointment of all these nominees here.

Thank you, hon. Speaker.

Hon. Speaker: You see, that is the best way. That is because you have a right to oppose or support. Yes, hon. Cheptumo.

Hon. Cheptumo: Thank you, hon. Speaker, for giving me a chance to contribute to this very important Motion. I am a member of the Committee that came up with this Report. Section 8 of the Kenya National Commission on Human Rights Act outlines the functions of the Commission. The Commission is very critical in the administration of justice in our country.

Allow me to read Section 8(a) which states the functions of the Commission. It reads:-

(i) Promote respect for human rights and develop a culture of human rights in the Republic.

(ii) Promote the protection and observance of human rights in the public and private institutions.

The Commission, therefore, is so important in assisting the Government in ensuring that the justice system in this country is achieved. As a Committee really, we took time to look at the members. In the same Act, when you look at the qualifications of

those to be appointed to be either a chair or members of the Commission, the standards are very high. For example, for one to be a chair, that person has to have knowledge and, at least, 15 years of experience in matters relating to law and human rights.

That level of requirement in qualifications is, indeed, in line with the provisions of the relevant law and the Constitution. Having applied our mind as a Committee to the nominees that appeared before us, we found out that the Chair and, indeed, the other members have the necessary qualifications, the expertise and exposure, both academic and experience. Above all, they meet the requirements of Chapter Six of the Constitution. As we address these issues, this is a Commission which is not only going to serve the Kenyan people, it will serve even Members of this House in terms of being able to point out issues that are of concern and relating to human rights.

As I support this Motion and the appointment of the members, my appeal to the chair and the membership is that, as they undertake their functions, they should become truthful in whatever investigations they will undertake under Section 8 of the Act. We have had cases where this Commission – but not the current members - has come up with a report or recommendations which are not based on facts. Since the Constitution empowers the Commission to play a critical role in advocating for human rights, my appeal to the Commission and, particularly the chair, is to ensure that the Commission is really guided by the principles of law in executing its mandate under Section 8 of the Act.

I, therefore, support the appointment of the members and also the rejection of one member, as is outlined in the Report of the Committee.

I support the Motion.

Hon. Speaker: Yes, hon. Oner Ogalo.

Hon. Ogalo: Thank you, hon. Speaker, for giving me the opportunity. I want to support the Committee because they were given a number of names to consider. They had no opportunity to go to the old list from the selection committee and select the names for vetting. They were given the list by the President to vet.

I agree totally with my colleague hon. Dennitah Ghati, but I cannot be as emotional as she was, I will try to be calm. I am beginning to realize that when a name is taken to State House for consideration, the chances are inversely proportional to the distance from a certain high point in Kenya. We have three people proposed for chair of the Commission. From the three, two of them come from a particular region and only one come from a region close to that high point.

As a mathematician, I just look for what other criteria was used to arrive at that minority name in that group. I see the only possibility is that your chances are inversely proportional to your distance from the high point. I am really worried because there is also a plan to keep this high point in the centre of gravity for the next 20 years. I do not know whether this inverse proportion will be working for the next 20 years and after that, what will happen to the rest of Kenya?

The Committee did their work. They were given names and they did the best they could. In any case, hon. Kaluma was there from my---

Hon. Speaker: There is a point of order from the Chair.

Hon. Chepkong'a: On a point of order hon. Speaker. I love the mathematics of hon. Oner and I would have wished for him to continue in that format, except that the mathematics has a certain twist in terms of its philosophy called "bend".

Hon. Speaker, if you look at George Morara Monyoncho in relation to the mountain that he has just mentioned, you will discover that he is closer to where he comes from than the mountain. Therefore, his mathematics must be totally wrong in terms of his calculation. If you look at Suzanne Shatikha Chivusia, you will also see that in relation to the purported mountain being mentioned, it is closer to hon. Ogalo's home than the mountain. Therefore, his mathematics is wanting – I do not know whether he went to Alliance High School because the best mathematician was actually in Alliance High School, Mr. Carey Francis. If you look at his mathematics in terms of the centre of gravity that he purports is closer to him –we hope that the centre of gravity can be moved to the lake. Unfortunately, that lake did not come through.

I think we should be guided accordingly.

Hon. Speaker: Can we also try to be alive to the fact that there are still 22 of you who want to contribute?

Hon. Ogalo: Thank you, hon. Speaker. I was saying that even when you go through the list of members, you will find Musundi holding the first position. Nelly Awori Matheka holds number two and then you find Jedidah Wakonyo Waruhiu; the first to be picked. The rest were picked because the first one had been picked.

Hon. Speaker, I would like to ask the Jubilee Government to realize that Kenya is a community of 42 tribes and in making public appointments, due care must be taken to ensure that the face of Kenya is represented. A president is elected by his supporters, but he becomes a president of everybody.

With those few remarks, I want to support the Committee and urge the President to be more careful in future selections.

Thank you.

Hon. Speaker: The last one is not in the Chamber, unfortunately. He is unlikely to hear when we are addressing him. We should address him when he is close to us. Hon. Members, I want to encourage that those of us who are contributing, bear in mind that so many of you are still eager to speak.

Hon. Abongotum: Thank you hon. Speaker. I will be very brief. First of all, I want to thank the Committee for doing a meticulous job and for coming up with names of individuals with exceptional qualities and professionals of high standing and thus, considering integrity and meritocracy. I, therefore, support the Committee for doing that.

Hon. Speaker, what I only want to point out is the issue of activism in the Commission. Instead of doing what they are mandated to do by Chapter Four, the most robust Bill of Rights as contained in the Constitution, most of those commissioners end up being activists and veer off from their core mandate.

Therefore, we want them to deliver on their mandate and not to be used by western forces to actually even undermine the Government. This has happened before and we are advising them not to do this.

I support both names, except, of course, for the unlucky gentleman from the Maasai Community. As you know, the Maasais have also been marginalized for quite a while. So, I will propose that when the other name is being re-submitted, let us have a name from the same community; the way we did it with the other Commission.

Hon. Speaker, I share a few sentiments with hon. Anami. One time, hon. Dr. Machage and I were actually kicked out of the Cabinet because of coming from minority

communities. It was not because we did not have credentials. So, sometimes, sentiments should be taken seriously. Therefore, I support and I want to say that let a name from the Maasai Community be re-submitted. I know that this Commission, for the last so many years, has not done much to look into the rights of people who are actually marginalized. I would like to give an example of children. Children from pastoral communities are actually not going to school. We want this Commission to pursue and push the Government or those authorities concerned to ensure that the Children's Act is implemented to the letter.

Hon. Speaker, with regard to women rights, I do not think they have done much. So, we want the issue of women rights to be looked into by this Commission.

Hon. Speaker, we want people with disabilities absorbed. We want this Commission to actually deliver on their mandate. That way, they will not sit in the offices, receive money and, at the end of the year, just give reports. We want a serious Commission this time round.

Hon. Speaker, because many hon. Members are also interested in contributing, I support the entire Report together with the rejection.

Thank you.

Hon. Speaker: It is important for me to indicate to hon. Members that I do consider it important for us to hear from every side of the House. But the way you are putting your requests, it would appear that it is people who sat somewhere and put their requests. I do not want to be insensitive to the fact that we have two sides of the House.

Hon. (Ms.) Nyamunga: Thank you, hon. Speaker. I think I would fail as a leader from Kisumu County if I do not start by congratulating students who did their Form IV last year. You can see Kisumu County did very well---

Hon. Speaker: Is it part of this Report?

Hon. (Ms.) Nyamunga: It is not part of the Report, hon. Speaker, but it is just---

Hon. Speaker: I will shut you out, if you continue with irrelevances now!

Hon. (Ms.) Nyamunga: Thank you, hon. Speaker. Going back to the Report--- I am sorry but I would like to go back to the one which is already there. There is a certificate here for Mr. Abdillahi Alawy, which does not even have the date. I do not know the authenticity of such a certificate. In my view, all the certificates should have dates and years of graduation so that you can know so and so graduated on such and such a date.

Hon. Speaker, to join my fellow hon. Members who have already spoken from my side, I would like to say that the issue of imbalance has now become a song that we keep on singing. That is because we keep on talking about it. We complain about it and nothing is done. Therefore, I do not know whether we are reaching the end of the road. Are we talking to ourselves or are we talking to a Government which brags to be young and representing all Kenyans? I believe if you are young and you want to show a certain leadership style, I think you should go beyond issues of imbalances. If we continue raising the same issues all the time and nothing is done, then there is no need of bringing some of these reports to the House for approval and yet, the appointees are already known.

Finally, I would like to say that most of the time, the Committee does a very good job. If you look at the names of the appointees and the marks given – the Report is passed

to whoever is doing the appointment, even if it is the President. I believe it is the President. If somebody can pass number one, two, three, four, five and then jump to number six, then what is the role of the Committee?

The Committee spends a lot of time and sits long hours to give a detailed report, but even in the rejections or in the appointments, no good reasons are given. You cannot see why so and so is number one or number two. They are rejected and no reasons are given. You just see that so and so has been selected, but there is no reason given. I think this is a trend that has gone on for a long time. Something should be done about it. The Government should know that the country is watching. These things cannot be done selectively; the same few people are being selected all the time and yet, we keep on singing about that matter in this House. I do not think that is acceptable. I do not think it is a trend that should continue.

Hon. Kabando wa Kabando: Thank you, hon. Speaker. I rise to support this Report. The role of KNCHR is, perhaps, one of those that were initiated early in the regime of the National Rainbow Coalition. There were a lot of expectations that this Commission will help in remedying many of the issues that the previous regime had taken for granted and assist in facilitation for the programming of human rights, governance and recognition of the rights, particularly basic needs that would assist populations from different parts of this country to be mainstreamed. I have two points.

One, as we pass the names of the nominees, it is important for this House to say loudly that there are also higher expectations of this Commission in its execution of its mandate and role. I want to reiterate what has been said by my colleagues about the obsession with the political agenda of these commissions. It is important, of course, to check and interrogate what the Executive and Parliament are doing. The citizens, through the commissions that are constitutionally anchored in law, are free to interrogate the Executive and Parliament.

However, going by past records, even as we appreciate that there is some work that has been done, there has been too much obsession with political issues. This time, we should appreciate that the mandate of the elected officials constitutionally changed in 2010 when we obtained a new Constitution. Therefore, we must appreciate that we have 47 County Assemblies, an expanded National Assembly with the issues of gender parity and affirmative action anchored in law, and another House to oversee issues of devolution. Therefore, this new team – and I know some of them very well - have the capacity and the requisite intelligence and integrity to do the work completely different from the previous commissions. Those commissions had people who were very loud in political press conferences, demonstrations and activism; not appreciating that this is a constitutional body completely different from KHRC, which is a Non-Governmental Organization (NGO). Therefore, even with regard to issues of funding, today's Commission needs to be interrogated by the relevant Departmental Committee. We do not want to have a national body, which is a constitutional body, but which is executing mandates that are sometimes too external and without relevance to the obligations that they are supposed to do as a constitutional body of the State of the Republic of Kenya.

Hon. Speaker, for instance, it would be expected that before they talk about which politician, State officer and Cabinet Secretary has done this and that other thing, the issues of basic human needs, food, security and education--- I would have expected, for

instance, that when there was an outcry from certain parts of this country that some bad rules and regulations had been passed by the Department of Education in admissions to secondary schools and national schools, they would have raised their voice. Education is a basic and necessary foundation for human rights and, therefore, dignity and prosperity of our people, the Commission should have intervened. This is the sort of commission that should say that on this particular matter, this State department is not complying with a rule that would allow access to a basic human need and, therefore, facilitate uniformity and growth of individuals in the country.

I support this Report. We do expect that those Commissioners will play a role that will be different from their predecessors. We also expect that they will remain wholly accountable to this Parliament.

As I conclude, hon. Speaker, I would like to congratulate you as the Speaker of the National Assembly for the position that you have taken. We are now vetting and approving, just like the Budget, these nominees. However, some people outside there expect that once Kenyans go through a rigorous election of their members of the National Assembly, County Assemblies and Senate, those members assemble and then they elect their Speakers, those very important organs of State that will sit back and allow unnecessary criticisms and decisions--- Then we are told by even some of the people that we love and respect very much that even if issues are very stupid, idiotic and abusive, we accept them as Parliament. We should then deal with those issues.

I think Kenyans are awake to the fact that, even when you are appointed as a commissioner here, your mandate cannot override the mandate of a member of parliament or a member of a county assembly who has been elected by the people. Even when you are appointed as a commissioner or a Cabinet Secretary, your role cannot override the role of a member of the National Assembly who has gone through a rigorous process of being vetted by people in the villages, estates, slums, professionals and wise people. Therefore, on this particular matter – and I say this without any bias – when you speak for the National Assembly whether from your Office or from that Chair, just know that you have unanimity of support. I know I may raise a contradiction, but in terms of this House being respected, be it by the media, Judiciary, NGOs and so on, respect is earned. We earn it because we are constitutionally convened. Therefore, even as we pass commissioners to those commissions, we expect that they will continue doing their work. But they shall understand that this House has a responsibility and a role, and that is the role we have executed today. Tomorrow, we do not expect them to join demonstrators here like they have no jobs. We do not expect them to call Members of Parliament names. If they have any issue, let them sit down and do a report and then submit it to the relevant organ of State. That report shall be interrogated and the mandate and verdict determined on logic.

I support.

Hon. Speaker: What may be out of order, hon. Gichigi?

Hon. Gichigi: Hon. Speaker, I would have wanted to contribute to this particular Motion but I can see that, at this point, we are all in agreement and sort of supporting the Motion.

(Loud consultations)

Will I be in order, therefore, to request that the Question be put?

(Loud consultations)

Hon. Speaker: Hon. Members, you do not have to belabor the point. At some point earlier on, there were 22 requests and they still remain. Now, I will follow the views of first come, first served. The other times I have been trying to mix regions, counties, disabilities and others because that is what is required of me. You are not the Speaker, hon. Kaluma. You cannot sit there and purport to get annoyed.

(Laughter)

We will go by the way the names appear. It is going to be like this. The first one is hon. Joseph M'eruaki, Yusuf Chanzu, Ali Rasso, Kipyegon, Robert Pukose, Isaac Mwaura, John Waiganjo, Moses Injendi, Irungu Kang'ata, Samuel Nderitu, and Lelelit Lati in that order. That is the way you have placed your requests. Hon. Millie Odhiambo, you should be the last person to even raise your finger. I can tell you the time you walked into the Chamber.

Hon. (Ms.) Odhiambo-Mabona: I am supporting you, hon. Speaker.

Hon. Speaker: It does not matter but do not raise your finger. When you raise your finger, you mean some other different things.

(Laughter)

Hon. Joseph M'eruaki.

Hon. M'uthari: Thank you, hon. Speaker. I rise to support this particular Report by the Committee on the nominees who have been approved. I also support the rejection of one nominee. As I support this, it is also surprising that within one day, this honourable House is rejecting two nominees nominated by the President. That is because they are not qualified for one reason or the other. The first one who was nominated by the President is not qualified constitutionally. That is because he holds dual citizenship. We also have a list here containing the name of another nominee which has been sneaked in before this House. The nominee is not qualified according to the Committee.

So, in a way, this is surprising because we might end up also having certain office bearers---

Hon. Speaker: What is your point of order, hon. Gichigi?

Hon. Gichigi: Hon. Speaker, it is important that this House notes that the problem with the appointee who was rejected by the Departmental Committee on Labour and Social Welfare is not because of his dual citizenship. We need to be very clear because---

Hon. Speaker: Hon. Gichigi, that point is not in this Motion. That is a matter which has already passed. There is no point of order there. Please, allow the Member to contribute. You know all your colleagues whom I have read out their names need to contribute. If we keep on interrupting every Member with our own arguments, then there will be no time for you to contribute.

Hon. M'eruaki, proceed.

Hon. M'uthari: Thank you, hon. Speaker for protecting me. I am saying that it is important that when people are given responsibilities, they do them right. It appears some people somewhere within the Office of the President are not doing the right thing. They end up embarrassing the President because they have brought here nominees who are not properly selected and, at the end of the day, we end up having this kind of scenario.

Otherwise, I urge KNCHR that, as we approve these nominees, it should work for the good of the country. At times, those commissions appear to work for other agents and people. At the end of day, they scandalise their very own country. So, I believe that the people we are nominating to KNCHR will be energetic and provide leadership. At the end of the day, KNCHR should be able to provide guidance and look into issues of human rights. They should look into the rights of everybody, including those of children so that there is equality everywhere.

With those few remarks, I stand to support this Report. I thank the Committee for doing a good and thorough job and coming up with it.

Thank you, hon. Speaker.

Hon. Speaker: Hon. Chanzu.

Hon. Chanzu: Thank you, hon. Speaker. I rise to support the Motion and say that KNCHR is one of the commissions in this country that were at the core of the transformation that has taken place in this country. That is because most of those who were yearning for change were fighting for it, so that we can have equal rights in various areas. So, it is a very important Commission. I think that is why the vetting process and the Report that the Committee has done is very significant. It touches on the core basics that we need in this country.

Hon. Speaker, so, out of the people who have been proposed here, there is one who has been rejected for very good reasons. In fact, I like the point that one Member has brought out; that one of them was not even among the eight who were shortlisted for vetting.

So, hon. Speaker, the only thing that we can do, considering that we have got 42 communities is to look at Kenya as one country. KNCHR should work for the service of the whole nation and not for where they come from. That should not be the issue. They should be able to work for the whole country. That is because if we say that we want to get commissioners from every place, it will not work. You cannot get commissioners from 42 communities. If you do that, it means that you will have a bloated KNCHR.

So, my only advice to the chairperson and his commissioners is: Once they assume their responsibilities, they should treat Kenya as one country and serve the interests of everybody. There must be good leadership in KNCHR in order for it to fulfill its mandate.

Hon. Speaker, the creation of the commissions was a way of trying to move away from the centralised system that we were used to. So, we expect that they should work independently, fulfill their mandates without any bias or without reference to any other authority or anybody else.

Hon. Speaker, it is also gratifying that the people who have been shortlisted here are properly schooled and qualified. I think that should be the basis upon which they can build on and provide good leadership within KNCHR, so that it can serve Kenyans equally. The team should be one that can be able to work effectively. There is something

that happened in this country when we were creating the earlier commissions. We looked at the provinces we had. That is the reason we have commissions having nine members. That is because we had eight provinces and so, we had to have one commissioner per province. However, we realised that, that was going to be very costly and that is why I want to congratulate this House for reducing the number of commissioners. In the subsequent commissions, like the one we have just approved the nominees earlier and in this one, the number of commissioners has been reduced to five. I believe these numbers can be reduced even to three commissioners.

So, hon. Speaker, with those few remarks, I support.

Hon. Speaker: Hon. Rasso.

Hon. Dido: Thank you very much, hon. Speaker for giving me this opportunity. At the outset, I wish to support the appointees. I also wish to take note of the Report by the Committee, which actually has been done exhaustively. They have been very balanced in their views.

I think considering some of the views raised by hon. Members here, sometimes, you can be the minority or the marginalised and then, you may be considered at other points. So, I think we must show leadership in terms of appreciating a position when it favours us or otherwise.

Hon. Speaker, this is a very important Commission and I noted from the Report that, since August 2012, the Commission has not been active and people have been silent. I come from Marsabit County where, in recent months, we have had communal conflicts. Some of it borders on human rights yet no investigation has been done. We found that one of the reasons why that has not happened is because this Commission has not been active. I thank the Committee for having taken proactive measures to bring this Report before the House.

Hon. Speaker, this being a constitutional commission, one important thing with regard to it is funding. If these commissions are not well funded, they will lack funds to carry out their mandate. In the process, you will see them seeking funds from external organizations and will end up not serving the people of Kenya. Therefore, I propose that there must be adequate funding for these commissions in order for them to be effective.

The previous KNCHR did not live up to its mandate and purpose. That is why we hear today in The Hague, about witnesses having been coached, or witnesses who say that they have been approached by KNCHR to testify in that court, when they did not witness the post-election violence.

Hon. Speaker, I would like to say that Kagwiria Mbogori is one person I met in Monrovia when I was on a United Nations (UN) mission in Liberia. She was working with the UN as a lawyer and she supported the Government of Liberia. She did extremely important work, particularly in the field of human rights, tackled child soldiers issues and gender-based violence. What was very important was the sort of reform laws that she helped to put in place. Whereas women have been saying that they are marginalized and excluded from important decisions, I think these are the sort of reforms we see coming to organizations and bringing life into them.

On the other two nominees, I think they qualify, based on their work experience, education and training. This is in connection with Suzanne and George.

Hon. Speaker, I beg to support this Motion.

Hon. Kipyegon: Thank you, hon. Speaker. I rise to support these nominees.

Hon. Members: Why is he sitting on this side?

Hon. Kipyegon: Hon. Speaker, I am getting threatened by the Members of ODM who are asking me why I am sitting on this side. They should also remember that I was once a Member of ODM and I used to be a very happy Member until they destroyed the party.

Hon. Members: No! Can you---

Hon. Kipyegon: Hon. Speaker, I would like to say that I feel threatened. I want to support this Motion by saying that I sat in the Committee which vetted the nominees we are talking about. When I sat in that Committee, I looked at the proposed Chairperson as somebody who is experienced, articulate and somebody we felt before we made that decision that she would steer this Commission to the highest level. Mind you, she is the first woman to hold the position of the Chairperson. I expect even my close friend here to support that.

Hon. Speaker, we must understand that this Commission has a bit of history which has made us suspicious. We wanted a chairperson and commissioners who understand human rights in the African context, and not people who just look at human rights from the academic point of view. We also wanted people who know and feel that they belong to this country, and understand human rights in our country.

We have had several issues with some of the members of this Commission. One point which has become very clear is the question of the International Criminal Court (ICC). It has not been very clear whether the Commissioners were involved in the coaching and recruiting of witnesses and that sort of thing. We wanted to remove that doubt, so that we have a Commission that will not be partisan. Although we have this other question of regional balancing, I must say that I was also very disappointed as a Member who comes from a marginalized region when we had to remove, or do away with, the name of Lempaa. However, we had no option based on the fact that he never qualified and was not in the list which was forwarded to the President, neither was he in the list which was signed by the President. We only hope that the same community and region, which Lempaa represented, will also be represented on the Commission.

Hon. Speaker, I just want to shorten my contribution by saying that the issue of gay marriages also came up when we were interviewing these nominees for these positions. Although it is a very hot issue, there were some people who were proposed to be commissioners who handled this matter seriously and convinced us that they were going to defend our culture and norms on this Commission.

(Applause)

I know my friend, hon. Kang'ata, is very happy. We also felt that this is a community and a country that must abide by the law, the Constitution and at the same time abide by the customs and traditions of this country. We cannot lean towards the wishes and whims of the Western countries. The previous Commissioners tended to lean towards the cultures of the white man.

An hon. Member: The British Commissioner!

Hon. Kipyegon: Hon. Speaker, I have not said the British Commissioner but I have said that the previous Commissioners tended to lean towards the customs and cultures of the white man. They forgot that they were born in Africa and they needed to defend---

Hon. (Ms.) F.I. Ali: On a point of order, hon. Speaker. I regret that the hon. Member has said that we were copying Western values and systems. I want to confirm that I was a former Commissioner on that Commission and we never “cooked” any report or coached any witness. It is true that we did not value any systems other than the Kenyan system. I request the hon. Member withdraws that statement because it is not appropriate and accurate.

Thank you, hon. Speaker.

Hon. Speaker: I think we can take that as part of your contribution given the fact that there is not much time left.

Hon. (Ms.) F.I. Ali: No, hon. Speaker!

Hon. Speaker: That is part of your contribution.

Hon. Kipyegon, can you finalize your contribution, so that your other colleagues, who are remaining, can also get a chance to say something?

Hon. Kipyegon: Hon. Speaker, I just want to clarify my statement and not withdraw it.

We have heard people talk about other people’s traditional activities and claim that they were part of military training activities yet it is their culture. It was presupposed that the members of this Commission would be prudent enough to explain to all that these are African cultures and traditions. I do not need to withdraw. I only need to tell the hon. Member that, maybe, when she was a Commissioner she missed part of the fun that other Commissioners had while coaching witnesses and giving out information to the ICC.

I really do not want to belabour the point. I just want to say that I support the nomination of the commissioners. Let us approve their nomination. When it comes to the question of Lempaa, we will sit again and look into it with a view to having a representative from the area where Lempaa comes from.

Hon. Speaker, although you have advised that we should not introduce another issue, I would like to congratulate my former school; Maseno High School for being number five.

Thank you very much.

Hon. Speaker: Hon. Pukose, could you take one minute, so that we can accommodate other hon. Members?

Hon. (Dr.) Pukose: Thank you, hon. Speaker, for giving me the opportunity to contribute to this debate. I rise to support the Report of the Committee. Initially, I looked at Lempaa as someone coming from a marginalised community. I was with the General but now that the General has retreated to strategise for another day, I concur with him.

Hon. Speaker, the KNCHR is very important. When it began operations, it did a commendable job, but in 2011/2012 its members digressed and engaged in politics. Those are the issues that we are now dealing with because they erode the credibility of the Commission. The evidence that is being presented at the ICC Kenyan case attests to the fact witnesses were procured to go give false evidence. We have witnessed this through commissioners, some of whom we used to meet in hotels like Sirikwa. During

that time, we thought that they were doing a good job; it later on emerged that they were doing other things.

Hon. Speaker, as hon. Anami puts it, the issue of human rights concerns both children and adults. Human rights include the day today activities that affect our society. We want an organisation that does not work like an NGO. The KNCHR should work like any other commission. As much as it will get external funding, it should not be influenced in its operations. It will also get funding from the national Government, for which they should be held accountable.

In order to give other hon. Members an opportunity to contribute to this debate, I want to support the Report of the Committee.

Thank you.

Hon. Speaker: Yes, hon. Isaac Mwaura.

Hon. Mwaura: Thank you, hon. Speaker. I rise to grudgingly support this Report. I want to commend the KNCHR for the job that they have done over the years. I agree that the Commission has done a very good job. It is good to be active and to be activist in your approach when dealing with issues of human rights, because that is the only way in which you can change the status quo.

Hon. Speaker, Mr. Lempaa Vincent is very well known to me. He has been a student leader and activist. He has initiated very many changes. Even recently, he went to court on the issue of sunscreens. He was our lawyer. He is somebody whose name ranks very high on issues of defending the less fortunate. Therefore, despite the fact that it is technically not possible to have him as a commissioner, I highly recommend him because he is a person who is known to me personally. He is, in fact, my personal lawyer.

I also commend the other people who have been nominated for these positions. I have worked with Jedidah Waruhiu of the Legal Resources Foundation. I commend George Morara of the Kenya Human Rights Commission (KHRC) and Mr. Mbogori because they are people who have done a very good job. I am concerned with the fact that Henry Maina was left out; these are people who have a very good track records when it comes to issues of protection of human rights.

I am, however, concerned because the KNCHR has always had a person with disability as one of the commissioners. I remember the visually-impaired Lawrence Mute, Dr. Samuel Tororei and others, who actually did a very commendable job in terms of promoting the rights of persons with disabilities and the realisation of the United Nations Convention on the Rights of Persons with Disabilities in New York, which I was part of. Therefore, lack of a person with disability on the Commission is a blow.

Hon. Speaker, I also note that it is important to have the KNCHR, the Commission on Administrative Justice (CAJ) and National Gender and Equality Commission (NGEC) combined to become one strong human rights commission. We are losing a lot. We are splitting hairs about having these three commissions. I know that the KNCHR has suffered a lot because for almost two years, they have not been in operation. Therefore, this House should consider having only one strong human rights commission.

These commissions' work is actually to fight for human rights, governance and democracy. This should also permeate to political parties. They must be seen to be beyond reproach, like Caesar's wife. We do not want *karate* and things like those to make people lose confidence in the democracy that we fight for in this country.

Hon. Speaker, finally, I want to end my contribution by giving a personal commendation to Lupita Ny'ongo. In 2006, with Lupita Nyong'o, we made a movie about albinism. We petitioned Parliament to consider issues of albinism. In that movie, I act as an aspiring politician and today I am a Member of this House. So, I am very happy for my very close friend, Lupita Nyong'o, for making it to the Oscars.

With those remarks, I grudgingly support.

Hon. Speaker: What is your point of order, hon. Nyokabi?

Hon. (Ms.) Kanyua: Hon. Speaker, I rise under Standing Order No.95 (2); given the mood of the House, the importance of this Commission and the agreement, we should really close this debate. Therefore, I move that you proceed to put the Question.

An hon. Member: Put the Question! Put the Question!

Hon. Speaker: No, there is the Mover, who has to reply.

(Loud consultations)

Hon. Members, does it appear like there is agreement that we call upon the Mover to reply?

Hon. Members: Yes!

Hon. Speaker: Hon. Chepkong'a!

Hon. Chepkong'a: Thank you, hon. Speaker. On behalf of the Justice and Legal Affairs Committee, I would like to thank all the hon. Members who stood up and supported as well as those who have given very wise comments with respect to the issues that touch their hearts as regards their constituencies. I notice that hon. Ghati may have been unhappy that a person from her constituency was not recognised, but I hope that in the next appointments, she will get one. We will stand with her.

Therefore, I would like to thank all the hon. Members who have contributed to this debate.

Thank you very much.

Hon. Speaker: Hon. Members, just as we did with the previous Order, we will deal with three Questions. Once we resolve one Question, there will be no going back to it. So, pay attention.

(Question put and agreed to)

(Question put and agreed to)

(Question put and agreed to)

Hon. Members, I told you that once one Question was put and carried, there was no repeating. There is no going back to it. So, we go to the next Order.

BILL

Second Reading

THE COUNTY GOVERNMENTS (AMENDMENT) BILL

Hon. Chepkong'a: Hon. Speaker, the County Governments (Amendment) No.4 Bill, 2013, which is a Senate Bill already approved by the Senate is coming up for Second Reading. The Committee on Justice and Legal Affairs has had opportunity to go through the Bill. We have made comments and our report has already been tabled in this House. This amendment Bill is coming for the Second Reading today.

The principal object of this Bill is to amend the County Governments Act, No.17 of 2012, so as to insert in the Act a new section providing for the establishment of county development boards in each county. The main function of the proposed boards shall be to provide a forum for consultation between the national Government and the county governments at the county level. The boards also shall be responsible for the co-ordination and harmonization of the county development plans and projects. The boards will also be empowered to consider and adopt the county integrated development plans, and the county annual budgets before they are tabled in the county assemblies for approval.

This Bill has been brought pursuant to its approval by the Senate; it was passed by the Senate on Thursday, 28th November, 2013. We have the endorsement from the Speaker of the Senate. This is a Bill which touches the counties. It has been originated pursuant to the relevant Articles of the Constitution. In particular, I would like to mention that the Senate as the representatives of the counties, in which they serve and protect the interests of the counties and their governments, has, in its wisdom, decided that it is important that various levels, within the county governments, be created for purposes of harmonizing development in the counties.

Clause 91(c) establishes in every ward a County Ward Development Board to be chaired by the member of the county assembly of that ward. There will be a number of members who are enumerated in Clause 91(c). The next category is contained in Clause 91(b), which establishes the sub-county board at the constituency level to be chaired by the Member of Parliament in that particular constituency. It also has members from sub-county who constitute that particular Sub-County Development Board. At the apex of these development boards is the County Development Board, which consists of the Senator as the Chairperson, the women representative as the member representing the county as the automatic Vice-Chair and all the Members of the National Assembly in the county. It also includes nominated Members of Parliament in the county and also the Senators who are nominated in that particular county.

Hon. Speaker, it is a very short Bill. It seeks to harmonize the various activities, including activities that will be undertaken by the Constituencies Development Fund Committees (CDFCs). There has been an anomaly and all sorts of allegations that the Member of Parliament is charged with the responsibility of spending money of the CDF. In fact, the Member of Parliament is an ex-officio Member of the CDFC. So, the allegation by a number of people that the Member of Parliament spends money within the county is not true. There are a lot of anomalies and allegations that the Members of Parliament act in an executive manner.

This Bill is an opportunity for the Members of Parliament, nominated and elected, to participate in development in the counties. As you know, Article 95 of the Constitution

is very clear. The Members of Parliament are elected to represent the people. Secondly, they are supposed to deliberate on and resolve issues affecting the people as they are representatives of the people. So, when a board is created at the county level, it will be part of the mandate of the Member of Parliament of the constituency to deliberate and resolve the issues of their constituents.

So, there is nothing that is unconstitutional about this Bill. At the end of the day, it is the members of the county assembly who will be charged with the responsibility of approving budgets and all the plans. These boards will just merely recommend and harmonize development plans. It is, as it were, coached in terms of the defunct District Development Committees, which were a consultative forum for the Members of Parliament to sit with the administration and come up with implementable plans within the constituencies and districts. It is recommended to the central Government for purposes of being funded. So, these boards will just be sitting for purposes of considering plans that will have come from the Ward Development Boards, chaired by the MCA, plans that have been approved and recommended by the Sub-County Development Board chaired by the Member of Parliament. Those plans will be harmonized at the apex, where the chair will be the Senator.

With those few remarks, I would like to call upon the nominated Member of Parliament, Hon. Bishop Mutua to second the Bill.

Hon. (Bishop) Mutua: Thank you, hon. Speaker. I would like to thank the Chairman of the Justice and Legal Affairs Committee for giving me the opportunity to second this important Bill.

From the outset, this will be a great opportunity for us to harmonize the county development agenda. This particular Bill will enhance the objects of devolution as stipulated in Article 174 of our Constitution. There is some fear that this Bill is an effort to clip the wings of the governors. This can never be true. This is not going to clip wings; it is going to create a forum for inclusive participation. This will be what I would like to call “a community planning forum”, where everybody is going to have a chance to bring brilliant ideas to enhance the development agenda within the county.

ADJOURNMENT

Hon. Speaker: Hon. Members, it is time to interrupt the business of the House. The House will stand adjourned until tomorrow, Wednesday, 5th March, at 9.00 a.m.

Hon. Bishop Mutua, you have a balance of nine minutes for seconding the Bill.

The House rose at 6.30 p.m.