

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 28th May, 2013

The House met at 2.30 p.m.

*[The Deputy Speaker (Hon.
(Dr.) Laboso) in the Chair]*

PRAYERS

MESSAGES

APPOINTMENT OF PSC MEMBERS

Hon. Deputy Speaker: Hon Members, I have a message from the Senate, and this is on the appointment of Senators and Members of the National Assembly to the Parliamentary Service Commission. Hon. Members, under Standing Order No. 41(2) relating to messages from the Senate, I wish to convey a message from the Hon. Senator Ekwee Ethuro, Speaker of the Senate.

THAT, pursuant to Article 127(2)(c) of the Constitution, and further to the message from the National Assembly to the Senate on the matter of appointment of Senators and Members of the National Assembly to the Parliamentary Service Commission, the Senate on Tuesday 21st May, 2013 concurred with the National Assembly on the appointment of the following members:-

- (i) The Hon. Senator Sammy Leshore
- (ii) The Hon. Senator Beth Mugo
- (iii) The Hon. Senator David Musila
- (iv) The Hon. Jimmy Angwenyi, M.P
- (v) The Hon. Regina Changorok Nyeris, M.P
- (vi) The Hon. Aden Keynan, M.P
- (vii) The Hon. Gladys Wanga, M.P.

Pursuant to the provision of Article 127 of the Constitution of Kenya, the Hon. Members now stand appointed to the Parliamentary Service Commission. Thank you.

Hon Members, can I allow the Members to sit, I have a second communication to make. Please, those ones at the back come in.

AMENDMENTS TO THE DIVISION OF REVENUE BILL

Hon. Members, I shall then give the second message from the Senate. This concerns the Division of Revenue Bill, 2013. Hon. Members, under Standing Order

No.41 (2) relating to the messages from the Senate, I wish to convey the message from the Hon. Senator Ekwee Ethuro, the Speaker of the Senate.

THAT, the Division of Revenue Bill, the National Assembly Bill No. 1 of 2013 which was published in the *Kenya Gazette* supplement No.63 of 29th April, 2013 as a Bill originating in the National Assembly and passed by the National Assembly on Thursday, 9th May 2013, was passed by the Senate with amendments on Thursday, 23rd May, 2013; and further that the Senate now seeks the concurrence of the National Assembly on the amendments to the Bill made by the Senate to the Bill.

Hon. Members, I now direct that the Clerk, pursuant to Standing Order No.145, forthwith circulates the amendments to all Members and further pursuant to Standing Order No.41(6)(c), refers the amendments to the Budget and Appropriations Committee for consideration before the House Business Committee allocates time for the House to debate the Report of the Committee.

Thank you. I see a point of order, by Hon. Mbadi.

Hon. Ng'ongo, Thank you, hon. Deputy Speaker. I do know that this particular Bill; the Division of Revenue Bill, has been contentious. I would like you to make some clarifications. I think it should be understood that really the interest when I raised this issue before the Bill was brought back was not really to downplay the role of the Senate or rather to interfere with devolution. I must confess that I am one of those supporters of devolution and I must confess that those who know me well know the role I played when we were doing the Public Finance Management Act, to make sure that we protect the devolved resources. Even though we are supposed to do that, it is important to do it within the law.

Hon. Deputy Speaker, with your permission, I request that you allow me two or three minutes because the Speaker had actually made a ruling that it was a mistake to refer this Bill in the first place to the Senate. Since then I have heard Senators insisting that they have a role to play in this Bill. I have equally read on the newspapers an advert put up by the Speaker of the Senate and with all due respect, I have a feeling that probably the Speaker to the Senate did not read what my concerns were and so he did not address any of my concerns. This is what I want to say: If you read Article 95(4) of the Constitution, it is very clear that the National Assembly has a responsibility to determine the allocation of national revenue between the levels of governments as provided in Part 4 of Chapter 12, that is, the national Government and the county government.

Article 96 talks about the role of the Senate. It is clear that the Senate determines the allocation of national revenue amongst counties. That has to do with the County Allocation of Revenue Bill as provided for in Article 217. There is nowhere indicated that the Division of Revenue Bill shall be a function of the Senate. However, more telling, and that is where I want the ruling of the Chair is Article 110. Under this Article--

Hon. Deputy Speaker, I wish the Clerk would allow you to listen to me. This is because I will require your ruling.

The Deputy Speaker: You also sometimes require their advice.

Hon. Ng'ongo: Yes, but it would be important to listen first and then advise from a point of information. I do not know what he was advising on before he listens to what I am saying. But anyway, Article 110 details how to transact those Bills that touch on the county governments. It states the procedures of transacting them.

Article 110(3) states that “Before either House considers a Bill, the Speakers of the National Assembly and the Senate shall jointly resolve any question as to whether it is a Bill concerning counties and if it is, whether it is a special or an ordinary Bill.”

So, even after you have agreed with the Speaker of the Senate that a Bill concerns county governments, you need to determine whether it is a special Bill or an ordinary Bill. Now, what is a special Bill?

A special Bill is defined under Article 110(2)(a). It states, “a special Bill, which shall be considered under Article 111, if it relates to the election of members of a county assembly or a county executive”. There is the Annual County Allocation of Revenue Bill mentioned in Article 218. There is no mention of Division of Revenue Bill. So, those are the only two Bills that the Constitution recognizes as special Bills concerning the county governments. The procedure of transacting them is very clear in the Constitution. The National Assembly can only overrule any amendment from the Senate by a two-third majority.

In terms of the ordinary Bill, if there is a disagreement or the Senate proposes amendments, the National Assembly can reject the amendments. However, the two Houses must form a mediation committee. In the event the mediation committee fails to resolve that stalemate, the Bill is lost. That is an ordinary Bill. A special Bill cannot be lost. I have said that there are only two special Bills and they are clearly defined. If the Constitution had envisaged that Senate will also be involved in the Division of Revenue Bill there would be clear provisions of how to solve it in the Constitution.

Why is it that Article 110 failed to recognize the Division of Revenue Bill as a Bill that concerns county governments? We could not have such a careless Constitution! The Constitution had contemplated the Division of Revenue Bill as a pure and exclusive function of the National Assembly hence no need to have a mechanism of mediating or resolving any disputes arising because there would be no disputes.

I expected the Senate to address itself to the following: If he insists that the Division of Revenue Bill should go to the Senate, what kind of a Bill is it? Is it a special Bill or an ordinary Bill? If it is a special Bill, why is it that Article 110(2) does not recognize it as a special Bill yet it recognizes the County Allocation of Revenue Bill?

In conclusion, this thing should not be seen as a tug of war between the National Assembly and the Senate. I plead with the media that it is not necessary to bring differences between these two Houses. However, it is important for posterity that we agree on how division of revenue should be transacted. If the Bill on that matter can be transacted by the two Houses, we need to be clear on the procedure of doing it. If there is no procedure chances are that we are going to end up with a stalemate which will lead to mediation and if we fail at mediation then the Bill is lost. Are you telling me that this country can work without the Division of Revenue Bill simply because it is lost? It cannot be that careless. This thing, to me, is very clear.

Hon. Deputy Speaker, I ask you to rule that this Bill was improperly forwarded to the Senate and, therefore, please, send the original Bill that this House passed to the President for assent.

Hon. Deputy Speaker: Thank you, Hon. Mbadi. I have indulged you because I know the passion with which you hold issues connected to the Budget. I will, however, stick by my earlier ruling which I think will give us a way forward. We need to ventilate more on this. I passed the buck to the Budget and Appropriations Committee – I believe

you are a Member of that Committee. Let the Committee ventilate on this matter. Let it weigh the pros and cons and then bring us a report here. We will then ventilate further on all those issues that you have put in place. Clearly, we cannot afford to lose a Division of Revenue Bill. Therefore, we must get all the information required to ensure that we are properly guided on how we are going to proceed.

I will stand by what I had ruled earlier. Let us wait for the Committee now that it is seized of the matter. It will bring a report before the House at the earliest possible time. This is a very important Bill that we need to pass very soon so that this matter is brought to rest.

PAPERS LAID

The following Papers were laid on the Table:-

The Report of the Departmental Committee on Administration and National Security on the Vetting of the Nominee, Mr. Francis Thuita Kimemia to the position of Secretary to the Cabinet.

(By Hon. Abongotum)

The Report of the Departmental Committee on Justice and Legal Affairs on the Approval of the Appointment of Lady Justice Kalpana Rawal to the position of Deputy Chief Justice of the Judiciary in the Republic of Kenya.

(By Hon. Chepkong'a)

NOTICES OF MOTIONS

ADOPTION OF REPORT ON VETTING OF FRANCIS THUITA KIMEMIA

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

THAT, pursuant to Article 154(2) of the Constitution and the provisions of Standing Order No.45, this House adopts the Report of the Departmental Committee on Administration and National Security on the vetting of the nominee for appointment to the position of Secretary to the Cabinet laid on the Table today, Tuesday 28th May, 2013 and approves the appointment of Mr. Francis Thuita Kimemia to the position of Secretary to the Cabinet.

ADOPTION OF REPORT ON VETTING OF JUSTICE KALPANA RAWAL

Hon. Chepkong'a: Hon. Deputy Speaker, I beg to give notice of the following Motion:-

THAT, pursuant to Article 166(1)(a) of the Constitution of Kenya and the provisions of Standing Order No.45, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the vetting

of nominee for appointment to the position of Deputy Chief Justice laid on the Table today, Tuesday 28th May, 2013 and approves the appointment of Lady Justice Kalpana Rawal to the position of Deputy Chief Justice of the Judiciary in the Republic of Kenya.

REQUESTS FOR STATEMENTS

HARASSMENT OF MOLO RESIDENTS BY ARMED GANGSTERS

Hon. Macharia: Hon. Deputy Speaker, I rise to request for a Statement from the Chairman, Departmental Committee on Administration and National Security following incidents that have happened in Molo Constituency. Armed gangsters donning police uniforms have been erecting roadblocks and terrorizing residents. Just to mention a few cases, on 14th May, 2013, these gangsters hijacked a lorry and *matatu*.

On Sunday, the same gangsters hijacked a bus full of Gor Mahia fans and another *matatu*, after which they raped a woman. I am requesting for this Statement because this roadblock is about seven kilometres from the Molo Police Division. Since this has happened twice, the people of Molo and Kenyans in general are concerned that because this is a major road heading to Uganda we need to get a Ministerial Statement explaining how gangsters are wearing police uniforms. They are also suspected to be holding G3 rifles and terrorizing Kenyans repeatedly immediately after the police move away from the roadblock. For the information of the Committee, these incidents are happening at the Kibunja Trading Centre.

Hon. Deputy Speaker: Request from Hon. Chris Wamalwa. I hope it has been approved.

INSECURITY IN TRANS NZOIA COUNTY

Hon. Wakhungu: Hon. Deputy Speaker, I rise to request for a Statement from the Leader of the Majority Party over the increasing incidents of insecurity in Trans Nzoia County. Over the weekend, a Police Reservist by the name Masika was shot dead in the night. There are also complaints from the residents that the top leadership of the police force in the Trans Nzoia County, about 70 per cent, is from one ethnic community. We have cases of policemen who have stayed there for more than five years.

Hon. Deputy Speaker: Has your Statement been approved, Hon. John Nakara? You need to get your Statement approved first before you can request on the Floor. So, I see no other Statement. Therefore, next Order!

MOTIONS

ADOPTION OF REPORT ON CONSTITUTIONALITY OF GAZETTE NOTICE BY SRC

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

THAT, this House adopts the Report of the Committee on Delegated Legislation on the Constitutionality of *Gazette Notice* Nos.

2885, 2886, 2887 and 2888 as published in the *Kenya Gazette* of 1st March, 2013 by the Salaries and Remuneration Commission, laid on the Table of the House on Thursday, 23rd May, 2013.

First and foremost, on behalf of the Committee on Delegated Legislation, I want to say that the Committee looked into the constitutionality of the *Gazette Notice* Nos.2885, 2886, 2887 and 2888 as published by the Salaries and Remuneration Commission on 1st March, 2013. The mandate of the Committee is derived from Standing Order No.210, which is to *inter alia*, consider if any statutory instrument is in accordance with the Constitution, Act under which it is made or any other written law. The Standing Order 210 provides that if the Committee finds the statutory instrument is not in accordance with the Constitution or the Act under which it is made or any other written law, it may recommend to the House that the Assembly resolves that all or part of the statutory instrument be annulled.

The Committee held four sittings to discuss the issue that was before it. I wish at this point to thank the Office of the Speaker and that of the Clerk for the support they gave to my Committee. Indeed, also the staff who did a very commendable job. I also wish to thank the Members of the Committee on Delegated Legislation for their patience, sacrifice and endurance during the long sitting hours which gave rise to the report before the House now. It is now my pleasure, on behalf of the Committee on Delegated Legislation, to recommend to the House pursuant to the provisions of Standing Order 210(5), that the House adopts the report.

It is important for the Members to know that the report has five parts. Part I is on introduction. Part II deals with the notices which I have just mentioned. Part III, which is very important, is the Committee's observations on the various issues touching on this subject. Part IV deals with the constitutionality of the *Kenya Gazette* notices. Finally and equally very important is Part V which gives the Committee's recommendations. The Chair and the Members will recall that on 2nd May, 2013, Hon. Linturi tabled a petition before the House pursuant to Standing Order No.225. This petition was referred to the Committee on Delegated Legislation for consideration. The Committee went through the entire petition and looking at the content of the four *Gazette Notices*, the Committee was of the view that it raises serious constitutional issues which required very urgent resolution by this House.

Hon. Deputy Speaker, I wish to start by saying that we looked at the constitutional provisions touching on Salaries and Remuneration Commission (SRC). This is one of the constitutional commissions under Article number 230 of our Constitution and the Article is so clear as to the mandate, the functions and the powers of SRC. Article 230 (4), states as follows:-

“The powers and functions of the SRC shall be to –

(a) set and regularly review the remuneration and benefits of the State officers.”

It is important to know that, that particular function is given to the Commission.

It is also supposed to in “(b) advise the national and county governments on the remuneration and benefits of all other public officers.”

The same Constitution under the same Article was also quick to advise the Commission the principles which should guide them in performing those functions and powers under Article 254. It is important for this House and even the entire country to realize that 230 (5), states as follows:

“In performing the functions, the Commission shall take the following principles into account---”

I would wish to invite the House to note the usage of that particular word “shall”, it is not optional, it is mandatory. You must take the following principles into account. It should be known that these provisions were passed by this House and above all, it was passed by the Kenyan people.

“(a) the need to ensure that the total public compensation bill is fiscally sustainable.”

But more importantly is:

“(b) the need to ensure that the public services are able to attract and retain the skills required to execute their functions;

(c) the need to recognise productivity and performance”

Finally, and equally very important;

“(d) transparency and fairness”

Those are the four principles which the Constitution sets and must be able to guide the Commission in performing its functions under Article 230 (4). So that in executing its powers and functions the Commission should be guided by those principles. It follows, therefore, that any attempt by the Commission to exercise its powers and functions under Sub-article (4), without taking into account the principles set under Sub-article (5), is in breach of the Constitution.

Hon. Deputy Speaker, it is also important to realize that the same Constitution under Article 230, an Act of Parliament was again passed by this House. That is the SRC Act which is the principal legislation that is supposed to guide the Commission again, in their day-to-day running of the affairs of the Commission. So, we need to distinguish two issues here.

One, the Constitution provides for the general principles to the Commission and then the Act of Parliament goes to set various procedures on how to run their day-to-day affairs of the Commission.

Hon. Deputy Speaker, Section 12(1) of the SRC provides as follows--- This is critical for hon. Members to know because we need to draw the distinction between provision of the Constitution and that of the Act. The Commission is not just allowed to utilize the principles under the Constitution, they are required again to be guided and directed by the provisions of Section 12(1) and (2) of the SRC Act.

“In addition to the principles set under Article 230(5) of the Constitution, the Commission shall also be guided---”

I invite the House again to recognize the usage of the word “shall” for the second time. It goes on to say “shall be guided by the principle of equal remuneration to persons for work of equal value. Without prejudice to subsection (1) the Commission shall take into account the recommendations of previous commissions established to inquire into the matter of remuneration in the public service.”

Hon. Deputy Speaker, it should be very clear and I want the Kenyan people to listen because there have been a lot of accusations about hon. Members wanting to enrich themselves unfairly. They are seen to be greedy and they are selfish people.

This is the Constitution that we are quoting. The Commission, in executing its functions, should be guided by other commissions. There are two commissions that have

been dealing with the matter of salaries for Members of Parliament; The Justice Cockar and Justice Akiumi commissions.

Hon. Deputy Speaker, I will table before the House a letter from the former Speaker of Parliament, forwarding Commission's document for the Commission to be guided by that.

Section 26 of the SRC Act also provides as follows:-

“The Commission may make regulations generally for the better carrying into effect of any provisions of the Act”.

Section 26(2) stresses about the powers to make regulations.

Again, these are very key words, “shall”. As a lawyer, it makes a lot of sense to me. It should have been the other way round but we chose as Parliament to use the word “shall”.

“Shall be exercised duly after drafts of the proposed regulations have been approved by the National Assembly”.

Hon. Deputy Speaker, any regulation of whatever nature or name you can call it; you can call it “regulation”, you can use “the *Kenya Gazette*” or you can call it any name under the earth. But the point is this, you should, as a matter of procedure or as a matter of law be able to table those regulations or that *Gazette Notice* before this House so that the House will be able to approve after you are satisfied that those regulations fulfill the requirements of the Constitution of this country. So, these are the issues that I would like to raise and they are also observations of the Committee.

Another very critical observation before I go to Part “C” of the report is that the Salaries and Remuneration Commission (SRC) in coming up with remuneration, the other benefits and the ranking of the said offices, it undertook an evaluation. They undertook a job evaluation by the PriceWaterHouseCoopers with the support of World Bank. So it is important for hon. Members to know that you were evaluated by a consultancy firm called PriceWaterHouseCoopers. During the said evaluation, the SRC sought input from Parliament as follows:- They invited the Clerk to join in the job evaluation. The SRC requested the Parliamentary Service Commission (PSC) to provide the organizational structure of Parliament, they requested for senior staff to be seconded to the process of evaluation but the PSC objected to the evaluation process as it was wrong and unconstitutional. It is important to note that this process was objected by Parliament in writing. I would like to read a letter by the former Speaker to the Commission when it was objecting to this unconstitutional process of job evaluation. This is a letter dated 22nd February, 2013 to Hon. Serem and the title is, “Proposed Remuneration Structure of State Officers in Kenya.” I would like to go to paragraph 4 in page 2. It is important for hon. Members to know this because it is going to inform our debate in this matter.

“It is constitutional requirement that the National Assembly approves the nomination of most State officers prior to their appointment. The National Assembly then oversees their work both from a financial and administrative perspective and may initiate process of removing them from office. In effect, the National Assembly substantially plays the role of a supervisor to these State offices. It does not, therefore, augur well for the structure of the Government for supervisors to be rated and remunerated less than those they supervise. This is not good human resource practice. It shall undermine their

constitutional role of oversight by Parliament and---interactions between the National Assembly and the State organs under constitutional duty to oversee.”

So, hon. Deputy Speaker, it should be noted that the National Assembly was able to register its objection to the Commission on the manner in which the job evaluation was done. There is another letter that I want to refer to so that I continue. It is dated 27th November, 2012 to Hon. Serem, the Chair of the SRC: “Job Evaluation of State Officers. Please refer to the job evaluation and State officers positions exercise that the SRC has been carrying out and find attached the following documents that shall be of assistance in evaluating the State officers’ positions to the Legislature. (i) Comments of the PSC on the salaries/remuneration draft structure for State officers Remuneration. (ii) Job description of Parliamentary office holders---” Let me go to number six, “Report of the tribunal to review the terms and conditions of service for members of staff of the National Assembly, chaired by Justice Cockar in 2002 and also by Justice Akiwumi on 29th November, 2009.” So, Parliament was keen enough to ensure that it informs the SRC about the disagreement on the job evaluation of State officers and particularly Members of Parliament.

So, the SRC failed to respond to any of the issues raised by the PSC. They did not respond at all to any of the three letters which I have read. What does that mean? Information is power. They were given information with regard to objections by Parliament; they chose to ignore, otherwise we would not today be having elected leaders of this country staying for three months without a salary. It is, indeed, a disappointment because Parliament was able to provide. Having failed to respond to any of the issues raised by the PSC, they went ahead to finalize evaluation process and gazetted the remuneration and other benefits of State officers and the structure of the State officers, as we have now in the *Kenya Gazette*. What I have done so far is that I have been able to demonstrate to this House and the country that there are certain fundamental issues that the SRC ignored in the process of undertaking the evaluation and in the process of ranking State officers. Having considered, therefore, the constitutional and other provisions on the SRC and having considered the job evaluation process, it is our considered view as the Committee on Delegated Legislation that the *Gazette Notices* are unconstitutional and, therefore, null and void.

(Applause)

But it is not enough because I have only been able to deal with only two issues. I want to say this and I want to be very clear to our country that what is before the House is a serious matter touching on the welfare; touching on the wellbeing; touching on the dignity of elected leaders of this country. It is important that we know that. In addition to this, it is about the rule of law. Why do we have the Constitution? It is to guide those who are governing; to guide Parliament and to guide the Judiciary. And so what is before us is not about an individual, it is not about personalities, it is about the wellbeing and the dignity of Members of Parliament and above all the rule of law. We must answer the question: Do we uphold the rule of law as a country or not and especially the organs which are entrusted to do so? We have 11 constitutional commissions. It is our responsibility to ensure that they follow the law and follow it to the letter because it is very important.

I have dealt with two things; the issue of illegal and unconstitutional evaluation and unconstitutional ranking of State officers.

Hon. Deputy Speaker, the ranking of State offices is not about individuals. We are not talking about Hon. Kaluma or Hon. Jakoyo Midiwo or Hon. Duale. We are talking about an office of a Member of Parliament. Hon. Members come and go but the office remains. Therefore, we are addressing the issue of the constitutional office of a Member of Parliament. The two institutions of Parliament have been ranked numbers 43 and 44. The Cabinet is number six, followed by the Judiciary at number seven. How far is number 34 from numbers one and six?

Parliament plays a supervisory role over those State officers to ensure that they always comply with the law in executing their functions. This is a fundamental function. It is not the Speaker or the Senate saying so. It is not even the Chairperson of the Committee on Delegated Legislation saying so. It is not even the Leader of the Majority Leader, it is a constitutional mandate. I would like to refer to Articles 95, 96, 142 and 254 of the Constitution. These are the Articles that confirm to this House and the nation that Parliament is, indeed, supreme. Parliament supervises other organs of the Government, and we should not be blamed. It is the law as it is which provides for this, and not the law as it ought to be, as others would want to think.

Hon. Deputy Speaker, Members of Parliament are the representatives of the people. They are elected to Parliament to exercise the sovereign will of the people. It is, therefore, not proper for the office of the Member of Parliament to be set below the offices of State officers who are subordinate and subject to Parliament's supervision. I have two people who are elected by the Kenyan people; namely, the President and the Deputy President. Below them is a Member of Parliament. Therefore, we are demeaning the status of the elected leaders of this country. We are demeaning the status of this House. This House must, therefore, be able to explain this to the nation, so that we can correct the situation.

There is another serious issue, namely, the disparity in remuneration. This has been unfairly done by the Salaries and Remuneration Commission (SRC). I would like to refer to another principle. There is need to ensure that there is parity across the three arms of Government. The Legislature, Executive and Judiciary are the three arms of Government which govern this country. If one of them is undermined, it will not have the power to function in the way it should. Let me give an example of the governor in the devolved governments. Governors deserve the remunerations allocated to them. I am not saying that they must not earn that much. In fact, they should even earn more. Governors earn Kshs640,681 per month. The governor is the executive officer of the county. However, Members of County Assemblies, who actually oversee the county executive, earn Kshs79, 240.

Hon. Members: Shame! Shame!

Hon. Cheptumo: Hon. Deputy Speaker, it is shocking that the difference between the salary of a governor and that of a Member of County Assembly is Kshs541,000.

Hon. Members: Shame! Shame!

Hon. Members: Hon. Deputy Speaker, how can Members of County Assemblies execute their oversight roles over an executive officer whose salary is Kshs541,000 more than what they earn? Then we are being told that the Commission evaluated our work. Can Parliament be blamed for raising this issue? The Commission said that they did an

evaluation. I want to conclude my remarks by saying that the job of evaluation undertaken by the SRC in determining the ranking of State officers and determination of benefits of Members of Parliament is unconstitutional.

Hon. Deputy Speaker, the SRC took academic requirements into consideration in doing the evaluation. It is my humble submission that academic requirements are only relevant for appointment positions as they show the process through which one is required to go through prior to becoming eligible to hold an office. These requirements are clear in the Constitution. One becomes a Member of Parliament through a democratic process, which is more rigorous than that of appointment position. A parliamentary candidate must convince the electorate that he understands their needs, and that he can articulate their issues well in this House.

Therefore, the job evaluation process tabled by the SRC did not take into account the provisions of Article 1(2) of the Constitution. What I am saying is important because it shows the House and the nation that the SRC acted contrary to the Constitution. I would like us to look at Article 1 of the Constitution, which says:

“1. (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with the Constitution.

(2) The people may exercise their sovereign power either directly or through their democratically elected representatives.”

Therefore, the evaluation process should not have been based on academic qualifications, as the SRC did. How do you quantify representation? It is not possible to use academic qualifications to do so. Articles 94, 95, 96 and 99 of the Constitution set out job description of Members of Parliament. So, as Members of Parliament, we occupy a very unique position. We are the only group of people whose job description is actually contained in the Constitution, under the Articles I have referred to. So, it is important that we recognise that fact. As I said earlier, it however took into account the provisions of Section 12 of the Salaries and Remuneration Act. Imagine a commission which violates its own Act of Parliament. I mean you are a commission and a law has been passed here setting out what you are supposed to do and you chose to ignore the provision of the Constitution. No wonder they were not able to comply with the Constitution! They were not even able to comply with their own statute.

Hon. Deputy Speaker, Section 12 of the Salaries and Remuneration Act says:-

“The Commission shall be guided by the principle of equal remuneration to persons for work of equal value.

Without prejudice to subsection (1), the Commission shall take into account the recommendations of previous commissions established to inquire into the matter of remuneration in the public service.”

So, if the Commission took into account the recommendations by the Akiwumi and Cockar commissions, they would have been able to make decisions that could not have been controversial and in contravention of Section 12 of their own Act.

Hon. Deputy Speaker, I just wish to raise another third point before I go to the fourth because we have six points. The *Kenya Gazette* Notice also is in contravention of Section 41 of the Constitution. Article 41 of the Constitution states as follows:

“Every person has the right to fair labour practices.”

When you talk of “every person”, it follows that Members of Parliament are persons. What can we construe “fair labour practices” to mean? We are talking of Article 14 of the Protection of Wages Convention, 1949 which states as follows:-

“Where necessary, effective measures shall be taken to ensure that workers are informed, in an appropriate and easily understandable manner –

(a) before they enter employment and when any change take place, of the conditions in respect of wages under which they are employed; and

(b) at the time of each payment--- .”

Hon. Deputy Speaker, our submission is that Members of Parliament should have been informed of the purported changes in the remuneration structure of the office of Member of Parliament before they commenced the process of vying for Parliament. That might sound a bit funny but it is true because the general elections were held on 4th March. A public officer interested in vying is required under Section 43(5) of the Elections Act to resign at least six months before the date of election. This meant that public officers who vied for elections resigned by September 2012. All this time the remuneration for Members of Parliament was Kshs851,000 set out in the National Assembly Remuneration Act. This is the basis upon which Members of Parliament vied for elections. I do not even think that we can be accused for that because for a fact it is true.

Hon. Deputy Speaker, point number two on that issue is that the Salaries and Remuneration Commission (SRC) waited and you can see the mischief here. I want to invite the House and the nation to read the mischief. They waited until 1st March just three days to the elections to publish the gazette notices. All persons who vied for elections knew all along that the remuneration for the office of Members of Parliament was Kshs851,000. It was therefore violation of the principles set out in the Protection of Wages Convention, 1949 for the SRC to purport to reduce the remuneration for Members of Parliament after they had undergone all the procedures necessary for them to be elected to the State Office under the understanding that the remuneration was Kshs551,000.

Hon. Deputy Speaker, the best conclusion I can make here is that this is equivalent to actually obtaining the services of these affected staff by fraud. The SRC has exercised its powers in a manner that infringed on the legitimate and rightful expectations of Members of Parliament. This is even worse for Members of Parliament who came back to the Eleventh Parliament because they knew. They earned that amount for five years. They went for elections hoping it would be the same thing but when they came back, it was not to be so. Can we also be accused for being selfish on that? I think the answer is no.

Hon. Deputy Speaker, item number four and I have 11 grounds of law to demonstrate to the nation that these gazette notices are illegal and I want to move a bit faster because of time, there is breach of international labour conventions. The SRC has breached international laws and conventions by reducing the remuneration of the office of Members of Parliament without the consent of the office holders. The SRC is composed of representatives from the Central Organization of Trade Unions (COTU), the Parliamentary Service Commission (PSC) and the Senate. These three organisations, and it is important to know, have come out in strong opposition to the remuneration structure proposed by SRC in the gazette notices under consideration. It is therefore clear that SRC

does not have a unanimous position on the matter of remuneration of Members of Parliament. Just imagine a situation where one of the key members of the SRC is actually objecting to the structure, not only one but three as I have said here. It means therefore there was no unanimous decision in terms of the structure that it laid before.

Hon. Deputy Speaker, the SRC also failed to comply with the relevant existing laws. Now, I would wish to quote Section 6 of the Sixth Schedule of the Constitution which provides as follows:

“Except to the extent that this Constitution expressly provides to the contrary, all rights and obligations, however arising, of the Government or the Republic and subsisting immediately before the effective date shall continue as rights and obligations of the national government or the Republic under this Constitution.”

Hon. Deputy Speaker, these are obligations to Members of Parliament by the national Government. It existed before and it exists now by virtue of the saving of that section under Section 6 of the Sixth Schedule. Section 7(1) of the same Sixth Schedule again provides as follows:

“All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the Constitution.”

Hon. Deputy Speaker, that is again another very serious provision. Even the High Court has been able also to speak to this issue in the case of John Harun Mwau versus the Attorney-General and others. The High Court in this case also dealt with the issue of remuneration of Members of Parliament as follows: “The terms and conditions of service of Members of the National Assembly are governed by the National Assembly Remuneration Act.” This is by an Act of Parliament.

Section 2 of that Act provides that:

“the persons for the time being---”

I think the use of the phrase “time being” is clear because we keep on going home and others coming back; others losing and others coming back again.

It goes on to say:

“the persons for the time being holding the several offices specified in the first column of Part II of the First Schedule shall receive a sitting allowance at the rates respectively specified in the second column of that Schedule in respect of every meeting attended.

Hon. Deputy Speaker, I do not need to explain even that one and so on and so forth.

Hon. Deputy Speaker there is now a feeling that the pension benefits are being taken away. These benefits are calculated in accordance with the aggregate of all pensions after the commencement of this Act during which one is a member of the National Assembly. A pension is payable when an MP ceases to be a Member of the National Assembly. The point I want to make here is that pension has been approved for Members of Parliament. The law provides so. It will be illegal and unconstitutional for SRC to one morning give a gazette notice that nullifies what is provided for under statute. The Committee is, therefore, of the view that the terms of service of Members of Parliament are to be determined in accordance with the existing legal requirements or instruments and not just what the SRC thinks about. There is the problem of the purported exercise of legislative powers. Article 94 of the Constitution states:

“The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.”

The Commission cannot, therefore, purport to take away that particular right. When the Commission issued a gazette notice which purports to completely repeal the Pensions Act and the sections that I have talked about, this amounts to assuming the responsibility of legislation which is not their mandate. Their mandate is well spelt in Article 230 of the Constitution.

Hon. Deputy Speaker discrimination is another issue contrary to Article 27 of the Constitution. It provides that there shall be equality and freedom from discrimination. Every person is equal before the law and has the right of equal protection and equal benefit of the law. Equality includes the full and equal enjoyment of all rights and fundamental freedoms. It goes on to state that the State shall not discriminate directly or indirectly against any person on any ground including race and so on.

As Members of Parliament we feel, and this is true, that there is an attempt by the Commission to discriminate against Members of Parliament. In all the four gazette notices the only institution whose terms have been reduced is the House. This is against the principles of Article 27 of the Constitution. The SRC has reduced remuneration for Members of Parliament while maintaining the remuneration for the Judiciary and other State officers currently in the office. This is discrimination against Members of Parliament and flagrant violation of provisions of Article 27 of the Constitution.

Hon. Deputy Speaker, allow me to deal with the issue of failure to comply with Section 26 of the Salaries and Remuneration Commission Act. The Finance Act amended that particular section by requiring that the Commission must bring before the House any regulation. Section 26(1) and (2) of that Act is clear and yet the SRC has not complied. It was supposed to table the gazette notice before us so that we approve. Even as they make regulations they are supposed to do that.

With regard to interference with the independence and internal workings of Parliament, Article 124 of the Constitution provides that each House of Parliament may establish committees and shall make Standing Orders for the orderly conduct of the proceedings, including the proceedings of the committees. Now, for the SRC to purport to begin to direct Parliament, that is, how many sittings they are supposed to have and when they are supposed to sit, amounts to interfering with our internal operations as a House. Article 127 of the Constitution gives the Parliamentary Service Commission the powers responsible for providing services and facilities to ensure efficient and effective functioning of Parliament. The SRC cannot purport to take away that right. Another principle is the oversight role of the National Assembly and protection of the Constitution.

*[The Deputy Speaker (Hon.
(Dr.) Laboso) left the Chair]*

*[The Temporary Deputy Speaker
(Ms. Shebesh) took the Chair]*

Hon. Temporary Deputy Speaker, having been able to demonstrate to this House what I am saying, by raising 11 grounds this afternoon, I wish to turn to Part V of our

recommendations. The Select Committee on Delegated Legislation recommends to the House to adopt this Report and in exercise of its oversight role under Article 95(a) of the Constitution resolves as follows:

(a) That Gazette Notices No.2885, 2886, 2887 and 2888 dated 28th February, 2013 and published by the SRC on 1st March, 2013 are unconstitutional, unlawful, *ultra vires* and therefore null and void. The National Assembly Remuneration Act and the Parliamentary Pensions Act being in force shall continue to govern the remuneration for Members of Parliament.

(b) The SRC and other constitutional commissions to strictly adhere to the Constitution and the law when executing constitutional mandate.

(c) The National Assembly, in exercise of its powers under Article 95(a) of the Constitution to review the conduct, composition and functions of the SRC as well as all other constitutional commissions and independent offices.

Allow me to conclude, hon. Temporary Deputy Speaker. It is important that you listen to this hon. Members. The Constitution declares that the Constitution is the supreme law of the Republic and binds all persons and all State organs in both levels of Government. Under Article 2(4) it states:

“Any law, including customary law, that is inconsistent with the Constitution is void to the extent of the inconsistency, and any act or omission in contravention of this Constitution is invalid.”

It is my submission that the gazette notices are unconstitutional and null and void and I, therefore, recommend to the House to adopt this Report.

(Applause)

I wish to ask my learned colleague, Hon. Kaluma to second.

Hon. Kaluma: Thank you very much for the opportunity to second this important Motion. In doing so, I request the Members and the whole nation to be alive to the role of Parliament as defined by the Constitution in Article 94, particularly, Sub-articles (1), (2), (3), (4) and (5). Under (1), it says that:-

“94 (1) The legislative authority of the Republic is derived from the people and, at the national level, is vested in and exercised by Parliament.

(2) Parliament manifests the diversity of the nation, represents the will of the people and exercises their sovereignty”.

Under Sub-Article 4, it says that:-

(4) Parliament shall protect this Constitution and promote the democratic governance of the Republic”.

Under Sub-article (5), this is something that we need to emphasize. It states:-

“(5) No person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation”.

What I beg to emphasize is found in those sub-articles. We are not debating this Motion to say that, as Members of Parliament, we are seeking the pay because this is a confusion that we need to alleviate. Rather, as the expression of the sovereign will of the people, as the democratically elected representatives of the people, we are saying that we are moving to protect the provisions of the Constitution passed by the Kenyan people in

2010. It is only this institution that can do it. I also want to second this Motion by emphasizing a matter that has been raised in the Report by the Chair of the Committee on Delegated Legislation. There is a procedure required of the SRC, the subject matter of our debate today, to adhere to in executing its mandate. In fact, it derives from the fact that the ultimate authority over anything that has the force of law in Kenya comes from this House.

Those gazette notices are being made in a manner that by-passes that constitutional authority and mandate. In fact, it is usurpation by the Commission concerned of the powers properly vested in Parliament by the Constitution. It is not just a violation of the Constitution, in my understanding of the law but also a violation of the Acts of Parliament governing the operations of the Commission. So, we are saying that where that happens, there is something that we must stand up to as the National Assembly to always stamp the authority of Parliament, not just to push our egos of power as individuals, but in protecting the constitutional mandate properly vested in this institution.

I wanted to emphasize that I am not speaking as Hon. Peter Kaluma. As I stand before this House to speak, it is the Homa Bay Town Constituency speaking and that should be understood. What has happened in this country is a shame. I have never known an elected Member of the National Assembly, in any country, staying for three months without pay after being sworn in. The fundamentalists and people may take it for granted; those who care to debate it outside there, but looking at the various gazette notices, the subject matter of our debate here today, we see a Commission that is averse to every elected representative of the people. That is how you see the salary of the county governor up there and the salary of the member of the county assembly down there. We want to question even beyond this House how a member of the county assembly, who is earning a gross salary of Kshs79,000 - and I think it comes to about Kshs40,000 as net pay - is going to oversee the county government to ensure that those billions of shillings that we are already considering in our Budget, is used only for the benefit of the people of the county. It is going to be a problem.

All the members of the Executive Committee are going to earn more than three times what is proposed by this rogue Commission to be earned by the members of the county assembly. I urge the Members to support this Motion. I do not believe I should be belabouring the issues already covered in the report. The Committee did quite some detailed work. The able Chairperson of the Committee has taken the House through every piece of consideration the Committee went through to come to the conclusions and to recommend to the House as we have recommended. This is a matter that without much debate should go to question and we focus on the other Motions which are pending. We have to be serious as a House.

On this one, I can state without being ashamed outside there that after the President, Deputy President, Speakers and the Deputy Speakers of the two Houses of Parliament, I wonder who this person is and which State Office is that, that can be on top of the office of the Member of Parliament. I do not know which one it is. But to me, it confirms that, that is a Commission that is seated somewhere like an untrained butcher directing the knife without considering where the intestines are, where the skull is and where the limbs are. You have *matumbo* mixed with beef and the tongue of an animal and served in one plate. This is what this Commission has done. It is so arbitrary that in

public law, we will consider it unreasonable in the sense that no reasonable commission sitting somewhere, given the considerations it has to go through, would come to such thinking.

I urge the House to agree with the Committee and adopt the recommendations to enable us to go forward and deal with the matters that are more important to the nation. A thought is being peddled around that there is a heavy wage bill. I mean unconceivable thought is being driven into the minds of our people that the only way to deal with this wage bill is to single out an institution of all other institutions and say:- “This is the institution we have to deal with”. We have now to think seriously about the mandate, the structure and the composition of all the constitutional Commissions and offices.

Let me give an example of one as I end, which is of concern to me. There is the Commission for the Implementation of the Constitution (CIC) which has nine Commissioners. The entire nation does not know the membership of such commissions. The only person in that Commission that we see featuring and speaking on things he has not bothered to research on and he does not understand is the Chairman. He will appear once in a month, talk to a matter he does not know and whatever he says will be contradicted. He does not bother to come back to explain his position and waits for the next one. We have nine Commissioners enjoying State facilities of the top most level, idling and doing nothing. I wonder why it would offend the nation if in reducing the wage bill, we went further after we pass this Motion and said that we want to reduce this number, possibly the Constitution would allow, to that one gentleman who makes noise on irrelevant issues and the secretariat to do other things. There are Commissions all over, whose mandate in terms of functioning cannot be properly explained.

Hon. Deputy Speaker: Hon. Kaluma, confine yourself to the debate. If you want to bring another Motion on the Commissions, you can do that. Today we have a specific Motion that we are addressing ourselves to.

Hon. Kaluma: Hon. Deputy Speaker, I stand properly directed. I will leave the Commissions. There is a recommendation of the Committee that in helping the nation, we need to exercise, as a House, the powers vested by the Constitution under Article 95, to oversee the functioning of those commissions. A thinking is coming up, going by the actions and the conduct of this Commission, that in the exercise of their functions, the constitutional commissions and independent offices are above the law and they can do as they will. That was not the intention of the makers of those provisions establishing the commissions.

With those very many remarks, because the Chairperson had explained the Report by the Committee in quite huge detail, I beg to second the Motion.

(Question proposed)

Hon. Wario: Ahsante sana Naibu Spika. Nachukuwa fursa hii kumshukuru Mwenyezi Mungu na wewe kwa fursa hii. Naipongeza Kamati ambayo ilifanya utafiti na kuleta Hoja hii muhimu mbele yetu.

Naibu Spika, Katiba hii inalinda haki za wanyama pia. Lakini wanyama hawasomi Katiba. Wale ambao walikuja na kuchinjia wanyama Langoni mwa Bunge, ningewaalika kabla hawajachinja nguruwe wasome Katiba kwanza.

Kipengele cha 94(1) cha Katiba ya Kenya kinatoa mamlaka ya kipekee itakapokuja kwa maswala ya utunzi wa sheria. Si utawala ama mahakama, ni Bunge lenye mamlaka ya kutunga sheria.

Hon. Member: Ni kweli hiyo.

Hon. Wario: Hatutaomba msaada kwa tume ya Sarah Serem kutusaidia kama Wabunge kutunga Katiba ambayo haiambatani na vifungu vya sheria ya nchi hii.

(Technical hitch)

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

Hon. (Ms.) Muhia: On a point of order, hon. Deputy Speaker. Thank you.

I wish to bring to the attention of this House that there is a countrywide blackout. I am not sure if it could be a conspiracy between Sarah Serem and Kenya Power so that the citizens will only consume what the media gives them because the Chairman is giving a very comprehensive Report.

Hon. Deputy Speaker: Okay. Thank you for that point of order. *Endelea mhe. Wario.* Can the relevant authorities confirm whether this is not a conspiracy against the citizens? What is happening with the microphone?

Please, give Wario the microphone.

Hon. Wario: Ahsante mhe. Naibu Spika. Kifungu cha 94(5) kinasema hivi:-

Hakuna mtu, chuo au taasisi ambayo itatunga sheria bila kupewa fursa ya kikatiba na Bunge hili. Sasa mimi nauliza: Kwani hii tume ya Sarah Serem imetoa mamlaka hiyo wapi? Kipengele cha 41 cha Katiba kinasema kuwa kila mfanyakazi apewe huduma, haki na usawa.

Bi. Naibu Spika, nilikuwa katika Bunge la Tisa na ninajua mshahara wangu ulikuwa wa pesa ngapi. Nimekuja katika Bunge la Kumi na Moja. Ni nini kimebadilika kwa wajibu wangu kama Mbunge au wajibu wa Bunge hili? Tofauti ni nini? Ni nini kinaongoza tume hiyo kukata mshahara wangu kwa asilimia 57 bila kunihusisha mimi kama mfanyikazi? Kipengele 41 cha Katiba kinamwambia amekosea kisheria.

Mhe. Naibu Spika, ukiangalia vile walivyofanya *ranking*, Kipengele cha 3 cha sheria za Kenya kimefanya *ranking* na kimemaliza maneno. Kipengele cha 3 kimetoa majibu ya kutekeleza sheria ya nchi moja; Bunge la Taifa na Bunge la mashinani. Pili, utawala wa Taifa na utawala wa mashinani na tatu, Mahakama. Unapoipatia Bunge nafasi ya 43, nani amekupatia mwongozo kwa sababu Kipengele cha 3 cha Katiba kimetoa mwongozo? Bunge ndilo la kwanza katika *ranking*.

Bi. Naibu Spika, Baraza la Mawaziri limepewa namba sita na sisi ndio tumewapitisha hapa Bunge. Wengine wameshuka kabisa, wakachanganya mafuta na maji. Sisi ndio tumewakosoa, tukawarekebisha na tukawaambia wachukue ofisi. Hawatuajiri kazi! Serem alikuja hapa akaapa kwamba hatateremsha mishahara ya wafanyikazi kiholela, na huko ndiko anafanya kazi.

Bi. Naibu Spika, nimesimama kuunga mkono Hoja hii. Waswahili wanasema kila nyani ana siku yake. Waliochinja nguruwe wana siku yao. Sisi tuna siku na siku yetu ni siku ya Katiba. Sisi hatutachinja nguruwe.

Nataka nisikike vizuri kule nje. Leo ni maswala ya Katiba, Sarah Serem angalie Kipengele 94 (1), (3) and Kipengele 3 cha Katiba ya nchi.

Amevunja sheria kulia, kushoto, kusini, kaskazini na katikati.

(Loud consultations)

Kamwe, kama Bunge na kama Wabunge, hatutaunga Sarah Serem mkono. Nimesimama kuunga mkono Hoja hii na kusema kwamba tume zote za taifa zifanyiwe uchunguzi. Wale wanavunja sheria tulete Hoja na waende wapumzike.

Nimesimama kuunga mkono Hoja hii.

Hon. Wakhungu: Thank Deputy Speaker. I rise to support this Motion.

Job evaluation does not deal with individuals but with positions. So, we want to correct the perception out there that the job evaluation is about Members of Parliament. This is an office and Sarah Serem should know very well that when it comes to job evaluation, you do job analysis and then rank offices.

The current Members of Parliament will go and other Members of Parliament will come. Some of the factors that are considered when doing job evaluation are, working conditions, academic background and decision-making in terms of the matters that are handled by Members of Parliament. When you look at the functions of the National Assembly, under Article 95 (6), it is stated as follows:-

“The National Assembly approves declarations of war and extensions of states of emergency.”

In terms of looking at the sensitivity of this matter, this one ranks Members of Parliament at a higher level. Again, when it comes to job evaluation, you are supposed to do the ranking; the pecking order. When you look at Article 152(2), it talks about the Cabinet. It states as follows:-

“The President shall nominate and, with the approval of the National Assembly, appoint Cabinet Secretaries.” That is the National Assembly which is part of Parliament. The National Assembly is the one that approves the Cabinet Minister but when it comes to ranking, she is ranking him ahead of you. That tells you the Serem Commission did not look at the functions of the National Assembly and the Senate.

Hon. Deputy Speaker, when you look at Article 95 of the Constitution, where it talks about the National Assembly, you will find that in that Article, the National Assembly reviews the office of the President, the Deputy President and other State officers. How come that the person who is reviewing when it comes to ranking is ranked lower than the people you are trying to oversee? I want to quote what Martin Luther King Junior said, that there comes a time when silence is betrayal. We want to set a positive precedent for the future. We know very well that leadership is about decision-making; not decision-making in times of comfort and convenience, but in times of difficulty and challenge like this one. So, I want to urge hon. Members that this is the time we should wake up and make decisions. The decisions will set precedent and it goes without saying that the job evaluation was not well done. When you look at the job description of a Member of Parliament, he has two offices. It is the only job that you have a constituency office and one in Parliament. Serem did not look into that. When you look at Article 127, the Parliamentary Service Commission (PAC) is the one in charge of Members of Parliament in terms of their welfare, so that they can perform their duties efficiently and effectively. Serem did not look into that. That is because when you look at the annex, you find that Hon. Marende by then, who was the Chairman of PSC, had written a letter to her but she did not bother to consider the recommendations of the chair of PSC. When you

look at the ranking of Serem herself – and she was approved through this House - she has ranked herself higher than hon. Members. That tells you this was selfish. Of late, we have seen busybodies like Nyachae all over, even when their job descriptions are not even clear. In terms of ranking, Charles Nyachae has been ranked at the very top. No wonder he has been on the forefront of defending what has been done by the Serem Commission.

I congratulate the Committee on Delegated Legislation for work well done. We must congratulate Hon. Cheptumo for providing that leadership. I urge this House to support the Motion.

Hon. Linturi: Hon. Deputy Speaker, it takes men and women made of very hard stuff to take a decision. It takes men and women like Hon. (Ms.) Odhiambo-Mabona to take such a unanimous decision; a decision that is meant to defend the Constitution of the Republic of Kenya. Not many people will see it that way. Many people out there will look at it and see it as a move by a clique or a group of Members of Parliament whose only intention is probably trying to safeguard what they are supposed to be taking as their package.

I also want to congratulate this House and tell this Parliament that it has a serious duty. It has an enormous task ahead of it to work within the Constitution, to defend it and to reclaim this country from the civil society.

(Applause)

This is the time! If there is time that every hon. Member should rise on his feet to talk and make comments for purposes of record with regard to the Report that is before this Committee, it is now. Why am I saying this? Who is this in conspiracy with the other bodies that are not known to us, to defeat the great role bestowed by the people of the Republic of Kenya on this Parliament? We are here to make laws and to oversee the Government.

I am very afraid for this country. I am sorry that the people we represent--- I want to thank hon. Members here for the vigour, courage and goodwill that they have portrayed for the last two or three months in service to this great nation, despite the challenges and hard times that they have been going through. I am also afraid and this is a question that may be answered by the Leader of the Majority Party in this House. It is an issue I would want them to answer. Could there be some conspiracy on the part of the Government to emasculate and intimidate Parliament so that it is not able to perform its functions? I was not a Member of Parliament during the old KANU days though I served in this House as a Member of Parliament representing the great party KANU. What I have told my brother, Hon. Cheboi is that, in the Seventh and Eighth Parliament, whenever there was an issue on the Floor and probably some people were not trying to play ball, hon. Members were being summoned to State House for brown envelopes because they were very desperate and were broke. Let us be honest, when people are poor; when people have nothing, the probability of compromise is very high. What we are trying to fight here is that probability of trying to compromise a Parliament that is exercising an oversight role on the Budget that goes beyond trillions. When we ask these questions, nobody wants to talk about it.

But because I know time is not on my side, let me comment on the incompetence of the Salaries and Remuneration Commission. Why do I say that Commission is

incompetent? It is because when you look at the provisions of Article 230, its mandate; the interpretation and understanding of what they are supposed to do, is not within their grasp. That is because when you look at the provisions of Article 230(5) the functions of this Commission, when it is executing its functions, it shall take certain principles. This is the point of reference. You shall be guided by the need to ensure that the total public compensation bill is fiscally sustainable. That is true but there are four issues that you must look into; the need to ensure that the public services are able to attract and retain the skills required to execute their functions. This is very critical. What this Parliament is doing is not an easy job. The people with the kind of academic credentials that members of the Cabinet and other people whom we oversee have require another match in this Parliament. If we want to perform that function, we need to encourage people to come to this House who can take those people head on. I feel very unhappy because when the Commission does not recognize that there is need to recognize and reward productivity and performance, it is a pity for a Commission that is supposed to be setting a guide to the country in matters that relate to how public offices or public officers should work.

The Members of Parliament seated here today are not here because there is nothing else they can do. It is a sacrifice. This country requires us here. We have abandoned our businesses and professional practices to come here and give service to this great nation called Kenya. The fact that we also offered ourselves to come here and serve our country must not be taken to mean that we are disgruntled. It is a shame that a constitutional Commission of this nature, which is supposed to understand the kinds of matters that we are discussing, can decide to take matters lightly. I should probably ask for forgiveness because I am one of the Members of the Tenth Parliament, who had an opportunity to vet that lady. I did not serve in the Committee that vetted her but I do not want us to take any blame anywhere.

An hon. Member: She was ranked number five!

(Laughter)

Hon. Linturi: Hon. Deputy Speaker, even though she was number five, I know the kinds of wars that were being fought here on the basis of regional representation, gender balance and many other issues that were being taken into consideration. The same applied to SRC. We know that some of the people who emerged numbers one and two during the interviews were said to be close to the former Prime Minister and the former President. Therefore, we could not always take number one and two because we had to deal with certain political considerations. As a House, we have to be careful next time. We must be able to unmask people appearing before the National Assembly and say that they will be bound by the rule of law and the Constitution in the execution of their mandates in whatever positions of leadership they will be seeking to occupy.

Finally, let me say that Parliament is the only body in this country, which has the mandate from the people of the Republic of Kenya to make laws. When a commission or an individual sits somewhere and masquerades as Parliament to make instruments to enforce a law, and we do not stand up to say “No, this is wrong”, we will be failing in our duties as Members of Parliament. I do not care when I stand by the truth. Irrespective of the number of pigs that will be brought to the entrance to Parliament Buildings, or the number of names I will be called; as long as---

Hon. Deputy Speaker: Hon. Mary Emaase.

Hon. (Ms.) Otucho: Thank you, hon. Deputy Speaker, for giving me this opportunity. I want to start by complimenting the Committee on Delegated Legislation for its very comprehensive and objective Report. I stand to support the Motion for obvious reasons.

Article 94(4) is very clear that Parliament shall protect this Constitution and promote the democratic governance of this Republic. I wonder whether the Serem Commission factored in the mandates of Members of Parliament while determining the salary that is supposed to be paid to them. I am referring to the roles and responsibilities of Members of Parliament *vis-a-vis* commensurate remuneration. On this basis, I call upon the Parliamentary Service Commission (PSC) to ensure that we have a more vibrant Public Relations Department for this organisation. It is high time we demystified the image of this organisation because it seems that the Serem Commission is actually---

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

Hon. Kemei: Hon. Deputy Speaker, I rise under Standing Order No.95 to request that the Mover of the Motion be called upon to reply.

Hon. Deputy Speaker: I will give a chance to two more hon. Members. I can see that the *mamas* are in the House.

Please, proceed, hon. Emaase.

Hon. (Ms.) Otucho: Hon. Deputy Speaker, I thank you for protecting me.

I was saying that it is important that the public is informed of the roles and responsibilities of Members of Parliament. For instance, the House will now be going for recess. Members of the public do not know what happens behind the curtains. They do not know that hon. Members will be retreating to the Committees in delivering service to this nation. The question we should be asking ourselves is: How do we make these leaders more effective, more efficient and more accountable as we deliver our services to this country?

Thank you, Hon. Deputy Speaker.

Hon. Ng'ongo: Thank you, Hon. Deputy Speaker, for giving me this opportunity. Let me take this opportunity to, first of all, thank, congratulate and commend the Committee on Delegated Legislation for a thorough job that they have done within a very short time. I would recommend to those of us who have not read this Report to take their time and read it. This is a very detailed and reasonable Report.

I have heard a lot of comments about the independence of the commissions that we have set up. It is true that they are independent but the question is: Do they have powers to unilaterally make laws through gazette notices? If we allow the Salaries and Remuneration Commission to make law through gazette notices, tomorrow, the Independent Electoral and Boundaries Commission will go ahead to review boundaries and gazette them, and we will not have a say because they will claim independence. Tomorrow, the Commission on Revenue Allocation, chaired by Cheserem, will go ahead to determine the formula of sharing revenue and gazette it. We have to put a stop to that behaviour. The commissions have been given independence, but the Constitution stipulates that those commissions must run through Acts of Parliament. The Committee has ably and eloquently explained that this Commission has attempted, through the Gazette Notice, to repeal very many Acts of Parliament, including the Salaries and Remuneration Act and the Pensions Act.

More fundamentally, do you know that Sarah Serem and her commission have repealed their own Act? The Salaries and Remuneration Commission Act has been repealed through that Gazette Notice. The Act states very clearly how the Commission should conduct its mandate, including how it should look at other recommendations. However, Sarah Serem's Commission ignored all that and did what it wanted to do through a gazette notice. Does that not amount to repealing the Commission's own operational Act? In my view, it does. I want to cite a constitutional provision, which I find very interesting. Remember that through that Gazette Notice, the Salaries and Remuneration Commission has done away with the pensions of Members of Parliament. What she has done, with her Commission is to say that, henceforth, Members of Parliament shall not be entitled to pension. But what does the Constitution say in the Sixth Schedule? Section 32 of the Sixth Schedule is about pensions, gratuities and other benefits, and it says:-

“The law applicable to pensions in respect of holders of constitutional offices under the former Constitution shall be either the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to the person.”

Hon. Deputy Speaker, that is the law governing the pensions of Members of Parliament. The Constitution says that you cannot change it to the detriment of the office holder. What has Sarah Serem, with her commission done? They have completely done away with the Pensions Act for Members of Parliament as well as their pension. Is that permissible under the Constitution? No, it is not.

Hon. Deputy Speaker, I also wanted to quickly point out the issue that Charles Nyachae has mentioned and he holds this Parliament in contempt because he issues statements through the media and yet, the law requires him to be reporting to the Committee on the Implementation of the Constitution (CIO), which is a Committee of Parliament. He goes ahead to say that we cannot legislate on a matter that confers pecuniary interests to us. The question I want to ask him is: Who is going to appropriate money for the Parliamentary Service Commission (PSC) if that is his interpretation? I am not a lawyer but I tend to ask: Really, where did some of the lawyers go to school?

(Laughter)

That is because certain facts are so obvious and straightforward that you do not need even any second thought to think about them.

Hon. Deputy Speaker, let me also make the second last point that I want to illustrate. When the Salaries and Remuneration Commission (SRC) attempted to do a job evaluation through PriceWaterhouseCoopers (PWC), did they need to carry out that job evaluation when Articles 95 and 96 of the Constitution are very clear on roles and responsibilities of Members of Parliament? You do not need to spend taxpayers' money. I hear they paid Kshs30 million and we need to have the SRC accountable for that money. We cannot pay some audit firm Kshs30 million to come up with what is already in our laws. It is a shame! Then when you do it, you distort it.

Hon. Deputy Speaker, page 23 of this Report has mentioned determination of a case. The High Court has already determined which law should govern the salaries and remuneration of Members of Parliament and it is not ambiguous. It says: “The terms and

conditions of service of Members of the National Assembly are governed by the National Assembly Remuneration Act, Cap.5, Section 2 of the Act.”

So, this was a case which was determined in 2011 after this Constitution was in place. If you are saying that that Act was repealed by this Constitution, is this lawyer mad or what is it? Why did you not go to court to contest the ruling of this judge? The High Court judge was very clear unless you go to the Court of Appeal. He has said that the salaries and remuneration of Members of Parliament is governed by the National Assembly and Remuneration Act and that was in 2011. But the Constitution came into force in 2010. So, if it was repealed, then what was this judge quoting? Lawyers can tell me that and this is why sometimes I challenge lawyers. Please, be like accountants. If it is a debit, it is a debit. If it is a credit, it is a credit. There are no two ways about it. There is no interpretation. You just need to debit it and go forward but lawyers will keep us busy with a lot of interpretations, some of which confuse us.

(Laughter)

Hon. Deputy Speaker, finally, my employers as Hon. John Mbadi are the people of Suba. Those are the people who employed me and not Okiya Omtatah. Not the civil society. Those are the people who employed me. You go and tell them that you are discriminating against me - their elected representative - by giving vehicles to all State officers. You are giving vehicles to the President, Deputy President, Cabinet Secretaries, Principal Secretaries, District Officers, District Commissioners and everybody. You are giving vehicles to the Chief Justice and all judges. When you come to Parliament, which is the third arm of the Government as the Legislature, you give only the Speaker and then you say: “Members of Parliament have to take loans to buy cars.” What kind of discrimination is this even if you hate us? Who needs the car? I need it more than the Principal Secretary. He or she does not have to go to his rural home using a Government vehicle, but they use Government vehicles. They are fueled. They are given drivers and then you tell me that, for me to serve the great people of Suba - and I am just from there - I have to take a loan to buy my car. The reason why we were being given a grant was because the Government calculated and realised that if you give a Member of Parliament a vehicle and you maintain and fuel it, it is too expensive. It is not manageable. That is why an agreement was arrived at to give us money to buy a car. Then they can fuel and maintain it themselves.

Let me conclude. Hon. Members, let us accept one reality, we have to restore and reclaim the dignity of this House. This House is under siege and I tell you if we allow the President and the Deputy President to dictate to us what we should do, we are lost as a House. If we allow the former Prime Minister - my party leader because I have heard him also talk about this matter - then we are also lost. I ask him to keep off. I respect him but on this one, I ask him to keep off and I want to tell the President: “Please, keep off.”

(Applause)

Hon. Deputy Speaker: Hon. Mbadi, your time is over.

Hon. Ng’ongo: Thank you very much and I support.

Hon. Deputy Speaker: Hon. Jimmy Angwenyi.

Hon. Angwenyi: Thank you, hon. Deputy Speaker. I want to congratulate and commend the Committee that has given us this Report. The SRC is the worst Commission we have got in this country. They have not done their work. I have no doubt they could not have done a better job because they are not qualified to do this job. I just want to add some of the laws which have been contravened by the SRC, to add on what has been given in the Report.

One is Article 28 of the Constitution which says that every person has inherent dignity and the right to have that dignity respected and protected. That SRC has put us into ridicule to the extreme point whereby we are compared with pigs. They have taken away our dignity and we must reclaim it.

The other Article I wanted to add is Article 40(2) of the Constitution which says: “Parliament shall not enact a law that permits the State or any person –

(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description.”

In our Constitution, Article 160, it has been stated very clearly that you cannot adjust or revise remuneration of judges of the Judiciary to their disadvantage. If we take what has been gazetted by the SRC, we will have violated Article 160. That is discrimination against Parliament. You are adjusting the salaries or remuneration of Members of Parliament to their disadvantage. That is discriminatory.

Hon. Deputy Speaker, finally, if you look at Article 41, it has been stated that you must have fair remuneration for equal jobs. You must have reasonable working conditions for a similar job. You must be able to demonstrate where you feel you are being unfairly treated. So, I want to support this Report and even go beyond that point because we are the people who can protect and promote the Constitution of Kenya. We are all concerned about the wage bill. We can reduce the numbers of commissions so that we can reduce the wage bill of this country. We can also be able to oversee the expenditure of the taxpayers’ money.

With those few remarks, I beg to support.

Hon. Deputy Speaker: Hon. Jakoyo Midiwo, you will be the last so that we can move on to the other business.

Hon. Midiwo: Thank you, Hon. Deputy Speaker. I rise to support this Report and in so doing, I want to say that this House did not have to be treated to this. We did not have to do this but I believe it is the responsibility of this House, as the supreme law-making organ of this country, to stand in the way of impunity. The amount of disrespect the Serem Commission is showing to the political class in this country is not something this country can live with. The amount of disrespect we are getting from the CIC is not something this country should expect. No country under the sun or on earth is run by commissions. Countries are run by laws legislated by national assemblies, senates or both. The thought and imagination that a commission can sit somewhere and become independent of its creators is a fallacy! How?

(Laughter)

Hon. Deputy Speaker, let me apologise because I was in the Finance Committee that interviewed that lady. I want to agree with Hon. Linturi that she got this job due to other considerations and not her brains. The way we have gone - that is the so-called

regional balance - is going to kill this country. I want to agree with Hon. Linturi that from now on, we must agree as a country that even though we look at other considerations, competence must be number one. That is because that lady is just incompetent. She is disrespectful. The Constitution says that nobody can make---

Hon. (Ms.) Shebesh: Hon. Deputy Speaker, is it in order for Hon. Jakoyo to mention one Commissioner, when we know that, that Commission has other members? I would wish that he mentions the other incompetent commissioners other than Sarah Serem.

(Loud consultations)

The Deputy Speaker: Order, hon. Members! I also want to reiterate that we stick to the matter at hand and stop personalizing issues.

Hon. Midiwo: Hon. Deputy Speaker I will do that, but when she goes on television to say that Parliament cannot intimidate her, she is talking as an individual.

Hon. Members: Yes!

Hon. Midiwo: Hon. Deputy Speaker, we cannot be intimidated by her. This is our right. We must talk to her. We are not saying anything other than her competence and her job. We have that right. We are paid to have that right.

In the Gazette Notice she adds herself a salary. If you remember, she attempted to make her job permanent and we rejected it as a House. In that Gazette Notice, Nyachae gets a salary. This House said that nobody should earn more than the President. You have a nobody doing nothing earning more than our President and we should not say it?

Hon. Members: Say!

Hon. Midiwo: We are going to say it. Hon. Deputy Speaker, let me tell this House and the nation at large, we merged wards in this House. Most of my ward representatives represent more people than 60 per cent of hon. Members sitting here and then you tell them: "You are going to earn Kshs79,000 from which we are going to slash some 31 per cent tax" Then you want them to serve people better. That is a conspiracy to kill devolution. You cannot tell me that somebody earning Kshs40,000 can afford a motorbike in the village. It is not possible. We must address this. It is not just about Members of Parliament. If Serem had put our salary at Kshs542,000 even if you taxed 70 per cent but followed the law, I would not be questioning it. She has refused to follow the law and yet, she says that we cannot threaten her with our power to legislate. Those powers are given to us by the Constitution. We are dealing with a rogue person.

Hon. Deputy Speaker, this House must play its role. I said it before that we must realize that we made mistakes. We were told to pass the Constitution and then come back to rectify the 20 per cent which is wrong. This is part of the 20 per cent.

(Laughter)

Why do I say that? All the commissions put together have a combined workforce in Nairobi of 700. None of them makes less than Kshs500,000. I am talking about 700 people living in Nairobi and going around in GK vehicles. Is that what this country is going to spend its money on?

Hon. Members: No!

Hon. Midiwo: The answer is no. This House has a responsibility. Merge the commissions and kill some. The country will be on your side.

(Laughter)

Hon. Deputy Speaker, in many countries, a job such as the one being done by the Serem Commission is done by an individual and a technical team. I said it here that part of the problem this country keeps having with the IEBC is that we have commissioners who behave like clerks. They want to do procurement; they do not want to do policy. So there is conflict. When elections approach, politicians fight because some incompetent person called a commissioner has not done their work. We cannot accept that.

In the Serem Commission, each one of them has a driver and a security person. They live here in Nairobi. They want to go around making about Kshs1 million and then they tell a Member of Parliament that he or she does not deserve a vehicle. If he has to acquire one, then he must take a loan. They do not even want to give you the money to repay that loan. We accept that there are some hon. Members here who are well endowed. We accept that. I saw some say that they do not need the Kshs542,000. That is you. For us who want public service, we do not have that opportunity. *Hiyo ni wewe.*

(Laughter)

The Deputy Speaker: Order, hon. Members! Please, proceed and conclude hon. Jakoyo.

Hon. Midiwo: Hon. Deputy Speaker, we did not see in that Gazette Notice, for example, the Judiciary. The Constitution talks about the judges, but the Judiciary has been busy improving the life of everybody that works for it. So, what is so selective that she goes after politicians or political offices and do not talk about those other ones? She is not talking about the salary of a county commissioner. The county commissioners are today earning more than governors. It is a ploy and a plot to kill devolution. We cannot accept that.

In conclusion, this Commission must go back to the drawing board and do what the law requires. The law requires that anything that they come up with, just like IEBC did, must come here for debate. Whatever they are trying to do will never work. They even try to make the position of Controller of Budget far less than that of the Auditor-General. The allocator of the money is less than the supervisor. That is what they are trying to do with Parliament. We can never agree to that.

Let me say this very lastly to your staff, we are negating this Gazette Notice. Comply with the law as it was. We are aware that part of the resistance is within us. So, we must act and act within the law. We are requesting you on record, that immediately this happens--- Remember that Nyachae is saying that we do not have the right. Ask him to refer to the Ringera or PLO case. He will know which powers we have in here.

(Laughter)

I thank you, hon. Deputy Speaker.

The Deputy Speaker: Order, Members! I want to call upon the Mover to respond.

(Loud consultations)

Hon. Cheptumo: Hon. Deputy Speaker, I wish to thank Members for their contributions. The issues that have been raised are very weighty. I just plead that this Report be passed. It is important that the issues raised by the Members are taken into account. Parliament has spoken and you have heard the issues raised by Members. I am happy that there is support for the Report. I request that you put the Question and we move forward.

(Question put and agreed to)

Hon. Deputy Speaker: Hon. Members, I just want to confirm that we have the requisite number to pass that resolution. So, we have the quorum and the numbers required to pass that Motion. Next Order!

Order Members! Can we have some order, please! If you are leaving, can you do so silently? We are moving to the Chair of the Departmental Committee on Justice and Legal Affairs. What is happening with the microphones?

ADOPTION OF REPORT ON APPOINTMENT OF KALPANA HASMUKHRAI RAWAL

Hon. Chepkong'a: Hon. Deputy Speaker, I beg to move the following Motion:-

THAT, pursuant to Article 166(1)(a) of the Constitution of Kenya and the provisions of Standing Order 45, this House adopts Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of Nominee for Appointment to the Position of Deputy Chief Justice, laid on the Table of the House today, Tuesday, May 28, 2013, and approves the appointment of the Hon. Lady Justice Kalpana Hasmukhrai Rawal to the position of Deputy Chief Justice of the Republic of Kenya.

Hon. Deputy Speaker: Chairman, there is too much commotion and movement in the House. Just allow them to retreat first.

Hon. Linturi: On a point of order, Hon. Deputy Speaker. I am aware of the importance and the urgency of passing this Motion for purposes of constituting a full bench of the Supreme Court, but I am also obliged and I have an obligation to take part in this debate as a Member of Parliament in the full knowledge of the Committee findings and all what is contained in the Report. There are serious Motions that require us to approve names of people to serve in various offices and considering the history that we have had with the just concluded kind of rogue officers, I am very afraid because I do not have a copy of the Report. The Report has not been given to the Members.

Hon. Deputy Speaker: Order, hon. Linturi! Copies have been provided by the Chair.

Hon. Linturi: Where are they? They are not here.

Hon. Deputy Speaker: Please, there are copies. Maybe, they are not enough to go round, but the copies are there.

Hon. Linturi: Nobody has it. Hon. Deputy Speaker, even if there could be, it is important to give the Members reports early enough, so that they have time to interrogate them. This is an ambush.

Hon. Midiwo: On a point of order, hon. Deputy Speaker. I want to plead with you that a very dangerous trend is being set in this House. Two weeks ago, I was in the Appointment Committee and we debated 16 names here without a report being before the House properly. There is no hurry in what we are doing, but let us do something for posterity. We shall be judged right. These Committees have had a chance to give us reports. We are even being asked by the media what is in the Report. By now, they could have been tabled and circulated, so that we do not look like we are sneaking anything behind Kenyans.

I am saying this particularly because the Report that we debated here about the 16 Cabinet Secretary nominees, did not even have the minutes which we came with from Windsor. Let us not further this trend. It is dangerous and unlawful.

Hon. Deputy Speaker: Okay, Members, I realize you are making very grave accusations, if you can put it that way, but I understand where you are coming from. However, I need to plead with the House that the Report was tabled today and the notice was also given. But I also want to inform Members that as it happened with the Cabinet Secretaries, today also happens to be the last day. Remember that we have a constitutional requirement of 14 days. So, our 14 days will expire today.

We had endeavored to provide the copies and a few Members have them. We have not had enough copies, but quite a number of Members have them. I want to urge the clerks to ensure that Members who do not have copies, at least, get them so that we can make some meaningful and informed contributions. I am hoping that, as the Chairman is moving the Motion, Members who do not have copies can be furnished with them. By the time the Motion is moved and seconded, Members will, at least, have the copies. They are not very long Reports. It is possible for you to quickly go through them before you make your contribution. So, I would urge the Members to allow us to continue with the moving of this Motion.

Hon. (Ms.) Odhiambo-Mabona: On a point of order, hon. Deputy Speaker. The Tenth Parliament has been accused time and again even in this House of having rushed reports and, sometimes, I have heard when hon. Members here from the Tenth Parliament are shut down on the basis that they were part of making certain reports or passing certain laws. Therefore, we are precluded from raising issues about them.

Hon. Deputy Speaker, if you look at the HANSARD of the Tenth Parliament, I am on record having raised issues several times concerning matters that were being passed in hurry. This is not the first time we are being given a report about a very important constitutional office and we are being told to pass it in a hurry.

If we approve the appointment of Justice Kalpana Rawal today, it will be based on her face; on how beautiful or ugly she looks. But it will not be based on what we know about her.

Hon. Deputy Speaker, whereas I do not want to dispute your ruling, I would want to urge that this House lets the name pass without debate so that we do not go on record as approving a person that we have not vetted. So, let the law take effect so that later, if an issue will be raised, at least this House will be absolved of vetting Justice Rawal. I am not saying there is anything wrong with her but I think it is not in order for us to be

ambushed. The reason we are given notice is, for instance, to verify facts. I am a lawyer and I would verify with practising lawyers if, indeed, the information we have on Justice Rawal is actually true. Just giving us five minutes to flip through a report, nothing magical will jump out of that report that we do not already know. So, my very humble view is let it be by operation of the law, but not that we have vetted her.

Thank you.

Hon. A.B. Duale: Hon. Deputy Speaker, I want to join my colleagues on this matter and I want to go on record that my office discussed this issue with the Clerk yesterday in his office, this morning and even now at the Chamber that these reports must be made available and we agreed with the Chair's ruling. These reports must be available to hon. Members.

Hon. Deputy Speaker, as you make your ruling, it must touch on the staff of Parliament. That is the gist of the matter that should go on the HANSARD that whoever is in charge of printing these reports and giving it to hon. Members, from wherever he sits in this Parliament must know that, this cannot go on. I totally agree and I want it to be noted that I raised this matter with the Office of Clerk this morning. I raised it with the Clerk who was sitting here about one hour ago. We cannot go on like this. So, as you give the directive, let this be the last directive and let somebody take responsibility for not providing reports to hon. Members. I do agree with my colleagues.

Hon. (Maj.-Gen.) Nkaisery: Hon. Deputy Speaker, I also stand to support what my colleagues have just said. The best thing that we can do for this country is to give it the best. I would like to propose--- It has become a trend that we get the report on the eve of the deadline. This is not how this House is supposed to work.

Hon. Deputy Speaker, we are supposed to approve two reports. I would like to suggest that we extend the House up to midnight, so that we have the opportunity of reading those two reports. That is because there are certain observations even in the public domain, affecting some of those candidates. Therefore, we really do not want to be rushed through a situation like this and then get blamed in the future.

So, hon. Deputy Speaker, we can either go for an adjournment or extend the time so that we can read the reports. We cannot accept the Government submitting reports when Committees are meeting on the eve of the deadline. Please, Chair, save this country from those problems.

Thank you.

Hon. Deputy Speaker: Hon. Members, I think I have made a ruling on that. We have got a very able--- You know that we, as a House, have representatives that we chose to do the work on our behalf. They have given us a report. Yes, I understand your sentiments. All your sentiments are true. I hope the Clerk's Office is taking this matter as it has been mentioned by the Leader of Majority Party. I know the numbers have increased almost two-fold. I do not want to give an excuse to the Clerk's Office. At least, we were aware from the beginning. If we need to employ more staff to ensure that we have enough copies, that needs to be done.

I am just pleading with the House to allow us to continue. We have noted all your concerns, I believe and I know they will be addressed as soon as possible. So, can we allow Hon. Chepkong'a; the Chairman of the Justice and Legal Affairs Committee to continue with moving the Motion.

Hon. Mirenga: On a point of order, hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order? Hon. Ken? We do not want to belabor the point hon. Members really---

Hon. Mirenga: On a point of order, hon. Deputy Speaker. I really think we should give hon. Members time to do this. We cannot get copies of the report. If you asked by show of hands how many Members you expect in this House to ratify this matter and they do not even have the report up to this point, it is really not fair to the House, the history and the precedent that we are setting. I do not see any harm that will come if we were to allow even one hour or two hours to bring up this matter so that hon. Members would have had a chance to look at it. I hear there is a deadline for midnight.

Let us do it. There is no hurry where we are going. There is no favour by insisting. This has to be discussed at exactly this right moment now.

Hon. Deputy Speaker: Order hon. Members! I can see the plea from the hon. Member. You know difficult times call for difficult measures. This is a big concern to hon. Members. I want to rescind my earlier decision and agree that we adjourn just for one hour for hon. Members to go and read through this Report and remember, we are giving a procedural Motion that we will not leave this place until all the business in the Order Paper is complete. So, we come back at 6.00 O'clock.

We are temporarily adjourning the House for you and I hope that is what you are going to do. You are going to acquaint yourself and read the two reports so that when we come here, we can have meaningful discussions. Please, any hon. Member who does not have the Report should not leave this Chamber until he or she has a copy. The rest of you who have it need to read the Report here or wherever. Please, we are suspending the House for one hour for hon. Members to acquaint themselves with the Report.

Thank you.

(The House adjourned temporarily at 5.20 p.m.)

(The House resumed at 6.00 p.m.)

[Hon. Deputy Speaker in the Chair]

Hon. Deputy Speaker: We want to continue and I will invite the Chair of the Committee. Do we have a quorum? I am told there is a quorum. Leader of Majority Party, do you have some comment to make?

PROCEDURAL MOTION

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to move the following a Procedural Motion:-

THAT, pursuant to the provisions of Standing Order 30(3) (a), this House resolves to extend its sitting today, 28th May, 2013, until conclusion of business appearing under Order Nos.9 and 10 and the disposal of the Motion for Adjournment of the House contained in the Order Paper.

This is because of the issues that we have raised that, these matters 9 and 10 are of such great national important that we ought to make sure the Supreme Court has the members required. The office of the Deputy Chief Justice is very

important and secondly, the Secretary to the Cabinet is a fundamental office for the first sitting of the Cabinet and the constitutional deadlines.

Hon. Deputy Speaker: I now ask the Minority Whip to second.

Hon. Munga'ro: Hon. Deputy Speaker, I second that we extend the sitting of the House until we exhaust the business on the Order Paper.

(Question proposed)

(Question put and agreed to)

MOTIONS

APPOINTMENT OF HON. LADY JUSTICE KALPANA RAWAL AS DEPUTY CHIEF JUSTICE

Hon. Chepkong'a: Hon. Deputy Speaker, I beg to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of the nominee for appointment to the position of the Deputy Chief Justice of the Judiciary and approves the nomination of Hon. Lady Justice Kalpana H. Rawal for appointment to the position of Deputy Chief Justice of the Republic of Kenya.

[Hon. Deputy Speaker (Dr. Laboso) left the Chair]

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

Hon. Temporary Deputy Speaker, I would like to thank you for granting hon. Members time to go through our report. As the Chair is aware, this Committee was fully constituted on Tuesday last week in the evening and we had the task of making arrangements to ensure that we vet the Hon. Justice Kalpana Rawal on Friday, as it was already scheduled. That did happen and we worked under very tight schedule. I must sympathise with the hon. Members who worked long hours, sometimes up to 1.00 a.m. This report was ready today and was submitted to the Office of the Clerk. We expected that it would have been made available to hon. Members by the time I would be moving this Motion.

Hon. Temporary Deputy Speaker, pursuant to Article 161(a) of the Constitution, as read together with Section 24 of the Sixth Schedule of the Constitution, His Excellency the President, through the Cabinet Secretary and Head of Public Service, forwarded to the Clerk of the National Assembly the name of the Hon. Justice Kalpana Rawal vide their letter dated 28th February, 2013, for vetting by the Departmental Committee on Justice and Legal Affairs, and approval by the National Assembly for appointment as the Deputy Justice of the Republic of Kenya.

Hon. Temporary Deputy Speaker, on Wednesday 15th May 2013, the hon. Speaker, through Communication from the Chair, informed the House that the Clerk of the National Assembly, vide a letter dated 28th February, 2013 by the Head of Public Service, received the name of Hon. Justice Kalpana Rawal and directed that the name and the curriculum vitae of the said nominee be referred to the Departmental Committee on Justice and Legal Affairs for vetting and report to the House on or before 28th May 2013. We have complied with the order of the hon. Speaker, as we have already tabled the report.

The Committee in various meetings, which continued into late hours--- We held a total of seven meetings in which we considered the suitability of the nominee as presented to the Committee. We held a total of seven meetings and we carried out formal vetting in accordance with the provisions of the Appointments (Parliamentary Approval) Act of 2011 for appointment to the position of the Deputy Chief Justice of the Republic of Kenya.

Hon. Temporary Deputy Speaker, I would like to sincerely thank the hon. Members of the Committee for putting long hours into this process. Many hon. Members at times sat until 9.30 p.m. to try and ensure that we had a vetting report that was well prepared. Indeed, we were prepared, contrary to some speculation by a section of the media that we were not prepared. Questions were prepared considering the documents that had already been presented by the Judicial Service Commission (JSC) through the Chief Justice. We looked at those documents and we then formulated the questions that we needed to put to the nominee.

I would also like to thank members of staff of Parliament for being so gracious and generous. I would like to particularly pick on one gentleman by the name Wasike who, despite the condition of his child who had undergone surgery during this period, was able to sit long hours until 1.00 a.m. in some cases. We thank him very much.

Hon. Temporary Deputy Speaker, since this report has now been circulated, and I am sure hon. Members have had opportunity of going through it, I will only mention the salient features of it as many hon. Members have already perused it. I would like to thank them for going through the report. I would like to mention the main issues that we considered as a Committee when the nominee appeared before us.

One of the things that we were considering, as required by the Act, was the knowledge, experience and qualifications in the context of the JSC nomination. We also vetted her on the basis of a vision and reforms that are being undertaken by the JSC at the moment. The other key criterion that the Committee vetted the nominee on was her competence, presentation, jurisprudence, integrity and morality.

Hon. Temporary Deputy Speaker, Sir, the other thing that we considered was controversial cases that the nominee has had the opportunity to make decisions on. In particular, we looked at the case of Gor Sungu, who was a former Member of Parliament, and Chairman of the Committee that was probing the disappearance and death of the former Minister for Foreign Affairs, Dr. Robert Ouko. We were concerned with the hefty costs that were awarded to Mr. Oraro in this particular case. One of the things that hon. Members of this Committee put to the nominee was whether the amount that she awarded to Mr. Oraro was commensurate to a simple defamation of character. We received a response and she defended her judgment, but we did not wholly agree with her.

The other case that was of concern to the Committee was a case she presided over, the tribunal inquiring into the murder of Dr. Chrispin Odhiambo Mbai; in particular hon. Members were concerned that there was video in which she disqualified evidence by a particular suspect. She informed the Committee that that video was not brought to her attention, because it was a video that had been submitted to the magistrate at a lower court. However, hon. Members felt that the video should have been called for by the superior court. We were not totally satisfied with the explanation. Based on our discretion in coming up with this report, the Committee did not want to interrogate the particular details, because we did not want to carry out an inquiry as a Committee.

The other matter that was of concern was the commission of inquiry into the circumstances that led to the helicopter crash that killed the former Minister of State for Provincial Administration and Internal Security, Prof. Saitoti and his Assistant Minister, Hon. Ojode. About the issues surrounding this inquiry, hon. Members were very concerned. Is it possible that this particular nominee is a gatekeeper for the Executive? She responded in the negative, and denied the fact. She said that she had conducted herself in the best interests of the public.

The other key issue that the nominee was vetted on was the question of her administrative skills, management and good governance. The Committee, as required under Standing Order No.216, investigated and enquired into the nominee's competence, particularly because she is going to be the Deputy Chief Justice (DCJ), which is a position of leadership. She is not going to be a mere DCJ, but she is supposed to provide leadership to the Judiciary. We were concerned about public matters to this country. One of the questions that were put to her was on our remuneration as protected by the Constitution. The Committee told her that this matter had exercised the minds of Kenyans and we wanted to know whether she was ready to take a pay cut. She said that she was willing to take a pay cut with one condition, that the money that would be deducted as her pay cut would go to charities. We thought that was a good answer with respect to what was happening to this House. I thought if there was a pay cut that we must take, it should also go to charities; it must not remain with the Exchequer.

Hon. Temporary Deputy Speaker, Sir, I will be very brief with respect to the observations that the Committee made. They are as follows:

This particular nominee has only three years to her retirement. One of the questions that we asked her was what value she would add to this position of the DCJ. She said that she brings experience, that she is an insider while the Chief Justice came from outside. So they will blend well and make sure that the Judiciary gets the best value out of the two of them. We found that her answers were fairly straight. In fact, even in instances where she was in error of judgment, or where she issued a judgment based on the time of arrest instead of time of judgment, she admitted that she was honestly wrong and we found her to be honest in the sense that she did not defend that error in judgment. Finally, the Committee found that she was suitable and qualified for appointment as the DCJ of the Republic of Kenya.

Pursuant to Article 166(1)(a) of the Constitution and Standing Order No.199, the Committee recommends that:

(a) this House approves the Hon. Lady Justice Kalpana Hasmukhrai Rawal for appointment by His Excellency the President as the DCJ of the Judiciary in the Republic of Kenya;

(b) that noting that the DCJ and the CJ will exit office almost at the same time, a succession plan should be put in place to provide for smooth transition.

Let me inform the House that this recommendation was by consensus of the Departmental Committee on Justice and Legal Affairs. I would like to call upon Hon. Ochieng to second this Motion.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, you should be informed that there is a technical problem between Seat Nos.89 to 131. So anybody who will be given an opportunity to contribute will go to the Dispatch Box.

Hon. Ochieng: Hon. Temporary Deputy Speaker, Sir, thank you. I hope that is not sabotage of the Minority.

As I rise to second this Motion, I also wish to thank Members of the Committee for the work done. As I second, I wish to bring to the attention of the House a number of issues. One, we were perturbed by the fact that we were being brought a nominee who was just two years shy of retirement age. Someone who is a judge under Section 167 of the Constitution must retire at 70 years; this also applies to the CJ and the DCJ. So the Committee was worried that this could have been a ploy for someone to bring their own person as part of a strategy in the Judiciary. As you know, the CJ will retire almost at the same time as the time when we expect this lady to retire. The CJ was born in 1947 and the DCJ was born in 1946. So these people will retire almost at the same time, and the Committee was worried. Is there a plan maybe to have these two people going at the same time, so that people can have their own preferred candidates? That is a matter that perturbed the Committee as we went through this exercise.

Hon. Temporary Deputy Speaker, Sir, one of the major issues that really concerned us was the three key issues that the Chair has highlighted. This hon lady has had the good fortune of presiding over three very controversial cases. Hon. Gor Sungu read a statement within the precincts of Parliament, but this lady went ahead and awarded damages of about Kshs3 million. If this trend continues, hon. Members will not have the right to talk about issues that are dear to them due to fear that certain people may file court cases against them. So, Chair, these are issues which the House must consider even as we go ahead.

The Temporary Deputy Speaker (Hon. Cheboi): Order, Hon. Ochieng! We left the Chair at the Committee level. In this House, we have the Speaker.

Proceed.

Hon. Ochieng: Hon. Temporary Deputy Speaker, Sir, the issue of the inquiry into the helicopter crash that led to the deaths of Prof. Saitoti and Hon. Ojode has not been settled. The death of Dr. Robert Ouko still remains unresolved. So, our question was: How come that every matter that this lady handles remains unresolved? Is there an issue that this House may need to look into, even as we approve her nomination? It is very important that these matters are brought here, so that this House can consider them as we consider this Committee Report, so that this lady can be approved.

With those remarks, I beg to second.

(Question proposed)

The Temporary Deputy Speaker (Hon. Cheboi): Yes, Hon. Mutahi.

Hon. Kimaru: Thank you, hon. Temporary Deputy Speaker, Sir. I stand to support the Motion.

From the Report that we have, it is clear that this is a lady who has had a remarkable career in law. She was the first lady to start her own law firm in Kenya, and that is quite remarkable. She has also served in the Judiciary for a long time, and remarkably so. Despite, maybe, the few errors that might have been pointed out, overall she is somebody who will bring a lot of experience to the practice of law and justice in Kenya. She has also managed to venture into areas where many people have been hesitant to go. She talks of judicial activism – something close to jurisprudence – which, for a long time, the Kenyan Bench has been accused of shying away from venturing into. The Kenyan Bench has been criticised for sticking too much to the letter of the law, instead of jurisprudence. So, in my view, she is a kind of person who qualifies for this post.

When it comes to the issue of salary, I am glad that she is willing to continue with the same salary. We also realise that the Judiciary, unlike Parliament, was able to continue with the structure that was there before. That aspect was recognised and respected because there is the Judicial Service Commission. Similarly, Parliament should have had its own terms and conditions decided by the Parliamentary Service Commission.

Hon. Temporary Deputy Speaker, Sir, looking at the debate that was here before, I am also happy to digress a little and say that this House has reinstated its dignity. It has stamped its authority on matters of legislation. It is the business of this House to make laws. It is the business of this House to repeal laws or amend them. It is not the work of commissions. I think this House has also brought to an end a new form of tyranny or dictatorship I would aptly describe as “commissionocracy” – a form of dictatorship by commissions.

The Temporary Deputy Speaker (Hon. Cheboi): What is “commissionocracy”?

Hon. Kimaru: Hon. Temporary Deputy Speaker, Sir, those who have been following developments in Government will have realised that there is that new form of government, which is a bit illegitimate.

With those remarks, I beg to support.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, of course, the Leader of the Majority Party and the Leader of the Minority Party have priority. I can see that the Leader of the Minority Party wishes to speak. However, I would encourage him to listen and speak at the very tail end, so that he can respond to hon. Members’ issues. I do not know what you have to say. If that is okay with you, I will give the Floor to Hon. Neto.

Hon. Oyugi: Thank you very much, hon. Temporary Deputy Speaker, Sir. I rise to oppose the Motion, the first reason being that the person who seconded the Motion highlighted Article 167(1) of the Constitution, which provides that a Judge of the Supreme Court ought to retire at the age 70 years old. We are talking about succession in the Supreme Court given the fact that the Chief Justice and the Deputy Chief Justice will be retiring at the same time. In terms of succession for an institution, that may not be in the best interests of this country. Of course, the procedure of getting Deputy Chief Justice and Chief Justice is one which is long-winded. On the basis that she has only three years to serve, it does not give us the very best in terms of choice.

The second reason as to why I am opposing this particular Motion is one that is fairly sentimental to my heart. I came to this House in the Tenth Parliament in the very unfortunate circumstances of my predecessor dying in a plane crash.

The Temporary Deputy Speaker (Hon. Cheboi): Order, Hon. Oyugi! I can see that there is a point of order by Hon. Francis Njenga.

Hon. Njenga: Hon. Temporary Deputy Speaker, Sir, I thought Hon. Oyugi is a Member of the Committee. I thought he also attended the vetting sessions, but he appears to be opposing the Report that has been tabled by the same Committee he sits on. Is he in order?

Hon. Oyugi: Hon. Temporary Deputy Speaker, Sir, it is true that I am a member of the Justice and Legal Affairs Committee but it is not true that I attended the said vetting session. If I, indeed, attended the said vetting session, I would have recorded my disagreement and opposed the approval.

(Loud consultations)

Hon. Temporary Deputy Speaker, Sir, if you protect me, I will proceed because I think I have vindicated myself.

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Members!

Hon. Oyugi: Thank you very much, hon. Temporary Deputy Speaker, Sir. As I was saying, if I was present in that vetting session, I would have opposed the approval of this Lady Justice. I passed my apologies to the Committee Chairman.

The Temporary Deputy Speaker (Hon. Cheboi): Just a minute, Hon. Oyugi. I think you need to clarify. You know that there are avenues for voicing concerns at the Committee stage. I have looked at the Report and I saw that you are, indeed, a Member. Ordinarily, we would not encourage a Member of a committee to contribute against because he had an opportunity to oppose at the committee session unless, of course, you have a very strong opinion.

So, proceed but other hon. Members should take note.

Hon. Oyugi: Thank you, hon. Temporary Deputy Speaker, Sir, for protecting me. This particular committee meeting was for very personal reasons, and it has nothing that is within my control, and that is the reason why--- If I attended a particular committee meeting, I would have still dissented the approval of the Lady Justice Rawal. My first reason for that, as I have stated, is that this is a constitutional issue that relates to succession at the Supreme Court, which I think I have sufficiently explained.

Hon. Temporary Deputy Speaker, Sir, the second one, which I said was fundamentally more sentimental to my heart, is the reason why I came to the Tenth Parliament; it was as a result of my predecessor dying in the very unfortunate circumstances of a plane crash. The same Lady Justice Rawal sat on that particular commission. She was the head of the particular commission that was supposed to have unearthed the reason why my predecessor died, and given the country the reason. As I speak today, the people of Ndhiwa are still waiting to understand the circumstances under which Hon. Orwa Ojode died, and I think I would be---

The Temporary Deputy Speaker (Hon. Cheboi): Order! I am finding it very difficult, Hon. Oyugi, to find any good reason for the arguments you are pursuing; really being a member of that committee, if you had an issue you should have attended the

committee meeting and given your views. Probably, I should be asking the Chairman of the Departmental Committee on Justice and Legal Affairs to clarify whether there is any dissenting opinion, and if there is none, I think we will not proceed in that manner. Did we have any dissenting opinion?

Hon. Chepkonga’: Thank you, hon. Temporary Deputy Speaker, Sir. You know Hon. Oyugi is a very vocal person. You can easily bypass what he says but on a more serious note, he is supposed to have been there, and there is no member who has dissented to the report.

Hon. Ababu: On a point of order, hon. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Hon. Cheboi): Thank you very much. I think we really need to be disciplined as hon. Members, and members of the committee. I will give that opportunity to somebody else. I will give a point of order to Hon. Ababu and not you.

Hon. Ababu: Hon. Temporary Deputy Speaker, Sir, thank you for the point of order. I am a bit concerned about whether we are setting a precedent in debate here. First of all, there is nothing in the Standing Orders that precludes a member of a committee from contributing, or enjoying equal rights to contribute to a debate on a report originating from the committee where the member serves. There is no requirement in the Standing Orders that unless you dissented in committee you cannot oppose a report. There is nothing in the Standing Orders to that effect. So, I am just concerned that we may be setting a very dangerous precedent; it may require some guidance from the Chair as to whether it is, indeed, the rule that unless you dissent in committee you cannot oppose the report originating from the committee on which you sit.

Hon. Temporary Deputy Speaker, Sir, really this is a House of debate. It is a House of debate and we must not be seen, including the Chair itself, to constrict the right of hon. Members to debate for any reason, other than the reasons that are specifically indicated in the Standing Orders. Whereas I agree with you entirely that there is need for discipline, at the same time the Chair must not be seen to gag hon. Members on a basis that is not provided for in the Standing Orders either expressly or implied.

The Temporary Deputy Speaker (Hon. Cheboi): Order, Hon. Ababu! Really it is good you put it very clearly that it is not provided for in the Standing Orders. We, therefore, give the opportunity to the Speaker to use Standing Order No.1, but the basic concern here, hon. Members, is that we cannot at all really encourage indiscipline. There are avenues that should be followed by members of the committee; indeed, I said, if you heard me correctly, that I would discourage. I did not say I will not give opportunity to members of the committee, and that is why I actually gave an opportunity to Hon. Oyugi, knowing very well that he is a member of the committee. What I was just trying to do was to make sure that the hon. Members who are not members of that committee have an opportunity to contribute. If the Chairman of the committee has given the committee’s report, that would really represent, as much as possible, the committee’s report.

Let us proceed.

Hon. Members: On a point of order, hon. Temporary Deputy Speaker.

The Temporary Deputy Speaker (Hon. Cheboi): I will give the opportunity to Hon. Angwenyi.

Hon. Angwenyi: Thank you, hon. Temporary Deputy Speaker, Sir, for giving me a chance. First, I rise to support the recommendations of the Committee for Justice Rawal to be appointed Deputy Chief Justice. Upfront, I take exception---

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Angwenyi, I did not give you an opportunity to contribute. You had a point of order. If it has been overtaken by events then we can proceed.

Hon. Angwenyi: Can I proceed?

(Laughter)

The Temporary Deputy Speaker (Hon. Cheboi): No.

Hon. Angwenyi: All right. Then let me raise a point of order. Is the hon. Member, or the hon. Members who have contributed, in order to discriminate against persons who apply for jobs in this country on the basis of age? Two, is he in order to say that we are now appointing people who will be the Chief Justice when this position becomes vacant? It will be advertised and the process of selecting will be carried out.

The Temporary Deputy Speaker (Hon. Cheboi): Order, Hon. Angwenyi! I think we cannot have two points of order in one. You have made your point but I do not think there is any discrimination; that is why the committee is suggesting that this report be approved. I will give the opportunity for contribution to hon. Manje.

Hon. Manje: Thank you, hon. Temporary Deputy Speaker, Sir. I stand to support this Motion, and say also that I am a Member of Parliament for Kajiado North. I attended some of these public inquiry meetings where Hon. Lady Justice Kalpana Rawal was the presiding officer. I saw her as a very articulate judge, and we people of Kajiado North have no doubt that she conducted the inquiry in a professional manner.

Also after that, I happened to sit down with members of the family of the late George Saitoti. I am the Member of Parliament for the constituency he represented for many years. I talked to them and they had no problem with the report from the inquiry and the way this lady conducted the inquiry. Therefore, I fully support this lady; I think I will vouch for her for that particular position.

Thank you very much.

The Temporary Deputy Speaker (Hon. Cheboi): I will give the next chance to Hon. Mwaura.

Hon. Mwaura: Thank you, hon. Temporary Deputy Speaker, Sir. I rise to support the nomination of Lady Justice Rawal, but I am also concerned that this House is really becoming a rubber stamp of the Executive. What leeway do we have really when we have only one option? There is nothing much we can do even when we do not agree with some of the actions of the nominee. You can only ignore them. How would a judge of the High Court not know---

Hon. (Ms.) Shebesh: On a point of order, hon. Temporary Deputy Speaker, Sir. I am not sure whether or not you heard the hon. Member say that this House has become a rubber stamp of the Executive, yet we have a report prepared by a Committee of this House. More fundamentally, this name emanated from the Judicial Service Commission. Is he in order to imply that this name was brought by the Executive, and that we are just a rubberstamp?

The Temporary Deputy Speaker (Hon. Cheboi): Let us treat it as his opinion.

Hon. Mwaura: Hon. Temporary Deputy Speaker, Sir, that is my opinion and I am entitled to it. A whole Judge of the High Court cannot know the retirement age as stipulated by the Constitution. Further, this Committee has noted that this judge is actually very shallow when it comes to human rights issues, yet human rights are in Chapter Four of the Constitution of Kenya. She is expected to defend the human rights of Kenyans.

Hon. A.B. Duale: On a point of order, hon. Temporary Deputy Speaker, Sir. Hon. Mwaura is a good friend of mine, but if the HANSARD will bear me out, he said that he supports the Report. The statements he has been making show that he is very vehemently opposing. A while ago he said that he is entitled to his opinion. I think in this House there are rules and procedures. We have the Standing Orders and the law which we need to follow. It is only outside this House where we are entitled--- I mean he is either supporting or opposing. He is entitled to either of the two. Is he in order to support from the outset and then oppose?

Hon. Mwaura: Hon. Temporary Deputy Speaker, Sir, this lady is going to be the Deputy President of the Supreme Court of the Republic of Kenya. Therefore, it is expected that she is conversant with the supreme law of the land. I also note from her statements---

Hon. Members: Oppose! Oppose!

Hon. Mwaura: I will not oppose because of the tyranny of numbers.

(Laughter)

I also note from the interview conducted by the Committee that the hon. Judge commented that she does not encourage judicial activism, but judicious activism. Then she goes ahead to say that in terms of calamity one must make a ruling that would avert crises in the society. If you look at the curriculum vitae of the Hon. Lady Justice you will realize that she has been appointed to various committees and commissions on behalf of the State. Therefore, I am wondering whether she is there to preserve the status quo.

While I support this Report grudgingly I would ask that in future appointments of this kind be considered differently. Kenyans are still grappling with confidence issues in the Judiciary. I support, but grudgingly.

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Speaker, Sir, I rise to support this Motion. It has been stated that the age of the nominee is 67 years. The Constitution that we passed in 2010 is clear that we cannot discriminate as far as age is concerned, not unless the nominee is, say, 70 years, which then bars her from being appointed to such a position.

The nominee whose name is before the House today has risen through the ranks of the Judiciary since her appointment. She is a member of the Court of Appeal which is the second highest ranking court in as far as the Judiciary is concerned. This lady has served as a Commissioner of Assize. For those who do not know they should be informed that a Commissioner of Assize is a *pro bono* activity; a judge is appointed to serve for a particular term on voluntary basis and without payment. This lady has greatly contributed to the development of the law.

She served in the Rules Committee. This Committee was supposed to bring life to Chapter Four of the Constitution. The Chapter states that legislation must be passed

within a specified time to ensure that the Bill of Rights comes to be. Lady Justice Kalpana Rawal served on this Committee.

This nominee was asked something about the relationship between the Bar and the Bench. We know that there are areas in this country, for example, Kisii, Bungoma and Meru where the Judiciary has earned the wrath of the advocates. This means that the courts have not been able to run where there have been boycotts by the advocates of the courts. When she was asked whether she would ensure a proper working relationship between the Bar and the Bench, she said that she understood her position as an administrator, being the Deputy President of the Supreme Court and also the Deputy Chief Justice, to ensure that there is smooth working relationship between the Bar and the Bench.

In as far as management is concerned she is ready and willing to work. She has demonstrated beyond reasonable doubt that she can actually perform these duties. We, therefore, beg hon. Members to approve this lady. It could be said that she does not appreciate the law, but you will find that in her activities she has contributed a lot in the course of her duties.

The issue of succession is not one that we can discuss in this House, because we still have the Judicial Service Commission (JSC) in place. It is alive to the fact that the Chief Justice was born in 1947. It is alive to the fact that Kalpana Rawal was born in 1946. This name was brought before us for approval. Therefore, in their wisdom, they know the lady and there is a succession plan with the JSC, which will be taken into account.

Hon. Mwaure: On a point of order, hon. Temporary Deputy Speaker. Is my friend, Hon. Kajuju, in order to gag this House by saying that we should not be discussing the age of the nominee?

Hon. (Ms.) Kajuju: Hon. Temporary Deputy Speaker, Sir, what I said to my learned--- My friend, actually. I always teach him law when we have a moment. I am surprised that he has not learned the law that I have been teaching him up to now. Chapter Four on the Bill of Rights states that you cannot discriminate on the basis of age, gender, or race. We could not have said that even if she met all the other requirements of the vetting this lady should not be appointed as the Deputy Chief Justice because she is three years and not two years--- She was born in 1947 and she is supposed to retire at 70 years. She was born in 1946. Therefore, she has three years that she is supposed to serve the Judiciary, which are long enough to ensure that she leaves the Judiciary a better place than she will find it.

I support the Motion.

Hon. Tonui: Hon. Temporary Deputy Speaker, Sir, I rise to support this Motion. Having gone through the report of the Committee, I believe this is the right person to serve in that office. This lady comes from the Asian Community, which is a minority community and this is a great opportunity to address the issue of the minority. So, I support her nomination. I do not think her retirement age is a big problem. She will retire at 70 years and we will replace her. What is the big deal about that? We will always be replacing these officers. In fact, it is going to be a great opportunity to be dealing with those replacements every now and then in our five year-term.

Having gone through the recommendations here, I can see that she does not even have issues of conflict of interest. She does not have any legal issues. I am sure we are

not looking for angels. We are simply looking for people with integrity and this lady has integrity. So, I support this report and wish to be part of those who are approving it.

Hon. Wandayi: Hon. Temporary Deputy Speaker, Sir, from the outset, I basically have no issue with the honesty of this lady. I have no issue with her morality and her temperament. But I want to oppose this report as a matter of principle. The Judiciary that we currently have in place in Kenya is supposed to be a reformist Judiciary, bearing in mind where we are coming from, as a country. I am afraid that if you look at the track record of this lady, there is nothing that qualifies her as a reformist of whatever shade. In fact, I was amazed - whoever had time to listen to part of her interview was amazed - when she was struggling to define human rights. At one point, she said that human rights is difficult to define, if I am not wrong. If defining human rights is difficult, then nothing can be easily defined.

Appointing this lady as the Deputy Chief Justice is basically an attempt to have the reactionary forces take over the Judiciary. The problem we have had in this country is the clique of conservative judges and magistrates, who have been a stumbling block to reforms and democracy. This lady is certainly part of that group, I can tell you. I also wonder what really happened at the Judicial Service Commission stage in this appointment process. I remember very well that there were very eminent women lawyers who appeared before that Commission. One of them is a former Chair of the Law Society of Kenya, who has become a Secretary to the Cabinet in charge of Defence. One of them was a former Chair of FIDA and many other eminent women lawyers. I do not think that bringing this lady to the Judiciary is in line with the trend to reform the Judiciary.

Hon. Omagwa: On a point of order, hon. Temporary Deputy Speaker, Sir. I respect the Member on the Floor, but this Committee is a creature of this House and we expect it to have done a wonderful job. It has given us a report. In the interest of time, would I be in order to move that the Mover be called upon to reply?

The Temporary Deputy Speaker (Hon. Cheboi): Certainly, you are out of order. I can see there is quite a lot of interest in this matter. Of course, we are alive to the issue of time, but we will certainly give a chance to a few more Members. Proceed!

Hon. Wandayi: Hon. Temporary Deputy Speaker, Sir, if you look at the tone of the Members who have spoken before, more so the Members of the Committee that has recommended this lady for appointment, you will see a situation where they are trying to give their response immediately because they are raising very grave issues and at the same time recommending that we go ahead and do what we can do on the Floor of this House.

The issues that have been raised in this report are too grave to be wished away. I do not think that we are in a hurry as a country. We are not in a hurry as a country to appoint the Deputy Chief Justice. This country has stayed without one judge for the last six months or so. We can afford to stay for another two or three months, as we do a correct process and bring on board people who can take this country forward in terms of managing the Judiciary.

I vehemently oppose this report.

Hon. ole Sakuda: Thank you very much, hon. Temporary Deputy Speaker, Sir. I rise to support this Motion. One of the points in the report is the humility and the experience Lady Justice Kalpana Rawal exhibits. We all stand to be reminded that in this world, sometimes roles can be exchanged. In 2008, I had a petition before the High Court

and it was adjudicated by Justice Kalpana Rawal; it has just come to our attention that it is our time to judge her. Let us be reminded, as Kenyans, that today you can be sitting on this side and tomorrow you will be sitting on the other side. If you do not do due diligence and do not give your all, some of these things may catch up with you in life.

Just as my colleague, hon. Oyugi, has said the circumstances that led to the death of Hon. George Saitoti and Hon. Ojode, also led me to this august House. Therefore, as an hon. Member has said, the people of Kajiado North know very well how she conducted the inquiry hearings. The report was finally given to the President and we are satisfied. She has two years to try and put straight some of the issues that we are raising here.

With those remarks, I support.

Hon. (Prof.) Nyikal: Thank you very much, hon. Temporary Deputy Speaker, Sir, for giving me an opportunity to address this matter. I stand to oppose this Motion. I am doing that basically because I find inconsistencies in what the Committee has reported and what it recommends.

This is the second time we are seeing this. When we were conducting a vetting exercise last time, we also had a lady on whom we had an argument. We read exactly how the Committee has presented the facts; they clearly lead to where they intended to go. When you reach the decision of the Committee, it is inconsistent with the facts.

Hon. Temporary Deputy Speaker, Sir, what we are seeing here--- Look at this and at the last page; there are four issues that you find the Committee is not satisfied with. The nominee holds an opinion inconsistent with Article 167 of the Constitution. A Judge of the Supreme Court, Deputy Chief Justice, really must be consistent with the Constitution in most issues, or in a major issue like this one. So, once you read that, it strikes you; surely something is not right here.

Then the next one is that the nominee does not demonstrate a clear view of human rights, and was not clear in her legal philosophy. At a certain point in every profession, whether technical or whatever profession, your philosophy in life in guiding the profession, particularly if you are at a high level, is of utmost important. It is even more important than the letter of the law. I think some hon. Member, a lawyer, said that is what they call jurisprudence. If you have somebody who is not clear on their legal philosophy I think that is a major weakness; that came from the Committee itself.

Hon. Temporary Deputy Speaker, then the Committee says that there is an issue of succession. I think here I wish to differ with some of our colleagues. It is not a matter of discrimination because of somebody's age. What we are doing in this House is actually planning for the future of this country, looking at every factor that may bring us problems or good governance. If you have a succession problem, that is something that you have to address at this point. I think the issue here is not that somebody is old and so on. The issue here is that you are likely to have to replace both the Chief Justice and the Deputy Chief Justice at the same time.

Hon. Members: Are you sure?

Hon. (Prof.) Nyikal: I am saying it is likely. I think that is the issue that we are having.

(Loud consultations)

The Temporary Deputy Speaker (Hon. Cheboi): Order, hon. Members! Order!

Hon. (Prof.) Nyikal: We are going to the next Order. You must allow people to express their opinion.

The next point is that the Committee observed that whereas the nominee demonstrated understanding of administration and management---

Hon. Wambugu: On a point of order, hon. Temporary Deputy Speaker, Sir.

The Temporary Deputy Speaker (Hon. Cheboi): Order! There is a point of order from Hon. Wambugu.

Hon. Wambugu: Hon. Temporary Deputy Speaker, is the hon. Member in order to suggest that Hon. Justice Kalpana Rawal should be the one propagating the succession plan, or that this is a programme that should be with the Judicial Service Commission (JSC)?

Hon. (Prof.) Nyikal: Exactly! Hon. Temporary Deputy Speaker, this is something that has come from the JSC, but if you want to argue that anything that comes from the JSC and is presented here we cannot say anything, then there is no need for anything to come from the JSC and be presented in this House. So, whatever it is they have, I think this House still has a right to comment on it. We have a right to look at the succession plan.

So, the next point is that the Committee observed that whereas the nominee demonstrated the understanding of administration and management, she could not reconcile the same with--- How can one manage an institution well if they cannot reconcile the understanding of management with its strategic plan? Managing an institution means you are steering it in a given direction according to its strategic plan that you have worked on. If at that level you are not even clear what that strategic plan is, then honestly we cannot say that you know management.

Again, you find that on the cases that she has handled, in a way the Committee itself is wondering whether she is a gate keeper for the State. Although it is put as a question even from the Chair of the Committee itself, what it means is the Committee is worried; we are probably dealing with somebody who is likely to be a gate keeper. Then you turn around and say: "We asked her this question and she said no". Obviously, if you asked me if I am a gate keeper, you do not expect me to say, "Yes, I am a gate keeper and I am always there." I am just reacting to what I have picked from here. Then the coincidence in the case is quite great.

There is another statement here which is also very interesting. Somebody describes himself as an insider. "Insider" is not always a positive word; it is actually somebody who tends to protect the status quo. I think that is what we are saying. We were also told that there was a case where there was an issue or a clear error of judgment. We were told that this was again explained. I think we may have party politics, but I think this House is the supreme institution in this country. Sometimes we should really be guided by facts that we have before us and put away everything else.

Hon. Temporary Deputy Speaker, I would say, as I conclude, that I think the Committee should sometimes be bold enough to give conclusions that are in line with the information they have. When we were talking about delegated powers, it was very clear. A Committee gives us facts and then its decision should be very consistent with those facts. I know the question will come and it will be answered that way. Let it be recorded

that many times we have passed decisions where facts were not in line with those decisions; let that be on record.

With those remarks, I oppose.

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Members, there is a point of concern, which I really want to put to hon. Members. Most of the time, a person would really be seeking to raise a point of order, and it takes a very long time before they exit the system. It is clear, therefore, that that is an hon. Member who has really forgotten the card there. I want hon. Members to be extra keen, so that the Chair is able to handle it correctly.

Hon. Angatia: Thank you hon. Temporary Deputy Speaker, Sir, for allowing me to contribute to this important debate.

I rise to support the report of this Committee. First, Chapter Four of the Constitution talks about equality and freedom from discrimination. Secondly, it talks about fair hearing. What we are subjecting Hon. Justice Kalpana Rawal with regard to her past experience is embarrassment. First, the lady justice has a proven record; she has been tested. She has chaired several commissions and it is not her responsibility to appoint herself. The individuals who appointed her looked at her record, experience and how she can perform. The issue of not mastering the strategic plan of the JSC is not her individual problem. A strategic plan is adopted by a team; it is not an individual thing. You are not supposed to draw a strategic plan and implement it for yourself. You draw a strategic plan based on the reforms that are required in an institution. To achieve what you want, you have to carry out the reforms as a team not as an individual. Let us not pin her down on the issue of the strategic plan.

Another thing that the hon. Members talked about is gate keeping. We are not going to approve this report for her to be nominated to gate keep on behalf of the Government. Lawyers in this House will tell us that when there is a critical case, like the dispute over last general election, it is not presided over by an individual; it is presided over by a bench. So, why can we not give her a fair hearing in this House?

I support the Motion. Thank you.

The Temporary Deputy Speaker (Hon. Chaboi): I really believe at this point the Leader of Majority Party has had his turn in listening to what the hon. Members are saying.

Hon. Members: Put the Question.

The Temporary Deputy Speaker (Hon. Cheboi): There are still some hon. Members who are interested in the Motion, and so I will give them a chance.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, Sir, there is a history to this process. Article 161(2)(b) of the Constitution clearly states how this office should be filled. Then Article 163(1)(b) again provides the role of the Deputy Chief Justice (DCJ) to one, deputize for the Chief Justice, and two, be the Vice- President of the Supreme Court. I dug into the history of Justice Lady Rawal. Her father was a High Court Judge in India. Her grandfather was a law Minister in India.

(Loud consultations)

If you protect me, I am going give a background; so, listen to it.

The Chief Justice of the Republic of Kenya, who is the Chairman of the Judicial Service Commission (JSC)--- The name of Justice Rawal did not come to this House by fluke. It came through a process; the JSC did due diligence and interviewed her. This House has the mandate, constitutionally, to reject this nominee.

(Hon. Mwaura consulted loudly)

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Mwaura, hold your peace.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, Sir, I want Hon. Mwaura to use his electronic microphone. I want him to learn how to use the swipe card provided to him by Parliament.

The Temporary Deputy Speaker (Hon. Cheboi): Let us hear what he has to say.

Hon. Mwaura: On a point of order, Hon. Temporary Deputy Speaker, Sir. Is it in order for the Leader of the Majority Party, who is my friend, to suggest to this House that one can be judged by pedigree? That is, if your father was a High Court Judge and your grandfather was a Minister--- This is a country of equal opportunities. Is it in order for him to suggest that?

Hon. Members: Yes.

The Temporary Deputy Speaker (Hon. Cheboi): Order, Hon. Mwaura! I do not think there was any suggestion to that effect.

Hon. A.B. Duale: Hon. Temporary Deputy Speaker, Sir, you know I have the right of developing my argument.

The CJ, a man I respect so much, Justice Mutunga, when he was forwarding this name to the authorities to pass to Parliament, described Lady Justice Rawal as experienced, well guided and a grounded judge. Lady Justice Rawal has been described as mature, patient and humble. We know the story by Ms. Kerubo. This House has the privilege of having in its midst the lawyer who represented Ms. Kerubo, the Member for Kiharu, a man I also respect a lot.

If Justice Rawal gets this job, she must not walk the road others have walked because as taxpayers and Members of Parliament who approve the Budget, we must give the job to somebody who will fit into the stature of that office. That is why Members of Parliament have a way of life. The CJ and DCJ must live within the confines of their offices. I do not think Justice Rawal will score a C- (minus) in that kind of life. Why did I make the reference to her father and grandfather? My good friend, Hon. Ababu, taught me in the last Parliament how to build your argument.

For the first time, what he taught me is what he wants to deny me. I think Lady Justice Rawal is within the Constitution, to be appointed for the three years. This Eleventh Parliament will have the opportunity after three years to give this country and the JSC another CJ and DCJ. There is nothing wrong with that. Those who were not in the last Parliament will have an opportunity to vet the CJ and give this country the best. I am sure the men and women who are in the Departmental Committee on Justice and Legal Affairs, led by Hon. Chepkong'a, are up to the task of giving this country the right people; it should direct this Parliament in accordance with the Constitution.

With those few remarks, I beg to support and ask hon. Members to support the appointment of Lady Justice Rawal.

The Temporary Deputy Speaker (Hon. Cheboi): I think in the interest of time and the two other Motions that--- I can see that Members of the Committee are very eager to contribute, but it is prudent that we finalize this matter. We have had arguments both ways; so, I call upon the Mover to reply.

Hon. Chepkong'a: Hon. Temporary Deputy Speaker, Sir, thank you for giving me this opportunity again to respond.

I must thank the Leader of the Majority Party. It appears that he has become better than the teacher, and we must congratulate him for that. Just to dispel the concerns of the hon. Members that have been expressed this evening, the way this report has been written was to give pros and cons. The majority of hon. Members, as you are aware, in this Committee are lawyers. So, the manner in which you write a report is like the way you write a judgment, where you must tell the whole House the issues that were raised with the nominee; we provided information in the report.

On a balance of probability, looking at the Public Appointments (Parliamentary Approval) Act, we found that this nominee is suitable for the position for which she has been recommended.

So, without spending too much time, I beg to move and request that this nominee be approved.

(Question put and agreed to)

The Temporary Deputy Speaker (Hon. Cheboi): The Chairman, Departmental Committee on Administration and National Security.

Hon. Abongotum: Hon. Temporary Deputy Speaker, Sir, thank you. The Departmental Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No.216 and has executed its mandate in accordance with the provisions of the said Standing Order, No.216(5) which mandates a Committee---

The Temporary Deputy Speaker (Hon. Cheboi): Hon. Chairman, Departmental Committee on Administration and National Security, move the Motion first as it is in the Order Paper.

ADOPTION OF REPORT ON VETTING OF FRANCIS THUITA KIMEMIA

Hon. Abongotum: Hon. Temporary Deputy Speaker, Sir, I beg to move the following Motion:

THAT, pursuant to Article 154(2) (a) of the Constitution and the provisions of Standing Order No.45, this House adopts the Report of the Departmental Committee on Administration and National Security on the vetting of the nominee to the position of Secretary to the Cabinet, laid on the Table of the House today, Tuesday, 28th May, 2013, and approves the appointment of Hon. Francis Thuita Kimemia to the position of Secretary to the Cabinet.

Hon. Temporary Deputy Speaker, Sir, the Committee on Administration and National Security was constituted pursuant to the provisions of Standing Order No.216

and has executed its mandate in accordance with the provisions of the said standing Order, which mandates the Committee to:

- (a) investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned Ministries and Departments.

Hon. Temporary Deputy Speaker, Sir, in accordance with the Second Schedule of the Standing Orders, the Committee examines the following subjects: National security, police services, home affairs, Public Administration, Public Service, prisons, immigration and the management of natural disasters, community service orders. The Committee oversees the following Ministries and Departments:

- (i) the Presidency or the Cabinet and State affairs;
- (ii) the Ministry of Interior and Co-ordination of National Government;
- (iii) Public Service, the National Police Service Commission and the Independent Policing Oversight Authority.

*[The Temporary Deputy Speaker
(Hon. Cheboi) left the Chair]*

[Hon. Deputy Speaker took the Chair]

Madam Deputy Speaker, the list of the Committee Members is as provided herein. I will not delve into all the details because I presume that every hon. Member has a copy of this Report, but I want to confirm to you that I have a team of very capable, meticulous and committed Members.

Article 154(2) (a) of the Constitution establishes the Office of the Secretary to the Cabinet, which is an office in the Public Service. This Article further provides that the Secretary to the Cabinet shall be nominated and, with the approval of the National Assembly, be appointed by the President. The duties of the Secretary to the Cabinet shall be to take charge of the Cabinet Office, be responsible, subject to the direction of the Cabinet, for arranging the business and keeping the minutes of the Cabinet, convey the decisions of the Cabinet to the appropriate persons or authorities, and perform other functions as may be directed by the Cabinet.

Hon. Deputy Speaker, after receiving the memo on the nominee to the position of Secretary to the Cabinet on 15th May, 2013, the Committee commenced its sittings on Wednesday, 22nd May, 2013. In conducting the vetting exercise, the Committee made reference to the Constitution, the Public Appointments (Parliamentary Approval) Act, and the Standing Orders. The Committee complied with the constitutional and legal requirements, as well as the established procedure for vetting, and ensured that public participation and openness during the proceedings were adhered to. Notifications inviting members of the public to the submitted memorandum were placed in the mainstream print media, in tandem with the law.

The Committee held a meeting with the Ethics and Anti-Corruption Commission Chief Executive Officer (CEO), Mr. Halakhe Waqo, on Monday, 27th May, 2013 at 7.00 a.m. The meeting was convened after the Committee resolved to invite the CEO to clarify claims contained in a letter sent to the Committee by that Commission. Further, the Committee invited Mr. Francis Kimemia to another meeting on Monday, 27th May, 2013;

that was to accord him the right of reply to the issues raised in the Commission's letter. The two meetings were held in-camera, because the Commission had requested in their letter that the information contained therein be treated in strict confidence as the matter concerned was still under investigation and, therefore, opening up the proceedings to the public could jeopardise the investigations.

Hon. Deputy Speaker, the Committee would like to thank the Offices of the Speaker and the Clerk of the National Assembly for the logistical support accorded to it during the vetting exercise. The Committee is also thankful to the media for their coverage of the proceedings of the Committee sessions, thus enhancing accountability and transparency of the vetting exercise. The Committee reached several findings during the vetting exercise. Those findings guided the Committee in making its final recommendations. The Committee's recommendations were solely based on the evidence and information from the proceedings of the Committee during the vetting exercise. These recommendations were unanimously agreed upon by the Committee Members during the adoption of the Report on Tuesday, 28th May, 2013.

On behalf of the Committee and pursuant to Article 154(2) (a) of the Constitution, Section 8(1) of the Schedule to the Public Appointments (Parliamentary Approval) Act, 2011, and Standing Order No.199, it is my pleasure to table the Report of the Departmental Committee on Administration and National Security on the nomination of Mr. Francis Thuita Kimemia to the post of Secretary to the Cabinet for debate and adoption by the House.

Hon. Deputy Speaker, I will try to be very fast. I have structured this Report sequentially and logically in the following manner: I have given the introduction. I will give a brief background on the nominee. I will then talk about the vetting process, give a brief on our meeting with the Ethics and Anti-Corruption Commission as well as on our second meeting with the nominee, and give the House our findings and recommendations. But before I get into that, I want to, once again, thank the Members of the Committee for burning the midnight oil to come up with this very comprehensive Report.

I want to inform hon. Members that this Report is very detailed. As I read the substantive parts of the Report, I will refer hon. Members to the annexure contained herein, so that they can acquaint themselves with the real issues to avoid discussing peripheral issues that have no substance.

As a Committee, we looked at the working experience of the nominee and found that he served as a District Officer (DO) in the 1980s, an Assistant Secretary, an Undersecretary and a Deputy Secretary in various Ministries. He rose to the position of Permanent Secretary in the Ministry of Provincial Administration and Internal Security in 2008 and became the Head of Public Service and Secretary to the Cabinet in 2012. He has undertaken special training at the former Kenya Institute of Administration (KIA). He has also undertaken security and leadership courses. Further, he undertook management performance courses in oriented public service in Malaysia and Harvard University. He has undertaken international courses in privatisation, regulatory reforms and corporate governance in Japan, among others. He has also been involved in publication of several Government publications and manuals, and has been the chair of numerous national committees. He has also received presidential commendations, among them the EGH and other commendations.

Hon. Deputy Speaker, on the candidate himself, we found that he has the ability to create synergies and encourage teamwork, and has been the biggest asset during his public service. I will not delve into all this because you have a copy of the Report. I will mention salient issues that we raised with the candidate, especially in relation to the territorial conflicts that we have at the moment between the Governors and the County Commissioners.

The nominee was able to inform us that according to the pecking order, the Governor is the senior most person in the county, but the County Commissioner is an appointee of the President. They all have to work together and read from the same page for the sake of the people they serve. He also said that he is committed to devolution and that devolution is not a choice but a policy and law that must be implemented in this country. He said he will support devolution to the letter.

Hon. Deputy Speaker, he also said he is committed to actually improving on the morale of the police, and he will make sure that their welfare is taken care of. One last issue is that he also confirmed that if appointed to the position of the Secretary to the Cabinet, he will ensure that the dignity of Parliament is upheld, because the Constitution recognizes the supremacy of Parliament. I think that is a good compliment because sometimes we have officers who do not understand the role of Parliament. We must remind them that Parliament is supreme all the time.

Hon. Deputy Speaker, we also sought to know whether the nominee is tax compliant. We confirmed that he is tax compliant and he has fulfilled all the requirements to be cleared for this office. I just want Members to note that we had notified the public to give their memoranda in case they had any issues. We had two memoranda that we received in good time. One was from John Mbugua of Nairobi who had an interest in the welfare of IDPs. He is claiming that Mr. Francis Kimemia should have done much better in addressing their issues. He also claimed that some members of the former Provincial Administration were involved in corrupt activities, and that action was supposed to have been taken. There was also a memorandum by somebody called Mr. Ng'etich, but it did not qualify to be considered.

I will invite you to the annexure. Everything is contained in this Report. It was not taken under oath, so we did not deal with the memorandum because it did not meet the requirements of the Act. We have others that were time-barred. They did not conform to the notification given by this Parliament, or the Clerk of the National Assembly. We had others from George Mallowah, Joseph Kinyanjui and Charles Akinyi Omanga. We could not deal with these because they were time-barred.

As you can see, we dealt with the candidate himself and this took us about four hours. This was the longest interview in the history of this country, because we wanted to get the best Secretary to the Cabinet for this country. I want to confirm that the candidate really displayed enthusiasm. He confirmed to us that he can actually be a transformational leader, who will fit into governance in the 21st Century.

We also met the Chief Executive of the Ethics and Anti-Corruption Commission and the relevant part of the Report is at Item 3.30. This officer had issues with a tender at the Kenya Airports Authority, in relation to which she said that Mr. Kimemia should have actually sacked an officer who was in charge, and who was the CEO.

The other issue was suspension of Mr. Thuita Mwangi, who is the PS for the Ministry of Foreign Affairs. Those were the main issues. If you look at the verbatim

report, you will see that these were the concerns by the Ethics and Anti-corruption Commission.

I want to cite Item No.5. There was delay because of bureaucracy and bad blood between the then Minister and his PS; this actually led to the delay in implementation of a project that is worth Kshs56 billion. In this Report, there was a sub-committee of the Cabinet that actually cleared the implementation of this project, because it was found to be above board. The sub-committee had very senior officers, including the Attorney-General. One other issue is that of suspending the Permanent Secretary. The Ministry of Foreign Affairs had a court order blocking this suspension. I would like to summarize our findings.

Hon. Deputy Speaker, after doing the vetting, calling the nominee again and even having talked to the Ethics and Anti-Corruption Commission officials, and getting all the memoranda these were our findings:

1. Mr. Francis Kimemia has the requisite qualification and vast experience in the public service, which qualifies him for the position of Secretary to the Cabinet.

2. The nominee has risen through the ranks progressively, having started as a District Officer, rising to his current position as Secretary to the Cabinet and Head of Public Service.

3. Mr. Kimemia has never been implicated in any known scandals in his official capacity.

4. The candidate exhibited impressive knowledge of technical issues especially those touching on public service. He was key in making positive proposals on how to move the country forward.

5. The nominee has been involved in major reforms in the Civil Service that have been initiated in the country such as police reforms and performance contracting in the public service.

6. The sentiments expressed in the Mbugua petition were not particularly directed at Mr. Kimemia, but revolve around the atrocities allegedly meted out against IDPs by the former Provincial Administration over the years.

7. The Ethics and Anti-Corruption Commission letter was based on initial suspicion of Mr. Kimemia as having been involved in the blocking of the suspension of the KAA Managing Director, and the Permanent Secretary, Ministry of Foreign Affairs, for their mishandling of the JKIA terminal project and in the purchase of the Tokyo property respectively.

8. The investigations were at a preliminary stage and it was, therefore, difficult for the EACC to draw conclusion against the person of Mr. Francis Kimemia. Mr. Mbugua's concerns were out of the failure by the Government to address IDP issues. The Committee found that action had been taken and some officers had been charged with offences while others were disciplined. We can confirm that others were sacked from their positions.

9. The EACC had no objection because in their verbatim records they said that they had no objection to Mr. Kimemia being appointed as the Secretary to the Cabinet.

10. During the presentation by the EACC CEO, he stated clearly that the Commission's letter earlier sent to the Committee was for cautionary and advisory purposes, but did not intend to depict Mr. Kimemia as guilty or culpable.

11. Decisions made by the Cabinet on the manner in which JKIA terminal project and the Tokyo property purchase were to be handled were beyond Mr. Kimemia's control.

Hon. Deputy Speaker, Sir, this was our recommendation and I wish to confirm that there was total unanimity from all the hon. Members. There were no divergent views because we had a lot of evidence to prove that Mr. Kimemia was not involved in any omission. The two cases that were cited actually revolved around officers who were appointed by the President and Mr. Kimemia was not the appointing authority. So, giving him the powers to sack them was actually elevating his position.

Arising from all these findings we wish to state that at the end of the vetting process the Committee made the following recommendations:

Having considered the suitability, capacity and integrity of the nominee, and pursuant to Article 154 (2)(a) of the Constitution and Section 8(2) of the Schedule to the Public Appointments (Parliamentary Approval) Act of 2011 the Committee recommends that the National Assembly approves the nomination and subsequent appointment of Mr. Francis Thuita Kimemia to the position of Secretary to the Cabinet. I would like hon. Members to look at the annexure because this Report is very detailed.

I end by thanking all my Members for a job well done. I now wish to call upon Hon. Otieno Anyango to second.

Hon. Anyango: Hon. Deputy Speaker, I am happy to second this Motion and point out a few things. We were vetting a career civil servant – somebody who joined the public service at the age of 24 years and has served for 33 years. He has gone through the ranks, taking a minimum of three years in every position until he reached the top. We do not have many in the public service who have had that kind of service throughout.

The position we were vetting is Secretary to the Cabinet. Right now Mr. Kimemia is holding the position of Head of Public Service. The post of Head of Public Service is at the discretion of the President to nominate and assign the responsibilities thereunder. So, for now he is vetted as the Secretary to the Cabinet. Maybe he will also get the assignment to act in the coordinating role of Head of Public Service, but for now we concentrate on the job of Secretary to the Cabinet.

We were very meticulous in examining this officer. We went into details to check personal capabilities, interpersonal relations, general demeanor, intellectual capacity and so on. This was in detail both in the interview and in the documents. With the advantage of somebody like me who was in the Cabinet for 15 years when this officer was with us from the time he was Personal Assistant to the Provincial Commissioner of Nairobi, I can state that what I saw was what I knew, the officer does not have integrity issues.

Usually I define "integrity" in a manner that is so simple that what you want, what you do and what you say should mean the same thing all the time. This is one such officer. What Mr. Kimemia tells you, what Mr. Kimemia wants, and what Mr. Kimemia does are consistent. That makes him an officer with integrity.

We need to clarify the two issues that the EACC raised with us. The first one was about the Greenfield tender which was handled by the KAA and the Managing Director then was Mr. Gichuki. They floated this tender and commenced the procurement process before they were assured of availability of funds. This was against the procurement legislation.

So, as usual, the Ethics and Anti-Corruption Commission (EACC) had its antennae out there, checking why this process was going on in this manner. Was there anything suspicious inside? Was there collusion? On the basis of that kind of suspicion, the EACC requested that the Government should suspend the Managing Director of the Kenya Airports Authority (KAA) on the ground that he proceeded with this tender process before he was assured of the availability of funds. When that request was sent over to the Permanent Secretary, Transport, he drew the attention of Mr. Kimemia to the issue. Mr. Kimemia, after consultation with the other Ministries and the Treasury, and based on what the Cabinet had already handled on this issue, responded to the EACC that:

“We cannot and do not need to suspend the officer because the real issue of having handled the tenders before finances were raised has now been solved. The Cabinet has given clearance for the project to go on; the Treasury is going to make available the funds and the contractor is required to seek funds for doing this project”.

The project was for over US\$653 million. It was out of that objection to the suspension of the Managing Director of the KAA that the EACC became exceedingly suspicious, which is within their mandate. We listened to them and brought Kimemia in the picture for observation. They wrote to us and stated that he was under investigation. Then we put the Managing Director to task as to what they were investigating. They were investigating because he declined to suspend Mr. Gichuki to allow them to proceed. That did not convince us that it was really a legitimate process that could be described as an investigation into this officer. I felt like dismissing it outright, but you cannot dismiss the EACC because they may know other things, and they are still keeping them, but on the basis of what they disclosed to us, it was something that we felt was not right. They admitted that it was only a cautionary and advisory letter, but written in a language as if there was some serious investigation going on when actually there was none.

When I was in the public service, I was against subjecting officers to statements like “under investigation” when the material relevant to any investigation was not made available to the officer or anybody else. They have not even requested Mr. Kimemia to make a statement. They have not even interviewed him. That was not fair. In any case, the tender went to the Appeals Board and it was ruled that it should proceed. The matter came to the Cabinet and it was ruled that it should proceed. The file is still open, but Mr. Kimemia is under investigation. That is not the right way to manage public affairs, even if you are an investigator.

The second issue was over the Tokyo Embassy property purchase, which the Members who were in the last Parliament were aware of. Again, Mr. Mwangi, who was the Permanent Secretary, Ministry of Foreign Affairs, was taken to court and he quickly moved within eight days to seek judicial review to stop his suspension. The Chief Executive of the EACC told us that Mr. Kimemia took eight days without acting, and so they thought that he was blocking the prosecution of Mr. Thuita Mwangi. I found this also not to be enough for somebody to write that Mr. Kimemia was being investigated for mega corruption and may be taken to court. The media flashed this out. It is not fair treatment of public officers by the EACC.

I wish to add here also that as you rise in the public service, the higher you go, the higher the occupational risk, in the sense that you get blamed for what others do and not for what you do as a person. So, other complaints that may have arisen or what anybody

might have felt about this particular career officer stemmed from the fact that he was holding a certain position. Even if you miss a promotion, you can even blame that very officer. Even if you fail in a tender and you try to lobby here and there, you can end up blaming that particular officer. So, we did not find any material complaint. Considering the service of 33 years by this particular officer, we do not have many people who have been so clean for so long; he has observed integrity and performance with due diligence over the years, as compared to other officers.

So, it was not an accident. It was not a matter of somebody being his godfather pushing him up every three to five years. He would not have been pushed through every assignment in public service for 33 years until he reached the top as the Head of Public Service. It was not an accident. It was due to his diligence in public duties. Those who know him can tell you that his demeanor is impressive. He has impressive knowledge, skills and quite an amount of what you can call personal capabilities and conduct in public affairs. He is very a resourceful officer, generally reasonable in terms of performance initiatives, including being able to write papers. We do not have very many hands-on officers, who even at higher level are able to sit and do a document by way of a training manual, which is then used and is not revised for several years.

We were impressed that this officer was cognizant of the dignity of all organs of governance, and knew that they must be protected. Parliament is an example; when some people try to ridicule the House, yet it is the supreme organ--- He was unequivocal that the treatment meted to Parliament up to now on the issues we have already covered this afternoon has not been fair. The Cabinet needs to have proper perspective of any of these issues, so that the right relations between the Executive and the Legislature are properly maintained and managed in the interest of the country as a whole.

I wish to confirm, therefore, that we were delighted to interrogate a highly respectful officer, who is usually very firm in executing Government policies and programmes. He is an officer with excellent interpersonal skills, respects his colleagues and has not risen through the ranks by accident; he deserves every promotion he received up to today. I ask the Members to approve this appointment within the provisions of the current Constitution.

(Question proposed)

Hon. Kinyua: Hon. Deputy Speaker, I rise to support this Motion. From the outset, you realize that we are talking about an officer who has risen through the ranks of the public service. If you look at the Cabinet that we approved a few days ago, you will see that we need institutional history of our Government, people who have the right experience and what it takes to make sure that the new Cabinet settles down properly and discharges its duties without having difficulties, as most of them have come from the private sector.

For any meaningful reforms in the public service, again we need institutional history. I think this is the right candidate who has that. As it has rightfully been put by Hon. Anyango, we cannot prosecute or crucify our officers, particularly in the public service for the positions they hold, which are not their personal responsibilities, but are institutional positions.

Hon. Deputy Speaker, again, we have seen the diligence, competence, integrity and the level at which Mr. Kimemia has been able to discharge his duties. As the Chair will realize, in the last five years, circumstances were very difficult and anybody would appreciate that. In a coalition government the opposition and the government are in one cabinet, having them work in harmony and be able to achieve synergy cannot be taken for granted. So, that is something that we ought to commend this officer for.

Hon. Deputy Speaker, I think the candidate has all the qualifications and is the right candidate for this job. I support.

Thank you.

Hon. Sitati: Thank you, hon. Deputy Speaker. I stand to support this Motion based on Chapter Six of the Constitution in terms of leadership and integrity. The report that we have been given by this Committee actually gives us information on how Mr. Kimemia has worked. I think it is important that we have his expertise on board, given that the Cabinet that we have is relatively new in the Civil Service. He needs to give guidance and leadership in this country. Therefore, I stand to support that we give this position to Mr. Kimemia.

Thank you.

Hon. ole Sakuda: Thank you, hon. Deputy Speaker. I rise to support. Going by what the hon. Members have already said about Mr. Francis Kimemia, I think we will do well to recommend him for this position.

Having known Mr. Kimemia personally, he is an experienced individual and somebody who took over the very difficult duty when Amb. Muthaura had to step aside because of the issues that faced him. Mr. Kimemia went out of his way to make sure that the coalition Government actually remained together. He really served as a guide, in my opinion, and made sure that this country did not fall apart. He carried on his duties very well and as my good friend, Hon. Anyango has said, when you look at his demeanor, he is not a man given to many words; he is a person who does what needs to be done. I think given an opportunity to carry on, he will give great service to this country.

Hon. Deputy Speaker, I, therefore, wish to support and actually say that we do not have a lot of time to talk about it; just go ahead and put the Question.

Thank you.

Hon. (Ms.) Leshoomo: Asante sana Naibu Spika. Hata mimi ninaunga mkono Hoja hii kuhusu Bw. Kimemia. Kwa kweli mimi sijui ni watu gani katika Kenya tunataka. Ukiangalia ile kazi Bw. Kimemia amefanya katika nchi hii, nafikiri ni mtu ambaye anastahili kupatiwa kazi hii. Badala ya kuongea mengi, tungepitisha Hoja kwa sababu naona kila mtu hapa ni rafiki ya Bw. Kimemia. Yafaa tuseme kwamba tunajua kazi yake. Kwa kweli ni mtu mwenye roho safi; hata ukiwa na shida, kama sisi ambao tuna shida ya usalama, na umpigie simu saa tisa usiku atachakua. Ukimweleza shida zako, atafanya kile wakenya wanataka.

Kwa hivyo, ninaonelea kwamba, badala kukaa hadi saa nne au saa tano tukijadili Hoja hii kuhusu Bw. Kimemia, kila mtu ni rafiki yake hapa na wengi wanampenda na kazi yake iko sawa.

Naona mhe. Ababu anacheka pale. Pia kuna rafiki yangu pale anaitwa Midiwo. Ningeomba tuweke sahihi na kumaliza jambo hili.

Ninaunga mkono.

Hon. Anyanga: Thank you, hon. Deputy Speaker. I rise personally to support this Motion. I am supporting a person I know very well. I have gone through the Report and I have seen a career civil servant, a person who has risen from the position of DO II to where he is now, as the Head of Public Service. I fully agree with Hon. Leshoomo that, instead of wasting time---

(Loud consultations)

Please, allow me to contribute.

I have gone through the Report and have seen a serious career civil servant. My brother Kimemia has developed quite a number of policies for this country. Some of those policies are being used in the Civil Service currently.

Hon. Deputy Speaker, I support.

Thank you.

Hon. (Ms.) Muhia: Thank you, hon. Deputy Speaker. I stand to support and ask all the hon. Members to support because Mr. Kimemia was able to prove to us how he amicably used the Harvard principle to sort out the issue which has been on air everyday between County Commissioners and Governors.

It is in our report that he was able to give us the way the delicate issue could have been managed. He showed the Committee that in future dispute resolution can also be sorted out using such a principle. He told us how a County Commissioner can speak during the Madaraka Day and allow the Governor to speak last. It is good to give the Governor an opportunity to first comment on the President's Speech, and then allow an opportunity, as per the pecking order, to speak last.

So, as I support, I wish to say that I have an advantage because Mr. Kimemia comes from one of my constituencies and every other citizen knows him as a humble and down to earth man. I think these are the kind of leaders we are looking for; he is an asset to this nation.

So, I beg to support.

Hon. Bunyasi: Thank you, hon. Deputy Speaker. I rise to support this Motion. I agree with the praises directed at him, but I am concerned about the nature of the praise because it may set a precedent that may hamper our movement forward. Heads of institutions stand accountable for what goes on in their institutions even if they are not personally undertaking tasks. If we remove that principle, we will have a problem in future when heads of Ministries oversee rotten Ministries. So I am very concerned about that dismissive basis.

The second basis is that I am really appalled by the work of the Ethics and Anti-Corruption Commission. There is nothing specific to this particular candidate but the general trend has now been that they either do not respond or they are completely wishy-washy. I think the worst thing to do is to be dismissive of what is coming out of the EACC because we will need them. If they are unable to perform, the House should come out clearly to sharpen them because it will be in our interest as we push this forward in the language the President himself used in this House. He is looking for double digit growth and elimination of corruption. If institutions are unable to do due diligence, we should say so.

I support this Motion because clearly he has been a strong civil servant, but I am very concerned with those two aspects. We are setting a precedent that will come back to haunt us.

Hon. Ababu: Thank you, hon. Deputy Speaker. Let me first of all start by saying that I was very proud or I have been very proud to serve in this Committee and to commend it for the amazing spirit of bipartisanship that informed the whole vetting process. I say this, of course, very aware that I am a proud Member of the CORD Coalition and as I proudly sit on this side of the House, I understand that we have a cardinal responsibility to play the role of watchdog. I also know that as an Opposition, our role is to be a watchdog and not a bloodhound. That means that we have to watch over the public good and not to witch-hunt those who have been given the mandate to govern the affairs of this country.

There is very worrying trend in this country, one that reminds you of the saying that all that you need to kill a dog is to give it a bad name. So give a dog a bad name and kill it. So we have witnessed scenario where people are demonized and reputations are dragged through the mud. We have had examples that have even come to this Parliament. Examples like the case of a very young brilliant attorney, Cecil Miller whose nomination to chair the then Interim Independent Electoral Commission was a sad story of how one can be given a bad name and hanged. This Floor has witnessed drama. The so-called maize scandal was an interesting drama on the Floor of this House; drama based merely on information casually thrown around. And it worries you when you look at Kenyans demanding for justice and you can see that the ordinary Kenyan wants justice but at the same time you see a worrying tendency to crave for blood. They want to see some blood being spilled and if that blood is for one that is for high and mighty, even the sweeter. All you need in this country is just to cry “thief” or say “wolf” even when there is no slightest hint of a wolf and everybody will be after you.

So, this gentleman, Mr. Francis Kimemia, who I must say I had occasion to serve with as a Cabinet Minister when he served as Secretary to the Cabinet of the last Government, I am glad that the Committee decided to ignore all the noises, all the speculations, all the rumours and all the suspicions and focus on what is truthful, factual and real. That is what has informed this Committee. I want to say that I would particularly find it unacceptable when a commission, a body that has been given constitutional mandate to help this country to confront challenges, challenges like corruption and abuse of office decides to undertake those responsibilities in a casual and cavalier fashion; in a manner that really leaves a lot to be desired. When you write a letter and you say that you are investigating someone for something mega - I must tell this House that when we received this letter and very unfortunately in the classical Kenyan style, this letter became the center of focus and made, especially the media ignore everything else and focus on this single piece of correspondence. You write a letter like this and you say that you are investigating someone for mega corruption. Of course, when we received this letter, as a Committee conducting due diligence, we were very keen to know what this mega corruption is and it was on the basis of that, that we decided to talk to the Ethics and Anti-Corruption Commission (EACC) in camera because we also wanted to protect its request for confidentiality. But the information that came out was disappointing, absolutely disappointing. My regret is that we conducted that session in camera; we should have conducted that sitting in public because then

Kenyans would have had occasion to see what this was all about. I dare say that if this Commission wants to investigate anybody for abuse of office, they have a very good candidate in one Sarah Serem. They would find a very good candidate there for investigation for definite abuse of office.

Hon. Deputy Speaker, let me conclude that in the process of vetting, I was interested to find out whether all the complaints that had been flying around this nominee on the question of his bias with regard to devolution, political bias and integrity had any modicum of truth. I was pleasantly surprised that on the issue of devolution, Mr. Francis Kimemia is very clear about the fact that devolution is the centerpiece of our new constitutional order. He is very clear on the pecking order in the counties and he did not hesitate when we put it to him as to who between the County Commissioner and the governor ought to take precedence, for instance during public events. Therefore, the fear that this nominee is a stumbling block to devolution is more fiction than fact.

The question of political bias, again, is one that has been on the lips of many people. Again, it became very apparent that this nominee is one who is firmly committed to serving Government and executing Government policy. Sometimes, in your zeal to execute your mandate it becomes very difficult, for anybody, to draw a line. I do not know how you would work in a manner where you were secretary to a cabinet headed by a politician and not go out of your way to implement fully the policies of a government of which you are secretary. Of course, the question of political bias is also one that we found rather wishy-washy.

Hon. Deputy Speaker, on the question of integrity, it would have been useful if the Ethics and Anti-Corruption Commission had been more forthcoming in terms of the information they had. I dare say that, based on the letter that the Commission sent to Parliament, it is important for commissions, especially the ones undertaking a key constitutional responsibility such as this one, to take their responsibilities seriously. In this case, I dare say that this Commission perhaps owes Mr. Kimemia a public apology, especially in terms of the wording of the correspondence they sent to Parliament. Let it serve as a lesson, that when you are tasked with a responsibility to watch over the public good, you do not need to throw a stone because doing so will please the public. You need to be faithful to all rules of natural justice to ensure that you conduct yourself in a manner that does not place odium on those that you are watching over.

So, I very confidently support this Report and urge this House to confirm Mr. Francis Thuita Kimemia as Secretary to the Cabinet.

Thank you.

Hon. Deputy Speaker: Yes, Hon. Ngunjiri.

Hon. Ngunjiri: Bi. Naibu Spika, ninakushukuru sana kwa kunipa nafasi hii. Ninaiunga mkono Hoja hii kwa sababu ni muhimu sana.

Nimesikia kuna mtu ambaye aliandikia Bunge barua kuhusu suala la IDPs. Kuhusu suala hili, ningependa kusema kwamba nimeshughulika sana na masuala ya IDPs. Ninathibitisha kwamba kama kuna mtu ambaye aliwasadia sana IDPs, kwa kuwapa makao; ni Bw. Kimemia. Mimi ni mkazi wa Nakuru, na ninajua shida tulizokuwa nazo kuhusu IDPs lakini Bw. Kimemia alisaidia sana kwa kusikiliza maoni na hata kwenda kuangalia maslahi ya IDPs walipokuwa wakipewa makao.

Kwa hivyo, ningesema, kwa sababu tumelizungumzia jambo hili kwa kirefu kwamba sisi sote tuko pamoja. Tuchukue fursa hii tuseme tumekubaliana na Kamati

ambayo imeleta pendekezo hili Bungeni. Kamati hii imefanya kazi nzuri sana. Kama alivyosema mheshimiwa fulani, tunamuheshimu sana Bw. Kimemia kwa jinsi alivyoweza kutuambia mambo yake yote kumhusu. Ninaiunga mkono Hoja hii. Kwa hivyo, tuipitisha kwa kauli moja ili tushughulikie jambo lingine. Tumeizungumzia Hoja hii kwa masaa mengi sana kwa sababu ya heshima. Kwa hivyo tuipitisha.

Bi. Naibu Spika, kwa hayo machache, ninakuomba uulize Swali ili tuipitisha Hoja hii.

Hon. Deputy Speaker: Yes, Hon. Stephen Wachira.

Hon. Karani: Thank you, hon. Deputy Speaker. I also rise to support this Motion.

Hon. Deputy Speaker, Mr. Kimemia is a man who rose through the ranks, from a very junior DO in a remote part of this country to the senior-most position in the public service. He has been consistent in his work. In fact, he has served three regimes: Retired President Moi's regime; retired President Kibaki's regime, and is now serving in President Uhuru's regime.

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

Hon. Member: Hon. Deputy Speaker, I want to inquire why the hon. Member on the Floor said that the North Eastern region is a remote area yet that is where this guy was hardened. He acquired his administrative skills in that area, and that is why we are approving his nomination.

Hon. Deputy Speaker: Please, correct your statement, Hon. Wachira.

Hon. Karani: I am guided, hon. Deputy Speaker.

I would also want to say that Mr. Kimemia has been acting in the position he has been nominated for appointment. So, this is a job he has already been doing. Ours today is just a matter of confirmation.

On the letter from the Ethics and Anti-Corruption Commission, it looks like we have problems with commissions just like the Salaries and Remuneration Commission (SRC). First of all, I want to commend the Committee that did the vetting because in the middle of their work, some television stations flashed "Breaking News" and said that the person being interviewed was involved in mega corruption. If the Members of the Committee had not stood firm, they would have been swayed into giving an unfavourable report on this gentleman. Of course, that was an act of malice by the television stations, just as it was malicious of some people who brought pigs to the entrance of Parliament Buildings.

With those remarks, I beg to support the Motion.

Hon. Deputy Speaker: Hon. Chepkong'a, what is your point of order?

Hon. Chepkong'a: Hon. Deputy Speaker, considering that there is consensus in the House, and pursuant to Standing Order No.95, would I be in order to request you to call upon the Mover to reply?

Hon. Deputy Speaker: Is that the feeling of hon. Members? My board is completely full.

Hon. Members: Put the Question. Put the Question.

Hon. Deputy Speaker: Hon. Members, I know that all of you would really like to say something good about Mr. Kimemia but, in the interest of time, let us end this debate at this point.

(Question, that the Mover be called)

upon to reply, put and agreed to)

Hon. Abongotum: Thank you, hon. Deputy Speaker. I intended to take four minutes but I will donate two minutes to Hon. Mbadi and consume the rest of the time.

Hon. Deputy Speaker: Hon. Kamama, I know that Hon. Mbadi is your friend. Unfortunately, once the House has said “Ayes”, you cannot donate time anymore. That is quite unfortunate, Hon. Mbadi.

Hon. Abongotum: Hon. Deputy Speaker, I stand guided.

First of all, I want to take the opportunity to say “kudos” to all the hon. Members who supported the Report of this Committee. I want to thank you for the good things you have said about the nominee. I also thank you for the comments you made about the Committee. I wish to say that you will also confirm to us that, as a Committee, we did a meticulous and thorough job.

Lastly, there is something I want to say on security. Once the President appoints this nominee, as a Committee, we want to be assisted, together with the nominee for the post of Principal Secretary for Interior and Coordination of National Government, to address issues of security in the North Eastern region and Bungoma, cattle rustling in the North Rift region; and deal with urban crime.

With those few remarks, I beg to move.

(Question put and agreed to)

MOTION FOR ADJOURNMENT

ADJOURNMENT TO A DAY OTHER THAN THE NEXT NORMAL SITTING DAY

Hon. Deputy Speaker: Hon. Majority Leader, please note that this is an Adjournment Motion that is for less than nine days. Therefore, the total time including that of the Mover will be 30 minutes.

Hon. A.B. Duale: Thank you, hon. Deputy Speaker. I beg to move the following Motion:-

THAT, pursuant to the provisions of Standing Order No.28, this House adjourns until Tuesday, June 4th, 2013 in accordance with the calendar of the National Assembly (Regular Sessions).

I will only take two minutes. One, we are adjourning to fulfill our constitutional mandate under Standing Order No. 232, Constitution of Kenya, Articles 220 and 221 that give us the power to interrogate and own the Budget. Two, pertaining to the Constituencies Development Fund (CDF), as Members of Parliament we need to make sure our CDF committees are gazetted this week and hon. Members and the committees can get the way forward.

Hon. Deputy Speaker, finally, there are other issues that we need to sort out and we need a break for this week so that by the time we come back on Tuesday 4th June, we embark on a second agenda which is making sure we take the country through the budget-making process through the month of June. Then, hon. Members will have done one or two things.

I beg to move and ask the Leader of the Minority Party to support.

Hon. Nyenze: Thank you very much, hon. Deputy Speaker. I rise to second and while doing so, I want to say this: As has been exhibited in the House, there is total support and for someone to serve for 33 years in the Civil Service and no finger is pointed at him or her, that is a good thing. So, on the Adjournment Motion, I beg to second.

Thank you.

(Question proposed)

Hon. Midiwo: Thank you, hon. Deputy Speaker. I rise to support this Motion for Adjournment. We have been here for a couple of months now and I know the new hon. Members need to go back to their constituencies. I want to encourage you, arising from my earlier contribution that your secretariat needs to sort out hon. Members so that they can go back and work in the constituencies.

Hon. Deputy Speaker, I find this a perfect opportunity for this country to know that the Government needs to tighten its belt when it comes to the issue of the implementation of the Constitution. Sitting here this afternoon and evening, I feel saddened when I hear hon. Members praising the discredited County Commissioners. We need to talk to this issue of implementation of the Constitution because half of this country will regret if we do not do the right thing. If a Member of Parliament can ignore a court ruling that says County Commissioners have no place and that Governors have a place, then something is wrong.

Very soon we will be faced with - and the Leader of the Majority Party said it here last week - this Bill that is in the air that is supposed to take powers from the Police Service Commission and give them to the Inspector-General of Police. The object of the Constitution was that we wanted to inject some input from the civilians into the police force in order to reform it. I want to plead with you Majority Leader as my friend that it may be rosy for the next 50 months but if we make a mistake as a country and if we do not reform the police force as per the intentions and aspirations of Kenyans, we will live to regret it. Therefore, I want to inform hon. Members who may be wondering what I am saying that in the Motion for Adjournment you can say these things---

Hon. Deputy Speaker: I will correct you on that one, Hon. Jakoyo. On this one for less than nine days, it would be strictly on the Motion for Adjournment. So, do not deviate too much.

Hon. Midiwo: Hon. Deputy Speaker, I stand corrected but I would like to be directed in the relevant Standing Order so that I stand guided as an old hon. Member of this House. I would like to know that.

Hon. Deputy Speaker, however it is important that we tell the Government to have and exercise prudent use of public funds. Leader of the Majority Party, you purport to be part of the Government. Maybe you need to inform the Government that we are saying that we will not see the Government flying in planes using taxpayers' money especially when it is---

Hon. A.B. Duale: On a point of order, hon. Deputy Speaker. It is the prerogative of this House to bring amendments to any Bill including the Police Service Bill. I am the Leader of the Government as the majority coalition which was formed. I ask my

colleague that he waits until 2017 when he might purportedly be in Government and be the Leader of the Majority Party.

(Laughter)

Hon. Midiwo: Hon. Deputy Speaker, can you imagine a nobody purporting to be head of the Government in the House? We are talking about the implementation of the Constitution. What a shame our country is being treated to!

Hon. Deputy Speaker, the Government is now properly constituted. We want to see the Government working the other way and we want to see Parliament performing its oversight role. I want to plead with our colleagues who think they are in heaven - The Kenya African National Union (KANU) party was there. KANU is not in heaven anymore. KANU tried everything and it came down. You will come down. If you keep on flying up there in these jets, you will see what the people of Kenya have for you.

I support this Motion.

(Laughter)

Hon. Deputy Speaker: Hon. Clement Wambugu.

Hon. Wambugu: Thank you, hon. Deputy Speaker. I rise to support the Motion for Adjournment and also take the opportunity to congratulate Mr. Kimemia for being approved for the seat of the Cabinet Secretary.

While I contribute to this Motion, I think it will be a good time for hon. Members to know that this break also is taking the Budget Committee to various provincial headquarters in their various constituents so that we can give our people a chance to contribute to the budget-making process in this country. It is also good to let the people know that most of the amendments and proposals that we received last year when we had visits to various regional headquarters were actually put and also adjusted within the Budget. It would be good for our constituents or people in various counties to come out in big numbers so that they can contribute.

Hon. Deputy Speaker, I would like the CDF management board to move with speed to gazette the CDF committees that were selected a while ago, so that the CDF money can be released. Many students who rely solely on CDF bursaries have been sent home.

With those few remarks, I beg to support.

Hon. Koinange: On a point of order, hon. Deputy Speaker. With all due respect, I am kindly requesting the Leader of the Majority Party to give assurance to the House that within those nine days, the Committee on CDF will have been gazetted and that the funds will be released within the same period.

The Deputy Speaker: That is not a point of order. Hon. Nkaissery, proceed.

Hon. (Maj-Gen.) Nkaissery: Hon. Deputy Speaker, I stand to support this Motion. It is important that, as Members of the National Assembly, we visit our people and tell them about Government policies. We need to tell them what we have passed so far. It is very important that we have this little break.

It is also very important that the Parliamentary Service Commission ensures that the welfare of Members of Parliament as passed this afternoon is implemented so as to

enable them--- This is not a favour. This is a constitutional right and, therefore, we should not fear to perform according to the Constitution. This House passed very important recommendations from the Committees. One touched on the appointment of the Deputy Chief Justice and the other one was on the appointment of the Secretary to the Cabinet. Therefore, we have performed our duty in accordance with the Constitution. The Parliamentary Service Commission should, therefore, move with speed to ensure that our CDF entitlement---

In fact, if the Parliamentary Service Commission does not move fast, that money will be returned to the Treasury and yet, it is money meant for the development of constituencies. The Commission needs to ensure that CDF money is in our accounts by Thursday. The staff can work overnight if they are paid to do so. By tomorrow morning, we can congregate here by 8.00 a.m. so that we are briefed on the matter. Then we will be able to go to our constituencies knowing very well that our constitutional mandate has been fulfilled.

Finally, I want to congratulate Mr. Francis Kimemia. He has been a fine officer. I have worked with him. He has served for 33 years and I have served for 40 years; 32 years in the military and 10 years in Parliament. So, I know the man and he is up to the task. As we speak now, he is on the same job. We just need to confirm him and we have done that. It is now the responsibility of the President to appoint him.

Hon. Langat: Hon. Deputy Speaker, I want to support this Adjournment Motion so that we have time to touch base with our constituents. I think it has been quite a long time and this is the opportune moment for us to go and start CDF projects. We have just passed the approval of two appointments. I would like to talk about the one of Mr. Kimemia. We are where we are as a country because after we passed the Constitution, we were very quick to go and pick everybody from the streets and some busy bodies and put them in very serious Government positions.

We have learned a hard lesson from what we did. We need to apologise to those who have been patient in the public service and have served longer. Some of them like Mr. Kimemia have served for over 30 years. But we have, instead, gone to the streets and brought people who think they know everything and yet, they know nothing. What we have done today is the best thing.

We need to recommend our public officers; that is, those who have been consistent and those who understand what needs to be done. All these commissions that we set up, I believe it was a big mistake. I think for us to go forward, we need to correct that mistake. We need to get the right people so that the job can be done.

As we go for recess, I wish hon. Members all the best. Let them do the best they can within the three or four days and meet here on Tuesday to transact the remaining business. I beg to support.

Hon. Koyi: Hon. Deputy Speaker, let me, first of all, take this opportunity to congratulate Mr. Kimemia for having been appointed by my Committee. He fits in the job. We interviewed and interrogated him. There are commissions in this country that are supposed to be written off. When we interviewed the Chief Executive of EACC, in my view, he does not fit in that job.

I beg to support his Motion.

Hon. Mwaura: Hon. Deputy Speaker, I rise to support this Motion and also observe that there are some Members of this House who are still not in, at least, two

Committees as is required by the Speaker's ruling. This issue needs to be expedited because we are also missing our opportunity to participate in the Committees.

In congratulating Mr. Kimemia I would also like to say that he needs to finish his degree. It has taken him nine years to finish his Masters. There is a fault in the way he has declared his annual income. You do not add Kshs1.2 million to Kshs14 million to make Kshs28 million. We may need to have some more transparency. That accuracy is required for one to be Secretary to the Cabinet.

I support.

Hon. Ramadhani: Hon. Deputy Speaker, I just wanted to bring to your attention the mood in the House. I support this Motion and say that we need to bring it to an end.

Hon. Deputy Speaker: Yes, and I also want to guide you that this particular Motion does not have a Question. If you look at Standing Order No.28, there is no Question to be put. When the time expires, the half hour, we will just close. So, can we finish, the Members who are still there?

Hon. Gikaria: Hon. Deputy Speaker, I also rise to support the Motion. I also want to mention about the appointment of Mr. Kimemia. If you look at the referees that he has given in his CV, it will only show how serious he was by giving the referees of the likes of the former President Mwai Kibaki and Francis Muthaura. He also gave a name of a priest, which only shows that he is also a very religious person in his service. The only thing that we wanted the Leader of the Majority to clarify is about the salary. We do not know whether we are just going on recess---

Hon. (Ms.) Wanyama: Hon. Deputy Speaker, I rise to support this Motion. I also want to join the rest of the Members to congratulate Mr. Kimemia on his appointment. I know him as somebody who is very capable to handle that docket, especially in terms of security.

Hon. Kajwang': On a point of order, hon. Deputy Speaker. Thank you for allowing me to enquire from the Chair if we may be having sufficient quorum to continue transacting the business of the House. My friend, Hon. Midiwo, is agitated that---

Hon. Deputy Speaker: You want to withdraw? Have you been guided? Continue Hon. Wanyama!

Hon. (Ms.) Wanyama: Thank you, hon. Deputy Speaker for protecting me. You have given me a chance to comment about the adjournment of this House and on Mr. Kimemia's issue. I agree with the rest of the Members because he is capable. He has experience and he is going to perform in the docket which he has been given.

I wish to also talk about security in my area. I come from Trans-Nzoia County where last Saturday, we lost one of the police reservists. I wish to request the Government to put the machinery on the ground to ensure that security is up to date. I support the Motion.

Hon. Chumel: Thank you, hon. Deputy Speaker, for giving me this opportunity. I want to start by thanking all Members for their participation, especially from the time we started up to now. This House engages in constructive debate and thus we know that by the end of the five years, Kenyans will have benefited.

I also want to join my colleagues in congratulating the two nominees that we have approved this evening, namely, Justice Rawal and Mr. Kimemia. Justice Rawal is going to play a very great and important role in bringing justice to those who deserve it. Sometimes, some Kenyans seem to be important than others. We still question how

Justice Baraza was removed from the service. The way she was removed from service was not the best. Those who come from minority communities in this country suffer even for a minute thing that could be solved amicably. Because nobody cares about them, it goes that way. This also affects my people in Kapenguria. After any small thing, they go for their necks instead of recognizing them as people.

Another issue is that police services are divided into two. We do not get the right services. The Inspector-General cannot even work now. He cannot even transfer a constable from one place to another. He cannot transfer errant police officers. You can see what happened in Western, North Eastern and parts of my constituency. There is a time that he wanted to transfer an Administration Police constable, but those people ran to court for protection. This group of Mr. Kavuludi is becoming a stumbling block to security issues in Kenya. Although I am a Member of the Departmental Committee on Administration and National Security, I want something to be done immediately. Otherwise, the issues that we are facing with Mrs. Serem and others--- Activists are brought from outside to come and gloss over important areas that touch on the lives of the people in this Republic.

I want to end by saying that the issue of land is very grave. I want some people to react to this issue, especially the Committee in charge of lands. They should address land issues and historical injustices. I know we will make it because the Members that we have in this House and the Members of that Committee can articulate this issue to the best of their ability.

I support the Motion.

Hon. Gaichuhie: Thank you, hon. Deputy Speaker, for giving me this opportunity to contribute to this Motion. I want to support the Motion for Adjournment. I also want to urge the public that we are adjourning because of the Budget public hearings, which is our constitutional mandate. So, I wish to ask the public to come out in large numbers as we go for public hearings. Otherwise, today, we have given jobs to two people, one a career civil servant and another, a career judge.

That is the way we should go because if the Commissioners we appointed were up to the task, we would not be facing the problems we have with, for example, the Kavuludi, Serem and the Nyachae commissions. I urge that in future, when we are doing any appointments, we should make sure that we get the right people. Otherwise, I support the Motion for Adjournment. I wish to inform the public that we are going there for the Budget matters. We are not going for any recess because we were only supposed to be here tomorrow and the day after. We shall be out there conducting public hearings for the Budget. That is why we are adjourning.

Hon. Angwenyi: Thank you very much, Hon. Deputy Speaker for giving me a chance to contribute to this Motion. First, I want to support the Motion for Adjournment. Two, I want to state very clearly that, as we go home for the next one week, let us think seriously about how this country is going to work with so many commissions, staffed with so many people who have no work to do. If people are idle, they go into mischief.

Three, we want to support our security forces and security apparatus. Hon. Kavuludi should give Mr. Kimaiyo space to do his work. The Committee on Administration and National Security should straightaway develop a Motion to amend the Police Service Commission Act, so that we can give space to the person who should run the police force in this country.

Hon. Midiwo: On a point of order, hon. Deputy Speaker. Is the hon. Member in order to insinuate that the Kavuludi Commission is not giving the Inspector-General (IG) a chance, while the work for both of them is properly and clearly spelt out in the Commission? What somebody is trying to do and what is being insinuated from the Floor of this House is actually trying to change the Constitution. We are not going to allow it. Is he in order?

Hon. Angwenyi: Hon. Deputy Speaker, I just took a cue from what we said about Sarah Serem's Salaries and Remuneration Commission (SRC). The SRC has got its mandate, but if they transgress the law and the Constitution and impede the work of professionals, Parliament must come to their aid. I am saying this very clearly: Let Kavuludi take some leave for two or three months and security will be restored in this country for free.

As we go home, I am asking the leaders of this National Assembly - Leader of Majority Party, Leader of Minority Party and once the Parliamentary Service Commissioners take the Oath of Office, to go to Treasury and clearly state that Members of Parliament have not been paid for three months now so that by Friday latest, that amount of money should be in our accounts. I understand that Treasury has been faithful and forthcoming with regard to our salaries. So, hon. Deputy Speaker, we ask them to release the funds to us by tomorrow.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, it is time to interrupt the business of the House. Therefore, this House stands adjourned until Tuesday, 4th June, 2013 at 2.30 p.m.

The House rose at 9.00 p.m.