

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 1st October 2019

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

WITHDRAWAL OF THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES (CONTROL) (AMENDMENT) BILL

Hon. Speaker: Hon. Members, as you may recall, the Narcotic Drugs and Psychotropic Substances (Control) (Amendment) Bill (National Assembly Bill No.7 of 2019) was published vide *Kenya Gazette Supplement* No.14 of 1st March 2019. The Bill proposes to amend the Narcotic Drugs and Psychotropic Substances (Control) Act of 1994 to enhance the penalties of the offence of trafficking narcotic drugs, provide for definition of "a law enforcement officer" and prescribe offences for a law enforcement officer who aids or abets or is an accessory to any offence under the Act. The Bill was read the First Time on 3rd April, 2019 and committed to the Departmental Committee on Administration and National Security for consideration.

Hon. Members, I wish to inform the House that I have received a letter from the Sponsor of the Bill, the Member for Nyali Constituency, Hon. Mohamed Ali Mohamed, MP, requesting to withdraw the Bill to allow its republication following the incorporation of additional input from stakeholders.

Hon. Members, Standing Order No.140(1) provides as follows:

“Either before the commencement of business or on the Order of the Day for any stage of the Bill being read, the Member in charge of a Bill may, without notice, claim to withdraw a Bill.”

In this regard and pursuant to the provisions of Standing Order 140(2), I direct that the Bill be withdrawn. Nevertheless, the Sponsor is at liberty to re-introduce the Bill in accordance with the provisions of Standing Order No.114.

I thank you.

(Bill withdrawn)

(Several Members walked in)

Hon. Speaker: It would be good if Members could take their seats.

PETITIONS**REDUCTION OF THE PERIOD OF CONSIDERATION FOR
PETITIONS FOR ADMISSION TO THE ROLL OF ADVOCATES**

Hon. Members, Standing Order No.225(2)(b) requires the Speaker to report to the House any Petition other than those presented by a Member. I, therefore, wish to report to the House that my Office has received a Petition submitted by one Mr. Brian Onyango Moses and one Mr. Boru Gollo Jattani. The Petitioners wish to propose amendments to Section 15 of the Advocates Act (Cap 16) regarding the period of consideration for petitions for admission to the Roll of Advocates.

Hon. Members, the Petitioners aver that the period of ninety (90) days prescribed in Section 15 of the Advocates Act (Cap 16) within which a petition for admission to the Roll of Advocates may be heard is excessive and unnecessarily lengthy. They, therefore, propose a reduction of the period to thirty (30) days.

Further, Hon. Members, the Petitioners observe that within the current framework, petitions for admission to the Roll of Advocates can only be heard by the Chief Justice. The Petitioners, therefore, propose that the law be amended to provide for the Deputy Chief Justice or the senior-most judge of the Supreme Court of Kenya to hear such petitions in the absence of the Chief Justice. The Petitioners aver that the issues in respect of which the Petition is made are not pending before any court of law or other constitutional or legal body.

The Petitioners pray that the National Assembly amends the Advocates Act (Cap 16) to, among other things, reduce the period of consideration for petitions for admission to the Roll of Advocates. Pursuant to the provisions of Standing Order No.227, this Petition stands committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee is urged to exhaustively consider the Petition and report its findings to the Petitioners and the House as required under Standing Order No.227(2).

I thank you.

Hon. Speaker: Hon. David Ochieng', the Member for Ugenya, you also have a Petition.

**APPROVAL, APPLICATION AND USE OF NEW BUILD
LOW COST CONSTRUCTION TECHNOLOGY**

Hon. David Ochieng' (Ugenya, MDG): Thank you, Hon. Speaker. The Petition I wish to present this afternoon regards the approval, application and use of New Build's Low-cost Construction Technology.

I, the UNDERSIGNED, on behalf of Arch. John Dumas Gachara of ID No.2315712, of P.O. Box 16454-20100, Nakuru.

DRAW the attention of the House to the following:

THAT, Article 43 of the Constitution guarantees every person the right to the highest attainable standard of health, which includes the right to accessible and adequate housing.

THAT, provision of adequate, affordable and decent housing for low income households is in short supply in the country.

THAT, due to lack of quality shelter, a majority of people live in areas with no access to clean water and sanitation, unreliable and unhealthy energy sources, leading to increased exposure to diseases.

THAT, the cost of production is the biggest challenge affecting the supply of housing and that the current housing deficit stands at 2 million houses with nearly 61% of urban households living in slums.

THAT, this deficit continues to rise due to fundamental constraints on both the demand and supply side and is exacerbated by an urbanisation rate of 4.2%, which is equivalent to 0.5 million new city dwellers every year.

THAT, the principle of progressive realisation of socio-economic rights under the Constitution requires the Government to take deliberate, concrete and targeted steps towards the achievement of those rights.

THAT, to realise affordable housing, the Government of Kenya has set housing as one of the four core agendas it intends to address, with a projection of 500,000 new housing units every year.

THAT, New Build Construction Technology is a Kenyan construction invention developed by the Petitioner and patented under African Regional Intellectual Property Organisation on 9th August 2007 under Certificate of Grant of Patent No.AP 1765 awarded to New Build Ltd.

THAT, the technology reduces the cost of production of houses by between 30 to 40% by employing the use of stones in the construction of the foundation, the floor slab and ring beams instead of the traditional cement, thereby reducing the cost of the foundation footing by 53.08%, the cost of the floor slab by 69.19% and the ring beams by 83.04%.

THAT, the technology is applicable whether the underlying base is soil or rock as it relieves considerable amount of pressure on the base and remains stable under varying weather conditions.

THAT, the application of the technology to only 25% of the Government's target of 150,000 housing units in urban areas and to 60% of the 300,000 housing units in rural areas (estimated under Sessional Paper No.3) would save the country about Kshs54.3 billion per annum.

THAT, the technology has been presented to the relevant authorities in the country, including the office of the President, the Ministry of Lands, Housing and Urban Development, the National Construction Authority and has not had any negative impacts on the critical economic activities.

THAT, the technology has been approved by the Ministry and has been uploaded on the Ministry's website and that training sessions on the application of the technology has been carried out to various industry players under the auspices of the National Construction Authority.

THAT, the matters raised in this Petition are not pending before any court of law, constitutional or legal body.

THEREFORE, your humble petitioner prays that the National Assembly, through the Departmental Committee on Transport, Public Works and Housing, considers the issues raised in this Petition on New Build Construction Technology with a view of making recommendations to the relevant Government agencies on the use of the said technology.

And your PETITIONER will ever pray.

Thank you.

Hon. Speaker: Hon. Members, there is a technical hitch which makes it impossible for me to see whether there is anybody who desires to make any comments on these petitions. My assumption is that there is none. I am not able to see anybody who desires to make any comments. The Petition is committed to the Departmental Committee on Transport, Public Works and Housing for consideration in the usual way.

Next Order!

PAPERS LAID

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Speaker. On behalf of the Leader of the Majority Party, I beg to lay the following papers on the Table of the House:

- (i) Legal Notice No.144 of 2019 relating to the small claims code of conduct for adjudication, adjudicators and explanatory memorandum from the Judiciary.
- (ii) Legal Notice No.145 of 2019 relating to the small claims court rules and explanatory memorandum from the Judiciary.
- (iii) Legal Notice No.155 of 2019 relating to the Public Finance Management National Government Amendment Regulation from the national Treasury.
- (iv) Legal Notice No.156 of 2019 relating to the Physical and Land Use Planning, classification of strategic national or inter-county projects regulations and explanatory memorandum from the Ministry of Land and Physical Planning.
- (v) Report to Parliament on all new loans contracted by the national Government from 1st May 2019 to 31st August 2019 from the National Treasury.
- (vi) The Report of the Auditor-General on the financial settlements in respect of the following institutions for the year ended 30th June 2018, and the certificates there in:
 - a) Postal Corporation of Kenya.
 - b) National Youth Council, and
 - c) National Drought Management Authority.

Thank you.

Hon. Speaker: Very well. First Legal Notice No.144 of 2019 relating to the small claims code of conduct is referred to the Committee on Delegated Legislation as well as the Legal Notice No.145 of 2019, Legal Notice No.155 of 2019 and Legal Notice No.156 of 2019.

The Report to Parliament on all new loans contracted by the national Government is referred to the Budget and Appropriations Committee.

(Loud consultations)

Order Members! There appears to be a lot of excitement this afternoon. It looks like the Order Paper is exciting.

(Laughter)

Anyhow, we should still be able to conduct business even with the excitement.

Hon. Members, let me recognise the presence of students from Lelmokwo Boys High School from Chesumei Constituency, Nandi County who are in the Public Gallery. They are welcome to observe the proceedings in the House.

Next Order!

QUESTION BY PRIVATE NOTICE

Hon. Speaker: Hon. Members, we have one Question by Private Notice from Hon. Washiali.

Question No.35/2019

CIRCUMSTANCES UNDER WHICH MUMIAS SUGAR COMPANY WAS PLACED UNDER RECEIVERSHIP

Hon. Benjamin Washiali (Mumias East, JP): Thank you, Hon. Speaker. Pursuant to Standing Order No.42A (5), I rise to ask Question No.35/2019 to the Cabinet Secretary for Agriculture, Livestock and Fisheries:

(i) Could the Cabinet Secretary explain the circumstances under which Mumias Sugar Company was placed under receivership by the Kenya Commercial Bank; state the long-term plans the Government has regarding cane farming in western region; and, shed light on the fate of Mumias Sugar Company suppliers who are still owed millions of shillings?

(ii) Within which timelines shall the Ministry in conjunction with the Kiunjuri/Oparanyaled Taskforce complete its report on the sugar industry and present it to H.E. the President for action?

(iii) What is the fate of the Mumias Sugar nucleus land which was leased by the Government from local residents for 33 years in 1974, and will the land revert to the community under the new circumstances?

Loud consultations

Hon. Speaker: Hon. Members, the Standing Orders are to enable the House to conduct business in an orderly way. When the consultations are too loud, some of you claim that you cannot hear what another Member is saying. This is the case and yet you are the ones who are consulting loudly. I urge that the consultations be in lower tones. Otherwise, you will be the authors of your own misfortune. On one hand you want to consult loudly and on the other you want to hear what the Member on the Floor is saying.

In particular, the Members to the right of the Speaker, please, your consultations are too loud and you have become very nomadic. Everywhere there is a Member moving to some place. We have just walked into the Chamber and you are not able to sit for even 10 minutes. The Member for Soy, Hon. Caleb Kositany, if you want to speak to that gentleman, take a seat next to him. That way, he does not have to shout to you. When you are standing, he is shouting very loudly.

The Question by Hon. Washiali is referred to the Departmental Committee on Agriculture and Livestock. That committee should note that this is a Question by Private Notice.

ORDINARY QUESTIONS

Hon. Speaker: The next Question is by the Member for Kisii County, Hon. Janet Ong'era. The Question is deferred because the Member informed the Clerk of her absence.

Question No. 422/2019

INTERDICTION OF HEAD TEACHERS IN KISII COUNTY

(Question deferred)

Hon. Speaker: Next Question is by the Member for Lurambi, Hon. Bishop Khamala Titus.

Question No.426/2019

CONGESTION AT THE KAKAMEGA LANDS REGISTRY

Hon. Titus Khamala (Lurambi, ANC): Hon. Speaker, my question is this:

(i) Could the Cabinet Secretary consider increasing the number of staff at Kakamega Lands Office Registry which is over-stretched as it serves all the 12 sub-counties in Kakamega County?

(ii) Would the Cabinet Secretary consider fast-tracking issuance of land title deeds at the Kakamega Lands Office?

Thank you, Hon. Speaker.

Hon. Speaker: Question referred to the Departmental Committee on Lands. Next Question is by the Member for Mavoko, Hon. Makau King'ola.

Question No.427/2019

FAILURE TO IMPLEMENT TAX GRACE PERIOD FOR TANNERIES

Hon. Patrick Makau (Mavoko, WDM-K): Thank you, Hon. Speaker. I stand guided in the first part of the Question and I withdraw it. The second part is directed to the CS for Industry, Trade and Cooperatives:

(i) Could the Cabinet Secretary explain the failure to implement the 3-year grace period that had been granted to tanneries before introduction of any tax on leather as agreed during an EAC Leather Forum meeting attended by the representatives of Uganda, Rwanda, Burundi, Tanzania, South Sudan and Kenya in Tanzania in May, 2019?

It was his prerogative to advise the Government accordingly, but...

Hon. Speaker: You are only asking a question, not making a statement.

Hon. Patrick Makau (Mavoko, WDM-K): Thank you.

Hon. Speaker: The Question will be responded to before the Departmental Committee on Trade, Industry and Co-operatives. Last Question is by the Member for Kamukunji, Hon. Hassan.

Question No.428/2019

STATUS ON CONSTRUCTION OF AFFORDABLE HOUSES IN KAMUKUNJI

Hon. Yusuf Hassan (Kamukunji, JP): Thank you, Hon. Speaker. I rise to ask Question No.428 of 2019, directed to the CS for Transport, Infrastructure, Housing and Urban Development. The national Government had committed to build 4,400 houses.

Loud consultations

Hon. Speaker: Order, Members! Order, Members! We are not able to transact business. I cannot hear what the Member is asking. You might not wish to hear but, certainly, I need to hear.

Hon. Yusuf Hassan (Kamukunji, JP): The national Government had committed to build 4,400 houses as part of President Uhuru Kenyatta's Big Four Agenda and the Social Housing Programme in my constituency.

What is the status on construction, including carrying out of public participation, surveys and community census, of the 4,400 affordable houses in Kiambiu Informal Settlement in Kamukunji Constituency as identified by the Government's Social Housing Programme in 2018?

Hon. Speaker: Hon. Hassan, you made some statements earlier which are not in the Question. I am looking at the Question and I do not seem to see some of those things you are stating. Anyhow, the Question will be responded to before the Departmental Committee on Transport, Public Works and Housing.

STATEMENTS

STATUS OF SGR CARGO TRANSPORTATION ORDER

Hon. Moses Kuria (Gatundu South, JP): Thank you, Hon. Speaker. Pursuant to the provisions of Standing Order No.43, Hon. Abdullswamad Sheriff Nassir sought the leave of the House during the afternoon Session of the National Assembly on Thursday, 25th July 2019 to make a statement on the containerised cargo which is transported from Mombasa to Nairobi through the SGR. The House resolved to invite the CS for Transport, Infrastructure, Housing, Urban Development and Public Works for a meeting with the Departmental Committee on Transport, Public Works and Housing to respond to the matters raised in the statement.

The meeting, which was open to members of the public, was held on Thursday, 8th August 2019 in Committee Room No.5, Continental House, at 10.00 a.m. The CS, Mr. James Macharia, informed the meeting that the directive, which had been signed by the Commissioner-General of KRA and the Director-General of KPA, had been postponed and the same made public through media houses. On 24th September 2019, the Speaker directed that the Committee meet and reports to the House the factual position on whether the notice had been suspended.

In its meeting held today, 1st October 2019, members of the Committee went through a report submitted by the Ministry on the status of the joint public notice issued by KRA and KPA that was submitted to the Committee on Friday, 27th September 2019 and noted that the second public notice had been published in the local dailies on 6th August 2019, indicating the postponement of the earlier notice pending further stakeholder engagement. Following its earlier directive to have the Ministry prepare a structured consultation forum targeting the leadership of the coastal region and all stakeholders, the Committee recommended that the Ministry reports back its findings. The report will inform the Committee's programme in carrying out extensive

public participation and stakeholder engagements between 17th and 21st October 2019 on the matter. The Committee reiterated its position that the notice which was published on 6th August 2019 remains suspended and it has been confirmed by the Ministry as this is a matter of national interest.

Thank you, Hon. Speaker.

Hon. Speaker: You see, this is the problem! Hon. Memusi, I know why you are not regularly in the Chamber but, please... There is a Hon. Member who requested the Statement and so it is immaterial how much you shout. That Member will get the first chance. This is the way it is done. Hon. Memusi, you cannot purport to be sitting there and addressing me.

Let us have Hon. Abdullswamad.

Hon. Abdullswamad Nassir (Mvita, ODM): Thank you, Hon. Speaker. I thank the Vice-Chair of the Departmental Committee on Transport Public Works and Housing Hon. Moses Kuria. Much as there was a lot of deliberation going on in the House, the genesis of the matter remains. As it stands with the Departmental Committee on Transport, Public Works and Housing, that notice remains suspended until all stakeholders have been engaged on how we are going to go through with this.

The Vice-Chair has also indicated that he is going to call the coastal leadership. I want to just affirm that, that is not just something that is affecting the coastal communities. It is affecting every single Kenyan and so, it should be open participation for every single part of this country.

Hon. Speaker, I want you to provide guidance. That is because it is public knowledge that, that particular notice has been suspended legally as it stands in this very House. However, it is public knowledge that no one is allowed to continue the way they have always been using their trucks and they are being forced to use the Standard Gauge Railway (SGR). So, Hon. Speaker, I would like you to give a ruling on this matter with your discretion. In the event that, that is the case on the ground, and we can prove it, what action should be taken on the person who has misled this very House?

Hon. Speaker: Unfortunately, the Hon. Speaker is not able to give a ruling on a matter that is not before him, I need to have the facts. The Committee says that the directive or legal notice is suspended.

So, there is no ruling I can give. If I heard the Hon. Moses Kuria correctly, he did indicate that the time sought was to allow for public participation. Among the stakeholders he indicated were transporters and others from other parts of the country. Those who will give their views are not limited to coastal communities. It is public participation.

Anybody, even from Lokichogio, will be at liberty to present their views on that matter but, as we hear now, the said directive has been suspended. We can only hope that, if it is not being obeyed, somebody will be in breach of the law. Suppose somebody was to transport their cargo otherwise other than through the SGR, would they be apprehended? If they will be apprehended, where will they be taken to if what purports to be legislation has been suspended?

So, let us just leave the matter there because there is no need for us debating it further. It was a statement.

(Loud consultations)

There is nothing more useful to add. A statement has been read. You want to make it a Mombasa parliamentary caucus. It is not! We are in the National Assembly. Let us have Hon. Arbelle, the Member for Laisamis.

REQUEST FOR STATEMENTS

Hon. Marselino Arbelle (Laisamis, JP); Thank you, Hon. Speaker. I rise to...

(Loud consultations)

Hon. Speaker: Order, Hon. Members!

Hon. Marselino Arbelle (Laisamis, JP): Thank you, Hon. Speaker. I rise to make a statement on life threatening and insecurity in Laisamis Constituency

Hon. Speaker: To make a statement or to request?

INSECURITY IN LAISAMIS CONSTITUENCY

Hon. Marselino Arbelle (Laisamis, JP): Hon. Speaker, to request. Pursuant to Standing Order 44(2)(c), I wish to request for a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding increased cases of insecurity in Laisamis Sub-County.

Hon. Speaker, in the last two months, groups of armed militia have been terrorising residents in most parts of the country, with most recent attacks at a local village of Arabal in Laisamis Sub-County, where a man and his two children were killed and his wife severely injured on 18th September, 2019. A similar attack was witnessed in Baragoi, Samburu North Sub-County where four herders and a primary school teacher were shot dead on 25th September, 2019. This spate of heinous killings intensified immediately the Government disarmed all local Kenya Police Reservists in the area.

While I appreciate the Government's intention on the disarmament exercise, it ought to have taken into account the communities living in the porous borders who are vulnerable to frequent raids and attacks.

Hon. Speaker, numerous efforts to resolve this matter have been futile as exemplified by the fact that the Government has deployed police officers in the area, but the attacks have persisted and intensified. It is against this background that I seek a statement from the Chairperson of the Departmental Committee on Administration and National Security on the following:

- (i) What is the Government's commitment to protect the lives and property of the residents of Arabal in Laisamis Constituency?
- (ii) What assurances are there and how soon would the stolen livestock be recovered?
- (iii) What mechanisms are in place to ensure urgent action to respond and end this menace, including a possibility of urgently re-arming the National Police Reservists in the area?

I thank you, Hon. Speaker.

Hon. Speaker: Chairperson, Departmental Committee on Administration and National Security, Hon. Koinange or the Vice-Chairman, Hon. Waluke. Both the Chair and the Vice-Chair being absent, it can only fall on the shoulders of the Hon. Leader of the Majority Party to communicate to the Committee that there is that request for a statement.

The next request is by Hon. Aisha Jumwa.

LACK OF RESPONSE TO TRAGEDY AT LIKONI FERRY CROSSING

Hon. (Ms.) Aisha Jumwa (Malindi, ODM): Thank you, Hon. Speaker. Pursuant to the provisions of Standing Order 43(1), I wish to request for a Statement regarding the Likoni Ferry tragedy that occurred on 29th September, 2019.

Hon. Speaker, it is very disturbing that a vehicle rolled off the ferry and 72 hours later, neither its occupants nor the vehicle have been recovered. Sadly, there appears to be very slow action by the Kenya Ferry Services, the Kenya Navy, the Kenya Coast Guard Services, Kenya Ports Authority and other related Government agencies in the search and rescue efforts.

There is need to expedite response and rescue activities, including streamlining the general management of disasters. I further wish to express my displeasure at the slow, uncoordinated actions undertaken by the concerned government agencies and wish to compel them to fast-track their efforts in a bid to improve the safety of all ferry passengers in our water channels.

Thank you, Hon. Speaker.

Hon. Speaker: This is a request for Zero Hour. As you know, the Standing Orders provide that the Speaker may approve a request such as this one after 6.30 p.m. But, I will put a rider that the request by Hon. Aisha Jumwa will be allowed subject to the House concluding the business appearing as Order No.11 on the Order Paper. That is before or after 6.30 p.m. If the House will have concluded considering the business appearing as Order No.11 at 6.30 p.m. then it will adjourn to discuss that matter of the tragedy that happened at the Likoni Ferry.

Hon. Jumwa, the request is allowed and so, you begin canvassing with your colleagues to conclude the business appearing as Order No.11 so that by 6.30 p.m., you will be able to delve into this. There is no debate or discussion. If it is about this, then you will see the door. Hon. Kanchory.

Hon. Memusi ole Kanchory (Kajiado Central, ODM): Thank you, Hon. Speaker. I do not know if I am the only one facing this challenge because these gadgets do not seem to work. I think the consultations are too loud because Members...

Hon. Speaker: Please, Hon. Kanchory, approach the Clerk. As you know, I have never taken a course in maintenance of Information and Communication Technology (ICT) gadgets. Approach the Clerk and make that complaint so they can deal with it. Those are administrative issues. Hon. Simba Arati.

Hon. Simba Arati (Dagoretti North, ODM): Thank you, Hon. Speaker. Two months ago, I asked a Question on the Floor of the House.

Hon. Speaker: What!

Hon. Simba Arati (Dagoretti North, ODM): Hon. Speaker, I asked a Question on the Floor of the House regarding the contaminated sugar which was confiscated and I have not received an answer.

Hon. Speaker: Contaminated?

Hon. Simba Arati (Dagoretti North, ODM): The Committee has never called the CS to explain if the confiscated consignment is in use or was released to the market. So, I do not know whether it is collusion between...

Hon. Speaker: Can we get a response from the Chair, Departmental Committee on Trade, Industry and Co-operatives, Hon. Kanini Kega.

Hon. Kanini Kega (Kieni, JP): Thank you, Hon. Speaker. I want to confirm to the House that this matter is alive with us. In fact, today we met the multi-agency team. Over the weekend, we will be going to Mombasa to ascertain what they said. They tabled a Report on all the seized

sugar location. We will go there to verify physically whether that sugar is there or not. So, the matter is very much alive with us. I will brief my good friend Simba Arati on the status and, if possible, he can also accompany us.

Hon. Speaker: Absolutely! Indeed, you need to invite Hon. Simba Arati. He might know where it is and that will make your work much easier. Hon. Simba Arati, accompany the Committee and if you know where it is hidden, please, take them there so that they can report to the House and the country. So, feel free to accompany the Committee.

Next Order!

MOTION

NOTING OF REVISED SESSIONAL PAPER NO.1 OF 2019 ON THE POLICY FRAMEWORK FOR REFORMING EDUCATION AND TRAINING FOR SUSTAINABLE DEVELOPMENT IN KENYA

THAT, this House notes the Report of the Departmental Committee on Education and Research on its consideration of the Revised Sessional Paper No.1 of 2019 on the Policy Framework for Reforming Education and Training for Sustainable Development in Kenya, laid on the Table of the House on Tuesday, September 17, 2019, and adopts the Revised Sessional Paper No. 1 of 2019 on the Policy Framework for Reforming Education and Training for Sustainable Development in Kenya.

Hon. Speaker: Order, Members! Those of you who have problems sitting! I can see several of you appear not at ease sitting. I know Hon. John Mbadi has been away for a week and so, he has not seen his troops. Order, Members! I think we better transact the business of the House.

Debate on this Motion was concluded last week and what remained was for the Question to be put, which I hereby do.

(Question put and agreed to)

BILLS

First Readings

THE CONSTITUTION OF KENYA (AMENDMENT) (NO.4) BILL

THE PUBLIC FUNDRAISING APPEALS BILL

(Orders for First Readings read - Read the First Time and ordered to be referred to the relevant Departmental Committees)

Hon. Speaker: Hon. Members, just for the avoidance of doubt, I have determined that these two Bills originating from the Constitutional Implementation Oversight Committee will go back to that Committee; which then will be able to do public participation hearings and invite all stakeholders that may be interested in giving views. I have done that deliberately because this

Committee is like any other. I have not referred those two Bills to the Justice and Legal Affairs Committee.

Hon. Members, I want us to appreciate that all the committees are equal. We cannot just say that a Bill emanating from this Committee should go to this other one. It is just membership. So, anybody who has views to present before this Committee should feel free to do so or even appear when the Committee is taking views from others. The views taken and the report that will come out on those two Bills will be tabled in this House. Therefore, we want every Committee to be busy and to work. So, those two Bills are referred to that Committee.

Next Order!

SPECIAL MOTION

APPROVAL OF NOMINEES FOR APPOINTMENT AS CHAIRPERSON AND MEMBERS OF THE NATIONAL LAND COMMISSION

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Hon. Speaker, I beg to move the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Lands in its Report on the Vetting of Nominees for Appointment to the positions of Chairperson and Members of the National Land Commission, laid on the Table of the House on Thursday, 26th September, 2019, and pursuant to the provisions of Article 250(2) of the Constitution as read together with Section 12 and paragraph 6 of the First Schedule of the National Land Commission Act, 2012, this House:

(a) Approves the appointment of the following persons to the National Land Commission:

- | | | |
|-----------------------------------|---|--------------|
| (i) Mr. Gershom Otachi Bw'Omanwa | – | Chairperson. |
| (ii) Hon. Esther Murugi Mathenge | – | Member. |
| (iii) Prof. James K. Tuitoek, PhD | – | Member. |
| (iv) Ms. Gertrude Nduku Nguku | – | Member. |
| (v) Mr. Reginald Okumu | – | Member. |
| (vi) Hon. Samwel Kazungu Kambi | – | Member. |
| (vii) Ms. Hubbie Hussein Al-Haji | – | Member, and |
| (viii) Mr. Alister Murimi Mutugi | – | Member. |

(b) and rejects the nomination of Hon. Tiyah Galgalo Ali as a Member.

(Loud consultations)

Hon. Speaker: Order, Hon. Members! Allow the Mover to move. You will have an opportunity to make a rebuttal. Proceed.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Hon. Speaker, as you may be aware, just to give a background, on 10th September 2019, you read the Message from His Excellency the President to the House regarding the nomination of the Chairperson and members of the NLC and referred the names of the nominees to the Departmental Committee on Lands for vetting.

Hon. Speaker, in compliance with Section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011, the Committee, through the Clerk of the National Assembly, placed an advertisement in the print media on Thursday, 12th September 2019,

inviting the public to submit memoranda by way of written statements on oath, that is, the affidavit on the suitability of the nominees in conformity with Section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011. By close of the submission deadline, the Committee had received 15 submissions, but only three were in conformity with Section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011.

Hon. Speaker, further, in fulfilment of the provisions of Article 118 of the Constitution, Section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011 and Standing Order 45(3), the Clerk of the National Assembly on Thursday, 12th September 2019, placed an advertisement in the print media inviting the public to the Departmental Committee on Lands approval hearings of the nominees on Thursday, 19th and Friday 20th September 2019 at 9.30 a.m.

The nominees appeared before the Committee on Thursday, 19th and Friday, 20th September 2019 for approval hearings in accordance with the provisions of the Constitution, the Public Appointments (Parliamentary Approval) Act, 2011 and the National Assembly Standing Orders on their suitability for appointment to the positions of Chairperson and members of the National Land Commission. The Committee also held meetings with Mr. James Mburu, Commissioner-General of the Kenya Revenue Authority (KRA) and Ms. Lilian Kosgey, the Acting Corporation Secretary of the Agricultural Development Corporation (ADC) on Friday 20th September 2019, to seek clarification on the suitability of three nominees with regard to tax compliance and integrity issues.

In conducting the approval hearings, the Committee was guided by the following issues. I will try to focus on the issues and the other Members of the Departmental Committee on Lands will focus on the individual members. We focused on the procedure used to arrive at the nominee; the constitutional or statutory requirements relating to the office in question; and the suitability of the nominee for the appointment proposed having regard to whether the nominees' abilities, experience and qualities meet the needs of the body to which they are being nominated to.

The Committee analysed each of the issues for consideration as envisaged under the Public Appointments (Parliamentary Approval) Act. The first issue is the procedure used in arriving at the nominees. The Committee considered several issues that had been raised by the public challenging the procedure used. Just to highlight some of the issues raised in respect to the procedure, one of the issues raised was to the effect that the Selection Panel that shortlisted the nominees was not properly constituted as it did not comprise of the two nominees from the Non-Governmental Organisations Council as required by law.

To this end, the Committee observed that pursuant to paragraph 1(d) of the First Schedule to the National Land Commission Act, it is the Non-Governmental Organisations Council that is required by law to nominate the two persons of opposite gender under paragraph 1(d).

The Committee also observed that vide a letter dated 18th October, 2018, the Head of the Public Service, Mr. Joseph Kinyua, wrote to the Chairperson of the Non-Governmental Organisation Council, Mr. Gichira Kibara, and requested the Council to nominate two persons as required by the law for appointment by the President.

On 30th October 2018, Ms. Joyce Yiale, on behalf of the Chairman of the Non-Governmental Organisation Co-ordination Board, replied to the Head of the Public Service and stated that they were unable to nominate the two persons required under paragraph 1(d) due to the fact that the Non-Governmental Organisation Council was still under the leadership of different factions because they had so many issues which had culminated into litigation.

In this regard, the Committee observed that the absence of the persons under paragraph 1 (d) of the First Schedule of the National Land Commission (NLC) Act was occasioned by the inability of the Council to nominate its nominees as required by the law. In light of the foregoing, the Committee observed that the Selection Panel was constituted in accordance with the law.

On the allegation that the procedure by the Selection Panel was opaque, the Committee observed that the interviews for the shortlisting of the nominees were conducted at the Public Service Commission. Members of the public were also invited to avail in writing any credible information concerning the nominees to the Chairperson of the Selection Panel as evidenced in the information contained in the shortlist and interview schedule published in the Public Service Commission website. In this regard, the Committee, therefore, observed that the procedure was not opaque as it had been alleged.

The other issue raised with respect to procedure was whether Hon. Esther Murugi and Hon. Tiyah Galgalo Ali had been interviewed for the positions of member of the National Land Commission, noting that the two had been shortlisted in the category of the Chairperson. This necessitated the Committee to proceed to consider the report of the Selection Panel where upon examination, it observed that the panel had advised the President that a total of nine candidates, among them Hon. Esther Murugi and Hon. Tiyah Galgalo Ali, had applied for the positions of Chairperson and Member and hence recommended that they be considered for nomination to both positions.

The Committee was keen on due diligence and, hence, we went further to verify the Long List of the Selection Panel culminating from closure of the application period and observed that Hon. Esther Murugi and Hon. Tiya Galgalo Ali applied for both positions as evidenced by the Long List No.41 and 115 for both candidates respectively for the position of Chairperson and the Long List No.372 and 897 for both candidates respectively for the position of member.

The Committee also received an application letter dated 21st June, 2019 addressed to the Selection Panel by Hon. Esther Murugi applying for both the positions of Chairperson and member of the National Land Commission. The Committee also received two applications letters dated 1st July 2019 respectively, addressed to the Selection Panel by Hon. Tiyah Galgalo Ali, one applying for the position of Chairperson and the other for position of member of the National Land Commission.

The Committee further examined Hon. Murugi during the approval hearing. She submitted that although she had been shortlisted for the position of Chairperson, she was also interviewed for the position of member.

The Committee proceeded to further examine Hon. Tiyah Galgalo Ali during the approval hearing. She submitted that although she had been shortlisted for the position of Chairperson, on the day she appeared before the Panel, she was also interviewed...

(Loud consultations)

Hon. Speaker: Order, Members! There must be order, Hon. Members! Hon. Junet and team! Hon. Member for Kigumo! Order, Members!

(Hon. John Waluke stood in the gangway)

Hon. Waluke, you were not in the House when a Statement was being sought from your Committee and now you have come in, but you cannot even sit!

(Hon. David ole Sankok stood in the gangway)

Hon. Sankok, take your seat. Hon. Members, we cannot transact business this way. It cannot be assumed that when a Member is moving a Motion for adoption of a Report that nobody can follow. You may not want to follow it yourselves but I want to hear. I do not sit in the Committee. I want to hear what it is that the Committee has brought to the House. Those of you who may not be interested in hearing, please, just go to the lobby out there. There is a place where you can sit and shout, or go to Uhuru Park. Nobody will ask you. You might be required to produce a permit to allow you to go yelling around there if you want to yell. Please, we can consult but it is only fair that we hear what is being said. Anybody looking at the House and noticing that the Chair of the Departmental Committee on Lands is moving a Motion wonders whether what is being said really matters to you. Please, if you want to consult, nobody has refused you. But do so in low tones. If you are not able to do so, because some of you appear to be incapable of consulting in low tones, go out. We must be able to transact business in an orderly manner.

Proceed, Hon. Rachael.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Thank you, Hon. Speaker. I had gone up to paragraph 21.

The Committee proceeded to further examine the documents of Hon. Tiyah Galgalo Ali during the approval hearing. She submitted that although she had been shortlisted for the position of Chairperson, on the day she appeared before the Panel, she was interviewed for both the positions of Chairperson and member. This clears the issue of one having applied for Chairperson and not member for both Hon. Tiyah Galgalo and Hon. Murugi.

In answering the question, therefore, on the procedure used to arrive at the nominees, the Committee observed that having scrutinised the procedure laid out in the First Schedule of the National Land Commission Act, the Selection Panel followed all the procedures required in law to be undertaken in arriving at all the nine nominees to the National Land Commission.

The Committee then proceeded to consider the second question; which is whether the nominees meet the constitutional or statutory requirements relating to the office in question as required by the law.

Hon. Speaker, to this end, the Committee observed that based on the evidence submitted in terms of the original academics certificates and testimonials during the approval hearings by all the nominees, a scrutiny of each of the nominee's curriculum vitae and oral submissions, the clearance reports on ethics and integrity, tax compliance, criminal records and higher education loan repayments, the following nominees had met all the respective constitutional and statutory requirements for appointment to the National Land Commission (NLC). I would like to take note of the words "during the vetting" and "report writing":

- (1) Mr. Gershom Otachi Bw'Omanwa - Chairperson.
- (2) Hon. Esther Murugi Mathenge - Member.
- (3) Prof. James K. Tuitoek - Member.
- (4) Ms. Gertrude Nduku Nguku - Member.
- (5) Mr. Reginald Okumu - Member.
- (6) Hon. Samwel Kazungu Kambi - Member.

- (7) Ms. Hubbie Hussein Al-Haji - Member, and
(8) Mr. Alister Murimi Mutugi - Member.

Hon. Speaker, with respect to the tax compliance certificate which was submitted to the Committee by Hon Tiyah Galgalo Ali, Pin No. A001864763G, the Committee noted that the Kenya Revenue Authority (KRA) had submitted a further report, vide a letter Ref No. KRA/M&CF/SEEM19/11 dated 25th September 2019. The document is annexed in the Committee's Report. The letter stated that the tax compliance certificate which was issued to Hon. Tiyah Galgalo Ali on 23rd October 2018 was withdrawn for having been irregularly issued. KRA also indicated that it was pursuing an internal disciplinary action on the officer who issued the certificate with full knowledge that the returns for the year 2017 had not been filed.

I had requested the House to take note of the words "during the time of vetting" and "report writing time." It, therefore, follows that the tax compliance certificate having been withdrawn by KRA; the Committee observed that Hon. Tiyah Galgalo Ali had not submitted a valid tax compliance certificate for purposes of the vetting exercise. The Committee proceeded to consider the third issue which is the suitability of the nominees for the appointment proposed having regard to whether the nominees had the abilities, experience and qualities to meet the needs of the body to which they were being nominated.

If you go through the Report, you will see that the nominees have professional training, good background and experience both in the public and private sectors. We have captured this in the Report. I believe that the Members of the Committee and others who have shown interest in this Report can attest to this. I will not go through this at this time. In this regard, the Committee observed that based on the oral submissions of the nine nominees to the NLC during the approval hearings, the Committee confirmed that all the nine nominees possess abilities, experience and qualities necessary for which the nomination was made.

Finally, the Committee considered the personal integrity of the nominees and, in particular, in response to any matters that had been raised in the memorandum from the public. In respect to the memorandum which was submitted contesting the suitability of the nominee for the member of the NLC, Prof. James K. Tuitoek, the Committee observed that the documents submitted by the Agricultural Development Corporation (ADC) indicated that the beneficiary of ADC land in question was Mr. James C. Tuitoek and not Prof. James K. Tuitoek who had been nominated to be a member in the NLC.

Hon. Speaker, the Committee exercised due diligence and it observed that from the documents submitted by ADC containing the picture of the said Mr. James C. Tuitoek who was allocated the land by ADC; it did not match with the nominee in question. Further, from the document containing the identification number of Mr. James C. Tuitoek, the Committee observed that it was 2342499 while the one of the nominee, Prof. James Tuitoek was 0323892. With this, the Committee did due diligence, checked and scrutinised the memorandum that was presented with respect to Prof. James Tuitoek.

The Committee also observed that in respect of the affidavit contesting the suitability of Hon. Kambi Kazungu, the dispute among the nominee, the Development Bank of Kenya and Giriama Ranch owners relating to a bank facility, the following cases were still pending in various courts awaiting determination:

1. High Court Civil Case No.57/2018.
2. Civil Case No.304/2018, and
3. Civil Case No.155/2018.

The Committee stopped at that because those are matters that are in court. We did not want to judge before the cases were concluded.

Finally, the Committee also considered other issues arising from the approval hearings, one of them being the date of birth of Ms. Gertrude Nguku. The Committee observed that there were inconsistencies in the date of birth of Ms. Gertrude Nduku Nguku as indicated in her identification card as 1st January 1966 *vis-à-vis* the information contained in the duly filled questionnaire as on 11th July 1966. The nominee submitted her original identity card, birth certificate and passport. All of them were consistent that her date of birth is on 11th July 1966.

In conclusion, allow me to thank all the Members of the Departmental Committee on Lands and the secretariat for a job well done. This was not an easy task as it required digging deep not just on suitability, but also on the procedure as required by the provisions of Public Appointments (Parliamentary Approval) Act which is a task that Hon. Members effectively executed.

I now, therefore, beg to move that taking into consideration the findings of the Departmental Committee on Lands in its Report on the Vetting of Nominees for Appointment to the Positions of Chairperson and Members of the NLC laid on the table of the House on Thursday, 26th September 2019, and pursuant to Article 250(2) of the Constitution as read together with Section 12 of the NLC Act (No.5 of 2012), this House approves the nomination of the following persons to serve in the NLC:

- | | | |
|----------------------------------|---|--------------|
| (1) Mr. Gershom Otachi Bw'Omanwa | - | Chairperson. |
| (2) Hon. Esther Murugi Mathenge | - | Member. |
| (3) Prof. James K. Tuitoek | - | Member. |
| (4) Ms. Gertrude Nduku Nguku | - | Member. |
| (5) Mr. Reginald Okumu | - | Member. |
| (6) Hon. Samwel Kazungu Kambi | - | Member. |
| (7) Ms. Hubbie Hussein Al-Haji | - | Member, and |
| (8) Mr. Alister Murimi Mutugi | - | Member. |

As per our Report, we reject the nomination of Hon. Tiyah Galgalo Ali to serve as a member of the NLC. I would like to state that I have in my possession a document from KRA clearing Hon. Tiyah Galgalo. I beg to move the Motion and request Hon. Khatib Mwashetani to second.

(Loud consultations)

Hon. Speaker: Order, Members! That Member, who appears so agitated, what is wrong with you? You appear so agitated like you want to fight somebody. This is a Committee Report, just like any other. What is causing the excitement? I am sure none of you has followed what the Chair of the Committee has been saying.

Hon. Mwashetani, you have the Floor.

Hon. Khatib Mwashetani (Lungalunga, JP): Thank you, Hon. Speaker, for giving me this opportunity to second the Motion on the nominees of NLC.

Our duty, as a Committee, is provided in Standing Order No.216 (1) and (2). As a Committee, this was a new task because we were given a task of vetting. We had to look at what the Constitution, as read together with the National Land Commission Act, says. We had to go through each and every detail so that we come up with a report that would create, at least, an

understanding of how those nominees have performed in vetting. There was a cry in regard to the process of how the selection committee was constituted. The selection committee was constituted by the President. It was to be completed by having two members from the NGOs sector for it to conduct the selection of the nominees. We went through the law and the law was clear because there was communication between the Public Service Commission (PSC) and the NGOs sector, which was unable to present two members to sit in the selection committee. On that correspondence, it made the Committee complete and able to sit and select the members who were nominated.

After understanding that the process was complete, the Clerk of the National Assembly wrote letters and invited the nominees who were selected for the vetting. We had nine members. One of them was that of chairperson. All of them were vetted in terms of integrity and academic qualifications. The chair was supposed to have an experience of 15 years. In regard to the documents which were presented with a CV, he qualified in terms of experience. All other members were to have an experience of 10 years. All those members qualified. We went through their documents, including their CV, and found that some of the CVs had some issues. When we were vetting them, each member demonstrated how they managed to get their qualifications and how they would contribute in this particular Commission for the benefit of Kenyans.

It was a tiresome activity. I am sure that the reason there is a lot of anxiety in the House today is because of one Hon. Tiyah. Hon. Tiyah used to be a Member of Parliament. One, she is a lady. We are all Members of Parliament. I am sure that when you are caught by surprise at times, you might find yourself in a lockout. We should look at it in two ways. We expected to get a confirmation of tax compliance from the Kenya Revenue Authority (KRA) Commissioner-General. We called him and he told us categorically that they were invalidating the certificate which was issued to Hon. Tiyah. Hon. Tiyah was issued with an e-tax certificate when she did an application. It was forwarded to her via email. She printed and stayed with it for eight months. On the material day when she realised that the certificate was not valid, she was called by one Peninah who works for KRA and advised to apply for a new return.

In my understanding, submitting a nil return is not an offence because the purpose of us having an institution like KRA is to guide us properly in case one has faulted. In case you have remitted some incomplete tax returns, they should advise you immediately. Hon. Tiyah Galgalo was given that opportunity and I am sure that today; it is not water under the bridge because she had time. In the morning, we received a letter from KRA as well as a clearance certificate confirming that Hon. Tiya was tax compliant.

(Applause)

In this regard, I would like to honour our report that is recommending to this House to pass the members from the Chair to other Members. It is also our duty and the wisdom of this House to either reject or approve the nomination of Tiyah Galgalo.

With those remarks, I beg to second.

(Loud consultations)

Hon. Speaker: Hon. Members, I said I must hear what is being said. Hon. Mwashetani, I want to know whether you were seconding.

Hon. Khatib Mwashetani (Lungalunga, JP): Hon. Speaker, I said that it is the wisdom of this House to reject or accept the amendment which has been brought. As the Vice-Chair of the Committee, I second the Report that has been tabled.

(Loud consultations)

Hon. Speaker: Hon. Members, remember I indicated that you will be here until you conclude the business appearing as Order No.11. You know my capacity to sit here for even 12 hours.

(Question proposed)

(Loud consultations)

Hon. Members, I am merely proposing the Question. It looks like you falter even after doing three terms. Please allow me to complete proposing the Question, even if you want to do rehearsal about something.

(Question proposed)

Hon. Members, after that brief period of noise, otherwise known as cacophony, allow me to also inform the House that this is a unique Report. It has been moved and seconded. However, this Report has a majority and a minority. Therefore, so as to afford every side of the Report the opportunity to make their case, I now give this first chance to whoever is in the Minority Report. I am informed it is Hon. Owen Baya. I give him the opportunity to also present his Minority Report. Similarly, give him the chance to say what he has to say. We will debate in the normal manner.

Hon. Owen Baya (Kilifi North, ODM): Thank you very much Hon. Speaker for allowing us to table the Minority Report. In it we singled out one member who has been nominated, Hon. Kazungu Kambi. I would like to say this: The academic qualifications presented to the Committee by Hon. Kazungu Kambi are such that you cannot really vouch that he had an opportunity to obtain a degree from the university.

(Loud consultations)

Hon. Speaker: Hon. Members, why are you so agitated? Just relax. Hon. Owen Baya has to be heard and must be heard. He must be heard to move his Minority Report.

*(Hon. David ole Sankok shook hands
with Hon. (Ms.) Gladwell Cheruiyot)*

Two people are seated so close to each other. They are shaking hands in such a violent manner. Hon. Sankok and Hon. Cheruiyot, you are shaking hands in such a violent manner that I can hear the noise from here. Allow Hon. Baya to move his Minority Report.

Proceed.

Hon. Owen Baya (Kilifi North, ODM): I want to say only two things. One, his academic qualifications which is a requirement for appointment into this commission is in doubt. That is one of the things we see. This Minority Report has that information. Two, the integrity of the person that is being vouched for is in doubt. That is looking at the case of the Giriama Ranch that this nominee is purported to have done.

Looking at the mood of the House, I move the Report at that level and leave the discussion at that point.

Hon. Speaker: We need somebody to second your Minority Report.

Hon. Owen Baya (Kilifi North, ODM): Hon. Teddy Mwambire, the Member of Parliament for Ganze.

Hon. Speaker: It looks like a county affair. The Hon. Teddy Mwambire shall second.

Hon. Teddy Mwambire (Ganze, ODM): Thank you very much, Hon. Speaker. I beg to second the Minority Report, which Hon. Owen Baya has tabled.

Looking at the details he gave to the Committee, especially on his academic qualifications, he indicates that he was an assistant manager at Post Bank between 1987 and 1990. If you look at his curriculum vitae, it indicates that he was in secondary school during the same time. This means that he was lying to the Committee. This nominee could not give the right information. That makes him unqualified as per Chapter Six of the Constitution.

If you look at the details of the Giriama Ranch, which lies in my constituency, this nominee forged the title deed to obtain a loan from the Development Bank of Kenya. We cannot let somebody who has forged a title deed and has land issues to serve in the National Land Commission.

Those are some of the reasons we feel that, if we give an opportunity to Samuel Kazungu Kambi to be in the commission, we will be committing a very fatal mistake to this country.

With these few remarks, I beg to second.

(Hon. Maina Kamanda and Hon. Raphael Wanjala stood in their places)

Hon. Speaker: Order, Hon. Maina Kamanda and Hon. Raphael Wanjala. Have you finished?

Hon. Teddy Mwambire (Ganze, ODM): Yes, I have seconded.

Hon. Speaker: Order, Hon. Members. Take your seats.

(Hon. (Ms.) Ruweida Obo stood in her place)

The Member in a *buibui*, take your seat. Take your seats. Order Members. Hon. Members, apparently, you may not wish to listen to one another this afternoon.

I told you that this Report is an interesting one because it has that Minority Report. Hon. Baya had intended to move an amendment. As you know, our Standing Orders do not allow you to move an amendment which, in the opinion of the Speaker, would amount to a negative of the Question proposed. It is because you have the opportunity to vote. That is the essence of that Minority Report. However, I approved an amendment which was presented to me, earlier this morning, by Hon. Hassan Oda Hulufu, Member for Isiolo North Constituency.

It is your business even though I saw the other day, in a debate at the university, somebody saying that the Speaker has passed very many laws. I think he forgot. He happened to

have been my teacher. He seems to have forgotten that the Constitution actually says Speakers of Houses of Parliament have no vote.

If everything decided here has to be done through a vote...Do not worry. Just like we have allowed the Chairperson of the Committee to move the Report and it was seconded and, Hon Baya moved the Minority Report which was also seconded by Hon. Mwambire let us, also, allow Hon. Hassan Oda Hulufu to move his proposed amendment. If it is carried, then you will be debating the Motion as amended. Again, even as you debate the Motion as amended as proposed by Hon. Oda, you will have to bear in mind that Hon. Owen Baya and his team of minority have issues which they have raised in the Minority Report. About those ones, you will have to vote. When we get to that point I will, again, remind you of how we will proceed with today's vote.

Let us allow Hon. Hulufu to move his amendment.

Hon. Hassan Hulufu (Isiolo North, KPP): Thank you, Hon. Speaker. I beg to move the following amendment:

THAT, the Motion on Approval of Nominees for Appointment as Chairperson and Members of the National Land Commission be amended by deleting paragraph (b) and inserting the following in place thereof as (ix): "Hon. Tiyah Galgalo".

As I move this amendment, I would like to thank His Excellency the President for ensuring that in the nomination, the proposed nominees reflect the face of our great Republic.

(Applause)

Hon. Tiyah, as a nominee, represents the minority group in many aspects. She comes from a minority ethnic group, a marginalised area in this Republic and, more importantly, she is a woman.

(Applause)

It is not easy for a woman from a minority ethnic group coming from a disadvantaged area to get to the final list of nine nominees nominated by His Excellency the President. She is a former Member of this august House.

I represent a constituency where Hon. Tiyah comes from. I can confirm to this House that I followed the deliberations of the Departmental Committee on Lands when they were vetting all the nine nominees. I can confidently say that the issues raised against Hon. Tiyah were in relation to tax compliance. It had nothing to do with tax evasion. It was failure to file tax returns which is not a criminal offence. Once KRA discovers that you have not filed your returns, you are allowed to file them and your books of accounts are audited and assessed.

The KRA has the sole authority to determine if someone is compliant or not and is issued a valid certificate of tax compliance. The nominee for Chairperson had the same issue. Probably, because he is a man, his issue was resolved in a day. As male Members of this House, we must empathise with our sisters. Most of the time, hurdles are put on their way when they are nominated to sit on boards.

I move and request Hon. Martha Wangari, Member for Gilgil to second my amendment.

Hon. Speaker: Hon. Martha Wangari.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Speaker. I thank Hon Hassan for that amendment. I will not go to the character of Hon. Tiyah Galgalo. It has already been demonstrated. I served with her in the 11th Parliament and there is no doubt about her impeccable character. When there was noise and you told Members to keep quiet, I listened carefully as the Chairperson was moving the Committee's Report. She confirmed that on the issue of KRA, there is already an ongoing disciplinary case on the person who had issued that tax compliance certificate. To her, it cannot be vicarious liability. Her issue has already been cleared. Hon. Rachael Nyamai put it clearly that it was not Tiyah's problem.

On the issue of late tax returns, you can only suffer consequences in terms of following it up. When this Report was being written, it was not clear. So, is it clear today? The Clerk has received a letter from KRA. Can that be clarified?

Hon. Tiyah Galgalo was the first girl to get to Form Six in Isiolo County. She is a woman of firsts. She has served with the International Conservation Caucus (IIC) and also the Poverty Eradication Commission. Her only fault is that someone issued a faulty tax compliance certificate. That cannot be taken as vicarious liability; it was not her fault. It was an issue of KRA and they must take it up.

I second.

(Loud consultations)

Hon. Speaker: This Member thinks she is in Homa Bay. Now, where are you? Hon. Members, I know many of you are active during weekends, but when you come here, I am sure you can reduce that speed. I can see Hon. Wanga moving like... I thought she was going to fall down.

*(Question of the first part of the amendment,
that the words to be left out be left out, proposed)*

Hon. Kimani Ichung'wah (Kikuyu, JP): On a point of order, Hon. Speaker.

Hon. Speaker: Hon. Ichung'wah, what is your point of order?

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, my point of order is on that amendment. I want to agree with what Hon. Martha has said in terms of the nominee. However, there is something that the Hon. Member for Gilgil mentioned. She said that matters to do with the Public Appointments (Parliamentary Approval) Act were adhered to by the Committee and that it listened to issues that touched on Hon. Tiyah Galgalo's tax compliance certificate and others.

It is instructive to note that, indeed, the Departmental Committee on Lands canvassed all issues relating to her tax compliance; concluded its report and tabled it before this House. Mine is on a matter of procedure. As you know, I have been a stickler to rules and procedures in this House. It is instructive that after the Committee tabled its report, folded and hanged their coat... The Public Appointments (Parliamentary Approval) Act is very clear on how to submit documents before a committee that is vetting officials. I seek your guidance as to whether any other evidence that comes post-the tabling of the report...

(Loud consultations)

Hon. Speaker: Forget. Forget. The Member for Embakasi, is it JKIA, relax. Finish your point of order.

Hon. Kimani Ichung'wah (Kikuyu, JP): Hon. Speaker, I was seeking your guidance because the House, in my view, has two options. It is important for the House to realise that this is the last day that we have, otherwise, all these nominees will be deemed to have been approved by the House, if we go beyond today. Since the Act is quite clear and this being the last day, the House has two options. Since there is evidence that was adduced before the Committee by none other than the Commissioner-General of KRA... We are aware, as Hon. Martha has said, there is a letter that has been done by another officer within the same institution.

I seek your guidance on these two options. One is for the Committee to seek leave for an extension of time for the new evidence that has been adduced to be considered by the Committee and it then tables a report here. I think the Chair of the Departmental Committee on Lands can do that by way of a Motion this afternoon.

Second, you guide the House on how to transact this matter, because we cannot as plenary be doing the work of the Committee. We must be faithful to our own rules and procedures. We must also be faithful to the letter and spirit of the Public Appointments (Parliamentary Approval) Act. I beg to ask that you do guide the House accordingly.

Hon. Peter Kaluma (Homa Bay Town, ODM): On a point of information.

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

Hon. Speaker: Whom will you inform, Hon. Kaluma? He was on a point of order. There is nothing to inform him on. He has already finished. Hon. Junet, what is your point of order?

Hon. Junet Nuh (Suna East, ODM): Hon. Speaker, the matter is very simple. This is a House of rules and procedures, as the Member alluded to. The question we are asking ourselves is: Is this Motion placed before the House in a proper manner? The answer is yes. Did you approve an amendment to the Report that has been placed here? The answer is yes. The next thing is to put the Question to determine whether the Report can be amended or not. At this point in time, we have not reached the level of debate where to adduce new evidence or not.

Hon. Speaker, I want to use your own words because I have been a good student of yours. You said one time that when a report or a Motion is tabled before this House, it is the prerogative of this plenary to do what they want with that Motion. They can amend it or reject it. They can do anything they want to the report. So, the chairman of *Tangatanga* should not mislead this House.

(Laughter)

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

Hon. (Ms.) Gladys Boss Shollei (Uasin Gishu CWR, JP): Hon. Speaker, my point of order is very brief. Thank you for the opportunity. I think we should realise we are dealing with a problem that should have been dealt with by the selection panel. It should never have come to the committee of the House. Issues of tax compliance should have been addressed there. Hon. Tiyah Galgalo, whom I have a lot of respect for, should have had the opportunity to rectify her documentation. So, the House should get a decision from the Speaker on how we shall deal with matters where an issue that should have been dealt with by the selection panel ended up in the committee and now we are dealing with it on the Floor of the House.

Thank you, Hon. Speaker.

Hon. Speaker: Let me hear Hon. John Mbadi. I am sure we have not heard his voice for the last one week.

Hon. John Mbadi (Suba South, ODM): Hon. Speaker, for about 11 years plus, I have never been lost like I am lost today. I did not hear any reasonable point of order from Hon. Ichung'wah. Neither did I hear it from Hon. Junet. All these issues that have come up to me come out like contributions, yet I thought you had proposed the Question so that we deal with this amendment. If there is any Member who wants to contribute to the amendment by Hon. Hassan, let him or her come out and contribute. The consensus in this House is that we put the amendment to vote and then we get back to debate on the main Motion. So, these points of order are just a waste of time because we will discuss them in another matter. There is Zero Hour. So, let us finish this issue quickly so that we move very fast, by putting this to vote without any further debate, so that we may debate the main report as a package.

Thank you.

Hon. Speaker: Hon. Members, so that we do not spend a lot of time on points of order, I wish to restate that there is nothing wrong with any Member rising in their place and claiming to be on a point of order. Hon. Ichung'wah spoke of new evidence. As far as I am concerned, I have not been presented with any new evidence or evidence at all, but you as a House are at liberty to deliberate on this matter. As you know, if I may just jog your memory a little bit, around May 2013, this House had a similar Motion. I think it was moved by none other than the then Member for Nairobi, with regard to a nominee for Cabinet position, who the Committee on Appointments had found a bit deficient. He did not move the Motion; he says he seconded, which is true. So, there is absolutely nothing wrong with the House making whatever decision. The matter before me is not unlawful. If it was unlawful, I would not have approved this Motion.

(Applause)

If in any way it offended constitutional provisions, I would not have approved it. Therefore, the Motion is properly before the House. It is for the House to make what it desires of the Motion. It appears the Member for Ndhiwa feels strongly that the Question should be put. Is that the feeling of the House?

Hon. Members: Yes.

Hon. Speaker: Is there a contrary view?

Hon. Members: No.

Hon. Speaker: Therefore, I put the Question.

Hon. Members: No.

Hon. Speaker: You are saying no to the statement even before the Question is put. Have you followed the Question?

*(Question of the first part of the amendment, that the words
to be left out be left out, put and agreed to)*

Hon. Members: Division! Division!

(Several Members stood up in their places)

Hon. Speaker: Order, Hon. Members! Are the Members standing claiming a Division?

Hon. Members: Yes.

Hon. Speaker: Yes, you have the numbers. Order, Member for Kangema! Order, Hon. Kajwang! Hon. Mwashetani, please, relax.

Hon. Ochanda and Hon. (Dr.) Nyikal, please, we are in the House.

Hon. Members, there is no need for any anxiety or cause for disruptions. Let us finish this business.

I order that the Division Bell be rung for 10 minutes then we proceed with the Division

(The Division Bell was rung)

Order Members! Order Members! Order! Take your seats. Member for Kangema, you can trot back. You seem to have a problem walking today. Is it because of the age? Yes, I suspected, but then you need to be seated so that you do not suffer a lot. Serjeant-at-Arms, lock the doors and draw the Bars.

The Member for Budalangi has stayed out of the House for a while and has now come back. Hon. Members, as you know, at this point no Member is allowed to walk in or out because the doors are shut and locked. For purposes of the electronic vote, I will ask first of all, if there are Members who have forgotten, misplaced or cannot use their cards, either out of lack of experience of using cards or whatever reason. I will ask them to walk up here on both sides. Those who do not have their cards, those who have misplaced them or if you might have your card stolen over the weekend during the many rallies that you may have been attending, please come forward. Is Hon. Ochanda without a card? Are they the ones with cards or without cards? Hon. Members, we want to finish this. We do not want people to say that there were others who were walking up and down. How is it that you took so long to walk up here?

Hon. Members, those of you who have cards, kindly log out.

(Hon. Members logged out)

I expect staff at the computer section to be ready to work on the screens. Now, Hon. Members, I will read the Question. Hon. Members, log in now.

(Hon. Members logged in)

Hon. Members, voting starts now. Hold on Members. Many of you still have your cards in. They are waiting for the normal 60 seconds to lapse. Hon. Millie, mine is working. Even those are working. I think you have infected them with the weekend stuff.

Hon. Members, vote now.

(Voting in progress)

Hon. Members, if you sit there, I am sure you should be able to find out how your card is. You sit there and then you start walking saying it is not working. It will force us to go and check the records. Hon. Members, do not worry. As you know, voting twice is a gross disorderly conduct. We will deal with it. So, do not worry. They should find out from the last Parliament from one of us. We will get the names manually here and also check the names from the machine.

Electronic voting is over.

(Vote tallying)

Hon. Speaker: Order Members! The results of the Division are as follows: Electronic Voting- Ayes 96, Nays 57 and Abstention 0.

In the manual voting, the Ayes are 18 and Nays 13. The total number of the votes is: Ayes 114, Nays 70 and Abstentions 2.

DIVISION

(Question put and the House divided)

(Question carried by 114 votes to 70)

AYES: Ms. Safia Sheikh, Mr. Maoka Maore, Ms. Jerusha Momanyi, Mr. Stanley Muthama, Ms. Wangari Mwaniki, Mr. Joshua Kutuny, Ms. Shamalla Jennifer, Messrs. Abdi Shurie, Abdi Tepo, Daniel Tuitoek, Peter Kaluma, Samuel Arama, Mark Nyamita, Jared Okelo, Richard Onyonka, Ben Momanyi, Jeremiah Lomorukai, Alois Lentoimaga, Ms. Naisula Lesuuda, Messrs. Yusuf Hassan, Mohamed Hire, Daniel Maanzo, Ms. Dennitah Ghati, Messrs. Olago Aluoch, Martin Owino, Peter Masara, Julius Mawathe, John Mbadi, Ms. Cecily Mbarire, Mr. Mbogo Ali, Ms. Mishi Mboko, Messrs. David Mboni, Robert Mbui, Omboko Milemba, Ali Sharif, Jones Mlolwa, Mohamed Ali, Mohamed Abdikhaim, Ms. Fatuma Gedi, Ms. Elsie Muhanda, Dr. Victor Munyaka, Messrs. Hassan Hulufu, Dr. Patrick Musimba, Messrs. Jimmy Angwenyi, Didmus Barasa, Geoffrey Muturi, Teddy Mwambire, William Mwamkale, Simba Arati, Ms. Gertrude Mwanyanje, Messrs. Khatib Mwashetani, Peter Mwathi, Marselino Arbelle, Junet Nuh, Maina Kamanda, Abdullswamad Nassir, Dr. Irene Kasalu, Messrs. Joseph Nduati, Charles Nguna, Samuel Atandi, Oku Kaunya, Kanini Kega, Babu Owino, Clement Kigano, Ms. Rachael Nyamai, Mr. Owen Baya, Ms. Edith Nyenze, Dr. James Nyikal, Messrs. Charles Kilonzo, Thuddeus Nzambia, Paul Nzengu, Erastus Nzioka, Ms. Eve Obara, Ms. Ruweida Obo, Mr. Geoffrey Odanga, Ms. Odhiambo-Mabona, Mr. Elisha Odhiambo, Prof. Jacqueline Oduol, Messrs. Gideon Ochanda, Adipo Okuome, Richard ole Kenta, Joshua Kivinda, Anthony Oluoch, Dr. Wilberforce Oundo, Ms. Esther Passaris, Ms. Rozaah Buyu, Messrs. Ali Rasso, Michael Kingi, Moses Kirima, Paul Abuor, Ms. Gladwell Cheruiyot, Mr. Sammy Seroney, Dr. Naomi Shaban, Mr. Omar Mwinyi, Ms. Beatrice Adagala, Ms. Sara Korere, Messrs. Wilson Sossion, T. J. Kajwang', Benjamin Tayari, Samuel Moroto, David Ochieng', Rahim Dawood, Gideon Koske, Makali Mulu, Dr. Chris Wamalwa, Dr. Otiende Amollo, Raphael Wanjala, Ms. Martha Wangari, Messrs. Ali Wario, Qalicha Wario, Tim Wanyonyi, Jackson Lekumontare and Ms. Wangari Mwaniki.

NOES: Ms. Jane Chebaibai, Ms. Charity Chepkwony, Ms. Anab Gure, Messrs. Kimani Ichung'wah, Josphat Kabeabea, Gideon Keter, Marwa Kitayama, Leonard Yegon; Ms. Liza Chelule; Mr. Lokiru Ali, Ms. Soipan Tuya, Ms. Alice Wahome, Ms. Janet Nangabo, Messrs. Christopher Omulele, Shakeel Shabbir, William Cheptumo, Fred Kapondi, James Gakuya, David Gikaria, Ms. Faith Gitau, Ms. Gladys Boss Shollei, Messrs. Moses Injendi, Kubai Iringo, Ms. Rehema Jaldesa, Messrs. Paul Katana, Anthony Kiai, Ms. Jayne Kihara, Messrs. Amos

Kimunya, William Kisang, Nelson Koech, Gideon ole Konchela, Kipsengeret Koros, Hilary Kosgei, Caleb Kositany, Dominic Koskei, John Waluke, Joseph Limo, Peter Lochakapong, Patrick Mariru, Sylvanus Maritim, Ms. Haika Mizighi, Messrs. John Mose, George Gitonga, Japheth Mutai, James Gichuhi, John Paul Mwirigi, Christopher Nakuleu, Daniel Nanok, Ms. Purity Ngirici, Mr. Kimani Ngunjiri, Mr. Eric Njiru, Ms. Mary Njoroge, Mr. John Nyaga, Ms. Beatrice Nyaga, Messrs. Joash Nyamoko, Ndindi Nyoro, David ole Sankok, Dr. Robert Pukose, Messrs. Mugambi Rindikiri, Mathias Robi, Daniel Rono, Cornelly Serem, Benard Shinali, Daniel Wanyama, Richard Tong'i, Ronald Tonui, Dr. Tecla Tum, Messrs. Vincent Tuwei, Josphat Kabinga, Emmanuel Wangwe and Ms. Halima Mucheke.

(Applause)

Hon. John Mbadi (Suba South, ODM): *Ni nani hao?*

Hon. Speaker: I am not supposed to disclose them because it is a secret. However, a Member is at liberty to disclose that he abstained from voting. I know only one Member who has disclosed that he abstained from voting, but I am not at liberty to announce his or her name. Therefore, the results of the division are that the Ayes have it.

(Question of the second part of the amendment, that the words to be inserted in place thereof be inserted, proposed)

(Question of the second part of the amendment, that the words to be inserted in place thereof be inserted, put and agreed to)

(Applause)

The Motion is amended. You may unlock the doors, draw back the bars and open the doors. Hon. Members, the debate on the Motion will continue as amended.

(Question of the Motion as amended proposed)

Hon. Members: Put the Question.

Hon. Speaker: What do you mean?

Hon. Peter Kaluma (Homa Bay Town, ODM): On a point of order, Hon. Speaker.

Hon. Speaker: There is a point of order from the Member for Homa Bay Town, Hon. Kaluma.

Hon. Peter Kaluma (Homa Bay Town, ODM): I thank you, Hon. Speaker and Members. For the short time we have deliberated on the Motion, the issue of KRA came up. I am only bringing to the attention of our colleagues a decision which was made recently by a bench of the High Court. You remember a short while ago we had elections for the Judicial Service Commission (JSC). Mr. Tom Ojienda was being blocked from contesting to be a member of the JSC and the reason was that KRA had not cleared him. He did not have a tax compliance certificate. I draw this matter to the attention of our colleagues here because it is important today. A bench of three judges said that requirements like clearance by KRA, Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI) through

the certificate of good conduct are administrative requirements. They are not set out in any law as disqualifying factors when you are seeking appointment to serve in any body.

Two, the High Court in that matter stated that because they are mere administrative requirements but not in law, they are also open to a lot of abuse. I beg Members to listen because this matter is important to me. I want to draw this matter to your attention to just remind you that these people who are seeking elective or appointive offices to serve in the public bodies are like you tomorrow. You will be approaching nomination and on the last nomination day which is Friday, you will be told by KRA that you should pay Kshs100 million. You will have campaigned so hard but you will not get the nomination. Colleagues, remember they will not be in a hurry to clear you at that time. Let us go by the precedent sent by the High Court. Let us not establish a precedent here which will be used against us in future. That is the only thing I am begging to bring to your attention.

I thank you, Hon. Speaker.

(Applause)

Hon. Members: Put the Question.

Hon. Speaker: Is it the mood of the House that I put the Question?

Hon. Members: Yes.

Hon. Speaker: Those Members who have finished their business for today...

(Hon. (Ms.) Wangari Mwaniki walked in the Chamber)

Member for Kigumo. You have problems sitting in this Chamber. I do not know why we made so many seats which are 350. They were made for you but when I look around, I do not see you.

Hon. Members, I wish to reiterate my Communication which was made on 22nd August 2018 during the Special Motion on the Appointment of Nominees for Appointment as Chairperson and Members of the Independent Policing Oversight Authority (IPOA). In that Communication I indicated, among other things, that given that the nominee is appointed to a public office as an individual but not as a collective body, the decision or resolution of the House ought to be a true and accurate reflection of the wishes of the House irrespective of the methodology used to execute any given Motion. Therefore, I have decided that given that there is a majority and minority report, I will put the Question to the name of every nominee, one by one, and if need be, if the House so desires or wishes to go into a division as it appears to have recently caught the House, so be it. It is still your prerogative, Hon. Members. Whichever way you vote, it is on the Report of the Committee and we are dealing with it on the strength of the provisions of Article 124(4)(b) of the Constitution. Therefore, Hon. Members, since it is the desire of the House....

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

(Loud consultations)

Hon. Speaker: Hon. Members, there is no cause for alarm. In order for us to be in keeping with our procedure...

Hon. Otiende Amollo, you have a point of order that you want to raise. After his point of order, I will put the Question that the Mover be called upon to reply.

Hon. Members: Yes.

Hon. Speaker: Hon. Otiende Amollo.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Thank you, Hon. Speaker. I rise under Standing Order No.1. In a sense, some of the waters which we are travelling through this afternoon may not have been well trodden.

Hon. Speaker, I rise on a point of order so that you can direct us. In a situation where the Chair of the Committee tables the majority report and another Member of that same Committee tables a minority report, is it in order to vote on that issue without debating it? This is a House of record. Even when you approve or reject a Motion it is important to us. However limited the time is, I would plead with you that it is important to give a few Members chance to express support or otherwise before we take a vote in a robotic manner.

Hon. Members: No!

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): My second point of order, Hon. Speaker, relates to a question of record. In moving and seconding the majority report, they alluded to a letter, but none of them – including the Mover of the amendment – produced that letter to the extent that this is a House of record. I have a certified copy of that record, and I would wish to table it for the record before we vote.

Thank you.

Hon. Speaker: Hon. Members, as you know, decisions of the House, whatever decision, are by way of resolutions. The only way you can know how people have resolved is by voting. Let me just put the Question because there are some of you who want to debate and I have no problem. We do not even have constraint of time. We have a lot of time. The House proceeds as it desires. The desire will be expressed through the vote. Hon. Otiende Amollo, the letter you allude to is now water under the bridge. The House is wiser from the information proffered by Hon. Kaluma. We just thank you for having a certified copy of that letter. It can still be part of the papers that are found in the House.

(Laughter)

The House has to make a decision on this matter one way or another. Actually, if the House wants to debate, I am more than ready to sit here with you, listening to the exciting contributions, but let me find out what the House wants.

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

Mover.

Hon. (Ms.) Rachael Nyamai (Kitui South, JP): Hon. Speaker, I would like to take this opportunity to thank the Members of the Departmental Committee on Lands and also the House because this is a matter we worked on diligently. I would like to thank all Members for the time they took to sit in the Committee and the deliberations that they did.

This is a matter we wanted to clarify very well, especially when issues of who had applied to be Chair and who had applied to be member were brought to the fore. I would like to thank the Members for accepting to dig deep into what was being done by the vetting committee.

All the members whose nomination this House has approved are highly qualified in terms of doing their job. I congratulate each of the nine commissioners that we have got from this House. The decision that the Committee made was based on the facts that were brought to the table. This morning, we received a letter which cleared Hon. Tiyah Galgalo. I thank the hon. Member who has brought the amendment and also thank the House for supporting the amendment. The intention of the Committee was to do its best in terms of vetting and make sure that we follow the law. That is exactly what we did.

I would like to thank the Legal Department and the Secretariat for guiding us throughout our sittings. I also thank them for sitting with us for long hours. They helped us to understand the task that was ahead of us. Before I sit down, I would like to say that the former NLC commissioners did their work but they may not have given the best to the country. We have confidence in the members that we have received today, including Hon. Tiyah Galgalo. The decision that has been made by this House this afternoon is good. We will be doing our work, in terms of overseeing the NLC, to make sure that they deliver better services to this country as compared to the previous NLC.

With those remarks, I beg to reply.

(Question of the Motion as amended put and agreed to)

Resolved accordingly:

THAT, taking into consideration the findings of the Departmental Committee on Lands in its Report on the Vetting of Nominees for Appointment to the positions of Chairperson and Members of the National Land Commission, laid on the Table of the House on Thursday, 26th September 2019, and pursuant to the provisions of Article 250(2) of the Constitution as read together with Section 12 and Paragraph 6 of the First Schedule of the National Land Commission Act, 2012, this House approves the appointment of the following persons to the National Land Commission:

- (i) Mr. Gershom Otachi Bw'Omanwa – Chairperson.
- (ii) Hon. Esther Murugi Mathenge – Member.
- (iii) Prof. James K. Tuitoek, PhD – Member.
- (iv) Ms. Gertrude Nduku Nguku – Member.
- (v) Mr. Reginald Okumu – Member.
- (vi) Hon. Samwel Kazungu Kambi – Member.
- (vii) Ms. Hubbie Hussein Al-Haji – Member
- (viii) Mr. Alistair Murimi Mutugi – Member
- (ix) Hon. Tiyah Galgalo Ali – Member.

(Three Hon. Members stood in their places)

Hon. Speaker: Hon. Members, the three Members who stood do not make the number to demand a Division. The Motion is carried; the nine nominees are approved by the House.

Next Order.

(Several Hon. Members withdrew from the Chamber)

Hon. Members, there was a Motion for Zero Hour.
Order, Hon. Members. Those of you have completed today's business can walk out in peace.

BILL

Second Reading

THE EARLY CHILDHOOD EDUCATION BILL

(Hon. Julius Melly on 26.9.2019)

(Resumption of Debate interrupted on 26.9.2019)

Hon. Speaker: The Business that is there is the one appearing as Order No.12. It is the Early Childhood Education Bill (Senate Bill No.26 of 2018). I am informed that a total of 21 Members had contributed. It belongs to the Departmental Committee on Education and Research. I assume the Members whose requests are there desire to contribute. The first one is Hon. Eve Obara.

(Hon. (Ms.) Eve Obara consulted Hon. (Ms.) Odhiambo-Mabona)

The Member who is talking to Hon. Millie Odhiambo, go to where your microphone is.

Hon. (Ms.) Eve Obara (Kabondo Kasipul, ODM): Thank you very much, Hon. Speaker. I am still happy that all ended well today and all the Members going out are smiling.

On the Early Childhood Education Bill, I am in this Committee. We agreed, and I believe it is important, that we set out proper structures because this is the foundation of our education. We have noted that the available structures in a lot of our schools are not even fit for our children. We have also noted that a lot has not been done in infrastructure despite the fact that the Government has pumped in a lot of money to these schools. I was partly of the opinion that, at the end of the day, this is an area that we may need to look at, to reconsider whether it still sits within the county governments or the national Government. As far as I am concerned, I think we may in the long run just have to take education as a package to be taken care of by the national Government.

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

[The Temporary Deputy Speaker (Hon. Christopher Omulele) took the Chair]

We also agreed that early childhood education centres must have stand-alone boards for the proper management of the institutions. There is a tendency, at times, of the centres being overlooked while focus is on primary schools. The privately owned stand-alone early childhood education centres must have proper boards that are away from the proprietors for proper governance of the institutions and in line with our *Mwongozo* policy that clearly spells out separation of functions.

With these few remarks, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Is Hon. Rono Kipkogei, Member for Keiyo South, in the House?

Hon. Daniel Rono (Keiyo South, JP): Yes.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Proceed, please.

Hon. Daniel Rono (Keiyo South, JP): Thank you, Hon. Temporary Deputy Speaker. I support the Bill on the Floor touching on early childhood education.

I support the Member who has just spoken about education. Education cannot be dissected. We cannot dissect a portion of education to be in the county governments and another under the national Government since the standards will be compromised. As it is, standards of early childhood education are compromised. Some of the teachers are employed by the county governments and others by the parents. So, their level of education is not in tandem with that of primary and secondary school teachers. The Teachers Service Commission (TSC) handles the entire sector of secondary and primary schools. The same thing should apply to early childhood education. As it is, some of the structures in ECD centres are in pathetic state in the counties. Children in ECD centres are very young. When you look at the structures that are being constructed, some of them are dilapidated yet we are talking about children. It is sometimes very cold during the day and the children sit in classrooms full of holes all over the walls. Their health is compromised.

The budgetary allocation to early childhood education is not given in a fair way. Many counties overlook early childhood education. They suffer as a result of this. There are no structures in the countryside. Some money is allocated unfairly.

So, I do not support the dissection of education. Let it be run by one centre, namely, the national Government, and not the county governments.

I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this very important Bill. Early childhood education is very important. It is the basis of a child's education. This is where you encourage a child to pursue education, which is the equaliser of both the rich and the poor. When you have a strong base, it projects a child to greater heights whenever education is needed. Currently, county governments have been handling the matter. They have hired ECD teachers and there has been a lot of disorder in the counties.

In a lot of situations, many schools have been abandoned and they do not have proper infrastructure for early childhood education. The environment is not really the best. With regard to the infrastructure constructed by the county governments compared to what we construct with the National Government Constituencies Development Fund, you will realise that there is disparity. This is because of public participation. Some ECD classrooms have been abandoned. In fact, in one case at Wote Town in Makueni Constituency, I had to indicate to the county government that I wanted to complete one of the ECD classrooms which was about to collapse and yet children were using it. Although it had been left out in the public participation, we had to take initiative as the NG-CDF to make sure that there was no accident and we do not lose the children, as we witnessed recently in Nairobi. For that matter, we allocated money and refurbished the classroom.

What I am trying to say is that when county governments do the infrastructure, they spend about Kshs2 million per classroom, but when the NG-CDF does that sort of infrastructure, they spend exactly half of that amount and you have a better classroom for the children.

The point I am trying to drive home is that we need to harmonise education generally. Although there has been an administrative action of taking these functions to county governments and making them shared, education should be fully managed by the national Government, from early childhood education. Their teachers should be recruited by the TSC and should be free to join Kenya National Union of Teachers (KNUT) and those other associations, so that their rights can be fought for. I believe if we had a structure of that nature, it would work much better, so that all education has one responsible Cabinet Secretary in the entire country, who can take charge and ensure that we do not have negligence as witnessed recently. All children are supposed to be given priority.

The interests of the child, according to the Children Act, are very important and prime and take precedence. We must ensure that all children receive good and fair early childhood education and have an opportunity equally in the whole country. We should not be having a situation like the one we have seen in the newspapers today, where some children are still learning under trees. The national Government should take up the challenge because the NG-CDF cannot meet all needs of all the schools. We usually give a budget to the Ministry of Education, Science and Technology and it should be used in the constituencies which have been left out for one reason or another or have been lagging behind because of lack of equalisation. That is why we enacted the Equalisation Fund to make sure all Kenyans have equal opportunities. It is really a serious challenge to the Ministry of Education, Science and Technology. I know they have a new broom in the name of the Cabinet Secretary, who will sweep better because he has managed education very well in the country before. He has been at university and has managed exams. For that matter, he should be able to manage education equally better.

I am looking forward to bringing amendments to this particular Senate Bill to move early childhood education system into the normal education system and look at the Constitution to ensure that we harmonise education. I am aware that this was an administrative decision, which could have been wrong or unconstitutional and which did not bring equality in education. Therefore, while I support the Bill, I am looking forward to further amendments at the Committee of the whole House.

I beg to support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Dennitah Ghati.

Hon. (Ms.) Dennitah Ghati (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to support a very important Bill that touches on early childhood education. The ECD is a foundation. It is everything for a child. It is what really shapes our children into what they become. It is important that we are discussing and putting emphasis on ECD.

As we talk about the ECD, I want to bring in the issue of children with disabilities. The Early childhood Development centres must be inclusive of children with disabilities. If we are talking about ECD and how we can put together infrastructure that makes it easy for children to go to school, we need to think about children living with disabilities. For children with disabilities to belong to schools and be able to use the infrastructure and the facilities in that school, that will be a plus for this nation.

All along, we have been talking about children with disabilities and their access to schools. It is extremely difficult for a child with disability to go to school. In this country, you will realise that children with disabilities are usually the last to get into a classroom and the first to drop out of school because the infrastructure in our schools is not conducive for them. So, we cannot talk about harnessing and strengthening ECD centres without talking about children with disabilities. They have a problem in going to school. Infrastructure in ECD centres is not just about chairs and desks. It is about the road that leads to the compound of the school and the road that gets to the classroom. How does a child using a wheelchair, for example, get into the classrooms?

We have seen county governments taking care of ECD. Most of our county governments are grappling to understand what ECD is all about. They have not known what it is all about. You realise that even the attention that ECD teachers receive from our county governments is wanting. It is extremely low. The ECD teachers are treated as second-class teachers. They are not usually capacitated. They are not even paid enough money to sustain themselves. We need to look at how much money an ECD teacher should be compensated with to bring up a child growing up in a school environment. The money that the Ministry of Education, Science and Technology has been providing to make sure that infrastructure in schools is conducive should be targeted to building ECD classrooms.

You have seen areas in Turkana or Nyatike where young children study under trees. That is completely unacceptable. We need to focus our attention to building the capacities of our ECD teachers, so that they can raise and train our children. The Cabinet Secretary needs to look at the ECD curriculum and make sure that that curriculum takes care of the needs of children with disabilities.

Hon. Temporary Deputy Speaker, that is the only way we will ensure that we are not excluding children with disabilities from accessing the normal kind of education. That is what inclusive education is all about. It starts with the Early Childhood Development Education (ECD). How do other children in a classroom view a child with disability who wants to get education from a young age? That is what we want to bridge in order to ensure that children with disabilities go to the same school, classrooms, environments and even sports. All these constitute and contribute to the well-being of a child.

When I talk about ECD, we cannot isolate normal children from those living with disabilities. We have to ensure that the curriculum that we develop with the Ministry of Education, Science and Technology takes into account the needs of children with disabilities even within the school environment. That is a Motion that I would love to support. The ECD infrastructure must be created in our schools even in our various areas and our teachers must be compensated. They cannot be viewed as just needing housing. The ECD teachers are viewed as just having the role of taking care of our children. It is a serious responsibility that we are giving our teachers. We must ensure that they are compensated and have their capacity built to ensure they are up to the task.

Allow me to support the Bill and thank the Committee.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Tong'i.

Hon. Richard Tong'i (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to support the Bill. I support it for many reasons.

Education is holistic. You cannot cherry pick and say that the national Government can do so much and the county governments can do so much. Developed economies in the world have invested a lot more on elementary education than in upper primary education. This is for

the simple reason that science has proven that children who get a good foundation always succeed in education matters as they grow old. If you miss out on the foundation, you will not catch up as you grow up because attitudes are formed at that formative age. If nursery school teachers do it because there is nothing else to do, we would have lost it as a country. We need to see a situation where nursery school teachers are the most qualified people as it is the practice all over the world. In the United States of America (USA) and United Kingdom (UK), teachers handling the lower primary are more qualified. Some of them are doctors. Most of them have master's degrees and few have bachelor's degrees. That explains why research is more successful in those countries because they appreciated and discovered the formula. If you go to the Netherlands and other countries which have succeeded, the best countries in education in the world, have invested heavily in elementary education.

I am glad my colleagues have pointed out issues which have been so obvious to all of us. If you go to the counties, the investment in elementary education is wanting. You go to a primary school; county governments have put in a lot of money. If you go to the books of accounts, you will be shocked that one nursery school classroom cost between Kshs1 million to Kshs3 million yet in the NG-CDF, we use between Kshs500,000 to Kshs1 million depending on the location. If we can use that kind of money to do quality classrooms, then somebody must be sleeping on the job. Either, we are not getting value for money or there must be some explanation. It cannot be different and yet it is in the same compound and environment. One arm of the Government through the NG-CDF uses less than half the money used by county governments. Somebody must be held accountable. I have a gut feeling we are misusing the money and not getting value for money. What makes it worse is that most ECD classes that were started by the county governments are not complete. Not long ago, I was in one of my schools in Kisii Nyaribare Chache Constituency, and was shocked to be asked to do ECD classes in Nyanchwa. I told them this is a function of the county government. Teachers and principals at the lower primary do not seem to appreciate the functions of the county governments and the separation of power and responsibilities.

However, since we have done a good job using the NG-CDF relatively to county governments, we get proposals in our offices asking us to do classes for the ECD. We appreciate that these are our children who will make schools get their Standard One to Standard Eight graduates. It is out of here that we will have secondary school students. So, we empathise with the situation. At times, we have gone out of our way and allowed them to use classes built by the NG-CDF money, but we know that counties have money. Most of the counties have factored that into their budgets and most of the time that money has been expended. The question is where the money has gone to. That is the question the auditors need to pick out and guide us where that money goes to.

Having said that, we all appreciate that education is holistic. We cannot have teachers who are controlled and paid by the county government and others by the national Government. Success of education or the lack of it is a function of many things. It is a function of motivation. If teachers are not motivated, even if you are going to have the nursery school teachers handled by the county government, qualified even to teach in secondary schools, success will not be achieved. Sometimes they are qualified but because of lack of employment, they end up teaching in nursery schools. They earn a quarter of what primary school teachers earn. We cannot motivate them. There must be a formula. If counties are going to continue dealing with the ECD, we must come up with a formula where teachers are compensated as those teaching in upper primary school with similar qualifications.

The guiding principle should be qualification. That is one of the amendments that I want to introduce to this Bill. That anomaly is a big omission which is hurting Kenyans not just now, but it will hurt the country even in posterity and days to come. If a demotivated teacher will work just because they have to be paid, we will miss the point.

In my county, nursery school teachers are paid a gross of Kshs12,000 totalling to a net of Kshs7,000 after statutory deductions. It will be worse if they have loans. These are the same teachers we expect to give their best and give a good foundation to our children who are future leaders.

As a country, we must deliberate on how we will handle this. It is only fair that, may be, under the Building Bridges Initiative (BBI), this issue is addressed so that we can harmonise the ECD, lower and upper primary, so that there is a seamless transition from one level to the next. We cannot have a bad foundation yet when the child gets to Standard One, there is a huge discrepancy. They get to learn a few things which they should have learnt at nursery school.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Tong’i, did I hear you say “under the BBI?”

Hon. Richard Tong’i (Nyaribari Chache, JP): Yes, Hon. Temporary Deputy Speaker. I said the BBI for the simple reason that the mood of the country seems to be talking about it.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Did you make that particular recommendation to the BBI when it was sitting because I think they have finished their sittings? Proceed.

Hon. Richard Tong’i (Nyaribari Chache, JP): Thank you, Hon. Temporary Deputy Speaker. I am sure BBI has a way of getting issues. I am sure they might have picked this as I speak because they have not done the final copy. I am sure they can input it. It was mentioned in one of the meetings that it is important that we have a holistic education system where we do not have one handled by the county and another by the national Government. The discrepancy sets in and when that happens, chances are that one is going to lose at the expense of the other.

Unfortunately, we are all strong to the extent of the weakest link that we have. If one link is weak, then all of us are weak to that extent. If our nursery schools are weak, then the whole country will be affected. Our researchers and scientists will be weak. They will be unable to compete at the global level. So, they will be disadvantaged because of poor foundation at the formative stage which is the foundation of education.

As I wind up, there are teachers who have retired after having served the country well. They have not been paid their pension money. It is a pain to somebody who has sacrificed and given much to the country, yet when they get to their retirement age, they are taken round and round for a simple reason of not having their paperwork in order. We must have a law compelling the Pension Department to ensure that within two years of your retirement, you are paid your money.

With that, I support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Adagala.

Hon. (Ms.) Beatrice Adagala (Vihiga CWR, ANC): Thank you, Hon. Temporary Deputy Speaker. I also want to contribute to the Early Childhood Education Bill. This is where a child begins to learn about their environment. It is a very important period for a growing child.

Early childhood education is very important and as my colleagues have said, it is an important time when a child develops their personality. They get to know their surrounding and when given the right information or taught the right things, they become better persons in the

society. The management of the next levels of education like primary and secondary schools is determined by the foundation children get in ECD.

In several of our constituencies, ECD centres are in deplorable situations. From the look of things, since county governments are in-charge, the centres lack facilities. You will find children seated on a dusty floor, with no proper care and nothing to eat. If I can remember in the olden days of President Moi, there was milk for the children. Most ECD centres in the country do not meet the required standards.

Therefore, if this law is put in place, at least, standards will be set. Some ECD centres are up to date while others are not. So, standards should be set, so that all ECD centres are at par. The children will be provided with comfortable seats, tables and toys to play with. The children should not be bombarded with too much learning without enough space and time to play because of lack of playgrounds. We will be bringing up children who are more of robots and are unable to understand their surroundings. Once subjected to this kind of torture, they may not be interested in furthering their studies.

I support this Bill. It has come at the right time. I have seen my colleagues complaining that county governments are putting up ECD centres using a lot of funds like Kshs2 million. This is daylight robbery because Members of Parliament construct classes using less money from the NG-CDF. How can county governments purport to use millions of shillings? This is simple financial mismanagement. The common person's children are the ones who suffer because they are unable to take their children to nice and well equipped ECD centres. Therefore, the Government should provide a law of creating conducive ECD centres, so that all children can love going to school.

Another issue is that ECD teachers are having it rough. Most of them are paid peanuts and others are not paid at all. You find a class with between 20 to 40 children having only one teacher from morning to around noon. This is not good because the children get bored. You know a child's concentration level is very low. So, once a child feels bored by the teacher, they will not understand anything. Therefore, there should be rules to govern the ECD centres. For remuneration maybe, the TSC should take over the running of ECD teachers because some have degrees in early childhood education. So, they must be taken care of and not left at the hands of governors who employ and pay them very little money.

If this Bill becomes law, our children will enjoy going to school. They should not be overloaded. As early as 6.00 a.m. in the morning, you see small children with huge bags on their backs and this is terrible medically. Dr. Nyikal can confirm that it is unhealthy for a child of three or four years to carry a huge bag on the back because it brings health issues. We need a conducive environment for the children to learn.

I support the Bill.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Ali Wario, but before you start, Hon. (Dr.) Kimunya, congratulations on your attainment of this great accolade of Doctor of Philosophy (PhD). Hon. Wario, proceed.

Hon. Ali Guyo (Garsen, JP): Thank you, Hon. Temporary Deputy Speaker. From the outset, I take this opportunity to thank the Chair of the Departmental Committee on Education and Research for bringing this policy framework. The ECD education should not have been devolved. The entire education sector from primary, secondary, colleges and universities is under the national Government. Devolving early childhood education without appropriate laws and policies in place is wrong.

I want to thank the Chair of the Departmental Committee on Education and Research for trying to rectify this mistake. Secondly, I want to speak about education in general from the point of Arid and Semi-arid Lands (ASAL) and pastoralists' children. I am speaking about them because they are children whose livelihood is determined by the climatic condition they live in. Therefore, there are gaps in law. I read the Omingo Report of 1970, the Koech Report of 1980 and the United Nations Development Programme (UNDP) Report of 2000. All are highlighting very key basic issues on education like issues to do with enrolment and retention. How do you address enrolment when you do not have an appropriate policy governing the early childhood education system in the county? Examples are Tana River, Lamu and Garissa. For the last 40 years, these counties have been leading from behind in national examinations. This is not an accident. It has been happening for 40 years. What is the Ministry of Education doing? Why can they not research and come up with appropriate policies to address this? Why can they not do an affirmative action to address the issue of children failing in ASAL counties? It is because of negligence and impunity. That is why children in Tana River have been leading from behind for the last 40 years and nobody cares; not the President, not the Deputy President or the Minister for Education. Nobody cares about the suffering of the children of pastoralists of this country. I hope this policy will give us hope. Regularising early childhood education will go a long way in solving the problems facing the pastoralist children of this country.

With those remarks, I support the Motion.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Martin Owino, Member for Ndhiwa.

Hon. Martin Owino (Ndhiwa, ODM): Thank you, Hon. Temporary Deputy Speaker. I appreciate the time you have given me to contribute to this Bill. This is the time when a child can learn when an "A" is straight or inverted. That can go a long way as an indicator of dropping from school or not. As it is now, ECD classrooms are in a deplorable condition.

I want to link this to Part II of this Bill on the right to early childhood education. Under that Part, sub-clause 5(1) says: "Every child has the right to free and compulsory early childhood education in a public education centre." The word "public" is good, but we need to do more. As another Member said here, we need to harmonise this. We are now building schools through the NG-CDF and advocating for infrastructure money to come from the Ministry of Education, but the ECD is left to the county governments. So, what sense does it make when you cut a child into two? Dividing basic education into two categories and addressing issues in only one category is doing a disservice to our children. Early childhood education is the foundation of education. I will suggest at an opportune time that we make amendments to harmonise education, so that we can deal with it from the national point of view. Even the funds that are allocated to the counties for this kind of activity can well be done through NG-CDF, so that when you start a primary school, you do not build modern classes with tin and iron sheets that have rusted in the middle for children.

Sub-clause 5(2) says that the right of early childhood education shall be enjoyed without discrimination. How can we talk of discrimination when the places the children learn in are not uniform? Some children learn in good classrooms while others learn in dirty classrooms infested with jiggers, where they pick diseases of various kinds. So, let us not be theoretical about advocating for free and compulsory childhood education when practically, some children are being discriminated against because of infrastructure. Children face a lot of hardships occasioned by bad learning environment with no toilets. Young children are vulnerable to various communicable diseases. We do not have appropriate toilets for children. If we cannot transfer

everything to the national Government, then we should, in one way or another, ring-fence the money for the ECD, so that issues of infrastructure at every centre can be addressed.

Lastly, a lot of private schools have sprung up to give early childhood development education, but they are loose. They are running amok. They are in tins and iron sheets. They are not licensed or inspected well. As I support the Bill, I submit that the right of a child to quality education must be given, but the most important thing that we should do to a child at that age is the security of a child in terms of proper infrastructure. Therefore, while I support this Bill, some amendments should be introduced to require the national Government to harmonise basic education for our children.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Christopher Omulele): Hon. Shimbwa.

Hon. Omar Mwinji (Changamwe, ODM): Thank you, Hon. Temporary Deputy Speaker for according me this opportunity to air my views and thoughts about this very important Motion.

Honestly speaking, the first five years of a child are very important. This is the time when the brain is growing. Learning has begun. Attitudes are being formed and the overall growth of a child is also taking place. This important stage of life needs to be taken proper care of. If we do not take care of our children during these ages, we will definitely lose them. We will have the kind of school dropouts that we see around. We will also have children who always lead from behind. That does not augur very well for this country.

Countries which have realised the importance of early childhood development education have paid a lot of attention to this stage. As Hon. Tong’i said, in some countries, lower primary school teachers and early childhood education teachers are better remunerated than primary and secondary school teachers. This shows that such countries know the importance of this stage in life. Early childhood development lays the educational foundation of children. If the foundation is not strong, we should not expect a lot in years to come. For effective learning to take place, we need a proper environment comprising of proper classrooms, proper playgrounds and proper care. If we leave early childhood development education to county governments, as it is right now, we will be exposing our children. Starting with recruitment, it is not done professionally. Perhaps, it is done based on who is related to who, unlike how it is done in primary and secondary schools. Again, this being a very important stage in life, it requires well trained personnel that understand the development of children, so that they can give them the necessary care and attention. Children who are exposed to a good learning environment definitely become good students. That is why it is recommended that schools sometimes become better than homes. If the environment of the school is better than the home, the child would definitely be interested in going to school. Going to schools that we have currently, you find that the home is better than the school. That is why children are not very keen on going to school.

Teaching is also a passion. We need to make sure that those who are recruited to teach our young children are in love with the profession. They should also be well-exposed to the nature and needs of children during the formative stages of their lives, so that they can bring them up in an environment which can help them to develop into good students who can produce the results that Hon. Ali Wario talked about. We also need teachers who can identify the various nature of challenges that children undergo and facilitate learning among the children. Leaving this important task to county governments might jeopardise the progress and development of education in our country.

Long ago, we had a programme where every primary school was supposed to develop a pre-primary school in its compound. This was to ensure that there was continuity from the lower to the upper classes, so that the children could adapt to the environment in those areas. The national Government is in a better position to handle the development that is required for the children because it has statistics. It is in a position to know how many children have been born in an area and how many pre-primary schools are required to cope with the population of those children. As it is right now, with no statistics, county governments would perhaps put up only one pre-primary class or school in one whole ward which does not add up. With all these, we can see that there is a great need for this level of education to be brought under the national Government, so that everything moves in concurrence until one gets out of school.

A proper learning environment is enhanced with a good learning atmosphere, learning materials and teachers who are also accommodative, have love and are not recruited because they have no other jobs to do and perhaps receive meagre pay as their salaries. With the problems that they have, they cannot impart good knowledge and training to the children who need those services at this stage.

With those few observations, I support this Bill that pre-primary, nursery or early childhood education should be transferred to the national Government.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, you know that we are due for Zero Hour as proposed by the Member for Malindi. We have less than five minutes to go before 6.30 p.m. At my discretion, I call upon Hon. Aisha Jumwa to move her Adjournment Motion for Zero Hour.

Hon. (Ms.) Aisha Jumwa (Malindi, ODM): Thank you, Hon. Temporary Deputy Speaker. Noting that my colleague, the Member for Likoni, Hon. Mishi Mboko, will also be moving an Adjournment Motion on the same matter tomorrow afternoon, I wish to request the House to allow me to defer my comments on the Zero Hour Statement to tomorrow during the Adjournment Motion.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, the Member is seated next to Hon. Mishi Mboko. They seem to have come to a consensus. I can see some Members are agitated and want to move on with the Zero Hour. The Adjournment Motion stands deferred until tomorrow. The two Members can consolidate. You will still have an opportunity to debate.

(Motion for Adjournment deferred)

In that regard, Hon. Ngugi Nduati was next in line from this side.

Hon. Joseph Nduati (Gatanga, JP): Thank you very much, Hon. Temporary Deputy Speaker for giving me an opportunity to contribute to this Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Members, we are going back to Order No.12.

Hon. Joseph Nduati (Gatanga, JP): Thank you, Hon. Temporary Deputy Speaker.

From the outset, I support the Bill. It is a very nice Bill. Early childhood education is very critical because that is the time most kids make good judgements on what they will do in future. We also know that the rich invest a lot in early childhood education centres. It was very wrong for the Government to have devolved both early childhood education and polytechnics. From what we are seeing, most county governments have not been able to provide good infrastructure.

Most classrooms do not have windows. They are not well-ventilated. As a country, we made a mistake. Looking at all nursery schools across the country, you will find that the windows are positioned badly. They are poorly lit. They have no floors. The desks which have been provided are of very poor quality. They are not enough. There are no chairs. Even toilets are a challenge because in most nursery schools, the toilets are the normal pit latrines which most of the young people cannot use. As we take back this function to the national Government, we need to look at the design because that is where we made the mistake. We should provide a facility which can be used by the young people.

The other thing I wanted to point out is that the teachers are not well-trained. They are poorly trained. In fact, you find that in most schools, it is the parents who pay for their services. The remuneration is quite poor such that you cannot get qualified teachers to teach in those schools. Playgrounds are also a huge problem in those schools. They are poorly kept. As a country, we should not have devolved the early childhood education.

A few Members have talked about construction of classrooms. Some of them have pointed out that they can construct a classroom with Kshs500,000. Members, as we are talking to the nation, we should be serious. It is very hard to construct a classroom with Kshs500,000, unless you construct a classroom which will collapse the next day as it happened in Dagoretti the other day. A good classroom should not cost less than Kshs1 million. Studies were done by the Ministry of Public Works and their recommendation was about Kshs1.5 million. If you will provide good windows, a complete floor, at least two doors and a ceiling, I want to assure the Members here that, that cannot be done with Kshs500,000. If we say that we can construct a classroom with Kshs500,000, we will be giving the country the wrong information. I am sure when some of us go back home, we will be challenged because we are the ones who are proposing that amount of money. Indeed, we have been asked to bring proposals. Constituents will see that Members are able to construct classrooms with Kshs500,000 which will be a big mistake. I encourage Members to do the right thing.

Last but not least, I urge the national Government to take over the role of ECD education and polytechnics. If you go to our polytechnics which were also devolved, you will find that governors have not done anything. They do not pay the staff and no materials are provided.

Hon. Jeremiah Kioni (Ndaragwa, JP): On a point of order, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Hon. Nduati. I can see an intervention request from Hon. Kioni. Let us hear him out.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Temporary Deputy Speaker. I want to bring to your attention the provisions of Standing Order No.95. If you listen to the Members' contributions since last week, we are literally saying the same things. I am asking that we bring this debate to a close, so that we can move on to new things.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Are you calling upon the Mover to reply?

Hon. Jeremiah Kioni (Ndaragwa, JP): Yes. There are only two Members which means we have exhausted this issue.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Kioni, you have said it. Let the two Members finish their contribution and then we can move on.

Hon. Joseph Nduati (Gatanga, JP): Thank you, Hon. Temporary Deputy Speaker. Hon. Kioni, I was concluding.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Kioni is agreeable.

Hon. Joseph Nduati (Gatanga, JP): I want to conclude at this stage. Thank you very much, Hon. Temporary Deputy Speaker, for giving me an opportunity to make my contribution.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have Hon. Mawathe Musili.

Hon. Julius Mawathe (Embakasi South, WDM-K): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute. I rise to support the Early Childhood Education Bill. I am praying that we will get an opportunity to make amendments in the Committee of the whole House.

A mistake was made when we were making the Constitution. We said that primary and secondary school education and university education should be managed and handled by the national Government and the ECD education by the county governments. There is no way a county, say, in south eastern Kenya, will allocate the same amount of funding to the ECD education as a county in North Eastern and yet we are supposed to have equal education for all the students regardless of where they are! So, I highly recommend that we amend this. I hope we will make amendments successfully, so that we can move the ECD education back to the national Government.

Most ECD education instructors or teachers are not paid appropriately. They are underpaid. The people who end up applying for the ECD education teaching jobs, in most cases, do not have the necessary qualifications or experience to teach the children. Teaching children during their formative age is a huge challenge because that is the time you are supposed to teach them how to write from A to Z and form their education foundation for the rest of their lives. As a country, we, in most cases, create a foundation to construct a two storey building and yet we end up putting up a 12 storey building on it. So, that is definitely inappropriate.

I thank you, Hon. Temporary Deputy Speaker, for giving me the opportunity to contribute.

I beg to support.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): The Member for Runyenjes, you have the Floor.

Hon. Eric Njiru (Runyenjes, JP): Thank you, Hon. Temporary Deputy Speaker for giving me the opportunity to add my voice to the Early Childhood Education Bill. At the outset, I want to start by saying that I support this Bill because ECD education is very important to our children. It is important for the Government to take this level of education very seriously.

We realise that in many county governments across the country, ECD education is not treated the same way. The ECD teachers' remuneration is inconsistent. In some counties, teachers are paid as less as Kshs8,000 and others are paid as much as Kshs18,000. There are a lot of differences in the way issues are handled at the county level. So, I support the Members who are saying that we revert this function to the national Government. It does not make sense when the national Government monitors the learning issues in a whole school with eight streams and then the county government only manages the ECD education. It will be better to bring all the learning activities under the national Government, so that we can have easy management, monitoring and quality control. If we do that, we will have good learning at that level.

Thank you, Hon. Temporary Deputy Speaker. I support the Bill.

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

Hon. Gideon Ochanda (Bondo, ODM): Thank you, Hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Hon. Kioni, you should not think that Hon. Temporary Deputy Speaker was lying when she said that there were two

Members who wanted to contribute. It is just that we have Members who are contributing very briefly and more requests are coming in. It is fair to allow them to contribute because they are not too many.

Hon. Gideon Ochanda (Bondo, ODM): By any chance, Hon. Kioni, I am the second one to contribute. I want to bring to the preliminary two critical things. One, Parliament, that is, the Senate or the National Assembly, is over-legislating for counties, which is something we need to observe. We are bringing in too many legislations which are supposed to be done by the county assemblies. The Constitution is very clear that county governments are distinct. Each one of them has its assembly to do some of these things. In as much as we are talking about standards which are really a benefit that we are seeing in this Senate Bill, there are many others that we are doing which should be done by the county assemblies. They will not be doing much because we are over-legislating. We are telling counties what to do with revenue, how to raise revenue and how to do other things. There is a problem there.

The other thing is that the Constitution indicates clearly that there are functions that are distinct. There are those that are placed with the county government and those placed with the national Government. In as much as they are distinct, the Constitution allows that a government on either side can play the functions of the other government. The issue of the ECD is one of those functions that the national Government and the county government ought to have demonstrated how they are able to share a number of things. What we call ECD teachers, for example, are teachers. The role of recruiting teachers, disciplining, transferring and all those things that pertain to teachers belongs to the TSC. The TSC ought to be in charge of teachers in ECD centres. For purposes of knowledge, ECD teachers are qualified to teach what we now call PP0, PP1 and PP2 or Grade 1, Grade 2 and Grade 3. That means that while we have a big shortage of primary school teachers in many of our primary schools, ECD centres have teachers who would easily double up to teach up to what we could be calling Class 3. So, teachers are teachers and they are supposed to be under the TSC.

In as much as the ECD programme is under the counties, the purpose and the role played by the TSC needs to be done also by teachers at the ECD centres. That is one critical thing. The resources that are going for purposes of ECD teachers to the counties need to go to the TSC such that it is the TSC that recruits, transfers and disciplines teachers such that ECD teachers are able to serve under what we call the headmasters or headmistresses for all primary schools.

When we have the counties, for example, coming up with all manner of different ECD training centres away from primary schools, we are missing very many other things. One, they end up buying land. Two, they end up with teachers on their own minus leadership of those teachers the way we would be seeing in a normal situation where the head teacher is in charge or is the head of primary school teachers plus those of the ECD centre. This is a very critical issue that needs to be looked at. That is exactly what brings in the challenges of how different counties are employing all manner of ECD teachers with different terms. All these terms need to be given by the TSC. As at now, if county governments are recruiting ECD teachers, they need to go with terms that are listed by the TSC. This is a critical thing that needs to be looked at here. In as much as some useful standards are brought in by the Senate, I still think we are over-legislating for counties.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Well said. Let us have the Member for Ainamoi, Hon. Maritim.

Hon. Sylvanus Maritim (Ainamoi, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me an opportunity to contribute to this very important Bill. Just like foundation in

every building is important, so is ECD to every learner. I appreciate that this Bill is coming up though it looks like we had put the cart before the horse considering we have been having ECD centres running without a framework that guides the same. All the same, we appreciate. It is coming up at a time where we are having confusion particularly in terms of infrastructure.

I am saying so because back in my constituency, we have problems in ECD centres. Most of them do not have adequate infrastructure. Where they exist, basic infrastructure like toilets are missing and classrooms are in bad shape. Most of the time, we are forced do the same. In any case, our hands are tied because largely, ECD should be a function of the county government, but we are forced outside the legal framework to see a way of assisting young learners because sometimes it is stressful to get into an institution where ECD students are suffering.

In as much as this Bill tends to set minimum standards before an ECD centre is set up, I am of the opinion that we also consider town schools where one acre is a challenge. In my constituency, some schools are not yet registered because we cannot get minimum acreage of two acres. I suggest we consider reducing acreage in urban schools where it could be a challenge to get one acre to set up an ECD centre, so that students do not suffer. Two, I also hope that this Bill is going to harmonise payments and contracts for ECD teachers. Most of them have been under contract sometimes for one year or six months. This discontinuation all the time is a problem. The ECD teachers are doing a lot of work. We should appreciate what they are doing by giving remuneration that match the task.

Finally, most of the ECD centres always grow into primary schools. I hope county governments are going to speed up the registration process that can also be easily picked up by Ministry of Education, so that learners can transit to the next level without interruption.

Having said that, I fully support the Bill.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuyu): Let us have Hon. Nyikal Wambura, the Member for Seme.

Hon. (Dr.) James Nyikal (Seme, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity to contribute to this Bill. This is an extremely important Bill. Early childhood education commonly referred to as nursery schools have been looked at as institutions you can put in the corner of a school, get anybody who has got some secondary or primary education to look after them, yet this is probably the most important part of education. Early Childhood Education is not to a large extent education per se, but it is to look at the development of the child in the earliest ages, so that education is harmonised with development. This is the period that for many children, they are very great changes in development that is occurring physically and mentally. Therefore, if it is not handled well, any errors that occur at this stage will affect the child for life. So, it is something that we should look at.

This is the time you can pick certain disabilities that may be so silent like autism that people may not know. You will then stream the children early, so that they can get the benefit of education later on in life. It is not just teaching the children to read and write, but also looking at the development of the child. Moreover, this is the foundation that later on, as I said, if the children have been properly streamed, they can pick into primary and secondary education. That is also important because a massive change is going on in this country. We may not realise it, but I think we do. If you look at the competence-based education, it is a massive change that we are still struggling with. We have to know where it is going. We are looking at 100 per cent enrolment which is going to take away exams that we are having at Grade 7 now.

If you have these massive changes, the preparation for children to get into these changes are key. Therefore, to look at it at this stage is extremely important. Whereas I accept it is a

function of the county government, it is important to know that whereas we have 47 counties, we have one nation. Therefore, on the issue of standards, you want to be sure that if you are moving from the Rift Valley to the Coast with your child who is in early education, they are going to fit perfectly. What the counties do is to implement the policies and standards that exist. The county assemblies can oversee and can make minor changes, but the overall changes must be the same. Therefore, for the Senate to bring this, it is bringing a very important issue at a very critical stage.

Part II recognises what I have been saying on the right to early childhood education. I would have added there “and development”. If you look at the details, it brings out the obligation of a county. They are not taking anything from the county, but there is an obligation to make sure that they have early childhood education in the right manner according to the standards that we want. What of the role of parents, the role of teachers and the role of guardians at this stage? A lot of times our children go to school as early as 6.00 a.m. They come back late. The development of a child is an important thing. I sometimes wonder. Children in developed countries go to school at 9.00 a.m. and return home at 3.00 p.m. and they still seem to be doing better than our children. In our country, you find little guys with big bags at 6.00 a.m. I wonder what they learn with all those big bags. It is, therefore, extremely important for us to look into these aspects, and into the duties of the people involved.

Part III is about the establishment of centres. It provides for the criteria for establishing them, the way they should be registered, and the process that are involved. We cannot overemphasise that. We have just seen what has happened. If we had criteria of saying “this school is fit to do this”, we would not have those things happening because somebody would do it. I know it is there for primary schools and secondary schools although we do not really adhere to them. This is even more important.

Clause 22 is on private schools. People may not realise, but problems are more likely to occur in private schools than in public schools. The private schools that we like because we think they are doing well are actually the high cost schools. Low cost private schools are like the one whose roof collapsed and killed people in Dagoretti. We need to have standards. When you have children of this level, you must adhere to the standards. We have decided to have our children in early childhood development education centres, which we can establish as private or public institutions. This Bill provides for the structures within which they will be operationalised, the boards that will run them, how the boards will function and how the heads will function.

In my view, this Bill does a lot. It goes into the administration and the recruitment of teachers. In fact, you probably need graduate teachers in early childhood education schools than you probably need them in primary schools. You are here dealing with not only, as I said, education, but the development of children. These are people who should be trained a bit in child health, so that they can pick issues of health that occur at that time. This is the time when you can notice that a child is short-sighted. We should start thinking of paying them well. The thinking that ECDE teachers should be paid less because they look after small children is an anomaly. This is the person who needs better pay.

We are talking about prohibition of exams and prohibition of holding them accountable or expelling them from school, among other issues. Again, they will need to be assessed. What are you assessing in somebody who is in pre-school? You need to assess them. You are not just going to assess education performance and whether they can read and write, but you even want to check their development and what they are able to do. You may not realise, but a five-year old child may still not be able to stand on one leg. These are small things that you want to pick and

know how this child is behaving. Are there things we need to look at? Even some physical conditions need to be looked at. As children grow, you pick them up. So, this is important. I really like this Bill for all these things.

The Bill also looks into the issue of accreditation. There are times when we have foreign schools in this country. They must be accredited because our children may go there. We should make sure that what they learn fits in our schools. The interaction aspect is also important. There is also the quality assurance aspect that has been put into this Bill. There is protocol for safety and so on. The drafters of this Bill have done a good job. If it is passed, it will give the basis for the county governments to take over.

On physical structures, we need better physical structures for young children. We will just set up standards to guide the county governments as they spend a lot of money to construct classrooms. That is a matter we have left to the auditors to determine. If the NG-CDF build a classroom using Kshs1 million or Kshs1.5 million, why should a county government build a classroom using Kshs3 million? We achieved that. I think those are not the issues here. The issues here are the well-being and proper progress of children in education with the best foundation that they need.

With that, Hon. Temporary Deputy Speaker, I support this Bill.

The Temporary Deputy Speaker (Hon. Soipan Tuya): Hon. Members, it is the time for me to give an opportunity to the Mover. Unfortunately, Hon. Buyu, you have come at the wrong time. It was just one turn for the Mover. I will give him the liberty to donate some of his time to you. I know we have eaten into your 10 minutes. Okay, you have one minute from the Mover. Let us have it on record.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. Before I reply, I would like to donate one minute to Hon. Buyu since she is the last one on the list.

The Temporary Deputy Speaker (Hon. Soipan Tuya): Fair enough. Let us have Hon. Buyu.

Hon. (Ms.) Rozaah Buyu (Kisumu CWR, ODM): Thank you, Hon. Temporary Deputy Speaker. I thank Hon. Kimunya too, for the donation of one minute. I would like to state that my profession is education. I taught for 10 years before I found my way into politics. I know the importance of early childhood education and what it does to the foundation of a child. I support because I know that a child who gets a strong foundation is able to go through education with more ease. I also know that with this kind of legislation, we will have a lot more attention paid to ECDE centres in our counties. At the moment, it is given the last priority. We also know that many children in ECDE learn under trees. If they do not learn under trees, they learn in rooms or structures that are not fit for learning. With this legislation, everything will be regulated. Standards will be regulated across the 47 counties and all our children will have equal opportunity to a strong foundation.

Hon. Temporary Deputy Speaker, in appreciation of what has been done to me, I do not wish to go any further. I support and once again, I thank you.

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Let us have Hon. Kimunya to reply.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Temporary Deputy Speaker. On behalf of the Departmental Committee on Education and Research, I want to first put on record our appreciation for the support that Members have indicated to this Bill and the emotional

attachment they have to the early learning process, in recognition that it is the foundation of all learning. If we get it right there, we get it right all the way. If we get it wrong, we are sunk.

As a Committee, we looked at this Bill extensively. We will bring a whole raft of amendments, first of all to harmonise it with the Basic Education Act, so that the terminologies and phraseologies are all aligned and to also bring some of the provisions that the Senate did not include. I would like to encourage Members who have promised to bring some amendments to do so, so that we can harmonise them. Perhaps, it could be the same amendments that we have already addressed, so that we can get this Bill right from the word go.

Members earlier today voted on the revised Sessional Paper, which is the anchor of this. It summarises all those things from alignment with the Sustainable Development Goal (SDG) 4. Nobody will be left behind. It is life-long learning. We want to start it from early childhood all the way to higher learning in a seamless and standardised manner, so that a child in Mandera and one in Nyandarua are subjected to the same standards. This is part of the reason for this Bill.

I want to thank the Senate for initiating this Bill. I hope by the time we make amendments, we will not go into a twinge and throwing, but it is something we will do for the betterment of this country. I also want to thank Members for their contributions that they have put in and the stakeholders who appeared before the Committee and brought their views.

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

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Very well, Hon. Kimunya. We shall defer the putting of the Question until such time as the Bill will be put on the Order Paper. Indeed, it is a very important Bill. Going by the interest that has already been demonstrated, we are going to have rich contributions at the next stage.

ADJOURNMENT

The Temporary Deputy Speaker (Hon. (Ms.) Soipan Tuya): Order, Members!

The time being 7.00 p.m., this House stands adjourned until tomorrow, Wednesday, 2nd October 2019, at 9.30 a.m.

The House rose at 7.00 p.m.