

NATIONAL ASSEMBLY

OFFICIAL REPORT

Thursday, 25th November, 2010

The House met at 7.00 p.m.

[*Mr. Speaker in the Chair*]

PRAYERS

COMMUNICATION FROM THE CHAIR

DELIMITATION OF CONSTITUENCY BOUNDARIES BY THE IIBRC

Mr. Speaker: Hon. Members, I have the following communication to make. At the earlier sitting held today at 2.30 p.m. Dr. Khalwale rose on a point of order seeking the direction of the Chair on the matter of the delimitation of constituency boundaries by the Interim Independent Boundaries Commission (IIBRC). He made reference to Article 89 of the Constitution which addresses the matter of delimitation of electoral units. In particular, the hon. Member referred to the following Sub-articles of Article 89. Article 89(2) vests in the Independent Electoral and Boundaries Commission the power to review the names and boundaries of constituencies at intervals of not less than eight years and not more than twelve years and to complete any such review at least 12 months before a general election. Article 89(3) vests in the Independent Electoral and Boundaries Commission the power to review the number, names and boundaries of wards periodically. Dr. Khalwale observed that by these provisions, the Independent Electoral and Boundaries Commission does not have the mandate to create new Constituencies, a function which by Section 27 of the Sixth Schedule to the Constitution is vested in the IIBRC. Dr. Khalwale, therefore, advanced the view that the conclusion of the delimitation of constituency boundaries by IIBRC was an extremely urgent matter and one that if left unaddressed could lead to a Constitutional crisis.

The Assistant Minister, Ministry of State for Special Programmes, Mr. M. M. Ali, in contributing on the matter stated that the matter of the delimitation of constituency boundaries was before the courts and that it was, therefore, out of order for Dr. Khalwale to seek the direction of the Chair on the matter. The hon. Member further observed that hon. Members had also had occasion to discuss the matter at length at the Speaker's *Kamukunji* which was held on Wednesday, 24th November, 2010.

Hon. Members, I undertook to give directions on this matter at this sitting. The matter of the delimitation of constituency boundaries is of critical constitutional significance. The Chair is aware that the matter is presently before the courts and, indeed, on 16th November, 2010 documents evidencing such position in one of the courts were tabled in the House by the hon. Member for Mutitu. The Chair is also aware that owing to the constitutional significance of the matter hon. Members held a Speaker's *Kamukunji* on Wednesday, 24th November, 2010 to deliberate and seek consensus on the same.

Hon. Members, the matter of delimitation of constituency boundaries is one that continues to cause considerable anxiety amongst not just hon. Members of this House but the people of Kenya as a whole. The Chair would, therefore, wish to appeal to hon. Members and to those in political leadership to seek a speedy resolution of the matter in the interest of Kenyans at large.

End A

Mr. Imanyara: Mr. Speaker, Sir, I wonder if the Leader of Government Business, who is the political head of one of the political parties, has anything to say to what you have said before.

Mr. Speaker: Deputy Leader of Government Business, that is a genuine request. It will be valid in the light of the communication which I have made, particularly the last two paragraphs.

The Minister for Agriculture: Mr. Speaker, Sir, your appeal will be heeded.

Mr. Speaker: Deputy Leader of Government Business, can you say that again Members do not seem to have heard you?

The Minister for Agriculture: Mr. Speaker, Sir, you made an appeal, it will be heeded.

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. While appreciating the expression from the Deputy Leader of Government Business that your order will be heeded, I am at a loss---

Hon. Members: The appeal!

Mr. Mbadi: Whatever it is. Could the Deputy Leader of Government Business---

Mr. Speaker: Order, Member for Gwassi! It cannot be whatever it is. I was clear in whatever I said. Please, refer to the Communication I made accurately.

(Laughter)

Mr. Mbadi: Mr. Speaker, Sir, let me start afresh. Given that the Deputy Leader of Government Business has just said that your appeal will be heeded I am at a loss how this will be done because it is critical. The life of the Interim Independent Boundary Review Commission (IIBRC) is coming to an end and she has just made a general statement that it will be heeded. Would it be in order for me to ask further for clarification on what is meant by heeding the Speaker's appeal?

Mr. Speaker: Deputy Leader of Government Business, please, take notes so that you can make a final response to this.

Dr. Khalwale: Thank you, Mr. Speaker, Sir. When I raised this point of order, it is because I was trying to think ahead of time. The time I was thinking ahead of is now, that we are going to be expected to make a decision on two important constitutional commissions. The decision that we are making is to constitute those commissions. So if we cannot respect the decision of an earlier constitutional commission that we made, how sure could Kenyans be that whatever decisions these new commissions we are making are going to be respected?

Mr. Speaker, Sir, with due respect the Deputy Leader of Government Business is here, she is free to make urgent consultations with the Government so that before we cast our vote, our minds should be very clear whether we are engaged in exercises in futility or we are engaged in work that will have results.

(Dr. Nuh stood up in his place)

Mr. Speaker: Order hon. Members! Member for Bura, would just resume your seat for a moment.

I just want to draw your attention on the need to proceed carefully even as you raise these points of order because whereas the Member for Ikolomani may to some extent have reacted to the response by the Deputy Leader of Government Business, as I conceive it, he appeared to begin to make his contributions to the Motion before that business is transacted. So be careful that you do not speak to the Motion now because it is not yet moved.

Member for Bura, with that caution, please, bear it in mind.

Dr. Nuh: Thank you, Mr. Speaker, Sir. I will abide by your guidance. While I laud your ruling, but I think it would be worthwhile to note that Dr. Khalwale in requesting for your guidance on the issue of delimitation of boundaries seems to have read the Constitution selectively. While the Deputy Leader of Government Business responds to the urgency, and we all as Kenyans know the urgency of the Independent Interim Boundaries Commission and the gazettment of the constituencies in earnest as required, but I think it would be worthwhile to inform Kenyans that all is not lost.

Mr. Speaker, Sir, Article 89 (1) says that there shall be 290 constituencies for the purposes of the elections of the Members of the National Assembly provided for in Article 97 1 (a). Going by this Article, it does not require any more powers to be given to the Independent Electoral and Boundaries Commission (IEBC) for the formation of any new constituency. The 290 constituencies in this country are guaranteed by the Constitution. What will have to be done by the IEBC will just be to delineate the boundaries and to give names to those 290 constituencies. While we discern and know the urgency of the matter, I think it will be worthwhile for the Deputy Leader of Government Business to inform Kenyans that it is not all lost and that any commission that will come after the IIBRC will still carry on with the work of Ligale.

Mr. Midiwo: Thank you, Mr. Speaker, Sir. I want to agree with you that this matter is causing a lot of anxiety to Kenyans and it has to given some solution. I want to thank you for allowing the membership of this House to convene a Kamukunji to try to resolve this matter.

Mr. Speaker, Sir, we are also aware that there have been several inter-ministerial meetings where the principals have been sitting. I think it is only fair that the Deputy Leader of Government Business informs this House and Kenyans what have they been talking about and whether there are any hopes. The life of the Ligale Commission is ending at midnight tonight. We want to know what the Government is expecting to do beyond that.

(The Minister for Agriculture stood up in her place)

Mr. Speaker: Just, hold your horse, Madam Minister. You will have an opportunity to respond. When you make your response, Madam Minister, you can answer all those issues.

Mr. Ruto: Thank you, Mr. Speaker, Sir. The matter raised by hon. Khalwale is a very critical matter. The Sixth Schedule of the new Constitution, Article 27, says that, "the Boundaries Commission established under the former constitution shall continue to function as constituted under that constitution and in terms of Section 41 (b) and 41 (c)

and it shall determine the boundaries of constituencies and wards using the criteria mentioned in this constitution,” and several other things mentioned.

The law also indicates that in the discharge of its functions, this Commission shall not be subject to the direction of any authority. There has been very clear interference on the functions of this particular Commission. We are worried that now that it is coming to an end and its work has been interfered with, we view this as a very grave violation on the Constitution by the executive. This is actually an attempt to scuttle the implementation of the new Constitution and therefore this probably this Government is not serious in implementing this Constitution.

Mr. Speaker: Order! This part obviously must come to an end. Member for Chepalungu, are you done?

Mr. Ruto: Mr. Speaker, Sir, I think the Government is not serious on implementation. I think it is important that the Government side tells us today what their intention is before we can---

The Assistant Minister for East African Community (Mr. Munya): Mr. Speaker, Sir, the implementation of the new constitution requires us also to be very conscious of our responsibilities and boundaries as a House. The responsibility of interpreting the constitution and applying the law is the responsibility of the courts.

End B

[The Assistant Minister for East African Community (Mr. Munya)]

Once we have passed the law here, it is very irresponsible for us if we allow the institution that is created by the same Constitution to do its job. There is a tendency with hon. Members of this House – I am sorry to say so because I am an hon. Member of this House – to want to acquire all the power that is in the Constitution; to appropriate all the power unto themselves. This does not augur well for the implementation of the new Constitution. Can we, at least, in the new spirit of the new Constitution, respect our courts and allow them to do the job that they are doing? This matter is before the courts.

Mr. Speaker, Sir, your appeal is in good spirit. If political leaders can be able to resolve the matter, well and good! And you have tried to do it even through *Kamukunji*'s. We have even tried to resolve these matters before, but we have not been able. If we can be able to resolve them this way, well and good! But, as long as citizens have gone to court challenging a decision of a Commission – which it is their right to challenge – we should not intimidate the courts by entertaining debate on those matters in this House.

Mr. Speaker: Mr. Bahari and that would be the last one!

Mr. Bahari: Thank you, Mr. Speaker, Sir. I want to applaud you for the ruling or the direction that you gave this evening, particularly so because this matter is before the court.

Mr. Speaker, Sir, the decision of the Interim Independent Boundaries Review Commission (IIBRC) satisfied many, many citizens of this country and many hon. Members of this House. But, equally, quite a substantial number of citizens were dissatisfied and they went to court. This House is very much aware of the principle of separation of powers between the courts and the legislature, which we must be at the forefront to respect.

Mr. Speaker, Sir, I want to appeal, through you, to the hon. Members of this House to exercise patience and wait for the outcome of this matter. They are very well aware that, perhaps, even whatever the Executive can say, they may be limited. Even if they made that decision, Kenyans can still go to court and demand for their right.

(Applause)

Why can this House not be patient?

Mr. Speaker, Sir, even if there are few hon. Members of this House, like myself, who are dissatisfied with the outcome, I think the majority who may be satisfied should be patient and ensure that justice is done and is seen to be done.

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! I did say, not very long ago, that Mr. Bahari would be the last one before the Deputy Leader of Government Business makes her response.

Will you, please, now make your response?

The Minister for Agriculture (Dr. Kosgey): Mr. Speaker, Sir, what hon. Members of Parliament are seized with is very important; it is a constitutional matter and we need to resolve it. However, you have given a ruling that has asked me to transmit your appeal to the Executive.

I have this to say: There has been mention of some inter-Ministerial meetings which I am not aware of. What I am aware of is that the two principals have been meeting. There were meetings, I think, held on Wednesday and there were some today. I attended some of them mid morning and I had to come here for the Business of the House this afternoon. What I have been informed now is that those meetings will continue tomorrow at 10 p.m. That is the message I got when we went on to this short break.

I will, of course convey the sentiments of the Speaker and of the House. But, truly speaking, looking at the Constitution and the Order Paper we have today, we are discussing the Business of the House. I think these things belong to the House and the House is also Government. I do not think you are asking me to rule against the Speaker's ruling but to simply convey an appeal.

Mr. Speaker: Hon. Members, we will now want to proceed to Order No. 8 and, please, note that we have three hours to transact the Business at both Order Nos. 8 and No. 9. That will, therefore, take us up to 10 p.m. at the very latest, unless there is a Motion to extent time. So, we will have to transact the two Orders in three hours, which end at 10.00 p.m.

Proceed, Chair of the Departmental Committee on Justice and Legal Affairs!

MOTIONS

ADOPTION OF REPORT ON APPOINTMENT OF CHAIRPERSON/MEMBERS OF CIC

Mr. Namwamba: Thank you, Mr. Speaker, Sir.

Mr. Speaker, Sir, I beg to move the following Motion:-

THAT, pursuant to provisions of Section 8 (6) of the Commission for the Implementation of the Constitution Act, 2010, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the appointment of the Chairperson and Members of the Commission for the Implementation of the Constitution laid on the Table of the House on Thursday, November 25, 2010.

Mr. Speaker, Sir, this Report has been prepared by the Departmental Committee on Justice and Legal Affairs which draws its mandate from Standing Order No. 198 (3) that hands this Committee mandate to consider issues of constitutional affairs, administration of law and order, public prosecutions, elections, integrity, anti-corruption and human rights.

This Report is specifically with regard to the establishment of the Commission for the Implementation of the Constitution, a constitutional commission established under Article 5 of the Sixth Schedule to the Constitution and, similarly, enacted further in the Commission for the Implementation of the Constitution Act of 2010.

Mr. Speaker, Sir, in considering this matter which came to the Committee by a letter Reference No. OP/CAB27/1/2 dated the 23rd day of November, 2010, from His

Excellency the President, having consulted the Rt. Hon. Prime Minister. That letter did forward to the Committee the names of the following persons for consideration for nomination to this Commission. The name of Mr. Charles Nyachae, nominated for the position of the Chair of this Commission; the names of Mr. Peter Wanyande, Dr. Ibrahim Ali, Dr. Elizabeth Muli, Dr. Florence Omosa, Ms. Catherine Muma, Mr. Kamotho Waiganjo, Mr. Philemon Mwaisaka Wawaka and Mr. Kibaya Imaana Laibuta.

Upon receipt of these names, the Committee held a meeting today, 25th November, 2010, to consider these nominees to the Commission for the Implementation of the Constitution (CIC) in compliance with the Constitution that requires nominees to this Commission to be approved by the House.

Mr. Speaker, Sir, the Committee wishes to thank the Office of the Speaker and the Clerk of the National Assembly for the support executed to it in the execution of this mandate. Therefore, it is my pleasant duty and privilege, on behalf of the Departmental Committee on Justice and Legal Affairs to present and recommend this Report to the House for adoption, pursuant to Standing Order No. 181.

Mr. Speaker, Sir, let me set off by providing some background to the House in respect of this Report. The CIC is established by Article 5 of the Sixth Schedule to the Constitution and has further statutory anchorage in the Commission for the Implementation of the Constitution Act, 2010. The said Article 5 of the Sixth Schedule to the Constitution, as read together with Section 4 of the Act provides for the functions of the Commission as being to:

(1) Monitor, facilitate and oversee the development of legislation and administrative procedures required to implement this Constitution.

End C

[Mr. Namwamba]

Two is to co-ordinate with the Attorney-General and the Kenya Law Reform Commission in preparing for tabling in Parliament the legislation required to implement the Constitution. Three is to work with each constitutional commission to ensure that the letter and spirit of the Constitution is respected. Four, report at least once every three months to the parliamentary select committee on:

1. the progress in the implementation of the Constitution; and,
2. any impediments to the implementation of the Constitution.
3. Exercise such other functions as are provided for by the Constitution or any other written law.

Mr. Speaker, Sir, Section 7 of the Commission for the Implementation of the Constitution Act, 2010 states that the qualifications of the chairperson and members of the commission as follows. Section 7(1) provides that a person is qualified for appointment as the chairperson or a member of the Commission if such person is:

- (a) a citizen of Kenya;
- (b) is the holder of a degree from a recognized university;
- (c) has knowledge and experience and has had a distinguished career of not less than five years in but not limited to any of the following things: law, public administration, economics, human rights or government;
- (d) that candidate meets the requirements of Cap.6 of the Constitution that speaks to the issue of leadership and integrity.

Mr. Speaker, Sir, Subsection (2) of that Section 7 of the Act provides that the chairperson of the Commission shall be a person who is qualified to hold the office of judge of the supreme court under the Constitution. Subsection (3) provides that no person shall be qualified for appointment as a member if such person:

- (a) is a State---

The Minister for Lands (Mr. Orengo): On a point of order, Mr. Speaker, Sir. I did not want to interrupt this debate, but being a Member who is disciplined about the practice in the courts, I have never seen anybody sit in the well of the Chamber. But if this is a new rule then the hon. Member for Rarieda is quite in order to sit within the well of the Chamber. I thought nobody should ever imagine--- Even the Speaker would not sit there.

Mr. Speaker: Yes, that point of order is *bone fides*. The Member for Rarieda, could you please find space anywhere other than in the hall?

(Laughter)

Chairperson, you may proceed.

Mr. Namwamba: Mr. Speaker, Sir, I will proceed. I was informing the House of the provisions of Section 7 (3) of the Commission on Implementation of the Constitution Act, 2010 that provides that no person shall be qualified for appointment as a member of the commission if such a person is:

- (a) A State officer;
- (b) is a member of a local authority;
- (c) is bankrupt; or,
- (d) has served as a member of the Committee of Experts appointed under the Constitution of Kenya Review Act, 2008.

Section 25 of the 6th Schedule to the Constitution provides that the Commission on the implementation of the Constitution shall be constituted within 90 days of the effective date. The effective date being the 27th of August, 2010, this Commission must, therefore, be constituted on or before the 25th day of November, 2010.

Mr. Speaker, Sir, the House should also know the provisions of Cap.15 of the Constitution that speak generally of Commissions and independent offices do apply to this Commission.

Finally, pursuant to the provisions of the Commission for the Implementation of the Constitution Act, 2010, His Excellency the President on November, 1st 2010 declared and, indeed, gazetted vacancies in the Commission in accordance with these constitutional and statutory provisions.

Mr. Speaker, Sir, in terms of deliberations and observations of the Committee, the Committee did hold a meeting on 25th November, 2010, today, at which meeting the Committee orally interviewed all the nine nominees, and also interrogated briefs prepared on each of the nominees. In conducting the vetting process, the Committee examined the candidates against the criteria set out in the second schedule to the Commission for the Implementation of the Constitution Act, 2010 which sets the criteria based on vetting of the nominees for appointment to public office by the National Assembly. That criteria require the nominees to disclose information on their personal and professional life, including their political affiliation, tax compliance and potential conflict of interest.

Mr. Speaker, Sir, at the conclusion of this vetting exercise the Committee made the following observations on the respective nominees:

1. With regard to Mr. Charles Ayako Nyachae, the Committee noted that this nominee, for the position of chair, is a holder of Master of Law degree from the London School of Economics. The Committee did note, after examining the profile of this candidate and interrogating him verbally, that he is academically and professionally qualified for the position for which he has been nominated.

Mr. Nyachae is an attorney of repute with considerable experience, spanning 25 years with proven service to justice and the rule of law. This nominee has also been actively involved in civil society reform-related activities, including service as chairman of the International Commission of Jurists (ICJ) between 1991 and 1993 and also as chair of the Institute of Education in Democracy between 1999 and 2003.

He also served a three-year stint as a member of the Law Reform Commission between 2003 and 2006. His moral standing has not been called into question to the knowledge of the Committee, nor can he be said to hold any known partisan political persuasions.

Mr. Gabow: On a point of order, Mr. Speaker, Sir. We do not have enough copies of the Committee's Report in the House. So, we would kindly request for more.

Mr. Speaker: There will be a few more copies available immediately, but some more will be produced.

Proceed, Mr. Chairman.

Mr. Namwamba: Mr. Speaker, Sir, may I also note that I am reading the critical portions of the report verbatim, and so we can proceed as copies come in.

With respect to Prof. Peter Wanyande, the Committee noted that Prof. Wanyande is a professor of political science from the University of Nairobi. He is a long-serving associate professor at the university where he currently teaches in the department of political science. The Committee found the nominee qualified on the basic evaluation grounds of academic qualifications, professional competence, moral probity and apparent capacity for non-partisanship. He possesses impressive credentials as a champion for reform, democracy, the rule of law and civil liberties.

Three, with regard to Dr. Ibrahim Ali the Committee noted that Dr. Ali holds a doctorate degree in Chemistry from the University of East Anglia, Norwich, United Kingdom. He has vast experience in the field of environmental research, where he is a pioneer and has similarly impressive credentials in community service and philanthropic work. The Committee found this nominee qualified on the required grounds of academic and professional competence, moral probity and political non-partisanship.

with regard to Dr. Elizabeth Muli, the nominee holds a PhD in law from Stanford University Law School, and currently teaches law at the University of Nairobi where she also chairs the Department of Commercial Law. Between 1995 and 1998 Dr. Muli served as a state counsel in the State Law Office Department of Treaties and Agreements.

End D

[Mr. Namwamba]

The Committee found Dr. Muli duly qualified on the basic evaluation grounds of academic qualification, professional competence, moral probity and apparent political non-partisanship. Dr. Florence Omosa holds a PhD in decision science – some of us were discovering that there is a discipline called decision science today – from the London School of Economics and is a distinguished consultant and advisor in the field of decision making and institution development. She currently works as a consultant advisor for the Canadian International development Agency (CIDA) and has previously served IGAD and the USAID among others as a consultant. Dr. Omosa projects a strong strict personality and appears to be a stickler for deadlines and discipline. The Committee found her qualified on the basic evaluation grounds of academic qualification, professional competence and moral probity and had no apparent political affiliations.

Mr. Speaker, Sir, Ms. Catherine Muma is a holder of LLM Degree from the University of London and is a distinguished expert on human rights, governance and gender. She has previously served as a State Counsel between 1995 and 2003, Commissioner on the Kenya National Commission on Human Rights (KNCHR) between 2003 and 2006 and a Commissioner on the Independent Review Commission on the 2007 Elections (IREC) also known as the Kriegler Commission in 2008. She currently undertakes consultant services for diverse clients including the Ministry of Justice, National Cohesion and Constitutional Affairs, the Ministry of Gender and KNCHR. On the evaluation grounds of academic qualification, professional competence, moral probity and capacity for political non-partisanship, the Committee found the nominee qualified.

Let me pause at this moment and render some disclosure to the House with regard to this nominee. I invite the House to note that in the process of vetting this nominee, the Committee wishes to bring to the attention of the House some allegation that was brought to its attention in the course of vetting Ms. Muma. Indeed, Ms. Muma, to her credit, had already volunteered information on the same matter of her own volition at the commencement of her vetting, subsequent to which the Committee received documentation regarding the same. The matter which is now subject of civil litigation arose from a report of the Efficiency Monitoring Unit (EMU) which had questioned some allowances paid to officers, including the nominee, when they served a taskforce established in 2002 by the National AIDS Control Council (NACC) to develop the law on HIV/AIDS. Ms. Muma served as joint secretary to the taskforce on secondment from the State Law Office. The Committee considered this matter at length and even invited the nominee back for further clarification. In doing this, the Committee enquired into whether this matter raised a question of integrity in the terms of Chapter Six of the Constitution that speaks to the subject of leadership and integrity. The Committee also inquired into the potential of this matter raising conflict of interest, especially in the event that the pending civil litigation is concluded against the nominee.

It was the considered opinion of the Committee that this matter did not raise any question of integrity on the character of Ms. Muma for the following reasons. First, that the issue in question was never whether she had made any false or fraudulent claim.

Rather, it was the misunderstanding between the NACC and the Directorate of Personnel Management (DPM) as to whether Ms. Muma and the other officers should have been paid a daily or a sitting allowance. The officers had been aware from the onset that they were to be paid a daily allowance and the misunderstanding between the two agencies is a matter that arose after the fact, and which the officers, including Ms. Muma, were not party to.

Secondly, the pending litigation is a civil matter and not criminal proceedings seeking to recover perceived payments made in excess of what is alleged to have been due and the sum in question is Kshs903,000. However, the allegations are based not on the conduct of the nominee but on the administrative incompetence between NACC and the DPM, including inconclusive record keeping of schedules and memos. A similar suit filed against the then Chairman of NACC has since been dismissed in favour of the defendant. The Nominee was emphatic that her character was beyond reproach and that she should not be held accountable for confusion and actions of others. She hailed that she had served for the 180 days paid for and would have been ready to refund the funds if there had been any irregularity, and which she maintained there was none. She, however, indicated that should the civil suit find that she should refund the funds, she would do so but was firm in her conviction that, this would not by any stretch of imagination amount to conflict of interest or, indeed, a question of integrity. On the balance of the information availed to it and the subsequent deliberations against the foregoing background, the Committee was satisfied that this matter did not, in any material way, call into question the integrity and credibility of Ms. Catherine Muma.

Mr. Speaker, Sir, with regard to the seventh nominee, Mr. Kamotho Waiganjo, the Committee noted that he holds an LLM Degree in International Trade and Investment Law from the University of Nairobi. He is currently a part-time lecturer at the Kenya School of Law (KSL) and a partner in the law firm of Kamotho Maiyo and Mbaatia Advocates. He has been involved in human rights work and also runs a weekly column for a national daily newspaper. The Committee found the nominee qualified on the basic evaluation ground of academic and professional competence, moral probity and political non-partisanship.

The eighth nominee that appeared before the Committee was Mr. Philemon Mwaisaka Wawaka. This nominee holds a BA degree in Government and Sociology from the UoN and boasts of a long Public Service record that includes service as a Permanent Secretary in the Ministry of Agriculture, Health, Transport, Tourism and Supplies and Marketing, among others. The Committee found the nominee qualified on the basic evaluation grounds of academic qualification, professional competence and moral probity and noted further that, although he contested a parliamentary seat unsuccessfully in 2007, he appears capable of political balance.

The ninth candidate and the final one was Mr. Kibaaya Imaana Laibuta. He holds an LLM degree from the London School of Economics and is currently in private legal practice as a managing partner in Laibuta Kamau and Company Advocates. He is also a law lecturer at the Kenya Polytechnic University College which is a constituent college of the UoN. Mr. Laibuta is a Chartered Arbitrator who has done work in the human rights sector, especially on matters relating to disability. Besides finding Mr. Laibuta qualified on the basic evaluation grounds of academic qualification, professional competence,

moral probity and political non-partisanship, the Committee also took special note of this nominee's distinguished achievements notwithstanding that he is visually challenged.

Mr. Speaker, Sir, subsequent to the foregoing, the Committee recommends as follows:- (1) That pursuant to Section 8(6) of the Commission for the Implementation of the Constitution Act, 2010, this House approves the following nine persons for appointment by His Excellency the President to the Commission for the Implementation of the Constitution to serve in the stated respective capacities.

- | | | |
|---------------------------------|---|--------------------------|
| 1. Mr. Charles Nyachae | - | Chairperson |
| 2. Prof. Peter Wanyande | - | Member of the Commission |
| 3. Dr. Ibrahim M. Ali | - | Member of the Commission |
| 4. Dr. Elizabeth Muli | - | Member of the Commission |
| 5. Dr. Florence Omosa | - | Member of the Commission |
| 6. Ms. Catherine Muma | - | Member of the Commission |
| 7. Mr. Kamotho Waiganjo | - | Member of the Commission |
| 8. Mr. Philemon Mwaisaka Wawaka | - | Member of the Commission |
| 9. Mr. Kibaya Imaana Laibuta | - | Member of the Commission |

End E

[Mr. Namwamba]

Mr. Speaker, Sir, in view of the deadline to have the Committee constituted by the 25th day of November 2010, His Excellency the President is urged to expeditiously appoint the above named persons to the Commission in strict adherence to the stated deadlines which are constitutional.

Let me conclude by expressing the gratitude of the Committee, the appreciation to the Public Service Commission (PSC) in the speedy manner in which it conducted the interviews and forwarded the names to the Committee. The Committee was satisfied that the candidates and the nominees presented before the Committee were indeed of the highest possible standards.

I beg to move and table the Report.

(Mr. Namwamba laid the document on the Table)

Mr. Speaker, Sir, Mrs. Odhiambo-Mabona will second the Motion.

Mr. Speaker: Hon. Members, notwithstanding the provisions of Standing Order No.87, I direct that the rest of the contribution be restricted to ten minutes each because of the level of interest that there is apparent in this matter.

Hon. Members: Five minutes! Five minutes!

Mr. Speaker: Okay, that is the general mood! Except for the seconder and official responder the rest will contribute for five minutes!

Mrs. Odhiambo-Mabona: Thank you Mr. Speaker, Sir, for giving me this opportunity. I wish to second the Motion.

I would wish to confirm that we deliberated at length over the nominees who were provided. They are Kenyans of good repute and standing. We, as a Committee were very mindful of the provisions of Chapter 8 of the Constitution on consequential legislation and specifically, Section 261 that requires us to legislate within given times as provided under the Fifth Schedule.

Mr. Speaker, Sir, I would like to note that I know Members have raised concerns and given the ruling that the Chair has made especially in relation to the issue of Interim Independent Boundaries Review Commission (IIBRC) Report. I would want to say that should we not be able to finish in time, we are allowed by the Constitution to raise two-thirds majority. Even if a Member should go to court, it is a long process. So, we have ample time as Members of Parliament to negotiate if we so wish.

Having said that, when we looked at the members---

(Loud consultations)

Mr. Speaker, Sir, some hon. Members are consulting too loudly and distracting me.

Mr. Speaker: Order, hon. Members! Order, Member for Ndaragua! You appear to be the immediate suspect. Be careful that you might be suspected of something that can lead to a criminal offence.

(Laughter)

Mrs. Odhiambo-Mabona: Of course, Mr. Speaker, Sir. I know you know me.

The names of the members we were given are persons of great repute. I am very happy that even the women who applied are of very good academic qualifications and repute. I wish we were able to take all of them including Koki Muli and others. Unfortunately, we were not able to get everybody on board. However, she is a person who is outstanding. I wish we could recognize that.

Mr. Speaker, Sir, I would only want to add that in relation to Mr. Philemon Muaisaka Wawaka, we questioned him on the issue of an allegation that he might have grabbed land. We were questioning him because it has come before this House in the past. He convinced the Committee that the matter came before court and went to the level of Court of Appeal and he won the case. Therefore, there is no issue of land grabbing attached to him.

As Mr. Namwamba indicated, we went at length to the issues relating to Mrs. Catherine Muma and we were convinced with very good and cogent presentation that she gave us that the matter attaching to her is civil in nature and is not criminal. It does not touch her integrity.

With those few remarks, I beg to second.

(Question proposed)

The Assistant Minister for Higher Education (Dr. Mwiria): Mr. Speaker, Sir, I beg to support.

First I would like to congratulate the Committee for doing---

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. I would like your indulgence if you could allow the Chairman of the Committee to clarify to the House whether in arriving at the list that they have given to the House, they were alive to Article 250(4) of the Constitution. This Article says:-

“Appointments to Commissions and independent offices shall take into account the national values referred to in Article 10 and the principle that the composition of Commissions and offices taken as a whole shall reflect the regional and ethnic diversity of the people of Kenya”

(Applause)

Mr. Speaker, Sir, I am beseeching you to allow him to come back and clarify to the House because I have run through this document and nowhere do they indicate to us how they reduced the fairness to conform to the regional balance. That point of order will help us so that when debating we do not assume.

Mr. Speaker: Order, Dr. Khalwale! Please, resume your seat!

(Dr. Khalwale resumed his seat)

Indeed, that would pass for a very good point of order while the mover still had the Floor. You would have raised it in a manner that the mover was perhaps misleading the House in emphasizing in his contribution that the Committee had complied with the Constitution when in fact it did not. However, the mover has already concluded his address to the House. So, again, you are caught with what I would normally refer to loosely as the doctrine of *Lachaise*. You are raising the matter after the horse has bolted. So maybe you can capture that in your own contribution.

End F

Mr. Ruto: On a point of order, Mr. Speaker, Sir. I think it is important that as we comply with the constitutional provisions and set up the commissions, they must actually comply with the Constitution. Probably, it may have been an oversight on our part, but looking at it, I realized that four of them actually come from one region. I do not know whether this, therefore---

Mr. Speaker: Order, Member for Chepalungu! Certainly, you cannot belabour that matter. I have already given directions on it and I am fully convinced that the directions that I have given are in consonance with the Standing Orders.

Dr. Mwiria, proceed!

The Assistant Minister, Ministry of Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I had just started by saying that I support the recommendations of this Committee.

First, I would like to congratulate them for doing a good job in terms of vetting candidates. But I must also go back and congratulate the two principals; the President and the Prime Minister, for acknowledging the fact that they also live in a new age where it is not enough for them to just make appointments and throw them to Parliament. As a matter of fact, they started by advertizing the jobs, receiving applications, listed them on the Kenyan Gazette and let all Kenyans know who were the persons they were considering for this very important positions, especially those of the Chairman.

Mr. Speaker, Sir, it is quite clear that all the Members, including the Chairperson of this Commission are professionally and economically qualified. They are people of integrity, independent minded and belong to what we would call the new Kenya. It is also a good blend. Often, we have had commissions and committees that are dominated by lawyers, but in this case, we have a broad array of professionals; from lawyers to political scientists to even national scientists. But I would also like to say that even was we talk about these people not having political ambitions, maybe this is one good example of why we are having problem with the Interim Independent Boundaries Commission (IIBRC); sometimes we have to be very careful with what kind of people we select in terms of their political connections. This is a good example and I believe, therefore, that some of the problems we have been going through with regard to boundaries are going to be a thing of the past because these are all people who have not expressed political interest and cannot be said to be affiliated to any political party.

Mr. Speaker, Sir, most of them are the face of Kenya, except the point that Dr. Khalwale made, and I would like to emphasize it. I think it is important that if we are selecting a team that is going to implement the Constitution for this country, that it represents the face of Kenya. Looking at that list, I found that four of the Members are from Nyanza.

Mrs. Odhiambo-Mabona: On a point of order, Mr. Speaker, Sir. Is the hon. Member in order to mislead the House? Since I have just had the benefit of discussing with one hon. Member here, this is an issue that has come before our Committee and it touches on gender discrimination. I am standing here married in Zimbabwe but in Kenyan Parliament. Catherine Muma is married in Nyanza but she is Luhya from Dr. Khalwale's constituency. She is not from Nyanza but from Western. Is the hon. Member in order to mislead the House? She comes from Western and when we questioned her and

asked where she comes from, she told us that she comes from Western. It is not us to define for people where they come from.

The Assistant Minister, Ministry of Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I have a lot of respect for where people are married, as well as those who marry them. I spoke about four members and not one. Hon. Odhiambo-Mabona went ahead and just singled out one member. Where does this member live? In any case, if you look---

Mr. Mbadi: On a point of order, Mr. Speaker, Sir. Since the hon. Member has referred to four proposed members to this Commission as coming from Nyanza, I think it would benefit this House to know the particular members who the hon. Member is referring to.

Mr. Speaker: Dr. Mwiria, you are tasked to substantiate!

The Assistant Minister, Ministry of Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, yes, I will substantiate.

Mr. Speaker, Sir, first of all, the Chairman, Mr. Charles Nyachae, I guess because he is not worth to be married, it is quite clear where he comes from. The second one is Prof. Peter Wanyande. The issue of marriage again here does not arise. He is also from Nyanza. There is Dr. Florence Omosa---

An hon. Member: Dr. Omosa is a Kisii!

The Assistant Minister, Ministry of Higher Education, Science and Technology (Dr. Mwiria): Is Kisii not in Nyanza?

Mr. Speaker: Order! Dr. Mwiria, please, proceed! You were responding to a point of order and no other has been allowed.

The Assistant Minister, Ministry of Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I respect Dr. Omosa very much. In fact, when we begin to do the (?) we are not going to touch on the women, because we have to think about that quota. We will have to touch on the men. But that is another one from Nyanza.

Mr. Speaker, Sir, the---

(Several hon. Members stood up in their places)

Mr. Speaker: Order, hon. Members! Please, relax!

Dr. Mwiria, will you, please, proceed!

The Assistant Minister, Ministry of Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I will proceed, but I think it helps to remind this House that like the Bible says, "the guilty are afraid."

The Assistant Minister for Foreign Affairs (Mr. Onyonka): On a point of order, Mr. Speaker, Sir. Is it in order for the hon. Member to refer to Nyanza as being an entity where both Prof. Wanyande and Dr. Florence Omosa come from, when we know very clearly that Dr. Florence comes from the larger Gusii, and actually from the County of Kisii and not Nyanza?

(Loud consultations)

Mr. Speaker: Order, hon. Members! Let us hear Dr. Mwiria!

The Assistant Minister, Ministry of Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I think you will agree with me that, that is frivolous. Is Kisii not in Nyanza?

An hon. Member: No!

The Assistant Minister, Ministry of Higher Education, Science and Technology (Dr. Mwiria): Okay! But there is Nyanza when it comes to the IIBRC?

Mr. Speaker: Order, Dr. Mwiria! Your time is up!

The Assistant Minister, Ministry of Higher Education, Science and Technology (Dr. Mwiria): Mr. Speaker, Sir, I support.

Mr. Gunda: Mr. Speaker, Sir, I would also like to thank the Committee for the work it has done in vetting the members of the Commission on Implementation of the Constitution.

Mr. Speaker, Sir, I have an issue which I want to be on record. I have an issue with the name of one Philemon Mwaisaka Wawaka. The Committee has been given half-baked information. Although they were told that he did not grab any land, I wonder whether this person is fit to be a member of this Commission, especially when the Land Chapter is so important to Kenyans. This person in his quest to make sure that he retains that piece of land which he says he did not grab, went ahead and obtained a court order. He got a bulldozer and---

End G

Mr. K. Kilonzo: On a point of order, Mr. Speaker, Sir. Indeed, we are discussing a very important Committee and the personalities who are being mentioned here are people of very high integrity. Is it in order for a Member to imply that Mr. Mwaisaka grabbed land without substantiating? Could the hon. Member substantiate?

Mr. Speaker: Order! Member for Bahari, you have been asked to substantiate the assertion that you have made.

Mr. Gunda: Mr. Speaker, Sir, I did not say that he grabbed land. I said that in his quest to keep the piece of land, he got a court order and got a bulldozer to demolish houses. He got a group of thugs and paid them to torch the grass-thatched houses.

Mr. Speaker: Order Member for Bahari. You are making very serious assertions that Mr. Mwaisaka got thugs and paid them to torch houses. For that part, do you have any evidence that you can tender to this House?

Mr. Gunda: Mr. Speaker, Sir, I can produce the evidence if you give me time.

Mr. Speaker: This is a very serious matter. Order, Member for Bahari. You are insinuating very gross criminal conduct on the part of Mr. Mwaisaka by saying that he got thugs and paid them to torch houses. What you have said is so grave that you must substantiate instantly.

Mr. Gunda: Mr. Speaker, Sir, I cannot substantiate instantly, but that is a fact. It happened.

Mr. Speaker: Order! Member for Bahari, you must withdraw and apologize. That is a very heavy matter and you cannot get away with that kind of a thing! Member for Bahari, could you, please, withdraw that part and apologize?

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Dr. Mwiria. Order, Member for Bura.

Mr. Gunda: Mr. Speaker, Sir, so that I can advance my case, I want to withdraw.

Mr. Speaker: Order! Member for Bahari, there will be no conditions where you make a claim that you are unable to substantiate!

Mr. Gunda: Mr. Speaker, Sir, I withdraw and apologize.

Mr. Speaker: Very well! Proceed!

Mr. Gunda: Mr. Speaker, Sir, I was saying that in the case of this Commission, it is going to do a lot of work especially when it comes to the Chapter on Land.

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): On a point of order, Mr. Speaker, Sir. I sympathize with hon. Bahari. How would he be expected to substantiate instantly, when he just got the report? He did not know who is going to be in the list.

(Loud consultations)

Mr. Speaker: Order! Order, Dr. Mwiria! Order, hon. Members! Dr. Mwiria, I am afraid that your conduct amounts to challenging the Chair's direction. You will, therefore, have to leave for the rest of this Session. Withdraw immediately!

Hon. Members: Out! Out!

The Assistant Minister for Higher Education, Science and Technology (Dr. Mwiria): Should I come back?

Mr. Speaker: Dr. Mwiria, will you, please, withdraw. Withdraw immediately, Dr. Mwiria! Otherwise, I will be compelled to get you out!

(Dr. Mwiria withdrew from the Chamber)

Mr. Speaker: Member for Bahari, your time is up!

Mr. Bahari: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Member for Bahari, you may do one and half minutes.

Mr. Bahari: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order! Mr. Bahari, please, relax. Proceed.

Mr. Gunda: Mr. Speaker, Sir, I was saying that in terms of moral probity in this case, should we have such people in the Commission and yet, we have others who are even more qualified than this one? I urge this House to find that Mr. Philemon Mwaisaka is not fit and get somebody else to replace him.

Thank you, Mr. Speaker.

Mr. Bahari: On a point of order, Mr. Speaker, Sir. I am sorry to interrupt at this point but when Dr. Kilemi Mwiria, whom you have just sent out of the House, rose on a point of order, he mentioned hon. Bahari instead of the Member for Bahari. Mr. Bahari did not make any mistake. For purposes of record, I will request that, that part be expunged from the HANSARD of this House.

Mr. Speaker: Very well. I direct that, that part be expunged from the record and instead of the name Bahari, we substitute it with the Member for Bahari.

The Assistant Minister for Youth Affairs and Sports (Ms. Ndeti): Thank you, Mr. Speaker, Sir. I stand to support. I would like to congratulate the Committee for coming up with these names. However, I as we scrutinize the Members of the Commission, we need to be very careful. These are respected people in this country. They have families and so, when we are talking about them, we should be very careful. When we give information, we should be able to substantiate what we say. The third point is that we are just going round and round. The bottom line is that there is one on the list from the Rift Valley and that should be looked into so that we have one. Thank you very much.

Mr. Farah: Mr. Speaker, Sir, I rise to support the Motion. Indeed, the Committee has done a commendable job, a very good job, indeed. They carried out their own vetting in a very extensive manner. The fact of the matter is that we will have Kenyans of integrity who will serve this nation with a lot of dedication. We are sure that they will serve us very well. The nominees who are here are all known to Kenyans. The few whom I know myself like Charles Nyachae, Peter Wanyande, Dr. Ibrahim Ali, Catherine Muma and Philemon Mwaisaka among others, are people of integrity and we need to respect them. We need to respect the fact that they are personalities like us with dignity and integrity and they do not have the opportunity to defend themselves when outrageous claims are made against them. As a matter of fact, I am sure that the Implementation Commission will do very well because of the people who will be at the helm. I have known Charles Nyachae for many years. Mr. Charles Nyachae is a man of impeccable dignity and integrity and he will be able to steer this Committee very well. I have known

Prof. Peter Wanyande for many years - close to 20 years. Dr. Ibrahim Ali, who comes from our province is somebody who is known by everybody. He is a former educationist and an environmentalist; a scientist in his own right and has his own dignity and integrity beyond reproach. I believe the rest are the same based on the Report that has been made by the Committee. Mr. Philemon Mwaisaka has been a Permanent Secretary in this Government. He has served as a permanent secretary in many Ministries. I have known him from 1987 when he was the Permenent Secretary in the Ministry of Transport and Communications. I had an interest in the Ministry of Transport and Communications in those days because of our family business. He is also a Kenyan of impeccable integrity and dignity. We need to respect them and pass this and I believe that the same applies to the rest of the nominees who are here. We need people who will not be looking behind their backs because they are afraid. We need people who will have confidence that is needed to execute the mandate without fearing politicians, the Executive or anybody else.

With those remarks, I support.

End H

The Assistant Minister, Ministry of State for Defence (Mr. Musila): Mr. Speaker, Sir, I stand to support this Motion. We are all aware and we have seen the amount of devotion these Committees have put in vetting the members of the various Commissions. I feel very proud that Members of this august House have risen to the occasion. They have spent a lot of time in scrutinizing and ensuring that the Commissions that are to be put in place are put in place in good time.

Looking at the candidates who have been selected by this particular Committee, I have no doubt that they have taken time to ensure that these are people of integrity and will serve this country well. The proposed Chairman of the Commission, Mr. Charles Nyachae, is known. He is non controversial. Despite the fact that his father has been a very prominent politician, he has lived to his professional standing. Prof. Peter Wanyande is known to all Kenyans as a very knowledgeable person. I have no doubt he will do a good job. Much has been said about Mr. Mwaisaka. I would like to persuade the Members of this House to avoid saying things against individuals simply because they have heard them being said. I, personally, know him. He has worked even as my personal assistant when I was a Provincial Commissioner. He has risen to the level of a Permanent Secretary. We have never heard anything mentioned against him. Therefore, this is a man to be supported. These are men and women to be supported to serve this country and I want to congratulate the Committee.

Finally, I want to say something general. As we embark on the approvals of names to these Commissions, I would like to believe these Commissions will perform well irrespective of where the members come from. The independence of these Commissions must be seen in their work. Kenyans have come of age and I do not think they will allow a Commissioner or Commissioners to do things under the influence of others. Therefore, as we begin to vet members of these Commissions and approve them, they will live to the expectations of Kenyans. They will work diligently, non-partisan or influenced by any politician. Only then, will they have the confidence of Kenyans.

With those remarks, I beg to support.

Mr. Ruto: On a point of order, Mr. Speaker, Sir. Certain concerns have been raised about the possibility of the list conflicting with the Constitution that require regional balancing. Under the Standing Order No.25, I wish to request that the debate be now adjourned. I ask hon. Mbadi to second.

(Loud consultations)

Mr. Speaker: Order, hon. Members! Hon. Members, pursuant to Standing Order No.25(3), I have power to do the following:- If the Speaker is of the opinion that a dilatory Motion, such as the one for the Member for Chepalungu is, is an abuse of proceedings of the House, the Speaker may forthwith put the question thereon or decline to propose it.

So, I opt to put the question forthwith.

(Question of the adjournment put and agreed to)

(Several Members stood in their places)

Hon. Members, those calling for a division have the requisite numbers as laid down by the Standing Orders. I will, therefore, direct that the Division Bell be rung.

(The Division Bell was rung)

End I

Mr. Speaker: Order! Order, hon. Members! Resume your seats!

(Hon. Members resumed their seats)

Sergeant-At-Arms, draw up the Bar.

(The Bar was drawn)

Hon. Members, we have four tellers, who will be as follows: For the “Ayes”, hon. Erastus Mureithi and hon. Benjamin Washiali; for the “Noes”, hon. (Dr.) Nuh Abdi and hon. Lukas Kigen.

Those hon. Members who are going to vote for the Motion “That, the debate be now adjourned” will proceed to the lobby on my right. Those who are voting against the Motion will proceed to the lobby to my left. Those hon. Members who are abstaining will have to come and record their votes at the Table.

Hon. Members, note that it is disorderly conduct, punishable under our Standing Orders, if you are present and you fail to vote. So, all of you must vote.

You may now proceed.

(Question put and the House divided)

End J

(Question carried by 91 votes to 44)

AYES: Ms. Abdalla S. Abuchiaba, Messrs Affey, Akula, Ali H.M., Prof. Anyang'-Nyong'o, Messrs Anyanga, Baya, Chanzu, Ms. Chepchumba, Chepkitony, Cheruiyot, Duale, Elmi, Eseli, Farah, Gabbow, Githunguri, Godhana, Eng. Gumbo, Gumo, Gunda, Imanyara, Joho, Kaino, Prof. Kamar, Messrs Kapondi, Kathuri, Keter, Keynan, Dr. Khalwale, Messrs Khang'ati, Kigen, Mrs. Kilimo, Messrs C. Kilonzo, Kipkorir, Kiptanui, Konchela, Mrs. Kones, Dr. Kones, Messrs Kosgey, Kutuny, Dr. Laboso, Messrs Lagat, Langat, ole Lankas, Lessonet, Letimalo, Linturi, Magerer, Magwanga, Eng. M.M. Mahamud, Messrs Mbadi, Mbiuki, Midiwo, Munyes, Muoki D., Murgor, Mwaita, , Nanok, Mrs. Ngilu, Messrs ole Ntimama, Nyamai, Obure, Oburu, Odhiambo, Mrs. Odhiambo-Mabona, Messrs Ogindo, Ojaamong, Okemo, Prof. Olweny, Onyancha C., Omollo, Mrs. Ongoro, Messrs Orengo, Dr. Ottichilo, Mr. Otieno, Dr. Otuoma, Mr. Pesa, Eng. Rege, Ruteere, Mr. Rutto, Prof. Sambili, Mr. Sambu, Mrs. Shabesh, Messrs Shakeel, Sirma Maj. Sugow, Mr. Washiali, Dr. Wekesa, Messrs Were and Yinda.

Tellers of the Ayes: Messrs. Washiali and Mureithi.

NOES: Ms. Abdalla A., Messrs Baiya, Balala, Haji, Prof. Kaloki, Kamau Jamleck, Kamau Maina James, Kenyatta, K. Kilonzo, M. Kilonzo, Kimunya, Kinyanjui, Kioni, Kiunjuri, Dr. Kosgei, Ms Leshomo, Mr. M'Mithiaru, Eng. Maina, Messrs Mbai, Mbau, Mbugua, Mututho, Dr. Monda, Mrs. Mugo, Messrs Munya, Mureithi, Muriithi, Musila, Muthama, Mwadeghu, Mwangi, Ms. Ndeti, Mrs Ngugi, Njuguna, Dr. Nuh, Messrs Nyammo, Nyamweya G., Nyamweya Oyongo, Ombui, Dr. Shaban, Sirat, Waibara, Waititu and Warugongo,

Tellers of the Noes: Dr. Nuh and Mr. Kigen.

ABSTENTIONS: Abdikadir, Ali M.M., Bahari, Kabando wa Kabando, Kombo, Dr. Machage, Messrs Namwamba and Wamalwa.

Mr. Speaker: Order, hon. Members. Apparently, the divisions which have previously taken place have not informed hon. Members on how to proceed. After I receive the results, as I resume my Chair you may bow and go back to your positions.

Under these circumstances, therefore, the Motion is carried. The effect of that, therefore, is that the debate on the Motion at Order No.8 is adjourned.

Next Order!

End O

ADOPTION OF REPORT ON APPOINTMENT OF
CHAIRPERSON/MEMBERS OF CRA

Mr. Okemo: Mr. Speaker, Sir, I beg to move:-

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the appointment of Chairperson and members of the Commission on Revenue Allocation laid on the Table of the House on Thursday, 25th November, 2010.

(Mr. Okemo on 25.11.2010)

Mr. Speaker, Sir, on behalf of the Members of the Departmental Committee on Finance, Planning and Trade, and pursuant to the provisions of Standing Order No.181, it is my pleasure and duty to present to the House the Committee's Report on the nominees to the Commission on Revenue Allocation (CRA). Article 215 of the Constitution provides for the establishment and membership of CRA and Article 215---

(Loud consultations)

Mr. Speaker: Order, hon. Members! Let us hear the Chairperson of the Departmental Committee on Finance, Planning and Trade.

Mr. Okemo: Mr. Speaker, Sir, Article 215(2) of the Constitution empowers the President and the political parties represented in Parliament to nominate the Chairperson and seven members of the CRA, respectively. The ninth member of the Commission is the Principal Secretary in the Ministry of Finance. During our sittings held on 24th November, 2010 and 25th November, 2010, the Committee orally interviewed seven names which were presented as commissioners and one name for the chairman. The names which were presented to the Committee are as follows:-

From the PNU side, we received Prof. Raphael Munavu, Prof. J.H. Kimura and Ms. Amina Ahmed. From the ODM side we received Prof. Wafula S. Masai, Meshack J. Onyango, Fatuma Abdulkadir and Rose Bosibori Osoro. I think it is important to clarify at this point that our duty as the Committee was to vet the names that were presented to us, and that is exactly what we did.

We did the vetting in accordance with the Second Schedule of the Commission for the Implementation of the Constitution Act, 2010, which specifies the qualifications, among others, as follows:-

Academic qualifications, employment record, professional affiliations, potential conflict of interest, knowledge of the relevant subject and overall suitability for the position, *etcetera*. During the meetings which we held on the two dates that I have specified, these were the observations regarding the various candidates that were presented before us.

For the Chairman, we received the name of Mr. Micah Cheserem. That was the name that was provided by the President in consultation with the Prime Minister. We interviewed Mr. Cheserem and, as a Committee, we were quite satisfied with his wealth

of professional and experience, both in financial and economic matters, having served as the Governor of the Central Bank of Kenya (CBK) for eight years. It is on record that while he was Governor, he demonstrated qualities of good leadership and he has also captured the qualities as stated in Chapter Six of the Constitution regarding leadership and integrity. He impressed the Committee on the views and his vision for the CRA and we believe that he would serve appropriately as Chairperson of the Commission.

Coming to the seven members that were before us, Prof. Raphael Munavu holds a PhD degree in Science which he got in 1972 with focus on the application of chemistry in the exploitation of natural resources for socio-economic development and wealth creation. He has extensive professional experience at senior management levels over the last 20 years as Vice-Chancellor and as Deputy Vice-Chancellor in charge of finance and administration at Moi University, University of Nairobi and Egerton University.

End P

[Mr. Okemo]

The position requires the development of skills for ensuring fair and evidence based allocations of resources among the various units in the universities.

Mr. Speaker, Sir, he possesses practical skills for developing and implementing Government policies necessary for discharging duties vested in the Commission and has strong conviction that fair revenue allocation should be based on sound formulas based on proper evidenced criteria and generally accepted indicators. We were impressed by his credentials and his understanding and practical knowledge in public finance management.

The second candidate was Prof. Kimura who is a holder of PhD in Accounting and Financial Management which he obtained in 1991. He was a professor of Economics and Accounting at the University of Nairobi for many years. He has the requisite professional experience in public finance, accounting and economics and has been involved in training in budgeting and public accounting in East Africa since 1970 and was a professor of economics. He has wide experience as a consultant to the Government from 1980. He was key in the development of the District Focus for Rural Development. He has been an advisor on reforms on Kenya's banking and financial sector. Part of the original Kenya Roads Board that set up the structure for the efficient allocation of funds for the construction and maintenance of the country's road network was part of his own initiative. He has over 60 publications in the areas of finance and accounting.

Mr. Speaker, Sir, the third candidate we interviewed was Prof. Wafula S. Maasai. Prof. Maasai is a holder of a Doctorate in Economics which he obtained in 1992 and has professional experience in financial and economic matters. Prof. Maasai has been involved very deeply in areas of policy analysis and management, macro-economic analysis, economic development planning and budgeting techniques, programme implementation, monitoring and evaluation techniques, strategic planning and regional integration and industrial economic development. He has several publications to his credit including having authored unedited books and journals and papers on areas of public finance.

The fourth candidate that we interviewed was Mr. Meshack J. Onyango. Mr. Onyango is a holder of a Master of Science in International Banking and Financial Studies which he obtained in 1995. He has extensive and professional experience in both financial and economic matters having worked for the Central Bank of Kenya (CBK) for 30 years. He has wide empirical knowledge of both macro and micro-economics and has worked with other donor and development partners like the USAID, the World Bank, UNDP and IMF.

The fifth candidate was Mrs. Fatuma Abdulkadir. She is a holder of a Master of Science in Business Administration which she got in 2007 and has vast experience in project design, project negotiations and budget preparation having worked for the Government from 1980 to date. She is a manager and an educationist with knowledge in Government financial regulations and procedure gained through managing and controlling of development partner funds.

Mr. Speaker, Sir, the sixth candidate was Mrs. Rose Bosibori Osoro. She is a holder of a Masters in Business Administration and has extensive work experience

covering a period of 13 years in budgeting and financial allocation in the public sector at the Kenya Forestry Research Institute (KEFRI). She is a reputable member of two professional associations namely the Institute of Certified Public Accountants (ICPA) and the Kenya Institute of Management and Certified Public Secretaries.

End Q

[Mr. Okemo]

Mr. Speaker, Sir, finally, the seventh candidate was Mrs. Amina Ahmed. She is a holder of a Bachelors Degree in Economics and French and has 22 years working experience in banking. She currently works as a consultant in an audit and management firm.

Mr. Speaker, Sir, the following are the recommendations of our Committee. The Committee recommends that pursuant to Article 215 of the Constitution, this House approves the following persons for the appointment by His Excellency the President to the Commission on Revenue Allocation:-

- (a) Chairperson of the Commission on Revenue Allocation, Mr. Micah Cheserem;
- (b) Members of the Commission on Revenue Allocation-
 Prof. Raphael Munavu;
 Prof. J. H. Kimura;
 Prof. Wafula S. Masai;
 Mr. Meshack Onyango;
 Mrs. Rose Bosibori Osoro; and,
 Mrs. Fatuma Abdulkadir.

Mr. Speaker, Sir, the Committee observed that the nominee, Mrs. Amina Ahmed, lacked the level of knowledge and expertise required for the position of the member of the Commission on Revenue Allocation. Secondly, we believe that she did not quite have a grasp of the proper comprehension and conceptualization of the role and co-functions of the Commission. The Committee unanimously, therefore, recommended that the relevant nominating political party comes up with a suitable replacement for the vetting by the Committee at an appropriate time.

Mr. Speaker, Sir, I beg to move and request Prof. Kaloki to second the Motion.

Prof. Kaloki: Mr. Speaker, Sir, I rise to second the Motion on the appointment of the Chairperson and Members of the Commission on Revenue Allocation in Kenya.

Mr. Speaker, Sir, in the Committee's deliberations and observations in the vetting process, we were particularly concerned about the qualifications of the candidates, employment record, professional affiliations, potential conflict of interest, knowledge of the relevant subject and overall suitability for the position. We went through the candidates and the Committee recommends that; pursuant to Article 215 of the Constitution, this House approves the following persons for the appointment by His Excellency the President to the Commission on Revenue Allocation:-

- (a) Chairperson of the Commission on Revenue Allocation, Mr. Micah Cheserem;
- (b) Members of the Commission on Revenue Allocation-
 Prof. Raphael Munavu;
 Prof. Kimura;
 Prof. Masai;
 Mr. Onyango;
 Mrs. Osoro; and,
 Mrs. Abdulkadir.

Mr. Speaker, Sir, I beg to second the Motion.

(Question proposed)

Mr. Abdikadir: Mr. Speaker, Sir, I support the Motion.

Mr. Speaker, Sir, I wish to make one key clarification as far as the Constitutional requirements for regional balance, as far as the Commissions are concerned. The clarification is that the regional balance is a constitutional requirement taking into account the totality of the Commissions and not any single Commission. In other words, there may be regional imbalance in a particular Commission, but so long as the totality of the Commissions and independent offices have regional balance, they meet the Constitutional criteria.

Mr. Speaker, Sir, I beg to support.

End R

The Minister for Tourism (Mr. Balala): Mr. Speaker, Sir, I beg to support the proposal by Mr. Okemo and his team. But I have a big concern about the rejection of Mrs. Amina Abdalla--- Amina Ahmed. At one point, she is described as a---

(Ms. Abdalla stood up on in her place)

It is not you! It is not you!

Ms. Abdalla: On a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Ms. Amina Abdalla. The hon. Najib Balala has already corrected himself.

Ms. Abdalla: Mr. Speaker, Sir, but the HANSARD will reflect what Prof. Kaloki has said.

Mr. Speaker: Order! Mr. Balala, could you, please, perhaps, apologize to Ms. Amina Abdalla so that---

The Minister for Tourism (Mr. Balala): Mr. Speaker, Sir, I do not know what I am apologizing for. However, I apologize to Ms. Amina Abdalla. I know you are Ms. Amina Abdalla and not Amina Ahmed.

I stand here to support the wonderful job that this Committee has done. However, I am concerned about the criteria of disqualification of a very well able lady called Amina Ahmed whom has been described as having a Bachelor of Arts Degree in Economy and French. She has 22 years experience in the banking sector and rose to the rank of Regional Director of Kenya Commercial Bank. Today, she opted to go and work as a consultant in an audit firm. She was disqualified on the ground that she lacked the level of knowledge that we need. I do not know what criterion was used. If she had a record of lack of integrity, had a record of corruption or had indulged herself improperly, then we can say we can disqualify her. I believe that the party that nominated Ms. Amina Ahmed did some vetting before they presented that able lady to the committee. I propose that this Committee considers an amendment so that we can approve this together with her name.

The Assistant Minister for Public Works (Mr. Kiunjuri): Mr. Speaker, Sir, I stand to support. First of all, the qualifications of these people are unquestionable. I do not want to argue about regional balance because, at the end of the day, we are looking at Kenya where, one day, a committee will be constituted from one village and the same clan. Since they will be competent and we will be thinking of them as Kenyans, we shall accept them as Kenyans. The Constitution that we passed is very clear on the issue of regions. However, we are no longer dealing with regions but with counties. We have 47 counties and I am wondering whether we will be constituting committees of 47 people all the time. It is high time that we live with the reality that we now have counties and that we have a new Constitution. All that we are arguing about regions and many other things--

I was browsing the internet last week and read a story about a wolf that was drinking water from the top of a brook. When it looked down, it saw a lamb and made up its mind that it would turn the lamb into its supper. It came down and asked the lamb why it was meandering in its water. The lamb gave a very convincing answer and said; I

cannot muddle your water because you are taking your water from up there and I am downstream. It also gave a second excuse that even if it did not do that, a year ago, it walked behind the lamb and abused it. The young lamb told the wolf that it was hardly one year but it still wanted to apologize. The wolf told the lamb that even if it was not him abusing the lamb, it was his mother. Before it gave any answer, the wolf said that it would not allow the lamb to argue it out of its supper and mauled the lamb. What we are doing here is deceiving Kenyans that we are arguing about regions. However, we know that we are arguing about other things. We should tell Kenyans that we are arguing about boundaries and not about these implementation committees, so that we are comfortable with the boundaries.

With those few remarks, I want to say that, as a young Kenyan, we must make sure that we act for the country. The spirit of nationalism has come. For the first time, we must look at things the way they are. We must separate our own internal wars, our political battles and rise to the occasion. Kenyans want a new Constitution. It is very clear that Kenyans will be moving to court any time according to Section 261 of this Constitution. Kenyans will be moving to court to say that if this House cannot rise to the occasion, then they have a right to sent us home and the Chief Justice shall declare it so.

I beg to support.

End S

Mr. Shakeel: Mr. Speaker, Sir, I rise to support the Motion before the House. There has been an objection raised by hon. Balala. I want to inform hon. Balala that this was a unanimous decision of the Committee on Finance, Planning and Trade. All the Members of the Committee are very qualified, well educated and aware of what was required. There was no biased as is being suggested. It is sad that among the very capable Kenyans, unfortunately, Mrs. Amina Ahmed did not make the mark. She may have 22 years of experience in banking and everything else, but on the day when we were interviewing her, she was not able to make the mark. She was not able to convince us and we needed her to convince us. We want to get away from the previous just endorsing and rubber-stamping. The new Constitution has asked us to vet and that is what we did. We felt that the best among the people, she was not able to meet the mark. Unfortunately for her, she even told us that she joined NARC-Kenya just the night before. So, if she was being vetted by NARC-Kenya and she joined it the night before, we were little confused. But we put that aside and gave her an opportunity to tell us what she felt the Commission was expected to do. As such, I want to advise hon. Balala to take us for what it was. He should give us the due respect because we did our job the best we could.

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Mr. Speaker, Sir, I stand to support an amendment that we retain Mrs. Amina Ahmed. I have been listening to the Members of the Committee and I am trying to understand why Mrs. Amina failed the exam.

First, I want to support the Committee for rushing with this, although we have only one day to get things done---

Mr. Nyammo: On a point of order, Mr. Speaker, Sir. Is there a Motion on the Floor to amend the original Motion? My understanding is that a Motion is moved and seconded. To the best of my recollection, no Motion was moved by hon. Balala. Therefore, there is no Motion to amend the original Motion on the Floor.

Mr. Speaker: Hon. Prof. Kamar is contributing.

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Mr. Speaker, Sir, I am moving the Motion and maybe I will have a seconder after that.

Mr. Speaker: Order, Prof. Kamar!

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Mr. Speaker, Sir, I apologize. The hon. Member is confusing me further.

Mr. Speaker: Order! You have previously sat on this Chair. That is not how we move an amendment!

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Mr. Speaker, Sir, I stand corrected and I respect your correction. I stand to support the Motion and comment on the issue of Mrs. Amina Ahmed being removed from the list.

This is a holder of a Bachelors Degree in Economics and French. For somebody who has passed in Economics, what questions were asked to her and she was not able to

answer? The hon. Member has just told us that one of the questions was when she joined NARC-Kenya. I hope I did not hear it right.

End T

Mr. Shakeel: On a point of order, Mr. Speaker, Sir. I did not say that we asked the question. She volunteered the information when she was saying her things. We never asked about political affiliation.

Mr. Speaker: What is your point of order?

Mr. Shakeel: Mr. Speaker, Sir, is the Assistant Minister in order to mislead the House that this is the question we asked?

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Mr. Speaker, Sir, whether she was asked the question or she volunteered the information, she was judged by when she joined the political party. That is not something which has to do with revenue allocation.

Mr. Midiwo: On a point of order, Mr. Speaker, Sir. I am a Member of the Departmental Committee on Finance, Planning and Trade. I sat throughout the vetting session. The Members of the Committee sat through this process. The issue with madam Amina was that she could not prove her CV. I think it is good because this is a Commission of people who can deliver. You have seen that the Committee tried its best. There may be some politics, but this Committee never considered political affiliation.

Thank you, Mr. Speaker, Sir.

Mr. Speaker: What is your point of order?

Mr. Midiwo: Mr. Speaker, Sir, is Prof. Kamar in order to mislead this House by purporting to know what transpired between the Committee and the madam Amina?

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Mr. Speaker, Sir, I think the hon. Member was not listening to what some of the other Members of the Committee were saying. I have not invented a statement. I have only quoted what the other Member of the Committee said. He claims to be a Member of the same Committee. So, if the two hon. Members were in the same Committee, probably, they are hiding some information. What Mr. Midiwo has said is different from what the other hon. Member said. We have been informed that this particular person just became a member of something, and have inquired into that allegation.

So, unless the Committee is hiding some information or her degree in economics is not genuine--- Sometimes you can go for an interview and panic. Sometimes you can go for an interview and you are sick. Sometimes you can go for an interview when there is a problem. If the Committee for sure had a problem with her CV---

Mr. Okemo: On a point of order, Mr. Temporary Deputy Speaker, Sir. I am just concerned that the Member of Parliament has said more than twice that the Committee is hiding something. This was an open interview, with the media and members of the public present. So, what could we possibly hide? Is she in order to mislead the House by insinuating that we are hiding information?

The Assistant Minister for Environment and Mineral Resources (Prof. Kamar): Mr. Speaker, Sir, I am just asking myself: Why are the Members of the Committee giving us contradictory information? The hon. Member who spoke before the Chairman mentioned clearly that they did not pass the CV. I think the Chairman should respect his own Members of the Committee because they were all in the same hall. If they did not respect the CV, that should have been the ground on which the presentation should have been made.

My problem is that the information we are getting is not convincing. I hope that the Chairman will take advantage of his time, because he is going to be given an opportunity to respond to this debate. He should tell us which areas are not clear, because when you give a presentation as you have done---

Mr. Deputy Speaker: Order, Prof. Kamar! Your time is up!

(Several hon. Members, including Dr. Khalwale, stood up in their places)

Dr. Khalwale!

Dr. Khalwale: I am on a point of order, Mr. Speaker, Sir.

Mr. Speaker: Order, Dr. Khalwale! You have caught my eye to contribute.

Dr. Khalwale: Mr. Speaker, Sir, I had been standing on a point of order. I thought that you had now allowed me to raise it.

Mr. Speaker: You did not say so, Dr. Khalwale; if that is so, resume your seat, because you caught my eye to contribute. I cannot presume that, because you wanted to raise a point of order five minutes ago, you still want to raise a point of order now.

(Dr. Khalwale resumed his seat)

End U

Mr. Ogindo: On a point of order, Mr. Speaker, Sir. I rise under Standing Order No.25---

Mr. Speaker: Order, Member for Rangwe! Before you stood up, you must know the reason why you rose on a point of order.

Mr. Ogindo: Mr. Speaker, Sir, I rise under Standing Order No.25. This matter is getting a lot of attention. Issues have been being raised here which I feel this House need to look at them more seriously. In view of that, would I be in order under Standing Order No.25 to ask for a dilatory Motion?

Mr. Speaker: Very well, resume your seat.

Member for Rangwe, you will be out of order to ask pursuant to Standing Order No.25. Standing Order No.25 allows you to move. If you ask, you are out of order.

Dr. Khalwale: On a point of order, Mr. Speaker, Sir. I rise under Standing Order No.25 noting that the Committee recommends, in its report, that the political party that nominated Mrs. Amina Ahmed makes a replacement. I also note, further to that if this will be done then it will reside in loss of gender balance.

Mr. Speaker, Sir, I note further that if this happens the Coast Province, where Madam Amina comes from would feel, once again, that the myth that has been perpetuated in this country, that Coast Province does not always have to appear on the national face and yet, it is a critical area in this country. Again this myth would be perpetuated. Because of those reasons, I wish to claim to move that the debate be now adjourned.

(Question put and agreed to)

ADJOURNMENT

Mr. Speaker: Hon. Members, it is now time for us to adjourn the House. The House is, therefore, adjourned until Tuesday, 30th November, 2010 at 2.30 p.m.

The House rose at 9.45 p.m.