

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 30th July, 2014

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATIONS FROM THE CHAIR

PRESENCE OF DELEGATION FROM PARLIAMENT OF TANZANIA ON SPEAKER'S ROW

Hon. Speaker: Hon. Members, I wish to introduce to you a delegation of the Standing Committee on Budget from the Parliament of the United Republic of Tanzania, who are seated on the Speaker's Row. The delegation comprises of the following hon. Members:

The Hon (Dr.) Festus Limbu, MP (Leader of Delegation)	-	Vice Chairman
The Hon. John M. Cheyo, MP	-	Member
The Hon. Ritha Mlaki, MP	-	Member
The Hon. (Dr.) Goodluck Ole Medeye, MP	-	Member
The Hon. (Dr.) Cyril Chami, MP	-	Member
The Hon. Amina Amour, MP	-	Member
The Hon. Josephat Kandege, MP	-	Member
The Hon. Christina M. Lissu, MP	-	Member
The Hon. Assumpter Mshama, MP	-	Member
The Hon. Kidawa Saleh, MP	-	Member
The Hon. Joseph Selasini, MP	-	Member
The Hon. Godfrey Mgimwa, MP	-	Member

Hon. Members, the delegation is accompanied by the following members of staff; Mr. Theonest Ruhilabake, Assistant Director Committee Department; Mr. Michael Kadebe and Ms. Haika H. Mtui, Clerk Assistants.

The delegation is in the country to benchmark, learn and share experiences with the Members of this House, and in particular Members of the Select Committee on budget and appropriations. The Members will be with us until Friday, 1st August, 2014. The visit is, indeed, timely as it coincides with our parliamentary week, which is aimed at showcasing the Parliament of Kenya to the public.

On my own behalf, and that of the House, I wish to welcome them to the National Assembly of the Republic of Kenya and wish them fruitful engagement.

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Thank you.

ACTIVITIES LINED UP TO COMMEMORATE
PARLIAMENT WEEK, 2014

Hon. Speaker: Hon. Members, further to the communication on Parliament Week given during the sitting of Wednesday, 16th July, 2014, I have the following communication to give.

As hon. Members are aware, Parliament Week commenced with a media breakfast, which was successfully enjoyed on Thursday, 17th July, 2014 within Parliament Buildings. The media breakfast brought together the leadership of Parliament and various representatives of the media industry, and provided a forum for deliberations on matters of concern to Parliament and the media. A series of media appearances by Members of Parliament on various television and radio stations have also commenced and will run throughout this week.

On Monday, 28th July, 2014, a public debate was held at the University of Nairobi's main campus. The theme of the debate was "Separation of powers under the Constitution of Kenya, 2010: A case for the Eleventh Parliament". The public debate was attended by the leadership of Parliament, including the Speaker of the National Assembly, the Deputy Speaker of the Senate, Commissioners of the Parliamentary Service Commission and other hon. Members of Parliament. Distinguished university professors, led by the Vice-Chancellor of the University of Nairobi, Prof. George Magoha, the student fraternity and the general public attended and actively participated in the debate.

Hon. Members, as part of the activities lined up for the Parliament Week, the much awaited sporting activities, pitting the two Houses of Parliament against each other, are scheduled for tomorrow, Thursday, 31st July, 2014 at the Nyayo National Stadium, commencing at 7.00 a.m. The sporting activities will include a football match between Members of the National Assembly and the Senators, a netball match between Members of the National Assembly and Senators, and tug-of-war between the two Houses.

In order to facilitate attendance by hon. Members and the staff of the National Assembly, all committees are requested to defer any committee sittings scheduled for tomorrow, Thursday, 31st July, 2014 at any time before noon. Hon. Members are also requested to note that the Open Day will be held on Friday, 1st August, 2014 at Parliament's public space opposite Sheria House.

Thank you.

Hon. Speaker: Hon. Members making your way in, please, do so quickly, so that I can dispense with---

Yes, hon. Musyimi.

Hon. Musyimi: Hon. Speaker, as you mentioned, we have visitors from the Parliament of Tanzania. My Committee was scheduled to see them tomorrow at 11 O'clock and you have just made an announcement with regard to sports at the Nyayo Stadium. I do not know whether you would be so kind as to give us consideration, so that we meet our guests from Tanzania.

Hon. Speaker: Those of you who may not be involved in the three sports, and who are Members of the Budget and Appropriations Committee, will be exempted from that directive, so that you can have a meeting with our colleagues from the Parliament of Tanzania.

Members, the sports begin at 7.00 a.m.; so, there is sufficient time. Hon. John Mbadi is requested to be donning his sporting gear by 6.30 a.m.

Hon. Musyimi: Hon. Speaker, one more item. As you know, you kindly approved the Parliamentary Golfing Club, which I am privileged to chair and am a bit disappointed that we will not have a tournament this year. I am hoping that when we do Parliament Week next year, you will include golfing as one of the games to be played by the two Chambers against each other.

Hon. Abongotum: Hon. Speaker, last week we were instructed by the Speaker to meet the National Police Service Commission, the IPOA and the EACC on the issue of police recruitment that had a lot of issues. I do not know what would be your advice because we have summoned them to appear before this Committee tomorrow from 10.00 a.m. That issue being urgent, I do not know what is your advice. Do we cancel it or how do we go about it? They are really prepared with their reports; it is a matter of national importance and our meeting them may lead to cancelling of certain recruitment exercises that did not adhere to legal provisions or the regulations. What is your advice, hon. Speaker?

Hon. Speaker: It looks like Members want a revision of that and it is not going to happen. I want to encourage those of you who partake of certain other things in the evenings to avoid that tonight, so that you can be up at the Nyayo National Stadium. When we meet there, we can make arrangements as to which committees can sit.

Hon. Members making their way in, could you, please, take your seats.

(Several hon. Members took their seats)

DISORDERLY CONDUCT BY HON. MILLIE ODHIAMBO-MABONA

Hon. Members, I have this communication to give. This communication relates to disorderly conduct by hon. Millie Odhiambo-Mabona, MP. Hon. Members, with a very heavy heart, I stand to issue this communication.

You will recall that on Tuesday, February 18th 2014, the House referred an incident to the Committee of Privileges after the Member for Mbita, hon. Millie Odhiambo-Mabona, made disruptive utterances against the withdrawal of the hon. James Nyikal, who had been suspended by the Chair for disorderly conduct.

The Deputy Speaker, then on the Chair, ordered her to withdraw from the Chamber for the remainder of the day, but before withdrawing, she menacingly pointed at the Deputy Speaker claiming that she had rigged the Standing Orders. The matter was reported to the Committee on Powers and Privileges, which first met on 24th June, 2014 to address it. Again, on Thursday, 24th July, 2014, at 5.35 p.m., the Member for Mbita was reported to have caused damage to property in the Chamber. The property was three seats and one table. On these two occasions, the Member has neither been remorseful nor apologetic to this House for her very persistent and unfortunate disorderly conduct.

As at this afternoon, I have received neither an explanation from the Member regarding the incidents, nor has she tendered any apology even after a long weekend of, I hope, soul searching and retrospection. Without pre-empting the hearing of this very grave matter by the Committee on Powers and Privileges, I wish to state that in the interest of order and decorum in this House, the incident touching on hon. Millie Odhiambo-Mabona is hereby referred to the Committee on Powers and Privileges to be considered along with the earlier breach of privilege. By this Communication, therefore, Members of the Committee on Powers and Privileges are notified of a meeting to consider this matter, among others, urgently on Tuesday, 5th August, 2014, at 10.00 a.m., at the Speaker's Boardroom. I thank you.

Hon. Members, during the Morning Sitting, I am aware that certain requests for communication and guidance were sought. Indeed, I was watching the proceedings and, therefore, that communication is going to be given shortly. So, hon. Ochieng' and hon. Opiyo Wandayi, I am seized of the matter. So, communication will be coming to give guidance before we embark on that business.

PAPERS LAID

Hon. A.B. Duale: Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House today, Wednesday, 30th July, 2014:-

The Report of the Auditor-General on the Financial Statements of the Kenya Wildlife Service for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statement of the Sugar Arbitration Tribunal for the year ended 30th June, 2012 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of South Nyanza Water Services Limited for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Water Resources Management Authority for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the National Water Conservation and Pipeline Corporation for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the Ministry of Nairobi Metropolitan Development for the year ended 30th June, 2013 and the certificate of the Auditor-General therein.

STATEMENTS

Hon. Speaker: Leader of the Majority Party, are you the one to respond to the first Statement request?

Hon. A.B. Duale: Hon. Speaker, I cannot see hon. Agostino Netto in the House. I am sure that he is very busy doing something he and I know about. So, I will issue the

Statement on Tuesday or Wednesday, next week. I can see the Member for Kibra raising his hand but I know that he is not Agostino Netto. Hon. Agostino Netto is very famous because he replaced a man I respected very much in the constituency – my good friend, the late brother “*Serikal*”. He is a man I cannot forget. So, I will do it on Wednesday, next week.

Hon. Speaker: Hon. Duale, the Statement is not ready, is it? Is that the position?

Hon. A.B. Duale: Hon. Speaker, it is not ready. It will be ready on Wednesday.

Hon. Speaker: Even hon. Agostino Netto is not in the Chamber.

The next Statement is by the Chairman of Defence and Foreign Relations Committee.

Hon. Gethinji: Hon. Speaker, we request for two weeks to respond to the same.

Hon. Speaker: What do you mean?

Hon. Gethinji: Hon. Speaker, I am assuming that this is a request for a Statement, and not a response, because it says “Schedule of Requests for Statements”.

Hon. Speaker: Yes, hon. T. Galgalo!

GOVERNMENT FAILURE TO ENDORSE DECLARATION
AGAINST DOMESTIC VIOLENCE

Hon. (Ms.) T.G. Ali: Hon. Speaker, I wish to request a Statement from the Chairperson of the Departmental Committee on Defence and Foreign Relations regarding non-endorsement by Kenya of the declaration to commit herself to end sexual violence and conflict. Thirty-five African countries, including the entire East Africa---

Hon. Speaker: Hon. T. Galgalo, just read the heading of the Statement request. Forget about the other stories.

Hon. (Ms.) T. G. Ali: Okay, hon. Speaker.

Hon. Speaker: Hon. Githinji, when can you respond to that one? You do not need to be given the entire narrative.

Hon. Gethinji: Hon. Speaker, we can adequately dispense with the matter in two weeks’ time.

Hon. Speaker: Hon. Galgalo, is that okay?

Hon. (Ms.) T.G. Ali: That is fine, hon. Speaker.

Hon. Speaker: Yes, hon. Dukicha Hassan.

REINSTATEMENT OF POLICE
CONSTABLE A.H.K. AMBARI

Hon. Dukicha: Hon. Speaker, pursuant to Standing Order No.44(2)(c), I wish to request a Statement from the Chairperson of the Departmental Committee on Administration and National Security regarding the failure by the National Police Service Commission to reinstate Mr. Abdulahi Haji Kenso Ambari, Police Constable No.62750 . The former police officer was dismissed from service on the ground that he had deserted duty in 2010. However---

Hon. Speaker: Enough! Enough!

Yes, hon. Kamama!

Hon. Dukicha: Mr. Speaker, this is a very serious case.

Hon. Speaker: No; let us have hon. Kamama.

Hon. Dukicha: It is a very serious case, hon. Speaker.

Hon. Speaker: There is nothing serious! Dismissal of a cop? Just that? Is that why it has become serious? The narrative is with the Chairman of the Committee.

Hon. Abongotum: Hon. Speaker, hon. Dukicha is very passionate because the police officer is one of his constituents. I have shared this matter with hon. Dukicha. We intend to take two weeks and come with a comprehensive report on the matter of the former officer.

Hon. Speaker: Is two weeks okay, hon. Dukicha?

Hon. Dukicha: Hon. Speaker, I thank hon. Kamama for undertaking to bring a report in two weeks' time, but I told you that this issue is very serious.

Hon. Speaker: No, no! No more stories!

Hon. Dukicha: Hon. Speaker, I made a similar Statement request on this matter.

Hon. Speaker: Hon. Dukicha, we adopted a method of doing things, and it binds everybody.

Hon. Members, you have to learn to abide by this procedure. There shall be no stories. The Chairperson of the Committee has the entire request for Statement. The only way he can be in the House is by being capable of reading and writing English or Swahili. So, why give stories when the Chairperson will best understand it by reading? The Committee will, indeed, have an opportunity to look at the details.

Yes, hon. Joseph Lekuton.

ALARMING RATE OF MATERNAL DEATHS IN SLUM AREAS

Hon. Lekuton: Hon. Speaker, I would like to request a Statement from the Chairperson of the Departmental Committee on Health concerning the alarming high rate of maternal deaths in the country, and specifically in slum areas.

Hon. Speaker: Yes, hon. Rachael Nyamai.

Hon. (Ms.) R.K. Nyamai: Thank you, hon. Speaker. We undertake to respond to it in two weeks' time.

Hon. Speaker: Hon. Lekuton, is two weeks okay?

Hon. Lekuton: Hon. Speaker, that is okay.

Hon. Speaker: Yes, hon. Janet Nangabo!

ALLEGED DISMISSAL OF RDU OFFICERS

Hon. (Ms.) Wanyama: Hon. Speaker, I wish to request a Statement from the Chairperson of the Committee on Administration and National Security regarding the alleged dismissal of the police officers attached to the Rapid Deployment Unit of the Administration Police Service.

Hon. Speaker: Yes, hon. Kamama.

Hon. Abongotum: Hon. Speaker, this will also take another two weeks. So, we request the hon. Member to be patient.

Hon. (Ms.) Wanyama: It is okay, hon. Speaker.

Hon. Speaker: Yes, hon. David Ouma Ochieng.

INQUIRY ON ONE-MILLION-ACRE IRRIGATION PROJECT IN GALANA

Hon. Ochieng: Thank you, hon. Speaker. I wish to request a Statement from the Chairperson of the Committee on Agriculture, Livestock and Cooperatives regarding the one million acre irrigation project in Galana.

Thank you, hon. Speaker.

Hon. Speaker: Yes, hon. Nooru.

Hon. Members: We cannot hear you.

Hon. Nooru: Thank you, hon. Speaker. I was saying that because this will involve going all over the country, we will require three weeks to report on it.

Hon. Speaker: Two weeks?

Hon. Nooru: Hon. Speaker, I require three weeks on this one.

Hon. Ochieng: I agree that this is not a very small issue; three weeks should give the Chairperson, enough time to give us a good report.

Hon. Speaker: I agree, it is not a small issue, and neither are the others.

(Laughter)

Hon. Ochieng, I quite agree and it is appreciated.

We can move to the next Order.

MOTION

ADOPTION OF REPORT ON NOMINATION OF NCIC COMMISSIONERS

Hon. Speaker: Yes, hon. Chepkong'a.

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

THAT, this house adopts the report of the Departmental Committee on Justice and Legal Affairs in an amended version in accordance with Standing Order No.48 on the nomination of Members to the National Cohesion and Integration Commission (NCIC) laid on the Table of the House on Tuesday, 22nd July, 2014 and in accordance with Section 17(1) of the National Cohesion and Integration Commission Act 2012 and Standing Order No.45, approves the nomination of the following fifteen (15) persons as commissioners to the National Cohesion and Integration Commission:-

1. Alice Wairimu Nderitu,
2. Morris Dzero,
3. Rose Macharia Mghoi,
4. Dr. Roba D. Sharamo,
5. Anne Munyiva Kyalo,
6. Millie Lwanga Odongo,

7. Irene Njeri Wanyoike,
8. Adan Abdi Mohamed,
9. Alasa Osman Hirsi,
10. Eric Oluoch Ogwang
11. Belinda Akoth Ochiel,
12. Francis Xavier Ole Kaparo, EGH, SS,
13. Irene C. Masit,
14. Dr. Joseph Wamocha Nasongo,
15. Prof. Gitile J. Naituli.

This arises out of the advertisement that was put out by the Clerk of the National Assembly pursuant to Section 17 of the National Cohesion and Integration Act, paragraph (1) of the First Schedule. The Clerk of the National Assembly did advertise in three dailies on 20th June, 2014, inviting qualified persons to apply for nomination as commissioners. At the expiry of 20 days, that was indicated in the advertisement as 10th July, 2014, a total of 250 applicants had submitted their applications to the Clerk of the National Assembly.

The Office of the Clerk of the National Assembly forwarded the applications received from the applicants totaling to 250 to the Departmental Committee on Justice and Legal Affairs for interviews and consideration. Fourthly, the Committee, through the Clerk of the National Assembly, wrote to the Cabinet Secretary for Interior and Co-ordination of National Government, inviting him to participate in the process as required by Schedule I of the Act, which requires that the Committee of the National Assembly in short listing and approving the names of persons to be commissioners to the NCIC must consult with the Cabinet Secretary in charge of security.

The Cabinet Secretary, Interior and Co-ordination of National Government, sent Dr. F. W. O Owino, the Director of National Cohesion, to represent the Ministry and he participated throughout the recruitment process. The Committee, considered the applications that were received and came up with a criteria to consider all the applicants, which included meeting the requirements of Chapter Six of the Constitution on Leadership and Integrity and Paragraph 3 of the First Schedule to the National Cohesion and Integration Act. In addition, we formulated various questions that were considered by the Committee to ensure that we pick the best in the process.

The First Schedule is very clear on what must be considered in all the applications and it sets out the qualifications of all the commissioners. The Committee was faithful in assessing and considering the applicants with regard to the parameters set out in the First Schedule. One of the things that was considered by the Committee was the disqualifications of persons who had applied to be commissioners. One of the requirements was that a person who applies, or qualifies, should not be a Member of the National Assembly. I am happy to report that there was no Member of the National Assembly who applied for these positions; the applicants were also not Members of any local authority

To consider the applications, we had a number of sittings and we shortlisted a total of 32 applicants from a list of 252 applications. The shortlist is indicated on page 10 of the report that we have laid on the Table of the House. The list sets out the number of applications received. The shortlist is representative of the country. While considering

this we ensured that the law was faithfully followed to ensure that we have gender parity, regional balance; we also took into account qualifications also. The applicants appeared before the Committee on Friday, 18th July, 2014, when we interviewed a total of 14 applicants. On Monday 21st, July, 2014, we interviewed the remaining applicants totaling 18.

Upon conclusion, of the interview process the Committee retreated to consider the applicants who had appeared before the Committee. I am happy to report that all the 32 applicants who were invited to appear before the interview panel appeared without exception. The only thing that happened was that some of those who were to appear on Friday requested an extension of time to appear on Monday, and the Committee graciously granted their requests.

Hon. Speaker, the Committee, after lengthy deliberations on all the applicants who appeared and consideration of their curriculum vitae, unanimously recommended 15 nominees. It now forwards them to the House for recommendation to the President for appointment as commissioners to the National Cohesion and Integration Commission (NCIC).

I am happy to present the list of the 15 nominees to the House for consideration and approval. The names, as already stated, are as follows:- (i) Alice Wairimu Nderitu (ii) Morris Dzoro (iii) Rose Macharia Mghoi (iv) Dr. Roba D. Sharamo (v) Anne Munyiva Kyalo (vi) Millie Lwanga Odongo (vii) Irene Njeri Wanyoike (viii) Adan Abdi Mohamed (ix) Alasa Osman Hirsi (x) Eric Oluoch Ogwang (xi) Belinda Akoth Ochiel (xii) Francis Xavier Ole Kaparo, EGH, SS (xiii) Irene C. Masit (xiv) Dr. Joseph Wamocha Nasongo and (xv) Prof. Gitile J. Naituli.

Hon. Speaker, I beg to move and I would like to request hon. Peter Kaluma to second this Motion.

Thank you.

Hon. Ngong'o: On a point of order, hon. Speaker. I just wanted to get your guidance on this matter. This is because I believe the Motion before us, which has just been moved by the able Chair of the Departmental Committee on Justice and Legal Affairs, is based on the NCIC Act, 2008.

I have difficulties whether we should proceed with this Motion without amending this Act. My argument is based on two reasons, the first one is with regard to Section 19 of the Act, which states that the Chairperson and the Commissioners shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years. This Commission---

Hon. Speaker: Hon. John Mbadi Ngong'o, could you just hold on? Sorry, hon. Members, I need to listen, so that I am able to give guidance. I cannot listen and I am being told to make a decision; I am also consulting. It is not possible! It is difficulty. I do not belong to the type that multi-tasks that much. I think it is fair that I pay undivided attention to what hon. Ng'ongo is saying.

An hon. Member: On a point of order, hon. Speaker.

Hon. Speaker: He is on a point of order! Hon. Members, please, familiarize yourselves with your own Standing Orders. When one Member is on a point order, another Member cannot claim to raise a point of order also. I must allow the one who is on his feet to finish. I thought you had learned these rules like young people who go to

Sunday school classes! By now everybody should be familiar with these rules! One member is on a point of order, and another one is either shouting or yelling purporting to be also on a point of order.

In any event, if you want to later claim to be on a point of order, just make a request or intervention. There is a slot for interventions. Do not sit in your place and shout “point of order”. That will not help, because I am not able to see you. Even if you shout, I will look down and will not see anything. Therefore, I do not know who it is that is making those pronouncements about points of order.

Proceed, hon. Ng’ongo.

Hon. Ng’ongo: Thank you for that, hon. Speaker. Maybe, we still require one more year for some hon. Members to learn these rules.

I rose on a point of order to seek guidance from the Chair with regard to whether we should proceed with this Motion without amending the Act that puts this Commission in place. The National Cohesion and Integration Commission Act, 2008 has certain provisions and I want to restrict myself to just two areas.

The first one, which I have just read out, is Section 19, which provides for the term of office for the commissioners, both the chairperson and the other eight commissioners. The chairperson and the commissioners shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years. Therefore, the thinking when we were enacting this law was to give the commissioners three years, which ended so many months ago, and the appointing authority could have chosen to give them a further term.

Hon. Speaker, be that as it may, I am particularly concerned about the provisions of Section 22 of the Act, which sets out the conditions upon which the offices of the commissioners fall vacant. If you read the particular Section--- I tend to think that we needed to amend this Act before we proceed to fill the positions. This is because the only condition upon which the office of the chairperson or a commissioner shall become vacant is if one, the office holder dies, two resigns from office in writing, three is removed from office in accordance with provisions of Section 23, that is due to incompetence, gross violation of provisions of the Constitution *etcetera*. Four, is if he is convicted of an offence and sentenced to imprisonment; five is if he unable to discharge the functions of his office; six is if absent for three consecutive meetings and finally, is if declared bankrupt.

Therefore, I would want to be advised under what law we are now filling these positions, given that they have fallen vacant and none of these conditions are fulfilled in the process that we are engaging in?

Sub-section (2) says:-

“The President shall notify every vacancy in the Gazette within seven days of the occurrence of the vacancy.”

Hon. Speaker, these positions of commissioners fell vacant so many months ago and the President should have declared them vacant within seven days. Therefore, attempting to fill these positions at this time by recruiting new commissioners to this Commission--- I do not think we are following the provisions of this Act. We should have replaced them but we did not. I think the best thing we would have done was, first of all, to propose amendments to this Act by Parliament, and then go ahead and fill the

positions in accordance with the amended law. This is because right now I am at a loss under which law we are filling the vacancies – we are even allowed as Parliament to interview, recruit, approve and send nominees to the President.

Hon. Speaker, I am in a dilemma on this. Even though I have no major issues with some of the names here - except some names of course - I would have problems because this is not cohesion really. We are bringing in party chiefs like the Chair of URP who will, possibly, chair the Commission; this will be a problem to me. But this will be after I am convinced that what we are doing is within the law. I do not understand which law we are operating under.

Thank you.

Hon. Speaker: Well, hon. John Mbadi Ng’ongo, if I did not want to listen to you reading the two sections of the Act, I would have given you a direct ruling on the spot. I do not even need to consult; because you have raised this matter, and because this is a matter that has gone through a Committee of the House, I think it is fair that I hear one or two other comments. I will give the first shot to the Chair of the Committee. I am sure you have raised issues about gazettelement by the President; of course the terms of office of the former commissioners, as you said, g expired so many months ago. As you said, I need to be understood that way; this is because I have no idea when their terms expired.

I think since the Committee has been dealing with this matter, it is fair that I hear from them. But it is not complicated. It is something which is straightforward.

Hon. Chepkong’a, the Floor is yours.

Hon. Chepkong’a: Thank you, Mr. Speaker. I wish hon. Mbadi was in our Committee. This is a matter that engaged the Committee for a whole day – we were discussing the constitutionality of this particular law. As you know, sometime last year we went for a retreat to Mombasa with the then commissioners of the NCIC and a number of proposals were made for the amendment of this Act. Unfortunately, we were not able to bring that to the House because their terms lapsed and they ceased to be commissioners over nine months ago. So, effectively there was no Commission and there was nobody to be succeeded because their terms had lapsed. So, we are talking about a new commission.

Hon. Speaker, the question as to whether this law was constitutional was answered by the transitional and saving clauses, particularly as contained in the Sixth Schedule of the Constitution. I would like to read it for clarity. Section 7(1) of the Sixth Scheduled states as follows:

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

It is the duty of Members of Parliament to bring any amendment at any time we think is the right time. However, laws, as they are, continue to apply; they are not suspended. The NCIC Act is not suspended; it remains in force. As you know, the office of the commissioner has remained vacant for the last nine months. The members of staff have just been continuing without any direction from commissioners. We discussed this issue at the Committee. You know we are very many lawyers in the Committee, among them hon. David Ochieng, hon. Peter Kaluma, who is supposed to be seconding; and hon. T.J. Kajwang, who raised this matter. We came to the conclusion that the process needs

to continue in accordance with the law. As it is, there were no commissioners in office. They ceased to be in office nine months ago; so, there was nothing for the President to gazette; the offices are now vacant because their terms lapsed a long time ago. We are talking about a new commission as we speak right now.

Hon. Ng'ongo: Hon. Speaker, what the Chairman has said is exactly what I said. I am aware that this Act still continues even after the promulgation of the Constitution in 2010; this Act was passed in 2008 and that is why I am quoting from it. However, my concern is this: Even if the terms of the commissioners lapsed and they are no longer in office, we need to make appointments to the Commission following the provisions of the Act. The Chairman has not clearly pointed out to me under which section of this Act this recruitment, or appointment, is being made. I would have loved to see in the deliberations of the Committee what they agreed on as the section guiding the filling of these positions.

I said that a precedent has been set in this House. In the Tenth Parliament I remember there was a time when we set a time limit for the President to put out advertisements. That time period lapsed and so we had to come back to the House to amend the law to allow the President to put out the advertisements in the Kenya Gazette. That is exactly what the Committee should have recommended instead of going ahead with interviews of people and then recommending names to this House for approval under no law, in my view. There is no section, really, that the Committee is citing to guide this fresh attempt to fill position in the commission.

Hon. Speaker: You want to say that the Committee is not quoting any section of the Act on what they are doing, or is it that whatever they are quoting is not clear to you? Hon. Chepkonga is there no---

Hon. Chepkong'a: Hon. Speaker, I thought hon. Mbadi had read our Report and that is why I went through it in a summary form. Again, there were no issues that were controversial. This was a fairly straightforward matter which we disposed of in the best interests of this country. Since every Member has requested to know under what provision of the law we proceeded, if you look at our Report on Page 6, Paragraph 2 states thus: "The National Cohesion and Integration Commission is established pursuant to provisions of Section 15(1) of the Act which states as follows: "There is established a commission to be known as the National Cohesion and Integration Commission."

Paragraph 3 is relevant to what hon. Mbadi has just spoken to. The membership of the commission is stipulated in the provisions of Section 17 of the Act; they state as follows: "The Commission shall consist of a chairperson appointed by the President from amongst commissioners appointed under Paragraph (b); (b) eight commissioners nominated by the National Assembly in accordance with the First Schedule and appointed by the President."

Hon. Speaker, the First Schedule provides for the qualifications of the proposed commissioners. There are other persons who are automatically members of this Commission who are not nominated by the National Assembly, and who are expected to be in office even as we speak today. Those are the Chairperson of the Kenya National Commission on Human Rights the Chairperson of the National Commission on Gender and Development, and the Chairperson of the Public Complaints Standing Committee, popularly known as the Ombudsman. The commissioners are supposed to hold office for a term of three years and they are supposed to elect a chairperson.

Section 18 provides for the procedure of filling these positions. That is what guided the Committee in deliberating and resolving all the outstanding issues that were there. What we are expected to do is clearly enumerated in our Report. The Clerk of the National Assembly was supposed to originate an advertisement in three public dailies with wide national circulation, which he did. This is a requirement of Section 18 of the Act. Once that was done, the provisions of the Standing Orders then kicked in. We had seven days within which to interview and recommend nominees to the Assembly. The Assembly has 10n days within which to approve the recommendation to be forwarded to the President.

So, that is the process that is set out in the Act and that we followed. These are provisions that are in the Act, and that have not been suspended. They are still binding on every Member of this House, including hon. Mbadi himself; if he thinks that he needs to bring any amendment, he is welcome to do so. Perhaps, for the information of the House, there is an amendment that is being done to the law. We expect that to be forwarded to the Committee. We have seen a draft. This law was reviewed in 2012 after it was promulgated in 2008. So, this law has already been reviewed even after the passage of the new Constitution in August, 2010.

Thank you.

Hon. Speaker: I think the matter has become obvious. For the comfort of hon. John Mbadi, I think the matter is obvious. The law as it is, in terms of the transitional provisions in Section 7 of the Sixth Schedule, is still in force. It is not repealed. It may not be good. It may not be the most exciting of laws that we have, but that is the best we have. I am happy that hon. Mbadi took part in the enactment of the original version of the law, the review of the same law in 2012 and he is most likely going to be involved in the further amendment to that law in this Eleventh Parliament. I think the Report was properly before the Committee and I direct that we proceed as was happening.

Hon. Peter Kaluma!

Hon. Kaluma: Hon. Speaker, we found ourselves in a unique position where we had to constitute this commission; I wanted to begin by telling hon. Members that it is very necessary now, more so in the current time. People are talking about dialogue and there are various sorts of tensions, religious, ethnic and everything. Possibly, this is the most important commission. Therefore, there was need to have it constituted. I will take the House through the considerations we went through in coming to the 15 names. We were concerned to ensure there is institutional memory in the commission. The commissioners who have since gone had served in the commission for a period of about four years. During those four years, contrary to perception, this is a hate speech commission. Through interviews, investigations and interactions with former commissioners, most of whom applied, we confirmed there was a lot of ground work covered to found the work of the commission going into the future. So, if you look at the list of persons here, the person called Alice Wairimu Nderitu was with the Commission. The person called Millie Lwanga Odongo was also with the Commission. Up to four of them applied, but after going through the interview and listening to them we considered the values that we wanted the commission to assist our society with; we deemed it necessary that we recommend these two people to His Excellency the President, so that

these individuals can have an opportunity to serve as an aide memoire to the other members of the commission who will be going there.

We were keen to deal with the issue of special interest. This is now a constitutional principle. Persons with disability in this country are required progressively constitute about 5 per cent membership of public office. We have minorities. We have people from various backgrounds which are considered marginalized. Hon. Members, if you look at this list, you will see a person like Mr. Eric Oluoch Ogwang. He is a lecturer of law but he is a person with disability; he walks on two crutches. We never considered the fact that he suffers a disability because he is a person who has competence. He teaches human rights law among areas that we saw in his CV. We said that these are matters we needed to bring on board. Of course, if you look at the composition of these names, what will be clear leaders and all hon. Members is that we considered not only ethnic balance but even regional balance. There are names that I need to mention. If you look at a name like Rose Macharia Mghoi, I wanted to say that over 250 citizens of this country applied for this position. We detached ourselves from being Members of the Committee. We left a technical team; in fact, we had the Clerk and other people from Government departments shortlisted the 32 people from the applicants. Of course, it is the 32 whom we interviewed to come up with these 15 names.

Some issues may worry hon. Members; I hear some issues coming up. For a lady like Rose Macharia Mghoi, Kenya has become very ethnic, which is not a good thing. We need to consider the ethnic aspect in these issues. When you look at Macharia you may think that this is a person from central Kenya. She is not! This is a Taita and we were concerned to see that if a Taita applied, a Taita is there. She is the only Taita who applied. She is not just a Taita but she is very competent. She has a background in education, curriculum and she came out very well. The same is the case with the other people you will see.

We do not have enough positions to ensure there is at least a commissioner from each constituency in this country. We considered counties. The President is required to appoint the chair and eight commissioners. We do not have positions for all 47 counties. We considered vaguely the issue of regions and provinces. Save for cases where we have difficulties, you look at a region and go to the shortlist of 32 names. Even if you look at the original applications you will identify some tribes, whether minority or otherwise, and note that nobody applied from some regions. We had such limitations. I can give an example; if you go to the Rift Valley Province, which I wanted to refer to--- Personally, on the day we were conducting the interviews--- I am saying this to my colleagues on the CORD side. A newspaper wrote that we were preparing ground for the former Speaker of Parliament, Hon. Kaparo, to be the chair. Of course, we discussed that issue in the morning. Let me tell you that we were balanced on this issue. The one question I personally kept putting to all the applicants--- The only person who answered it touching on integration, cohesion, the position of our country, and with the passion that I never expected would come from anybody was Hon. Kaparo. My attitude towards him changed completely.

So, comes in there and you know the tribe he comes from. Then you see Irene Masit from the Kalenjin nation down there. It was a very steady balancing act. Somebody would ask: "Where is Mzalendo Kibunja?" Remember we took care of institutional

memory but we have a situation where we already have Prof. Gitile Naituli, and so we do not want to lump together people from one region. Let me indicate that there are sections of this country where something called a commissioner is unheard of. In fact, they see somebody called a commissioner and seek the definition of the word “commissioner”. One of them is Homa Bay County and the Luo part of Migori County. We do not know anything called a commissioner. We just see their cars and say: “This is a commissioner, a provincial commissioner.” So, we did a lot of balancing.

Hon. Speaker, we considered the issue of age and an understanding of the issues that are values under the Act. If you look at this, you see us going for the wise counsel of Francis ole Kaparo - we are giving the President that option; we are not saying the President must appoint him; we also have a Kenyan as young as Belinda Akoth Ochiel, a very young lady. In fact, I think she is 36 years old. I can tell you that Hon. Cheboi would do it, if given a chance to confirm that when this young Kenyan spoke to the Committee on issues of integration and cohesion, she was one of the people who got the highest scores from each hon. Member. We were amazed at how young Kenyans---

Hon. Ochieng: She was the best.

Hon. Kaluma: Hon. Ochieng is saying she was the best. In fact, it was amazing how young Kenyans understand issues of cohesion, integration and want this country to move forward. So we were not just doing this for the sake of it; most importantly, there was the issue of gender balance. You know when there is tension or conflict in a country; where there is lack of unity; when there is lack of cohesion; when there is lack of integration; when there is war among our people, the people who suffer most are women. The passion and neutrality with which women talk about our unity as a nation is unlike that of men. When you are looking at a list of 15 people being referred to the President for consideration, you see that we have eight out of 15 people. Issues like gender balance are crucial.

Hon. Speaker, I want to end by saying that all Kenyans who applied for this position, on the face of it, were qualified. I wanted to thank them for applying. Hon. Members and colleagues, I am confirming to you that we did the best to consider the constitutional principles, our national values, the need to have this country united and the need to have a people who can be integrated and become cohesive. I beg you, hon. Members, as I second, to support this important Motion, so that we can have this important Commission established to ensure that we do not have hate speech by Hon. Ng’ongo and others.

With those few remarks, I beg to second.

(Question proposed)

Hon. (Ms.) Abdalla: Thank you, hon. Speaker. I beg to support this list. I had initially risen on a point of order to respond to the issues raised by hon. Mbadi, but I am happy that the Chair of the Committee has dealt with him. I request my colleague, hon. Mbadi, to remain on his specialty, finance, and leave cohesion to the right people.

Hon. Speaker, when hon. Mbadi stood up, I thought he would be dealing with the probable constitutionality of the Act now that the not so new Constitution calls for separation of powers. This Bill came before we actually gave a committee of Parliament

the job of a recruiting--- I noticed that hon. Mbadi wanted us to go to the bad history of the coalition Government.

Hon. Kang'ata: On a point of order, hon. Speaker. Pursuant to the relevant provisions of the Standing Order, may I move that we limit the contribution of every Member to five minutes?

Hon. Speaker: Hon. Kang'ata, your resume shows that you are a lawyer and you still rise in your place and claim to say "using the relevant provisions of the Standing Orders". Surely, which lawyer goes to court to argue that way?

(Laughter)

Which relevant provisions of the Standing Order? In any event, you know the specific Standing Order requires that the Motion be moved before debate begins. So, once the debate has started it is not open to any Member to start claiming that he wants to limit the contribution time for Members. However, I am also sure that hon. Kang'ata, being a young budding lawyer he is, will appreciate that you do not say "using relevant provisions". I want to know which relevant provisions because there are very many relevant ones. I do not want him to be told that it is Standing Order No.97.

What you wanted to say, unfortunately, has been overtaken by events but due to the fact that debate has already commenced--- Had you intended that, that be done, you would have been perfectly within Standing Order No.97

Proceed hon. Amina Abdalla.

Hon. (Ms.) Abdalla: Thank you very much, hon. Speaker. I just hope that the Committee will take note of that anomaly, so that we, Parliament, remain a vetting institution and not a recruiting agency. Let the Executive propose the names and let them be brought here for us to vet the suitability of individuals.

I want to say that this was the first Commission where the two-thirds gender rule-- - At the beginning of the term of this Commission, our male colleagues were not very interested in its positions, but things have now changed and I hope that the President will also follow the tradition in the past appointments, so that women are more than the normal three out of nine; that is the usual case in constitutional commissions.

Hon. Speaker, I am also concerned and I would like the Chair to respond when replying that the commissioners who served in this Commission--- I believe that the need to have institutional memory is very important; the former commissioners served for a three-year term and were given another one year. Does the one year constitute a second term, and make them ineligible for another third term? That is an issue that I hope the Chair when replying will address.

Mahatma Gadhi told us that if peace is to be part of our being then the future in terms of leadership should be with women. So, this is just the message I want to send to His Excellency the President; he should not give us three commissioners, if he wants cohesion to take place. He should give us more than three female commissioners in this new term.

Finally, I think we are now slowly getting the right people to the right job. I pray that the principals who gave the chairmanship of this commission to hon. Kaparo--- I said

this because there are jobs that require individuals who cut across the board and are able to be respected by different sides.

Hon. Speaker, the good job that hon. Kaparo did in restoring peace in Marsabit is a clear indication that as the chair of this commission he will be able to help us in this serious problem of lack of cohesion.

(Laughter)

With those few remarks, despite my concerns about the issue of Parliament becoming a recruiting agency, I think we need this commission more than dealing with technicalities; that should not slow down a major issue like considering the repercussions that arise due to lack of cohesion; we are seeing these, especially in volatile areas in this country.

I beg to support.

Hon. Wakhungu: Thank you, hon. Speaker. I rise to support. Going through the Act, you will realize that there is a lot of emphasis when it comes to ethnic discrimination. That was why as you came up with these names the ethnic background of candidates should have been a key priority.

In talking about the names of 15 nominees, I did not hear the Mover, hon. Chepkong'a, whom I respect very much, mention whether we have a youth in this list. We were told that Belinda is 37 years old and that is not a youth. This is because according to the Constitution, a youth should be 35 years old or younger. So, this list lacks the youth, as much as they have done very well when it comes to gender.

Hon. Speaker, I heard hon. Amina propose hon. Kaparo to be the Chair; we know that Dr. Kibunja, who was the previous Chair, was a man. It is my humble request to His Excellency the President that this time we should have a lady as the chair of this commission.

(Applause)

I think this will add a lot of value. From this Motion, we have been told that Belinda Okoth Ochiel scored the highest marks and it is my humble request to His Excellency the President to appoint her the chair of this commission. If this is done, we will have some changes.

Hon. Speaker, Article 232 of the Constitution is very clear in terms of giving equal opportunities for all. I think it will be a wonderful idea. There is a scientific research which has been done and it has shown that when women are in a leadership position, there is a high probability of them performing better than men. The fact that this commission is very critical, especially in our polarized political environment, it is my humble request that we have a lady to chair it.

Looking at what Kibunja did last time, at some point it was a great disappointment. I know he tried, but this time why do we not give a chance to this lady and we are told she is the youngest. So, hon. Speaker I support this.

Another issue is that I was looking for somebody with disability. I am told Erick Oluoch Ogwang is disabled, I think that is a tick, the Committee did very well.

On the issue of hon. Francis ole Kaparo; we respect hon. ole Kaparo very well, he was a Speaker but we know very well he is the Chair of URP.

(Loud consultations)

The Committee should have told us whether hon. ole Kaparo has resigned as the Chair of URP or not.

(Applause)

That is the issue. If at all he has resigned, looking at his age; the fatigue, I do not think he has the stamina to come in to be the Chair of this Committee. So, I humbly request that Belinda Akoth Ochiel be seconded to be the Chair. I know His Excellency the President is listening---

Hon. Speaker: There is a point of order.

Hon. Chepkong'a: Thank you, hon. Speaker. You know, I have a lot of respect for hon. Chris Wamalwa. One of the things that I like about him is, he dresses very nicely and speaks well. That is a matter that we put to hon. Francis ole Kaparo. We asked him what he would do given that he is the chair of URP and he stated very emphatically that he had resigned over one month ago.

(Loud consultations)

Hon. Speaker, hon. Ken Obura must not introduce this, this is not an election. It is an appointment. So, you do not need to resign six months before. It is even enough that you resign even before. Hon. Dzoro was also a Member of a certain party and we were very clear. We asked them and they said they are no longer members of those parties. We were very careful. These are matters of cohesion. So, I would like to inform hon. Wakhungu that he has resigned.

Hon. Speaker: The hon. Wamalwa is accordingly informed.

Hon. Wakhungu: Thank you, hon. Speaker. I am happy to hear that hon. ole Kaparo had resigned. There is a high probability of skewness in terms of where you come from. We might say that we are going to be very objective, but if hon. ole Kaparo has resigned, that is good. But if he gets the job, he should not look at the issue of skewness. I am hoping he will be objective in whatever he is going to do, I have no problem with him. But the issue here---

(Loud consultations)

Hon. Speaker: Hon. Members, do not be agitated. There is nothing. Hon. Wamalwa is at liberty to make his statement.

Hon. Wakhungu: This is a House of debate hon. Angwenyi and you know I respect you very much. So, please do not get--- You are even older than my father and I respect you. You know it very well.

(Laughter)

So, if your son is speaking, do the listening. As Martin Luther King said, listening is a virtue. You will also get a chance to debate, because this is a House of Debate. I support the list, hon. Speaker. Thank you.

Hon. Katoo: Thank you, hon. Speaker. I rise to support this Motion. First of all, I would like to agree with my good friend hon. Ng'ongo and Chair of the Committee, hon. Chepkong'a that maybe a lot needed to be done on this Act. If you read the Report on Page 2, the Secretary to the National Cohesion and Integration Committee, Dr. Owino, said to the Committee that they are doing a lot as the Secretariat to align the Act to the new Constitution; the only Constitution we have as a country. But we have to live with the laws as they are, until this House makes the necessary changes.

Let me thank the Committee for trying to do a lot of regional balancing. If you look at the list, we have 15 nominees from 14 counties. There is only one county in the name of Kakamega that has two nominees. That makes it 14 counties. The county has two nominees, No. 6 and No. 14. That is no problem at all. So, I was saying that at least out of the 47 counties, they picked names from 14 counties.

Also, in terms of gender, more than half of the nominees in the list are women; Eight out of 15. That is really giving the President a leeway to find the most suitable names so as to balance interests. The President will only pick chairperson and eight other commissioners out of the 15. I always ask myself, suppose you resign and the President does not pick your name out of the 15, what happens? It will even be good to resign after your name has been picked. Let me also say that, as a politician, it is always good not to condemn ourselves to an extent that we are deemed not qualified or you do not warrant or merit to serve this country in any position.

I thank the Committee because if you look at the list, they have picked former politicians who were in this House. Hon. Morris Dzoro was our Minister for Tourism and Wildlife. Therefore, that is very good consideration for our career as politicians. I want to say that no one is more qualified than hon. ole Kaparo. If you read the Act, it says a person shall be qualified for appointment as a commissioner if such a person is of high moral character and has proven integrity. He should have knowledge and experience in matters relating to race, ethnicity, human rights relation, public affairs and human rights. Having served as the Speaker of the National Assembly for 15 uninterrupted years, he deserves to serve in that position. Anyone who has served as the Speaker of the National Assembly in this country merits chairing or being a Commissioner of this Commission. We must also understand as politicians, first and foremost, what are the functions of this Commission? This commission is going to monitor what we say as politicians. I like what the seconder of this Motion, hon. Kaluma, said when he talked of dialogue. Some of us when we are addressing our rallies digress. These are the things that are going to be followed by this Commission. We also need politicians to be in this Commission because they understand the political background of these Members. Take for instance, the Kibunja Mzalendo-led commission, the only politicians that they took to court were sitting politicians in the entire time and they were only three; hon. Kutuny, hon. Kapondi and hon. Machage, the current Senator for Migori County. By that time, they were all allied to the Government side of the day. That does not really say that we

need to find people who are politically--- Once appointed, you will serve as a commissioner or chairman in a very neutral capacity. You do not what to know who has said this or that, so long as you are following the law. Therefore, I would really wish to ask my colleagues that we really support this Report of the Committee and this Commission should have been there even yesterday. Now that we are calling for a referendum and we are going to hype this country in political rallies, this commission ought to have been in place long before we even called for *Saba Saba*.

I beg to support.

Hon. Mulu: Thank you for giving me the chance to also support this Report. Let me start by appreciating what the Committee has done. It is important to get these Commissioners. In this country, we are all discussing about lack of inclusiveness. We are saying that some people in this country feel like they are being excluded from public activities. That being the case, if we are not careful, we will get into problems. Where people feel like they are excluded, things can get worse.

As I support this Report, there are a number of reservations that I want to make, which might help in coming up with the final list. However, I am sure President Kenyatta is the person who will determine the number. Before I go to the number, the spirit of this House is to have fewer Commissioners. I do not know whether this Committee took time to handle this important question of whether we need the eight Commissioners or we can do with three. I would have wanted to see a recommendation from the Committee possibly telling the President that three Commissioners would do the work, so that we can move from eight to three. This is important because we are talking about eight Commissioners. Being a Member of the Budget and Appropriations Committee, our recommendation has been between three and five. So, the position of the Committee in terms of the number is still not very clear.

I would have wished that we reduce the number to three or four. I believe that most of the work of these commissions is done by the technical people who are in charge of advocacy and other departments, but not the Commissioners.

Hon. Speaker: Hon. Makali Mulu, when there was debate about what hon. Mbadi and the Chairperson of the Committee were saying, among other things which were explained were the provisions of Section 17(1)(b), that the Commission shall consist of a chairperson appointed by the President from amongst the commissioners appointed under paragraph “(b)”. Paragraph “(b)” says eight commissioners nominated by the National Assembly. This is not one of those commissions found in Chapter 15 that have a membership of between three and nine. This is specific.

Hon. Mulu: Hon. Speaker, I am aware of this, but because of what we have been saying as the National Assembly, the spirit is that we would want to see these kinds of institutions having fewer Commissioners. Although as you are saying, maybe the law will not allow but the spirit is to have fewer commissioners.

The other thing that I want to comment on is what has been said to be institutional memory. I understand that two of the Commissioners have been included in this list to ensure that we have institutional memory. These two Commissioners served in the earlier Commission, in terms of performance, did they perform as per the expectations? It is very clear that the perception by Kenyans is that the former Commission did not meet the expectations of the people. If that is the case, then I would plead that even before we

decide to bring on board Commissioners who were in the other Commission, it is important that we get a clear evaluation of their performance, so that we do not transfer the problems of the previous Commission to the current Commission. That is very important.

The other point is that when you look at the minutes, they are very brief. One of the problems that we are having, even when we are discussing hon. Kaparo, is that Kenyans know very well that hon. Kaparo has been the Chairman of the URP. When you read this Report, page 9 is very clear. It says: "No person shall be qualified for appointment as a Commissioner if such a person- (c) is a member of the executive body of or is actively involved in the affairs of a political party". I know he has resigned, but I would have imagined that we should be having a statement in this Report saying that the Committee got a letter from hon. Kaparo indicating that he has resigned so that even as we discuss this, we do not start imagining that we are getting somebody to the Commission while he is the chair of the URP. This will not be in order. We need to note that even as we get these minutes, we need to see more details in the minutes. These minutes are quite brief.

The last point is the issue of regional balancing. This is a very important issue. The reason why regional balancing is a key factor in determining who is appointed is because this country has regions. These regions have people who live there. Every region would want to have representation. We cannot have all the 47 counties in this list. Initially, we used to have about eight provinces. When you look at the original eight provinces, to some extent, they were taking care of some particular ethnic formation.

For example, from the region I come from, the person who is being proposed to be appointed has a name from that region, but it has a dash of another region. When you look at the Coast region, the person has a name which comes from the lower part, but there is a dash.

Hon. A.B. Duale: On a point of order, hon. Speaker. You have heard what the Member has said. I have never heard of that in my entire 42 years of life. He has said that there is a name that is from his region, but it has a dash of another region. For the record of the House and the nation, could he tell us who the dash is, how the dash and the region came together, the chemistry behind and why he has a problem with that?

Hon. Mulu: Hon. Speaker, I will be more than willing to do that. When you go to page 10 of the Report, one of the proposed names is Ann Munyiva Kyalo-Ngugi. The other one reads Rose Macharia-Mghoi. We are Kenyans and we know what these dashes mean. We are only saying that if we are serious about regional representation, unless we are being told that those regions cannot produce somebody who is qualified, let us be fair to the process.

Hon. (Ms.) Kajuju: On a point of order, hon. Speaker. The Member is being disrespectful to the ladies who are born in one region and get married in another region. It is not fair. Is it, therefore, in order for the Member to refer to some persons in the list as having names after other names from other regions? It is not fair.

Hon. Speaker: Hon. Members, there is nothing out of order. Let hon. Mulu make what he may of the dash. I have not heard of marriage in his contribution. He just referred to a dash. If he thinks dashes are uncomfortable, he is at liberty to propose an amendment so that you remove the dash. Hon. Chepkong'a, take the Floor.

Hon. Chepkong'a: Thank you, hon. Speaker. I have a lot of respect for my colleague. He is my good friend, except that I would like to inform him that there was an amendment that was made when I was moving the Motion. It is not Rose Macharia-Mghoi, but Rose Mghoi-Macharia. This is a matter that was discussed by this Committee. What we said is that, when you are married, you do not cease to belong to your ethnic group. You have a right to remain as a Member of that ethnic group. It is your choice. This is a matter that the Committee discussed when balancing this. As you heard, hon. Kaluma when seconding the Motion said, with respect to Rose Mghoi-Macharia, she is not a Kikuyu, but a Taita. What we were looking for is regional balance. So, when my good friend is contributing, he should not make attributes to some values that do not exist in the person mentioned.

Hon. Mulu: Thank you, hon. Speaker. Let me assure hon. Members of this House and more so honourable ladies that I have a lot of respect for ladies. I have two daughters and the third lady in my House is my wife. I have a lot of respect for ladies. There is no way I can say anything which demeans ladies. If we are saying it is not important to get somebody from our region, let us remove this requirement and appoint Kenyans. Let us appoint Kenyans; we will be fair to ourselves other than saying region is important, then when it comes to regional appointment, you go for Kenyans. So, to me, I think we should delete the original requirement from these criteria and appoint Kenyans. Even as we move forward, it is important that we live by the spirit of the criteria in terms of appointing people.

With those remarks, I support the Report but my observations must be taken into consideration.

Hon. Speaker: Hon. Members, I think it is fair to say that even as we purport to be rising on points of order, if you merely disagree with something that another Member has advanced, there is nothing out of order. You just wait for your chance so that you can say your bit. Every now and then, everybody is claiming to be rising on a point of order merely to say something different from what the other person has said. There is nothing absolutely out of order. We also disrupt the flow of Members' contributions with those arguments. Let us tolerate each other's point of view, appreciate that you have a right to be heard and to hold whatever opinions you may have about the Report and the list of names. Each one of you has a responsibility to protect each other's right and to hold those contradictory views. It is only fair. That is how we will be able to operate in a proper democracy. Hon. Waiganjo, proceed.

Hon. Waiganjo: Thank you, hon. Speaker. I also rise to support this Report. We as Members of the Committee on Justice and Legal Affairs have never seen the kind of lobbying that was done. Not just to Members of this Committee by the public, but also by Members of this House. There was lobbying for the Committee to find favour with some of the applicants, but we stood firm. We agreed from the outset that we were not to have any interests as Members of the Committee. We shall not also allow ourselves to be lobbied by any Member of this House or members of the public in general. Having said that, we know that this Commission should have come into being probably in 1963, and now that we stayed for a period of nine months without this Commission--- I was a little worried when hon. Ng'ongo stood and appeared to want to impede debate on this Report.

As a matter of fact, even the Director of Public Prosecutions is unable to prosecute hate speech cases because of lack of this Commission. It is an important commission.

When we sat, we had personnel seconded to us from the Ministry of Interior and Coordination of National Government, one Dr. Opiyo Owino. So, we had a lot of insight in what we were doing. This is a negotiated report, on behalf of this House I must say. We took very many and long hours trying to balance regions and ethnic communities. Closer look of this Report will tell you that we managed to pick people who generally represent professional associations. You will notice the first name of Alice Wairimu Nderitu, even if she remains to give institutional memory to this Commission, she is also a senior advisor for the Centre for Humanitarian Dialogue, a co-convenor of Citizens for Peace, former Commissioner and also a founder of Uwiano. So, we were not just looking at regions, but we were going deeper and looking at qualifications of each applicant. That was not without challenges because not all the regions would have been represented in this Report and not every region would necessarily give us a Commissioner. As you know, there are 47 counties and we only needed to have eight commissioners. We had 250 applicants and to cut down that number to a mere 32, was in itself a challenging task. So, we did our best and even the 32 that remained and the eight that we now present to this House, we are not certain that they will be nominated because out of 15, only eight will make it to the Commission. We have representatives of the Association of Chartered Institute of Personnel and Development, which is ably represented by Rose Mghoi from Taita Taveta. I think it is also fair to mention that we are at the same time encouraging intermarriages, but when it comes to appointments, we appear now to want to push out those we already accepted in unions. That is not fair. It still happened when we had post election violence. You are from a particular region married to a person from another region and when violence erupts, your wife is no longer yours and your husband now becomes a person of an opposite tribe. It is very unfair. Even if we want to balance ethnicity and regions, we should also have something more than that. We should know that we are a united Republic of Kenya. We are brothers and sisters of this country. So, let us not act and perpetuate the hatred that is already at boiling point.

I was happy about the appointment of hon. Francis ole Kaparo. When he appeared before us, we did not expect him to give us the insights he gave. Lately, you know he has been involved in conflict resolution in Marsabit, a violence prone area. Members who are pleading with the President to appoint chairman from one region are exercising presidential prerogative. But it is not harmful to mention that a particular candidate may be very helpful to this Republic by looking at his track record, or what he has done lately. The fact that he was a member or a chairman of URP is neither here nor there. First, he is no longer the chair of that party and secondly, it is not wrong to be a chair of a political party; in fact it is a plus. Having united parties is even better so, for me, I think he will bring more cohesion and will also help in the cohesion and integration in this country.

I notice a mistake in the Report, which is either typographical or otherwise. The seventh nominee; Irene Njeri Wanyoike is indicated to have come from Nyeri and that is not true. I think it is important to make a correction there because this is a Nairobi nominee. This is a person from Nairobi and not Nyeri, so that we may not mistake obvious appointments which we know are coming from particular regions.

Looking at Belinda Akoth, it is true she is very brilliant and scored very high marks. She also represents the Association of Media Women of Kenya and Public Relations Society of Kenya. As I said, we really tried to look at professional associations to be represented. We also have a representative of the Law Society of Kenya (LSK), actually, several of them in this Report, including Eric Ogwang. So, I urge Members to support this Report. This Commission now has to come to being so that we can also check our tongues; otherwise, they will catch up with us in the long run.

I support, hon. Speaker.

Hon. Speaker: Hon. Chachu Ganya.

Hon. Ganya: Thank you, hon. Speaker. From the outset, I do support this Motion and I want to commend the Committee on Justice and Legal Affairs for the job well done. If you look at the requirements of the Constitution and the Act, they have done their best to live up to it. Whether it is about regional balance, gender consideration, the need to have continuity in terms of institutional memory, they have done a very good job, and they need to be commended.

They have tried their best to ensure that at least 14 counties are represented in this, by the 15 members. The elderly as well as the young people of this country have been given a chance, both men and women as well. This is a good Report; they have done with a very good balance. This Report needs to be supported by this House and endorsed.

I want to state clearly that I do strongly believe that the former Speaker of this House, Francis Xavier ole Kaparo, will do a commendable job, given a chance to serve in this commission and nation. I had a chance to work with him very closely in the last few months, when Marsabit County was on fire. As a senior statesman appointed by the President to work with the leadership and the people of Marsabit County, alongside Sen. Yusuf Haji, they did a commendable job. We owe it to them and our President that today the county is back on its feet and our people co-exist in peace and are able to work together for the betterment of that county.

This job needs people with integrity; Kenyans who are statesmen, who can stand up to the occasion and tell Kenyans what is right without any worries or fears. I strongly believe a statesman like Francis Xavier ole Kaparo can do that and he has a proven record having been tested on leadership after serving for 15 years in this House. I also want to commend this Committee for giving a chance to one of the persons on the list, Dr. Roba D. Sharamo, who hails from my constituency. He is a young man with a PhD in conflict studies. He spent part of his life in the United States of America (USA) where he did both his Masters and PhD and today he is a senior fellow working for the United Nations Development Programme (UNDP) on conflict management. Given a chance, with these skills, experience and education, and the energy that he has as a young man, I am sure he will serve this country very well. I do appeal to His Excellency the President to at least ensure that people who are from such marginal counties like Dr. Roba Sharamo, are given a chance to serve in this Commission as he picks the eight among the 15.

I also do hope that this Commission, this time will be given the necessary support that it needs, whether in terms of enabling policy, legislation, or the resources to do with job. For sure, the past commission did some good work, but they did not live up to our expectations. There is a lot that they could have done, maybe they did not have the

necessary laws or what was there was not biting enough. They could not enforce what they needed because of the weakness of law or lack of resources. But looking at the crisis which we face in this country today in terms of tensions and conflict, whether at the Coast, North Eastern Province, Upper Eastern or Western Kenya, we have a country that is not at peace.

That is why this Commission is very important for this country and actually, I do believe, unlike the other commissions in our Constitution where they have the privilege of having three to eight members, this one, we must have at least eight members if not more. But since the law only provides for eight members plus the chairman, we need as many commissioners as we can so that they can serve and work may be in teams as they address these crisis and problems in different parts of our country. So, given the magnitude of the work they have and the problems that are in hand today in terms of conflict and lack of peace in our country, we do need this Commission. It is very important that members are appointed and the Commission constituted as soon as possible. They need to address the conflicts at the Coast, North Eastern, Western, Upper Eastern and other parts where these conflicts are likely to emerge.

With those few remarks, I strongly support the Report.

Hon. Speaker: Hon. Joseph Limo.

Hon. Limo: Thank you, hon. Speaker. I stand to contribute to this important Motion and from the outset I want to say that one of the key issues which we need to look at is really the actual functions of this commission, so that we really understand whether we are getting the right people.

For a very long time, we have seen National Cohesion and Integration Commission only talking about hate speech. We have not seen them really doing the job which we expect them to do. We know in this country we have several threats which bring us risks and some of them are land, cattle, politics, clans, tribalism, historical injustices both perceived and real and we rarely hear this Commission talking about any of them. Instead, they only follow things when they have happened. They follow politicians who have incited the public or those they perceive to have said things which border on hate speech.

I want to say that if they will be proactive this Commission will actually be seen to be contributing a lot during and after recruitments to ensure that there is balanced recruitment in the country. Some of these things including recruitment are the ones causing tension and lack of cohesiveness in this country. We have heard many people fighting especially in northern Kenya. Turkana, Pokot and Samburu fight every other day, yet we have not seen them actively doing anything to ensure that the conflict is resolved. I believe that is their job. We have also not seen them identifying risk groups in the country, so that we act proactively instead of waiting for people to fight and then we go around saying that we have to find out who incited them.

If this Commission will have men and women of integrity, and people who have capacity and qualification to perform their work, they will be working ahead of time to ensure that nothing happens in this country, which brings instability. I have to say that I am really worried because we have not seen people from the minority groups like Turkana, Pokot and Ogiek on that list. But that is not the point. The point I want to make is that when the names were being called out, I was worried because of our colleagues

here who were actually celebrating. We know that for a very long time now, when we bring names for adoption or approval, we know the side of this House which has been complaining continuously. Today, it is very unique that for the first time, one side is celebrating because they look at themselves and not Kenya. I want to urge the President, out of these 15 names, he ensures that no region or ethnic group will have more than one appointee so that we see that we are really representing the face of Kenya as per Article of 232 (h) of the Constitution.

Hon. Speaker, we want also to encourage the President to ensure that – though we did not really get a youth among these names. I want to urge my friend, hon. Sakaja, who has been fronting issues of the youth in this House that when we talk about a person who is over 37 years, that is not a youth. That is our age mate. We want to say that one of the risk groups in this country are the youths because they are faced with a lot of challenges. We have to really involve them in ensuring that the country stays together. We have also to ensure that the people who are appointed have real issues on the ground. I am delighted to note that some of them are former politicians. We have been talking about politicians in bad light, but at the end of the day, we have also recognized that very good people who perform very well in this country are former politicians because they really understand the ground very well and they understand the issues which affect our people. Therefore, there are respected politicians like Francis ole Kaparo. He is a plus, because he understands the issues on the ground and issues affecting the people directly.

Hon. Speaker, I have also to note that it is important that, at least, people living with disability have been recognized through the appointment of Eric Oluoch Ogwang, so that people in this country recognize that disability is not inability. They have to play a role in ensuring that the country stays together.

Finally, I want to say that the people who will integrate this country are our children. If we train our children to forget that they come from a certain tribe or a certain region or clan, we are sure that this country will be cohesive and free from ills like tribalism, fighting and all sorts of things. I was surprised one day when my child, who is in Standard Four but that time she was in Standard Three asked me what tribe she belongs to. It is a good thing that our children do not know their tribes. If we can reach to our children and let them know that they are Kenyans; they are human beings and they forget their tribe, this country can be cohesive.

Lastly, we have also to address the real issues in this country. As long as we live a life of denial - One of our respected Members of Parliament who is a doctor said that anybody who is living a life of denial is a medical case. It will mean that most of the people in this country will be suffering from a certain medical condition of self denial. We have to face the issues at hand so that we ensure the country is cohesive and we will not have people fighting because they come from a certain race or tribe.

Otherwise, I want to rest my case by saying that I support, but I urge the President to ensure that the final list will come out balanced. Let it show the face of Kenya as per Article 232 (h) of the Constitution.

Thank you very much.

Hon. Speaker: Hon. Opiyo Wandayi, the Floor is yours. Hon. Members, do not get surprised. I am following the list which is here. You may think that you were ahead of hon. Wandayi; I can tell you that he was ahead of you.

Hon. Wandayi: Thank you very much for that consideration. I wonder why hon. Members get agitated when I get an opportunity to speak.

From the outset, I want to support this Report, but with certain observations. This is a very important commission that should have been in place much earlier. Be that as it may, there are certain issues that we need to address. First, of course, is the issue of empowerment of this Commission. This Commission will not achieve much unless it is adequately empowered in terms of financing and what we call logistics. This will enable it to do its work in an efficient, effective and impartial manner as contemplated by both the Constitution and the Principal Act.

Hon. Speaker, I have looked at the proposal by the Committee, this issue of ethnic inclusion is a very critical issue that runs through the Constitution and, indeed, the primary Act that gives forth this Commission. Therefore, it is an issue that needs not be belabored. It is very pertinent issue. I also take cognizance of the fact that the Committee had to undertake a very delicate balancing act. It was an extremely delicate balancing act in terms of selecting 15 people out of 250 people and taking into consideration the diverse interests.

Having said so, it should have been important that even in situations where members of one ethnic community; and I am talking about the Gusii Community. The Gusii Community is a significant community in this country in terms of population size and, indeed, in their contribution to national development. Even if one person from that community did apply, he should have been considered. Why do I say so? In these names, you find a repetition. People coming from the same community or related communities have been picked whereas a critical community such as the Gusii is left out. I do not want to go into the details of which communities are represented by more than one person here, but the fact is that more justice should have been done to include communities such as the Gusii, Kuria and so on. That is very important.

Finally, on the issue of qualifications, if you look at Section 18(1) part (c) on the situations that would bar one from becoming a member of this Commission, one, is when the applicant is a member of the Executive body or is actively involved in the affairs of a political party. The question one would want to ask is: How do you define active involvement in the affairs of a political party? What defines active involvement and what is active or passive involvement for that matter? If you look at this particular provision critically, you will notice that the intention of the drafters of this legislation was to ensure that people who sit on this Commission are people who are beyond reproach; people who cannot be perceived in any way to be partisan or owe allegiance to sectors of the society.

In future it is important that we take due cognizance of this requirement. This Commission is going to perform a very important role. Indeed, in the situation we are in as a country where there is ethnic tension and polarization, this is the Commission that is going to be very useful. I hope this Commission will go beyond the issue of hate speech and address the cardinal issues which are at the core of disintegration and lack of cohesion in the country. For instance, you have heard about the cases in Lamu, Western Kenya, Marsabit and so on. This Commission is supposed to go to the root cause of those problems. There is no need of preaching cohesion and national integration against the backdrop of discrimination and injustice. This is a Commission that should have the teeth

not only to advise the Executive, but also compel the Executive to act according to the Constitution by being just, fair and accountable.

Without further ado, I wish to support this Report and hope that in future we shall improve on it.

Hon. Gichigi: Hon. Speaker, I also rise to support this particular Motion. I have had a look at this list and also the competencies listed in the Report and I believe that the Committee did a good job. I did not know that Members of Parliament can do a good job when it comes to recruitment as a Committee charged with the responsibility of recruitment. Our Departmental Committee on Justice and Legal Affairs has done a good job.

I am happy about the regional balancing; 14 counties out of the 47 counties in a tricky situation is a good mix. I have looked at the academic qualifications as well as the experience of the persons whose names have been shortlisted here. Gender parity is also dealt with competently here. I have faith that the Committee represented us well in this issue.

I do not want to delve into what others have covered. However, this is a very important Committee especially in the current times. We need to ensure that this debate is concluded quickly and urge our President to put in place this Commission. Any moment you go to the social media and scroll down the messages being posted by users, be it on Twitter or Face Book, you will find that out of ten people, at least, one or two people actually release what can be called hate speech. They try to create a divide between the communities of this particular country. The stereotyping that we are seeing there can only lead to serious problems in this country.

I am happy when I see people of the caliber of the former Speaker of this House. Also, when I look at the first person in this particular list, Alice Wairimu Nderitu, I am happy because this is a person who can bring institutional memory to this particular Commission that is being created. We do not want a situation where we have a completely new team that will make the mistakes that the earlier Commission committed. Alice Wairimu has skills in social contracts where communities meet and agree on sharing resources like water. Through such skills we see communities, for example, the Kisiis and the Kipsigis who for a long time have been squabbling, in fact, fighting, now coming together. We want people who can bring to the discussion table the MRC at the Coast Province. We require people with those skills.

When I hear my colleagues lament that some of the names that have been suggested here belong to people who are married elsewhere, I am worried. Are we actually telling our children that they should only marry from their own communities? Should our girls get married only to their communities in order for them to attain leadership positions in this country? Is it right to come to this House to condemn somebody because they have gone to marry from another community? It is completely wrong! It is easy to talk about others, but what about the male Members of this House? Have we all married from our own communities? Do you want us to be condemned because, say, you have married from a constituency that is not yours? I think this is something that we should look into. We need to frown upon condemning people who get married or marry from other areas.

It is important that we look at the budgetary constraints that hampered the work of the earlier Commission. This House, currently, has the powers to hold the knife and share the cake of this country. Let us look at the merit of the budget sharing and ensure that commissions like this one are given sufficient resources to carry out the duties we have tasked them with.

I support this Motion and I do urge the President that when the names reach him, he should create this Commission sooner than later.

Hon. (Ms.) Ghati: Thank you, hon. Speaker, for the opportunity to contribute. From the outset, I want to say that I support the list. I do so with a lot of hope that for once we are seeing a situation where in the history of this country we are not only looking at women as constituting only one-third. We are moving in the right direction because we are moving towards meeting the half-half requirement. When I look at this list I realize that it basically adheres to the issue of gender which is a very serious constitutional requirement. That is why I want to support and thank the Departmental Committee on Justice and Legal Affairs.

The Constitution of this country clearly identifies and recognizes the issue of persons with disabilities. I am happy that this is a requirement that was considered by the Committee.

I want to talk about the issue of youth which is very prudent. When you look at this list and the person who has been listed to represent the young people, Belinda Akoth at 37 years, I think for once we are moving in the right direction. We are moving against the traditional way of thinking that we always have to have old, tired and recycled people.

Hon. Speaker, I have a reservation. When we are talking about the huge wage bill that this country is grappling with and we still constitute commissions that have eight or nine members, I think we are not reading from the same script. I have an issue. While I have no big problem with Francis ole Kaparo, he is a man I respect. He has been a speaker for the last over 15 years. He has been a Minister before I was born and we are talking of empowering the young people yet when I look at the age of this man, I feel like we are not giving opportunities to upcoming people. I have no problem with ole Kaparo. I am very sure and I know that most hon. Members are keenly rooting for ole Kaparo to chair. I want to urge the President that if ole Kaparo is picked among the nine, then we need to look and support that ole Kaparo can deputize a woman. For once, we can look at the list and say: "Let us have a Commission that has woman as the chairperson." If you look at this country, we only have Sarah Serem of all the commissions we have in this country. So, it is only prudent that we have ole Kaparo becoming a deputy of a woman from this list of eight.

I want to thank hon. Members who have chosen the eight members out of the 15 to be listed. I want to urge the President that in the same thread the Departmental Committee on Justice and Legal Affairs has lived within the half/half. When he is nominating these people, he should look at the issue of half/half so that out of the nine members that the President of this country is going to pick, we have, at least, four as women and four men and they can choose their leader or chair. I believe that those who are going to be picked by the President will pick a woman as the Chair of this very important Commission.

With those few remarks, I beg to support.

Hon. Sakaja: Thank you, hon. Speaker, for giving me this opportunity. At the outset, I would like to state that, indeed, I am in support of the names that have been proposed as commissioners of the NCIC. As you are aware, this process was kick-started by the Joint Committee on National Cohesion and Equal Opportunity because we had been encountering certain difficulties and we realized when we went through the Act that this Commission needed to be set up via the initiative of Parliament. I wrote, on behalf of the Committee, to the Clerk's Office. Then the Clerk thereafter instructed the Departmental Committee on Justice and Legal Affairs to take it up.

You realize and I have heard the Majority Whip stating as many have stated before that there had been the feeling amongst certain quarters that we needed to amend the mother Act before taking up this process because according to the new dispensation that we have, Parliament does not do interviews. Appointments are done, then vetted by Parliament and then done by the Executive. But the Committee felt very strongly that it is very deliberate and it was right for this particular Commission to be set up by the National Assembly because the NCIC is not the kind of commission that should want to be beholden to the Executive. You would want it to be beholden to the representatives of the people who appoint them and that is only through the National Assembly. So given that the Joint Committee felt very strongly that there was no need to amend it and that National Assembly was in the right place to conduct interviews and come up with the names – 15 names as the Act provides – and from those 15 names, the President would be in order then to select eight names to this Commission.

We are very pleased, as a Committee, that we have reached this point at this time where we have the names of the commissioners because a lot of the work the Committee has tried to do could have moved faster if the commissioners were in place. Having said that, I would like to thank the CEO of the Commission together with the Secretariat because they have been cooperating very well with the Committee and they have been doing a sterling job even in the absence of the commissioners. The Committee felt very strongly that we need a commission that understands a number of things. One, just as the Committee in Parliament is named, "National Cohesion and Equal Opportunity", the route towards national cohesion in our country must start from equalization of opportunities. When every Kenyan wherever they are in this country feel that they have an equal opportunity at life, that they have an equal opportunity to get a better job, they have the same chance that a young person in Nanyuki has; the same chance as a young person in Kisumu; as a young person in Mombasa; as an old person wherever it is, then we start moving towards cohesion.

We feel very strongly that for a long time many Kenyans have not felt as Kenyans as certain parts of this country which is why we felt we need a commission that can actually be proactive and not just reactive: A commission that can see beyond just issues of hate speech but can take measures to create an environment where we all feel as Kenyans and where we all feel we have equal opportunities to pursue an opportunity. I think every Kenyan wherever they are in this country want very simple things; to go about their lives peacefully and to make something out of themselves.

Hon. Speaker, there are a number of things that we have already, as a Committee, tasked this commission to take up and I hope that the commissioners who will be selected

will take this seriously. First, we have commissioned as a Committee in Parliament that the NCIC looks at employment in the counties. In our counties, we have seen many of the counties have become Balkan where you only get a job if you are from a certain ethnicity. We have asked, pursuant to the County Governments Act, that 30 per cent of those who are employed in any county must not come from the dominant community. So, together with the county service boards, the NCIC is conducting a survey to give us a breakdown of everybody who has been employed at the county level. In addition to that, we have also commissioned the NCIC to do a national audit of all those who have been employed in the national Government so that we can proactively and not in a vindictive manner put across measures to ensure that every Kenyan from every community can get an opportunity. We are also working with this Commission to look at other pieces of legislation and how we can strengthen the Act to make sure that these things are done; that when appointments are done and many times we hear, either from the Opposition or anybody saying that this Government has one, two or three communities, that must be backed with an empirical analysis. This is where we can see the names of the people appointed, the counties they are from and their age because we also want the youth. Young people must get opportunities to get jobs at any level. So, that is an analysis that we are expecting.

Another item that I hope and I know all these 15 are listening before the eight are appointed are the issues of lack of cohesion within our counties. We have already started in Lamu County where we summoned the Governor, Members of Parliament, the Senator and the leadership of the county. We have listened to them. Of course, our efforts in Lamu County and Baringo County where we had all the Members who I must thank who came to the Committee--- All of these efforts would help if we have a Commission that is alive and moving.

When it comes to the names of the people proposed, I would like to say that I have confidence in all of the names that have been proposed. I think they are of right standing. It is also very welcome that we are saying we should have many names of women. I think that is the right way to go. I must register my disappointment with the Member who tried to bring up an issue as to where a woman is married or not married; whether there is a hyphen in a name or no hyphen. The lady called Rose Macharia Mghoi shares a name with my mother-in-law, Mghoi from Taita.

I asked myself, one day when my wife looks for a job, because she comes from Taita but she is married to me who comes from many places in this country, will she have trouble because of where she is married? We must respect our women and we must allow them to have a choice of where to be married because that is not what defines them.

(Applause)

What defines you is the content of your character and who you are.

Hon. Speaker, I would also like to register a little disappointment that indeed, there is nobody below the age of 35. Many people keep saying that they are youthful but if you are not below 35 years, you are not a youth because the Constitution is very clear that the youth is one who is between 18 years old and has not attained 35 years.

However, I would like to challenge the youth because if you do not apply, where will they get you from? So, also young people must step up and seek these jobs because they can get an opportunity. This is why many of us are in this Parliament to also defend the rights of the young people.

I have heard some Members express disappointment or reservations on the nomination of hon. Francis Xavier ole Kaparo who until recently was my co-Chair in Jubilee as the Chairman of URP. I would like to confirm that he resigned and politics does not disqualify you from getting a job. All of us are in this House but we do not know what will happen tomorrow.

(Applause)

Politics is not the opposite of professionalism. You cannot discount the experience this man has. You can also not discount his wisdom. Ask anybody from Marsabit County the work that he did when he was chairing the task force. So, I also support the nomination of hon. Francis ole Kaparo and I wish him the best.

Hon. Speaker, I would also like to tell hon. Members who are worried that the President might not look favourably upon all the 15 names, not to worry. We have a President who gets wise counsel and cares about every part of this country. We will have a well-balanced Commission and we really look forward to working with it once it is constituted.

Hon. Speaker, with those very few remarks, I wish to support.

Hon. Opiyo: Thank you, hon. Speaker. I want to, first of all, thank the Departmental Committee on Justice and Legal Affairs for coming up with this very good list.

Hon. Mirenga: On a point of order, hon. Speaker. I do not wish to, of course, disrupt my very good friend, the Member for Awendo. I rise on a point of order under Standing Order No.95 given the fact that we have sufficiently debated this Motion. Virtually, everyone has supported it.

(Applause)

I would love to be given a chance to be heard but it saddens me that a man with PhD, a qualification that we really respect where we come from can actually shout in a House like this. Given the mood of the House generally since everybody is supporting this Motion, could the Mover be now called upon to reply?

Hon. Members: No!

Hon. Speaker: Hon. Members, hon. Ken Obura is perfectly within his rights to claim to rise on that point of order. It is now my business to also assess the said mood. I think it is fair to also appreciate that when everybody stands up to say “I support, having been a politician is not a crime or being married in some place or what is not---” Now everybody is just talking about marriage and who was in politics. We are repeating ourselves. Let us also allow that we can transact other business. However, let me allow hon. Jared Opiyo to make his quick remarks.

Hon. Opiyo: Thank you, hon. Speaker for that indulgence. I want to support this Motion but with a few observations here. First of all, I would like this House to move with speed to change the statutes to provide that the nomination or identification of individuals to this Commission is left to the Executive rather than this Parliament. We must stick strictly to our oversight role as the national Parliament.

Secondly, this Commission is coming a bit too late. We have had some time when they were not in place. I think it is important for us as a House to pass over this list to the appointing authority so that this Commission is in place to handle the major challenges facing this country.

Today, as we speak, there is a lot of political discourse going around the country. As politicians, our statements that we give out there will be checked if the Commission is in place.

Hon. Speaker, Article 250(1) of the Constitution provides that members of constitutional commissions could be anything between three and nine. If the Act that anchors this Commission requires nine members, as the august House, we have a responsibility to move very quickly and change the statutes to provide that members should be three or between three and five so that we really cut down on the wage bill that the SRC has been talking about from time to time.

It does not make much sense that some work that can be done by three Commissioners is left to a whole lot of nine people to undertake it. It does not make economic sense for us especially at this time when we are struggling to cut down on our wage bill.

Hon. Speaker, there is a very important function that we believe with the coming into place of this Commission should be tackled immediately. I am happy that we are trying to come up with an Act that will regulate the social media. There is a lot of hate speech that is going around in the social media be it Face Book, Twitter and all those things. So, this Commission has got its task clearly cut out for it. Somebody must rein in people who abuse the social media so that this country can exist in cohesion.

Cohesion actually applies even in areas of appointment and all facets of our social life as a country. Really, it calls upon the Commission from time to time to compel the Executive to do a national audit of all Government appointments or employments in all the sectors of this economy so that we, as Kenyans, feel included.

Hon. Speaker, we were trying to fight marginalization when we voted in the new Constitution. However, marginalization has now extended even to the counties. I believe that when this Commission comes into force, it will even check the behaviour of the counties.

Like hon. Kaluma was trying to say here, we in Migori and Homa Bay counties do not understand what a commissioner is because there is none in this Government. Sometimes, when names are floated here, some start with 'O' and others with 'A' and we believe that the entire Nyanza is represented. In real sense, the entire Migori region as well as Homa Bay is under-represented in this Government. Really, I think from time to time to time, when appointments are made, they should be apportioned to counties besides regions and tribes. Thank hon. Speaker for giving me that opportunity.

Hon. Speaker: Let us hear one elder.

Hon. Angwenyi: Thank you, hon. Speaker. I understand I am in the category which is being marginalized by being senior. We have taken the cue from the people of Kilifi who are slaughtering their parents because they are above 50. I hope this Parliament will not take that cue and that it will respect and appreciate seniority. That is because we all wish to live long in this country. We all wish to come back to Parliament many times. We all wish to be somewhere even at the age of 70 and 80. I rise to support this Report although it has got one defect. The defect is this: People believe that if they appoint two people from Nyanza, they have covered the whole region. I have heard somebody complaining today that Migori and Homa Bay have not been given an opportunity in the Government and yet, we have got two permanent secretaries from there. There is a part of Migori - the Kuria side - which has never been considered. It is marginalized. The same now is being extended. That region is marginalized by people who think that if they appoint people from Siaya, they have represented Kisii. But be that as it may---

Hon. Speaker: What is your point of order hon. (Eng.) Gumbo?

Hon. (Eng) Gumbo: Hon. Speaker, this is a House of records and a House of facts. Is it in order for hon. Opiyo and hon. Angwenyi to say that Migori County has never been considered when we all know that the Vice-Chair of IEBC comes from there? You are talking about Migori County.

Hon. Angwenyi: Actually, we are saying the same thing. That is the Commission we want to remove.

(Laughter)

Maybe, you want to disband IEBC because of having a Vice-Chair who is from Migori. It could be the reason. Anyway, be it as it may, the Committee has done a great job, except where they forgot to take the one and only Kisii that had applied.

Hon. Speaker: Is there another point of order from hon. (Ms) Ghatti, the Member for Migori County?

Hon. (Ms) Ghatti: Yes hon. Speaker. Thank you very much. I want to correct the Member for Rarieda. This is the current IEBC Vice-Chair. Yes, she is from Migori. She was born in Migori County. That is the same Commission we want to disband. She is from my community, which is Kuria. One of the problems that we make in this House is that when we are talking about counties that are cosmopolitan--- Look at counties like Migori where I come from. You tend to think that we are in Nyanza. We have the Kisii Nyanza, Kuria Nyanza and Luo Nyanza. When we are talking in this House about Nyanza, we are thinking that you are talking about the---. We need to go to the nitty-gritty of counties. The Kuria community is marginalized in Migori County. So, we need to be looking at certain communities that constitute that county for us to be fair.

Hon. Speaker: Hon. (Ms) Ghatti. That is not a point of order. But you have my sympathies given your condition.

(Laughter)

Hon. Angwenyi: She was informing me, hon. Speaker, and supporting what I have said. That Luo Nyanza has marginalized the Kuria Nyanza and now, they want to extend the same to Kisii Nyanza. We are saying no!

(Laughter)

Otherwise, the Committee has done a great job.

Hon. Speaker: Hon. Ochieng. Hon. Members, why do you not avoid using some of the phrases which appear to be exciting the rest of you?

Hon. Ochieng: On a point of order, hon. Speaker, Sir. Is the hon. Member on the Floor and the Member who has just spoken, hon. Denitah Ghatti, in order to talk about Luos marginalizing Kurias, when she knows that the biggest population in Migori is composed of Luos and she represents them here? Most of her voters are Luos. Is she in order?

Hon. Speaker: She is perfectly in order to talk about the county. She represents the county. Now, what is out of order when you are talking about the county you represent? Hon. Ochieng, you now want to engage in an argument. Surely! Hon. (Ms) Ghatti is the Member for Migori County. She is talking about her county. She is perfectly in order. Hon. Angwenyi, why do you not conclude your exciting contribution? Hon. Onyancha, what information do you want to give hon. Angwenyi? The hon. Angwenyi was sufficiently informed. Is that not so?

Hon. Onyancha: Hon. Speaker, the day we will move away from our hypocrisy-- - The Member of Parliament for Homa Bay, hon. Kaluma, stood up and, as he was supporting his Committee's proposals to the House, he was also supporting that Ogwang' from his own Constituency; that he should be given a chance. So, it is true that there is some marginalization happening and people are working for their own people!

Hon. Speaker: Hon. Members, there is nothing out of order or information.

Hon. Angwenyi: Please, protect me. I know he is a good man.

Hon. Speaker: Hon. Kaluma, you appear agitated. The Member for Homa Bay.

Hon. Kaluma: Thank you, hon. Speaker. It is good that when we are mentioned negatively, we have a chance. There is no single individual here coming from Homa Bay Town Constituency. In fact, the person with disability called Eric Oluoch Ogwang' is from Karachuonyo Constituency, which is way towards the border of Kisumu if I remember. But number two also, there is nobody from Kisii who applied or was shortlisted.

(Laughter)

Hon. Speaker: Hon. Angwenyi, why do you not finish. Hon. Members, I wish to draw your attention to the fact that the business appearing as Order No. 9 has a deadline of today.

Hon. Angwenyi: So, hon. Speaker, I respect hon. Kaluma and what he has said is correct. Nobody comes from his constituency.

Hon. Speaker: Just make your contribution.

Hon. Angwenyi: We must make sure that this Parliament does not marginalize any community in this country. It should not be part of the marginalization of any community, be it the Kisiis or Turkanas. But this Committee has done a very good job. First, by identifying one hon. Francis ole Kaparo. That is a man of integrity; a man of high experience. A man who can solve the problems in this country without fear of favour. I know him. He has been my Speaker in this House and, on several occasions, he sent me out. But he is a man of character and integrity. If the President was to ask for my recommendation, he should be the chairman. Let us not allow this Parliament to propagate hate speech. When you say that a lady who has been married to another community belongs to a whole community where she was born, that is hate speech. You are making our sons--- Like my son is going to marry a lady from Taita. Now, I may want to persuade him not to marry from there because she will always remain a Taita instead of a Kisii.

Hon. Speaker, Ms. Cecilia Mbaka, who was in the shortlist, is a Kisii. She has given birth to Kisiis - seven sons. If I brought them here, they can muscle you down like nobody's business. Those are Kisiis. She is the mother of our Kisii boys. We should encourage inter-marriages among the communities and not discourage them.

Hon. Speaker: I think, Members, why do we not avoid that language? Is it necessary really?

Hon. Members: Call the Mover to reply.

Hon. Speaker: Mover to reply? Members, you must make a decision which is that the Mover be called upon to reply.

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

Hon. Chekong'a: Hon. Speaker, I have been approached by a number of Members, including my very good friend, Eng. Gumbo, to donate time but, knowing the Standing Orders, it does not allow me to donate any time. The tradition cannot override the law and since I am the Chair of the Justice and Legal Affairs Committee, I will abide by the law.

I will be very brief. I would like to thank all the Members who have supported the nominees for appointment as the commissioners of NCIC. I am, indeed, indebted to most of the Members who have contributed in a very positive manner, knowing that, that is a Commission that will deal with issues of cohesion and integration. For the first time, this House has been unanimous. It has come together in approving the nominees to NCIC. This is very commendable. It is flowing all the way from the Justice and Legal Affairs Committee where we had consensus in approving these names and recommending them to the National Assembly. So, I would like to thank the Members.

The only thing that we were unable to do was to get a young person. I noticed that hon. Sakaja, who represents the young persons, sits as the Chair of the National Cohesion Committee. He will be sufficient. Maybe in future, we would like to ask the young people or the youth to apply for these positions. As it is, we did not have a choice on the persons to pick to the Commission from the youth.

We were fortunate to have one person representing persons with disability, namely, the former magistrate Mr. Erick Aluoch Ogwang'. So, with respect to the representation of our society, it is fairly represented. Those are 15 persons and yet, we have about 42 tribes. We could not fit every tribe in this particular Commission. Again, as you know, the Supreme Court has ruled that we look at the totality of all the Commissions when considering ethnic balance and regional representation. So, we took that into account together with the Kenya National Human Rights Commission, the Salaries Review Commission and all the other Commissions, while considering the persons who have been recommended.

I would like to thank the Members and I move.

(Question put and agreed to)

COMMUNICATION FROM THE CHAIR

PLACE OF MINORITY REPORTS AND ADMISSIBILITY OF COMMITTEE REPORT ON REMOVAL OF IEBC COMMISSIONERS

Hon. Speaker: Hon. Members, I have this Communication to make. This is with regard to the place of minority reports and admissibility of the report of the Departmental Committee on Justice and Legal Affairs on the matter of the removal of IEBC Commissioners.

Hon. Members will recall that earlier in the day, during the Morning Sitting, the Member for Ugenya, hon. David Ochieng', through a point of order, sought the guidance of the Speaker on the admissibility of the Report of the Departmental Committee on Justice and Legal Affairs on the petition for removal of the Chairperson and eight other members of the Independent, Electoral and Boundaries Commission. The Member also sought to know the place of a minority report in a report of a Committee as contemplated in Standing Order No.199. The Member was supported by the Member for Ugunja, hon. Opiyo Wandayi.

Having perused through the verbatim report for the morning sitting, I must thank the two Members for raising these matters, which are, indeed, weighty and have implications on the interpretation of our rules of procedure. In summary, the Members sought guidance on the following matters:-

- (i) The place of a minority report in a report of a committee of the House.
- (ii) Whether the report of the Departmental Committee on Justice and Legal Affairs on the Petition for the removal of the Chairperson and members of the IEBC as tabled on 17th July, 2014, is admissible.

Hon. Members, to begin with, there is a universally accepted principle of democracy and I quote:-

“The majority shall have their way, but the minority shall also have their say”.

This principle does not decree that the majority ought to emasculate the voices of the minority, nor does it give the minority a blanket cheque to say anything under the sun. To the contrary, this principle encourages the majority in any group to recognise and take into account the views of the minority in that group.

In the courts, particularly the higher courts, it is not uncommon for judges in a bench to make differing determinations on a matter. However, the decision of the court is carried by the majority of the members constituting the bench. In parliamentary parlance, the application of this principle is not new. In the Commonwealth of New Zealand, the Speakers have reached a common ruling on this matter, which I wish to quote from a publication called the Speakers' Ruling, 2011. This particular authority is rather long, but due to its importance on the matter before us, I will quote most of it.

“Differing views should be fairly reflected in reports. There is a strong presumption that this will occur. Members who are in the minority have a legitimate expectation that all reasonable steps will be taken to ensure that this convention is followed even though in their Standing Order No.242, it gives discretion to committees. That discretion should only be exercised as a last result when text supplied by a minority is significantly misleading or intemperately expressed and reasonable efforts to find a compromise has been unsuccessful.

Where possible, Members should give some advance warning that they are likely to enter different views, so that their perspectives can be incorporated. There is no such thing as a minority report. There is only one report presented to the House by a Select Committee. The minority or differing views may be indicated in a report. No committee is obliged to indicate diverging views in a report. A majority of the committee can refuse to include other views if it wishes, but a majority cannot rewrite a minority's views so that, effectively, the majority is putting words in the minority's mouth. That would misrepresent divergent views. A minority does not have a blank cheque to include whatever it wishes in the report. A majority can refuse to admit different views all together. If a minority views are objectionable or too long, there may be a trade off whereby the minority agrees to curtail its contribution, but this must be done consensually. The majority cannot just rewrite the minority's views. A minority contribution, like every contribution, must be relevant to the subject before the Committee”.

The Chairperson rules on relevance. The indication of a minority report is a mechanism to allow the House to be acquainted with the completeness of the issues about which there has been disagreement, before the House can make a resolution.”

Hon. Members, on the other hand, Erskine May, a foremost leading authority on parliamentary practice, holds this view:-

“A report from a Committee embodies the conclusions agreed to by the majority of its members and members to dissent from the report may not make minority reports to be appended to it, nor can members enter their protests against a report. If a member disagrees to certain paragraphs in the report, or to the entire report, they can record their dissent by dividing the committee against those paragraphs or against the entire report as appropriate.

Members can also put on record their observations and conclusions as opposed to those of the majority by proposing an alternative draft report or moving amendments to the draft. Any alternative draft or amendments on which a division takes place is recorded in full in the minutes of proceedings of the committee. Where a committee is unable to agree on a report, it can make a special report to that effect, together with the evidence taken before it; or it can merely report the evidence taken before it to the house without any observations or expression of opinion.”

Hon. Members, this now brings me to the practice in our own Parliament and the provisions of our Standing Orders. It is common knowledge that our practice allows Members with dissenting views to have those views recorded in the report of the committee. As a matter of fact, before the coming into force of the current Standing Orders, the practice has been to allow a mention of the differing views and name of the Member or Members dissenting. This was the case during the case of the Departmental Committee on Health on the matter of irregularities on the rolling out of the Civil Servants Outpatient Medical Scheme by the National Hospital Insurance Fund (NHIF). In that Report, the then Member for Kasipul Kabondo recorded dissenting views.

Similarly, the then Chairperson of the Departmental Committee on Education, Research and Technology recorded dissenting views in his Committee's first Report on the nomination of the persons to the Teachers Service Commission (TSC). In this last example, the Chairperson went ahead to move the Report of the Committee as this was his duty, notwithstanding that he had differing views on most of the recommendations made by the Committee. This practice has now been codified in our current Standing Orders under Standing Order No.199(5) and (6), which reads:-

“199(5) A report having been adopted by a majority of Members, a minority of dissenting report may be appended to the report by any member of members of the committee.

6. A report of a select committee, including any minority report, together with the minutes of the proceedings of the Committee and with note or record of any evidence by the committee as the committee may deem fit, shall be laid on the table of the house by the chairperson of the select committee, the vice-chairperson, or by a member authorized by the committee on its behalf, within 14 days of the conclusion of its proceedings.”

Hon. Members, the reading of these rules indicate that, as an advance of our previous practice, those with minority views have been accorded the higher privilege as they are allowed to have their views recorded substantially, and not just a mere mention and, in a rare occasion, have a dissenting report appended to the main report. This is in keeping with the spirit of our new Constitution to protect the rights of both the majority and the minority.

However, should a committee not reach consensus, this does not imply that there should be two reports of a committee or a separate report compiled by the minority. The rule of thumb is that there can only be one report of a committee. That is the report that has been supported by the majority of the membership of the committee, which may contain, as part of it, a minority report.

Hon. Members, this now brings me to the question as to whether the Report of the Departmental Committee on Justice and Legal Affairs contains in it a minority report. To address this question, I wish to draw the attention of the House to pages 27, 28 and 29 of the Report. Indeed, the title of item 6.0 of the Report is “Report on Minority Views”.

That part has captured not only the reasons and named the Members with differing views, but also the recommendations of the minority Members of the Committee. The minutes of the Committee for its sittings, particularly those of 15th and 16th July, 2014, have also captured those views fairly. This is by far a liberated procedure as compared to our previous practice, and which meets the threshold required under Standing Order 199(5) and (6).

Looking at the reasons for dissenting and the alternative recommendations of the minority in this Report, I am satisfied that adequate opportunity has been given to the minority to propose an alternative draft Report, including recommendations for which different shades of opinion have been offered for the House to make an informed decision. It is my finding, therefore, that the Report of the Committee is admissible. Therefore, Order No.9 on the Order may be entered upon.

Hon. Members, I am aware of an allegation that was made during the Morning Sitting to the effect that part of the House may not be accorded fair opportunity to debate this matter. This is far from the truth. As a matter of fact, I want to indicate that since the debate on this matter is likely to be politically emotive, as I have noticed, it is the intention of the Speaker to accord each Member a fair opportunity to speak their minds. In order to enable this to happen, I will not entertain frivolous points of orders from either side of the House. Each Member speaking should be allowed to speak their mind. But all of you must also keep within the limits of our rules of debate.

Thank you.

Hon. Ochieng: On a point of order, hon. Speaker?

Hon. Speaker: What is your point of order?

Hon. Ochieng: Thank you, hon. Speaker. I am well guided and I am happy with your ruling. This settles the issues that we raised in the morning. As I thank you, I also just want to know, as we debate this Report, what happens to Members who would want to propose that this House adopts the dissenting views? I want guidance on this because it is a very important issue. For example, if Members decide that they agree with what is not in the Report or the views of the majority Members but those of the minority Members, what happens?

Thank you.

Hon. Speaker: Hon. Members, there is no complication. We will cross the bridge when we get to it.

Yes, Leader of the Majority Party.

PROCEDURAL MOTION

EXTENSION OF HOUSE SITTING TIME

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

THAT, pursuant to Standing Order No. 30(3)(a), this House resolves to extend the sitting time until the conclusion of business appearing under Standing Order No.9 in today's Order Paper.

Hon. Speaker, my reasoning is very clear. The Motion under Order No.9, which is the Report of the Justice and Legal Affairs Committee, has a time deadline of today. If you allow me, the answer being sought by hon. Ochieng is found in the kind of Motion that we are dealing with. It is the Motion that we put the question to. Since we have only about an hour to adjourn, and this is a very important Motion, I am moving this procedural Motion so that tomorrow, we may not be accused of having rushed this

debate. We want both the majority and the minority to have their say, so that this House can decide on the fate of the Report of the Justice and Legal Affairs Committee.

With those remarks, I beg to move and ask the Chairman of the Committee to second the Motion.

Hon. Speaker: Yes, hon. Chepkong'a!

Hon. Chepkong'a: I second, hon. Speaker.

Hon. Speaker: Hon. Members, I will exercise my unfettered discretion and proceed to put the question.

(Question put and agreed to)

It is so ordered. I may wish to just draw the attention of the House to, of course, the provisions of Standing Order No.97. We do not want people to become wise midstream and start--- Is that why hon. Katoo ole Metito has an intervention?

Hon. Katoo: Thank you, hon. Speaker. Actually I have been on an intervention for quite some time. That is because I want to move:-

THAT, in accordance to Standing Order 97, this House, resolves to reduce the debating time per Member to five minutes because of the interest that this Motion No.9 is going to attract. I did not want to move it when we have already moved the Motion. So, hon. Speaker, I seek your permission.

Hon. Speaker: Does anybody wish to second. Hon. Chris Wamalwa.

Hon. Wakhungu: Sorry, hon. Speaker, I was not seconding but opposing. So, let me wait for my time to come.

Hon. Speaker: Leader of the Majority Party.

(Question put and agreed to)

Hon. Chepkong'a, just before you move, let us have hon. Peter Kaluma.

Hon. Kaluma: Thank you, hon. Speaker for the indulgence. I am standing under Standing Order No.199(6). In the nature of this matter, I doubt, it could be debated adequately in the manner the House intends to, if we do not have the documents and evidential material placed before the Committee so that, really, the House can agree or disagree with the Committee on an informed view. Would I request that the documents which were placed before the Committee may be placed before the House for consideration and for an informed decision on the matter as required by Standing Order No.199---

Hon. Speaker: Hon. Peter Kaluma, if you carefully listened to my Communication, I personally saw all the material and that is why I have come to this conclusion. So, I would expect that since this Report was tabled on 17th July, 2014, that there should be sufficient material. It is, indeed, true the point you are raising; that all the material that has been presented to the Committee should be made available to all Members or, indeed, to as many as desired to read. You all know where materials are kept. Please, do not reduce me to doing clerical work. Surely, hon. Peter Kaluma, I cannot be the one to provide materials.

Hon. Kaluma: I have been sitting in the Committee and I can confirm to the House that the materials which were placed before us, particularly confirming discrepancies in the results, which was a ground in the Petition, were well over 2,000 pages. It is not this thing being showed to Members. We are just seeking an opportunity to fairly debate this matter. We need those documents.

Hon. Speaker: Well, hon. Members, there is nothing for me to direct. The reason why the House created committees is so that they could go and listen to situations where evidence is adduced. They listen to the evidence and bring their reports on behalf of the House. If you tell me that you want to read 4,000 pages; well, of course, everybody is at liberty to read as many pages as they desire to but, we want the Report to be moved. It is not in contravention with any practice or tradition that I know of. So, hon. Peter Kaluma, I am sure as a legal practitioner, a judge does not go ferrying all the exhibits. For, example, if you go to visit KICC, you do not ferry KICC to court to say that this is KICC. It suffices that the Judge says they visited KICC and they saw that it is a 29 storey building. Anybody with a contrary view is at liberty to visit the same place *locus* and come and say it 19, 20 storeys or whatever the size.

Surely, if we go the route you want to go, I think we are going to create some very different ways of doing business in the House because this is a Committee of this House. We need to respect that particular situation; that these are committees of the House. Hon. Chepkong'a.

Hon. Chepkong'a: Thank you, hon. Speaker. Just in addition to what you have just said, Standing Order 230 is very clear. It states as follows:-

“That a petition to the House for removal of a member of a Commission under Article 251(1) of the Constitution -

(a) shall indicate the grounds under Article 251(1) of the Constitution, which the Member of the Commission is in breach;

(b) may contain affidavits or other documents annexed to it.

Hon. Speaker, we have no affidavits or other documents annexed so that it is claimed that we did not bring those documents here. When the Petition was forwarded to us, it was just a mere Petition, making reference to a Supreme Court decision and the documents that were filed thereat. So, the Committee was being invited to go to the Supreme Court to look for those documents. Hon. Speaker, I would like to thank you very much---

Hon. Speaker: Hon. Chepkong'a, you do not even have to belabour the point. I am well grounded on this matter, which I am sure, you know well.

Hon. Chepkong'a: No! I do appreciate hon. Speaker. I was just saying what transpired in the Committee, which Members are quite aware of.

MOTION

ADOPTION OF REPORT TO REMOVE THE CHAIRPERSON AND MEMBERS OF IEBC

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

THAT, this House adopts the Report of the Departmental Committee on Justice and Legal Affairs on the Petition for the removal of the Chairperson and the Members of the Independent Electoral and Boundaries Commission (IEBC), laid on the Table of the House on Thursday, 17th July, 2014 and in accordance with the provisions of Article 251(3) of the Constitution and Standing Order No.235, finds that the Petition does not disclose sufficient grounds for the removal of the Chairperson and Members of the Independent Electoral and Boundaries Commission.

Hon. Speaker, the Petition by the Petitioner, Mr. Wafula Buke, was committed to this Committee by yourself, in which you required the Committee to conclude its findings and submit a report as required by Standing Order 230, within ten days.

Hon. Speaker, I came back to the House and requested for additional 30 days which this House graciously granted. We tabled a report which was in accordance with your own direction and we complied with your order. The Petition by Mr. Wafula Buke received quite some substantial attention in the Committee. We investigated and it took us a long time. We went out of our way to ensure that the Petitioner appears before the Committee - although he is not required to. We went out of our way to invite him to make oral presentations to support his Petition. We also wanted hon. Members to hear first hand and orally from him what he wanted the Committee to assist in terms of supporting the Petition.

Hon. Speaker, Standing Orders are very clear that the Petitioner must be assisted in ensuring that the Petition complies with the Standing Orders and the Constitution. Therefore, it was our duty to ensure that we assist the Petitioner. We gave him as much leeway as we could in ensuring that he complies with the provisions of the Constitution and the Standing Orders. At one point, the Petitioner was afraid to come before the Committee. He sought a number of adjournments or requests to be excused from appearing on the dates that we had given him, until the last time we gave him a final notice that, if he does not appear, the Committee will proceed as it deemed fit.

On the last day, he appeared and came with his advocates. As you are aware, our committees are *quasi judicial*. We do not strictly follow the Evidence Act in terms of ensuring that we are strict in the manner in which evidence is provided to the Committee. Therefore, we allowed the Petitioner in the company of his lawyers to make his oral presentation and to give any further supporting issues he could have liked to present before the Committee; which he did. At the conclusion of those proceeding, he was surprised that hon. Members are very accommodative. We took time to inform him about Article 95 of the Constitution which is very clear that we deliberate and resolve the issues that concerns the people.

Therefore, as the representative of the people, we were very kind to him and we extended our generosity of the National Assembly in ensuring that he was comfortable in making his presentation of his Petition. So, we heard him. After we concluded with him, as you know, we are required under the Constitution and the Standing Orders to advertise and call for memoranda from members of the public who are interested in providing any information that may support or oppose the Petition.

Hon. Speaker, we received a number of memoranda from members of the public pursuant to the advertisement that was sent out by the Clerk of the National Assembly. We received two memoranda in support of the Independent Electoral and Boundaries Commission (IEBC) and we received one memorandum in opposition of IEBC. Thereafter, we then invited the Commissioners of IEBC, after having received notice to give us written submissions on issues that had been raised by the Petitioner. They forwarded to us a written submission in which all the nine Commissioners appended their signatures. When they appeared before the Committee, they confirmed that all of them have appended their signatures to that response and they stood by its contents.

Hon. Speaker, having listened to all the parties, the Committee then receded to consider all the issues raised. We would like to register our profound gratitude to yourself and the Clerk of the National Assembly for having extended the support to this Committee in terms of providing facilities for us to meet even at very short time, particularly providing facilities that were appropriate for carrying out the interviews which we conducted.

We would like also to thank members of staff who were very supportive. They worked for long hours to ensure that the reports were prepared in time. The Petitioner had sought the removal of IEBC Commissioners on three main grounds as clearly stated in Article 251 of the Constitution. The grounds in which the Petitioner sought to rely on were as follows:-

(i) In the exercise of the registration of voters and compilation of voters register and in the conduct of the general election by the Commissioners, they mis-conducted themselves and they did not do it in accordance with the law.

(ii) They were in serious violations of the Constitution and the laws of this country.

(iii) They were incompetent in the management of the 2013 elections.

Hon. Speaker, the law is very clear. Article of 251 of the Constitution states that:-

“Any petitioner who seeks the removal of members of a constitutional or independent commission or the so-called Chapter 15 - Commissions or Article 59 on Commissions - would need to support the grounds with facts as to why those commissioners must be removed.”

In supporting the Petition, the Petitioner stated that the IEBC Commissioners mis-conducted themselves in the procurement of the Biometric Voter Register (BVRs) and the Electronic Voter Identification Device (EVID) equipment during the general elections. Therefore, the Commissioners grossly mismanaged the use of public finances contrary to Article 201 of the Constitution as read together with Article 10. The Petitioner sought to rely on the following documents, in his own Petition:-

(a) The documents presented by the Petitioner and IEBC to the Supreme Court in the Presidential Petitions Nos. 3, 4 and 5 of 2013.

(b) Election petitions and appeals filed in the High Court, Court of Appeal and Supreme Court on Gubernatorial, Senate and National Assembly seats.

(c) The discrepancies in IEBC elections data as shown by the elections returns presented to the National Assembly and posted by the IEBC.

(d) Reports and analysis by various organizations namely: The Kenya Human Rights Commission, Mars Group, Standard Media Group and others not mentioned.

(e) Use of multiple non-gazetted election voter registers on the day of the elections.

Hon. Speaker, when we met as a Committee, considered all those issues and, just as background information, IEBC is a successor of the Interim Independent Electoral Commission (IIEC) which was a successor of the Electoral Commission of Kenya (ECK) that was disbanded after the 2007 elections. They had been set up and established pursuant to Clause 41 (a) of the former Constitution, when dealing with the reforms of that time.

The IEBC has been established pursuant to Article 88 (1) and the IEBC Act, No.9 of 2011. The vacancies in the IEBC were declared in the local dailies of 11th August, 2011. A total of 430 applicants applied for the position of members and four applied for the Chairperson's position.

In July, 2011, Parliament approved the appointment of the selection panel to the IEBC. The selection panel was mandated to shortlist applicants and forward three persons for appointment as Chairperson and thirteen persons for appointment as members.

The panel conducted interviews and forwarded to His Excellency the President the three names for the position of Chairperson and 13 names for the position of members. The President, after consultations with the Right honorable Prime Minister, nominated nine persons for consideration by the National Assembly as Chairpersons and members of the IEBC through a Communication by the Speaker dated 25th October, 2011.

The names and curricula vitae were forwarded to the Constitutional Implementation Oversight Committee of the National Assembly to consider them. The House, thereafter, approved the nomination of the nine persons as per the Committee's recommendations, namely, Ahmed Isaac Hassan as the Chairperson; Lilian Mahiri Zaja as the Vice-Chairperson and Eng. Abdulahi Sharawe, Thomas Letangule, Mohamed Alawi Hassan, Albert Camos Onyango Bwire, Kula Kalma Godana, Amb. Yussuf Nzibo and J. Muthoni Wangai as members. They were approved by the National Assembly as Commissioners to the IEBC.

The Petition, therefore, seeks to remove those persons that were appointed in accordance with that process for serious violation of the Constitution and the laws of Kenya, gross misconduct in the performance of functions and their duties as commissioners and incompetence in the management of 2013 elections. I have clearly stated the facts that are being relied on in the Petition and the oral evidence that was adduced by the Petitioner when he appeared before the Committee when he was invited. I would like to state again that he relied on the procurement of the so-called Biometric Voter Registration (BVR) and the Electronic Voter Identification equipment during the last General Election which he alleges were in contravention of Article 201 and Article 10 of the Constitution. The documents were presented to the Supreme Court, that is, the Election Appeals and the rest for clarity.

The responses by the IEBC, that is, the nine commissioners, including Chairperson, are available in Room 8. When they appeared before the Committee to make their own oral presentations with respect to the report they had presented to the Committee earlier, stated as follows:-

1. That the Petition was vague in allegations about the Commission and not the Chairperson or other members of the Commission and that it is not supported by any cogent evidence that warrants individual response.

2. The Petition as drawn does not satisfy the threshold envisaged by Article 251 of the Constitution.

3. The Petitioners seek to vilify the Chairperson and members of the Commission for having performed their constitutional role by announcing results of the peoples' choice.

4. The Petitioner is questioning the legitimacy and legality of all elected and nominated leaders in the country in both the national Government and county government. By implication, the Petitioner seeks to demand for a fresh General Election by mischievously legitimizing the last General Election through this Petition. Those are the responses I am reading; it is not my response. We will come to the Committee's findings.

5. The Petitioners' ground on petition concerning the procurement of Electronic Voter Identification (EVID) and the BVR is without any legal basis as the member's role in procurement is limited to approval of the budget and procurement plan. The Commission's procurement was as advised by the Public Procurement Oversight Authority (PPOA). In the attachment thereat, you will see a letter dated 12th May, 2011 written by a member of staff from IEBC seeking clarification from PPOA as to whether the commissioners can participate directly in the procurement of items and equipment in IEBC. The PPOA, in their letter dated 24th May, 2010 responded. These documents were presented to us by the IEBC and they are attached on our Report. PPOA clearly stated that it was not the business of the Commissioners to participate in the procurement of anything in the IEBC and that their role is merely restricted to the approval of budget and the procurement plan.

6. On the documents presented by Petitioners and IEBC during the Presidential Petition, the commissioners submitted that all the documents were considered in their totality by the Supreme Court in the Presidential election and by extension all other elections that were held at the same time were found to have been fair, free and credible. They supplied us with the Order of the Supreme Court which is dated 30th March, 2013 in considering petitions numbers three, four and five of 2013.

7. The finding by the Supreme Court on the voter register and compilation does not impute any culpability on the part of the commissioners in the registers used.

8. The Commission has so far conducted 15 by-elections as a result of successful petitions. All but one of the by-election results returned the same candidates elected on 4th March, 2013, thereby vindicating the Commission's work.

9. The IEBC is the source and custodian of all authentic election data and the commissioners' attention has not been drawn to any discrepancies by anybody or organization in the reports it has established.

10. The Commission is constitutionally mandated under Article 138(3) of the Constitution to tally and verify the count of votes in the polling stations and declare the results.

11. The Commission received observer reports from the AU, the Commonwealth Observer Group, the EU, Carter Centre Election Observer group, among others that had

been accredited by the IEBC as observers in accordance with Article 88(4)(h) of the Constitution. According to IEBC, they returned the following verdict: That the elections were peaceful, transparent and credible and reflected the will of the people.

12. It was observed by various accredited observers that although the Commission faced challenges in the conduct of the 2013 General Elections, those challenges did not affect the credibility of the election.

13. The Commission cited various precedents to demonstrate that the allegations leveled against them do not amount to gross misconduct. The Nigerian Supreme Court view, which we were given, states that “some acts which constitute gross misconduct are refusal to perform constitutional functions, corruption and abuse of office of power. In their submission, the Commissioners said, “We have not been charged with any offence of similar nature let alone being investigated on those allegations.

14. The Petition, according to the IEBC, contains no particulars of what is alleged to be multiple non-gazetted registers used by the Commission during the elections.

Hon. Speaker, finally, No.15. The Commission informed the Committee that some matters in the Petition are pending in court and that they should be dismissed as being insufficient, incompetent and abuse of the legal process and lacks merit in both fact and law. What basically the Commission was seeking to do was to invite us to invoke the principle that is contained in our own Standing Orders; the principle of *sub judice*; that once a matter is pending before court, it cannot be discussed at the National Assembly. In support of that contention, they produced the charge sheet that contained the names of members of staff of the Independent Electoral and Boundaries Commission (IEBC) who had been charged in Criminal Case No.141 of 2013 in which the CEO, together with the Deputy CEO and other members, were charged with irregular procurement of the popular elections Evid equipment. That matter is still pending in court.

The Committee held Sittings and deliberated on the Petition by Mr. Robert Wafula Buke. The Committee noted a number of issues; considered the memorandum and representations are made there-under. In particular, it considered the joint affidavit by Juma Magwanga, Benson Isusa, Martin Mule Malonza, Naisiae T. Poloshe and Mustafa Abdullahi Ahmed and that which was in support of the Petition by hon. Abuya Abuya. In the memoranda that were received from the two that were in support of the IEBC, what they said in summary and in brief is that the elections were conducted by the IEBC in a transparent and fair manner and that the IEBC complied with all the laws as required.

With regards to hon. Abuya Abuya, this was more of a personal issue; that in fact, hon. Abuya Abuya, who had been denied a nomination certificate had been promised to be nominated as a senator. Unfortunately, up to date, he has not been nominated although he claims he had been assured by IEBC. We were not dealing with politics. There was no party.

(Loud consultations)

Hon. Speaker: Order, hon. Members! Remember my ruling: Everybody will be heard in silence. It just has to be like that.

Hon. Chepkong'a: Hon. Speaker, hon. Abuya Abuya claimed that, up to date, he has not been told the outcome of his request that he made to IEBC and which, the IEBC had agreed to; that he would be considered for nomination. In the Petition, it is premised as required by Article 251 of the Constitution. Let me go fast in the interest of time, so that we can deal with all these issues. I have stated the facts that support the Petition. I have also stated the response of the IEBC and I have also stated the supporting facts that were presented to the Committee. Unfortunately, we were being invited to go to the Supreme Court to fish out the documents that were relied upon by the Supreme Court. The law is very clear. The Petitioner is expected to present all the supporting evidence. It is not incumbent upon the Committee to go on a fishing expedition of supporting documents of the Petitioner.

I would like to move quickly to the issues that were raised in the Petition that was filed at the Supreme Court. That is because we were invited to consider the documents that were filed thereon. Again, as you know, the Supreme Court has issued its judgment in its entirety. They gave their order as required by law and in Petition No.3, basically, the issues that revolved around it were as to whether the IEBC in tallying the votes should have included the rejected votes and whether the inclusion of the rejected votes had a prejudicial effect on the percentage of votes won by President Uhuru. That, in itself, had no relevance to the Petition because the Petitioner was not claiming anything with respect to the rejected votes. With regard to Petition No.4 of 2013 which the Committee considered to be relevant to the issues that were raised under the grounds that the Petitioner sought to rely on, we found that the grounds that the Petitioners, in Petition No.4 of 2013, had a similarity with the grounds that the Petitioner sought to rely on. For purposes of clarity and for avoidance of doubt, I would like to mention the grounds.

On 16th March, 2013, petitioners Gladwel Muthoni Otieno and Siad Rajan filed a petition against the IEBC and Mr. Isaack Hassan, hon. Uhuru Kenyatta and hon. William Ruto. The petitioners averred in their petition in the Supreme Court:-

(i) The election was not conducted substantially in accordance with the Constitution or the Elections Act and the governing regulations. In particular, the IEBC failed to establish and maintain an accurate voter register that was publicly available, verifiable and credible as required by Articles 38(3), 81(d), 83(2), 86 and 88(4) of the Constitution and Sections 3,4,5,6,7 and 8 of the Elections Act 2011 and the Elections Registration of Voters Regulations 2012.

We found that, as invited by the Petitioner to rely on the documents in support of this ground, had a similarity with his own grounds and the supporting facts. The true number of registered voters is unknown and, therefore, the IEBC did not have an accurate voters' register. That the Chairperson and the IEBC repeatedly changed the official number of registered voters and at the absence of a credible principle voter register vitiates the validity of the Presidential elections.

Again, that is a ground that the Petitioner invited us to rely on and a ground that was ably argued at the Supreme Court.

The electoral management system adopted by IEBC was complex and had many shortfalls contrary to the constitutional requirements that it be a simple, accurate and verifiable, secure, accountable and transparent system; that the IEBC failed to meet the

mandatory legal requirements to electronically transmit elections results and this affected the validity of the presidential elections.

Again, one of the reasons and facts that the Petitioner was relying on is that all the presidential results were not transmitted electronically as required and, therefore, the commissioners were incompetent. The IEBC did not discharge their obligation under the Constitution because the tallying and verification of the results did not happen at the polling stations. There was no electronic transmission of results and party agents were ejected from the National Tallying Center.

That is one of the grounds that the Petitioner sought to rely on.

Finally, on Petition No.4, the Petitioner said that the Independent Electoral and Boundaries Commission (IEBC) violated the Constitution and the Public Procurement and Disposal Act, CAP412(c) of the laws of Kenya by awarding the tender to an unqualified bidder who then supplied devices that did not work properly or simply failed on election day. Again, this is one of the strong points that the Petitioner sought to rely on. That is a matter that was also canvassed at the Supreme Court.

[Hon. Speaker left the Chair]

[Hon. Deputy Speaker took the Chair]

Hon. Deputy Speaker, on Petition No.5, 2013, on 16th March, 2013, hon. Raila Odinga filed a Petition against IEBC, Mr. Isaac Hassan, hon. Uhuru Kenyatta and hon. William Ruto. The Petitioner averred that:-

(1) The electoral process was so fundamentally flawed that it precluded the possibility of deciding whether the presidential results declared were lawful.

(2) The IEBC official tally of registered voters changed several times. This resulted in the final total number of registered voters differing materially from what was in the principal register. Again, that was a ground that the petitioner sought to rely on. That is a matter that was also canvassed at the Supreme Court.

(3) The IEBC failed to carry out transparent, verifiable, accurate and accountable elections as required by Articles 81, 83 and 88 of the Constitution. Again, you will notice that, that is what the Petitioner sought also to rely on.

(4) Several anomalies occurred in the process of manual tallying such as the votes cast in several polling stations exceeding the number of registered voters, differences between results posted and the results released by the IEBC, the use of unsigned Form 36 to declare the results and the electronic systems acquired and adopted by the IEBC to facilitate the general elections were poorly designed, implemented and destined to fail. Due to the failure of the system, the IEBC was unable to transmit the results of the elections in contravention of Regulation 82 of the Elections Act, 2012. Again, the petitioner has sought to rely on that particular ground in support of his grounds as clearly stated in his Petition.

Hon. Deputy Speaker, the Supreme Court, in considering all those, gave us the ruling or the order which is annexed to the Report. I am not going to read out everything. I will only read out that which is relevant to all that which has been quoted. This is the

ruling in the consolidated Petition Nos.3, 4 and 5 of 2013. The Order of the Court was as follows:

“This represented the unanimous decision of the Supreme Court. It stated:-

“As to whether the presidential elections held on 4th March, 2013 was conducted in a free, fair, transparent and credible manner in compliance with the provisions of the Constitution and all relevant provisions of the law, it is the decision of the court that the said elections were, indeed, conducted in compliance with the Constitution and the law.”

(Applause)

Hon. Deputy Speaker, we were being invited to sit on appeal of the Supreme Court decision. As you know, Article 163(2)(a) gives exclusive power to the Supreme Court to make a determination---

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, I have been informed that the Speaker clearly said that everybody shall be heard in silence. That is still in force.

Hon. Chepkong’a: Hon. Deputy Speaker, just for clarity, this is the Constitution of Kenya passed in 2013. It says in Article 162(2):-

“Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to-

(a) Employment and labour relations; and---“

When it comes to the Supreme Court, Article 163(3)(a) states:-

“Exclusive original jurisdiction to hear and determine disputes relating to the elections to the office of the President arising under Article 140 is the preserve of the Supreme Court.”

The Supreme Court has expressed itself on this matter. It determined the matter that it was invited to determine in Petitions Nos.3, 4 and 5 of 2013. As I have just said, they made their orders accordingly.

Hon. Deputy Speaker, on the Committee’s findings:-

(1) On alleged serious violation of the Constitution and the laws of Kenya, the Committee by majority found that the petition does not specifically set out the functions of the Chairperson and Members of the Commission in which they failed to perform or which Article of the Constitution or any other law they have violated.

(2) On the alleged gross misconduct, the Committee by majority found that the petitioner did not provide any material evidence to establish and prove gross misconduct against the Chairperson or Members of the Commission. There were no facts that were provided.

(3) On the alleged mismanagement of public finances contrary to Article 201 of the Constitution as read together with Article 10 of the Constitution, in the procurement of BVRs and EVID the Committee by majority found that the BVRs and EVID are matters of procurement and several officers of the Commission have been charged in court in Nairobi in Anti-Corruption Case No.16 of 2013 as evidenced by the charge sheet

that is attached to this Report. This was presented to us by the Commission. In this matter, the Commissioners are listed as prosecution witness.

In our view, this matter with regard to the procurement of equipment is *sub judice* and so cannot be entertained by the National Assembly.

On alleged ground of incompetence in the management of 2013 elections, the Committee by a majority did not find any supporting facts as required under Article 251 of the Constitution.

Hon. Kajwang’: On a point of order, hon. Deputy Speaker. I hate to interrupt my learned friend and senior. However, just allow me to request the Chair to clarify for us the timings that we got because a Motion was moved and the question put. If you are going to allow the Mover to use 60 minutes to move and then seconded and make hon. Members speak for only five minutes; knowing that there are Members who are opposing and supporting the Motion, would it not be inequitable? The time of the Mover should also be reduced just like the time of the Members has been reduced. He cannot retain the 60 minutes in the Standing Orders. That is what I am saying.

Hon. Deputy Speaker: Yes, but unfortunately, when you were doing the limiting of the time, you only did it for the Members speaking. That was not done for the Mover. That is a different request now. Let us leave it to the magnanimity of our Mover to see if he can summarise. This is because we have already passed that one. Hon. Members speaking will have five minutes.

Hon. Chepkong’a: Thank you, hon. Deputy Speaker. In fact, I was coming almost to the conclusion of this matter. The Report I am presenting is what was discussed by the Committee. I am not adding my views.

On the statement by the Petitioner at paragraph 5 of the Petition that issues in respect of the petition are not pending before any court of law, constitutional or legal body, the Committee found out that, as a fact, the statement by the Petitioner was untrue. That is because the Chief Executive Officer and other officers have been charged over procurement issues and there are election petitions pending in a number of courts. This is in breach of Section 3 of the Petitions to Parliament Procedure Act.

Finally, according to Section 3(f) of the Petitions to Parliament Procedure Act, the petitioner should indicate any effort made to have the matter addressed by a relevant body and whether there was attempt to do so. We found that there was no attempt in complying with an Act of Parliament.

Having set out the facts and the findings of the Committee, the Committee having considered the provisions of Articles 82, 83, 88 and 251 of the Constitution, and having considered the provisions of Chapter Six of the Constitution and the provisions of the Petitions to Parliament Procedure Act and Standing Order No.230 of the National Assembly, the Committee, by a majority, reports to the House as follows:-

(i) The Petition does not disclose grounds for removal of the following Members:-

- (a) Ahmed Isaack Hassan – Chairperson.
- (b) Lillian Mairi Saja – Vice- Chairperson.
- (c) Eng. Abdilahi Sharawe – Member.
- (d) Thomas Letangule – Member.
- (e) Mohamed A. Hassan – Member.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! You will have your say hon. Members. Just allow the hon. Chepkong'a to finish moving. Hon. Lelelit, what is out of order?

Hon. Lati: Hon. Deputy Speaker, in all fairness, I think we extended the time of the House today because this is a very important Report. I am seeing the Chairman reading the Report page by page and I have the Report here and I can read. At least, I went to school. You should know how to summarize. That is what we are asking. Fairness! Thank you.

Hon. Deputy Speaker: Order, Members! That is why I said we are leaving it to his discretion to shorten it so that Members can participate. As you know, there is high level of interest. Remember we cannot change midway. We have already made a decision that any increase or decrease of time is done at the beginning and not midway once debate has started. Hon. Chepkong'a, please, proceed to conclude so that Members can contribute to this Report.

Hon. Chepkong'a: Thank you, hon. Deputy Speaker. You know hon. Lelelit is my good friend. If he was following the Report, he knows that I am now reading the recommendations of the Committee which are contained in only two paragraphs. I do not know what has irked him about the names I have read. These are just purely names of persons and I am required under the law to do so.

Hon. Deputy Speaker: Hon. Chepkong'a, just finish

Hon. Chepkong'a: I am not arguing. I said the Petition does not disclose grounds for removal of the persons I have named. Accordingly, the Committee recommends as follows:-

That the House finds that the Petition does not disclose any ground for removal of Ahmed Isack Hassan, Lillian Mairi Saja and the Members - Eng. Abdulahi Sharawe, Thomas Letangule, Mohamed Alawi Hassan, Albert Kamres Onyango Bwire, Kula Kalma Godhana, Amb. Yusuf A. Nzibo and J. Muthoni Wangai.

Upon the conclusion of the Majority Report, the Minority Report was written because of the dissenting Members who sought to object to the Majority Report. The Minority Report is contained in paragraph 6.0 on page 27 and it goes all the way to page 29. The names of the persons who dissented the Majority Report include: Hon. Peter Kaluma, MP, Hon. David Ochieng, MP, hon. Agostino Neto, MP, hon. (Dr) Christine Ombaka, MP and hon. T.J. Kajwang' MP. All their views are contained thereon. I want to thank you, Madam Deputy Speaker, and call upon the Leader of the Majority Party to second.

Hon. A.B. Duale: Thank you hon. Deputy Speaker. I will take very little time because the Chair has explained everything. I will go to the generals. I had the opportunity, under the courtesy of the people of then Dujis Constituency, to take part in the disbandment of ECK in 2008 and the formation of the Interim Independent Commission - the mother of the current IEBC. From the outset, I had a very good reason - by then in 2008, I was a new Member of Parliament for Dujis Constituency - to participate in the disbandment and sending home of the former Chair - the late Samuel Kivuitu. That was among the many reasons that caused the post-election violence in

2007/2008. After that, Kenya went through a new dispensation where people shared the Government. We had a Grand-Coalition Parliament. We did not have an Opposition for the first time. That was a Parliament where both sides of the House were Members of the Executive. That gave a chance to a few of us, later at the end of the five years, to form a caucus that resembled an opposition. We decided not to work with that Grand Coalition Government.

The 2010 Constitution, both in the letter and the spirit, created institutions under Article 248, Chapter 15 of this Constitution. If you read from 248 from the formation and composition, the framers of the Constitution realised that, in the event that those institutions, among them the National Land Commission, Teachers Service Commission, Judicial Service Commission, IEBC, Gender and Equality Commission and other independent offices like the Office of the Auditor-General and Controller of Budget---

(Loud consultations)

If you allow me, hon. Ken Obura should not be replying to me. We do not want to go into what happened on Thursday. Some of us are here for a purpose and we want to make a change in our political career.

Hon. Deputy Speaker: Order, Members! Every Member shall be heard in silence.

Hon. A.B. Duale: I will take my seat and when order comes back, I will speak. I am neither in a camels market or a fish market. I am in the Eleventh Parliament of Kenya.

Chapter 15 of the Constitution created institutions, commissions and independent offices. Article 251 of the Constitution gave the roadmap. I have been very consistent. Today, I am a happy man. I have said it in my constituency and on the Floor of the House that if you want to disband a Commission under Article 251 - the Commissions and Independent Offices shown under Chapter 15 of the Constitution - the route is the one that the Committee on Justice and Legal Affairs has taken. It is through a petition.

The IEBC conducted a general election in 2013. The 349 Members sitting here were elected and were given a certificate by that institution. The 47 governors and 47 Senators went through a due diligence process and where there was a petition, the Constitution is very clear. It is clear that if it is a presidential election, one of the functions of the Supreme Court was to look at disputes of presidential election. I look at the evidence adduced by this Committee and out of the 29 Members, 25 Members agreed with the verdict of this Committee. Four Members disagreed. In my opinion, even minority opinion must conform to the Constitution. It has no regional balance. The minority opinion does not conform to the Constitution.

(Loud consultations)

Hon. Deputy Speaker: Order! Order, Members!

Hon. A.B. Duale: Hon. Deputy Speaker, I have the Floor. They will have their say.

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

Hon. Deputy Speaker: Order, Member! Hon. Ken Obura! Hon. Wandayi! Proceed to finish your seconding.

Hon. A.B. Duale: Hon. Deputy Speaker, we have said that everybody will have his say. The Member for Garissa Township is having his say.

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

Hon. Deputy Speaker: Order, hon. Ochieng! Order!

Hon. Ochieng: But you allow him to do things that are not right!

Hon. Deputy Speaker: Order, hon. Ochieng! Members, I have said it severally, let us not agitate each other. Hon. Leader of the Majority---

(Loud consultations)

Members, we are all Members of this august House. Hon. Eng! The Leader of the Majority, proceed to conclude your seconding, so that other Members can contribute. Desist from making comments whose consequences you know clearly, Leader of Majority Party.

Hon. A.B. Duale: Hon. Deputy Speaker, I will speak my mind. I was given that opportunity on 5th March, 2013 by the people of Garissa Township. Nobody can deny me the right to do so.

Hon. Deputy Speaker, I have said that in everything that we do in our country, we must conform to the constitutional provisions. The 25 Members who supported the Report did so within the constitutional framework. On 7th August, 2014, there will be a by-election in Mathare and Gatundu. One of the members of the leadership of the CORD Coalition won his seat through a by-election which was supervised by IEBC.

(Loud consultations)

One can break chairs and do anything they like, but I shall be heard.

An hon. Member: On a point of order!

Hon. A.B. Duale: Hon. Speaker, if they keep quiet, I will conclude.

Hon. Deputy Speaker: Order! Order! Proceed to conclude. Your time is almost up, Leader of the Majority Party.

Hon. A.B. Duale: Hon. Deputy Speaker, in 2009, with a very astute politician whom I respect, we walked out of that kind of dictatorship. I walked out with hon. William Ruto and today we are happy. We have formed a political party. So, those who want to be under a dictatorship should know which side of the political divide they should go to.

Hon. Deputy Speaker: Your time is up, Leader of the Majority Party!

Hon. A.B. Duale: Hon. Deputy Speaker, I am seconding the Motion. So, I need to sum up my submission in one minute.

Hon. Deputy Speaker: Leader of the Majority, your time is up! You have done your seconding. Can we finish?

(Question proposed)

Hon. Deputy Speaker: Yes, hon. Ali Rasso!

(Loud consultations)

Order! Order, hon. Members! I have given the Floor to hon. Ali Rasso. Please, allow him to be heard in silence.

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

Hon. Deputy Speaker: Hon. Members, I am not putting the Question! Hon. Rasso is on the Floor!

Hon. Dido: Thank you very much, hon. Deputy Speaker. I wanted to say “put the Question” but I want to make my contribution.

Hon. Deputy Speaker, the citizen was within his constitutional rights to bring the Petition to this House. However, what we are seeing is that what has not been given by the courts is being brought to this House for debate. For that reason, I think the citizens of this country are watching and asking: Is the House going to give what the Court has not given? The IEBC should actually be thanked for running a successful election in 2013.

(Applause)

Hon. Deputy Speaker: Order! What is not in order, hon. David Ochieng? It better be a point of order.

Hon. Ochieng: On a point of order, hon. Deputy Speaker. This is a very important matter and I do not think I will be intimidated. The point that I want to make is this: Are the Members, starting from the Mover and Seconder of the Motion, up to now, in order--- That is because they keep on saying: “We are looking for what we did not get in the courts”, when it is very clear in our minds that this Petition--

(Loud consultations)

Hon. Deputy Speaker: Order! Order, Members!

Hon. Ochieng: This Petition is very clear. It talks about the removal of members of IEBC. It does not talk about making Raila Odinga President or anything. It is just removal of members of IEBC. That court decision they are talking about cannot even be quoted---

Hon. Deputy Speaker: Okay, you have made the clarification, hon. Ochieng. Order Members! Allow hon. Rasso to continue.

(Loud Consultations)

Hon. Dido: Thank you very much, hon. Deputy Speaker. Please, protect me so that I can make my contribution.

Hon. Deputy Speaker: Hon. Rasso shall be heard, hon. Members. You know Members are allowed to sit anywhere in this House, He is allowed to sit anywhere. Order, Members! Let us hear the hon. Member, please.

Hon. Dido: In 2009, the former ECK was disbanded following the elections of 2007. In 2014, we are asking that IEBC should be disbanded following the elections of 2013. I think from the on-goings, it appears that if you do not win, actually, the problem is IEBC. We must move away from that because the referee cannot always be wrong. The player could easily be wrong on the pitch. From what the Committee has provided to this House, there is not sufficient evidence that has been presented to us for IEBC to be disbanded. If we believe in the rule of law - and that is how IEBC was established under Article 88 of the Constitution - we must move away from the brink and follow it. That is because what IEBC has done is very much within the law.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. (Dr.) Eseli.

Hon. Simiyu: Thank you, hon. Deputy Speaker. If you noticed, I had pressed the intervention button. The Mover of this Motion at the tail-end, mentioned a Minority Report. In the course of his talk, he never told us what was in that Report, yet he is the Chair of that Committee. I think the honour is upon him to give all his membership a hearing; that is democracy. So, he should have actually given a highlight in that Report - about what the minority said - because it has misled the whole House to the extent that even the last speaker was talking about the disbandment of IEBC.

The Motion is not about disbanding IEBC, but removing specific commissioners. That is not equal to disbanding IEBC. So, I believe all this misconstruction of the whole Motion is because the Mover did not make it very clear. This is a democracy and we should have equity. Why did he not give us the highlights of the Minority Report, which he mentioned?

Hon. Deputy Speaker: Okay. The Chair of the Committee, a question has been put directly to him.

Hon. Chepkong'a: Thank you, hon. Deputy Speaker. One of the things that hon. Mirenga needs to go and check is my *curriculum vitae*. He will discover that mine is better than his. He needs to go back to school! It is a fact and it speaks for itself. You should have taken notice of that long time ago.

Hon. Deputy Speaker: Order! No! No! Hon. Chair, do not digress from the point.

Hon. Chepkong'a: Hon. Deputy Speaker, you know I was making every attempt to go through this Report. Hon. Kajwang' and the callers on the other side told me to finish what I was saying. In obedience to their request, I sat. Therefore, I do not know my problem.

Hon. Deputy Speaker: Order! Order, hon. Members! Let us hear from hon. Mirenga.

Hon. Mirenga: Thank you, hon. Deputy Speaker. I want to say from the outset that, just like my colleague hon. Dr. Eseli has said, many hon. Members, particularly on the other side, did not understand the nature of this Petition. That is because each one of the speakers talked about the disbandment of IEBC. The truth is that we are talking about the removal of the Chair and the rest of the Commissioners. In fact, I am very happy that there is an intention----

(Loud consultations)

Hon. Deputy Speaker: Order! Order, hon. Members! We are not hearing the hon. Member contributing. We said that each person shall be heard in silence. If you all respect the views of others, we are not going to---

(Loud consultations)

This heckling and shouting is not making anybody heard. In the end, nobody is benefitting or gaining. Let us just listen. I remember hearing the Speaker clearly saying:-
“The minority shall have their say, even if the majority will have their way.”

Therefore, can we hear the opinion of hon. Mirenga?

Hon. Mirenga: Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Also desist from agitating anybody. Please, just make your point and let it rest there.

Hon. Mirenga: Hon. Deputy Speaker, I laud the last words that you have just said. I only wish that they would apply whenever the Leader of the Majority Party also speaks in this House. I am also very happy that the Chair of the Departmental Committee on Justice and Legal Affairs has already proposed an amendment. Actually, there is a Bill that should be coming to this House before the end of the year.

The Bill proposes that anybody coming to this House in future, will have a degree and in fact, a valid degree. This will ensure that when we talk about the removal of IEBC and the Commissioners, you will understand and you will not talk about the disbandment.

Hon. Deputy Speaker, the discrepancies that the IEBC results showed touched on every ward of this country. In Meru County, a ward called Anyaki, there were 17,000 votes beyond the registered number of voters.

(Loud consultations)

That is why the documents are being hidden! When we say we want the documents to support what they are saying, they are just ready to vote. We know there are people here who are ready to vote. You will vote, but before we vote we must debate. I want to tell the IEBC Commissioners –if you allow me – they will not rely on the numbers of Jubilee in this House to survive. I want to say in the infamous words that are associated with Jubilee. While it is true that in this House they will be protected, I do not know who will conduct the 2017 elections. But I know it will not be the current IEBC. That one you can take to the

Hon. Deputy Speaker: Okay. Are you checking the time?

Hon. Mirenga: Hon. Deputy Speaker, maybe, you need to give one of them a chance to rise on a point of order so that they can say what it is that is itching them before I proceed.

Hon. Deputy Speaker: Order, hon. Kaluma! Do not ask for protection when you are making everybody to get angry.

Speak your mind without---- You should not seek protection from the Chair.

Order, hon. Members!

Hon. Mirenga: Hon. Deputy Speaker, I do not know where this agitation is coming from. Obviously, it is meant to protect the stolen vote and victory. But I want to say that no matter what you do, we will take you through the referendum and the IEBC commissioners will go home.

(Loud consultations)

You can say that is irrelevant, but that is the truth. You must live with this. You are free to be---

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Ken Obura!

Hon. Mirenga: Hon. Deputy Speaker, the truth is that when we go through the referendum, we will kick them out and that is coming soon!

(Loud consultations)

Hon. Deputy Speaker: Hon. Kamama! Hon. Members, you all keep talking about relevance and then, when you get up, you are irrelevant yourself. Could we, please, abide by the rules that we are setting for each other?

Hon. Abongotum: Hon. Deputy Speaker, I want to be heard and I will not speak until we have total silence in the House.

Hon. Members: Yes.

Hon. Abongotum: Hon. Deputy Speaker, I support the recommendations of the Committee. About minorities, of course, you know how we deal with you. I would like to say from the very outset that this matter was disposed of by the Supreme Court which gave all the reasons. The reasons are annexed to this Report. We did not have any dissenting voice. Before I say that we will not actually change this Commission, the Chairman and other members will remain because most of them were actually chosen from this side. They were chosen by the ODM Party then. They thought that they were going to be unfair. But they actually exercised their right. They did the right thing by announcing that Jubilee had won the elections fairly and squarely.

Forget about the tyranny of numbers of 2013! What you are going to face in 2017 is a total Waterloo! I want to confirm that the commissioners are very competent. They did not commit any serious violation of the Constitution and that they conducted the elections according to the law. The only hiccup we saw was on the issue of procurement. We know that the procurement of BVRs and EVID had issues. However, the Government has taken appropriate action. Those who mismanaged the procurement of the BVRs and EVID are actually in court and the courts will decide.

I want to plead with my honorable friends that let us not even contemplate--- The other side, especially our friends from CORD, they want to choose their own referee.

Hon. Members: Yes!

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Stop shouting at each other across the Floor!

Hon. Abongotum: Our friends from the other side of the aisle want to choose their own referee to manage the 2017 elections. We will not allow this to happen because we have the numbers. I want to end by saying: “You will face the real tyranny of numbers in 2017.” On the issue of the referendum, we will also know how to handle you.

I beg to support the recommendations of the Committee.

Hon. Deputy Speaker: Hon. Lelelit!

Hon. Lati: Hon. Deputy Speaker, thank you!

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members! I have given the Floor to hon. Lati!

Hon. Lati: Hon. Deputy Speaker, I have decided to contribute to this debate today because on 5th March, 2013, when the returning officer announced that I had won the elections, it was the first wining in my entire life. I wanted to vindicate the Independent Electoral and Boundaries Commission (IEBC) because that day, they did the best job in Samburu. I know they did so everywhere in Kenya. If I was to accuse anybody in this country for making me and all of us win that election, it will not be the IEBC. Otherwise, I will be brief and say that all of us who are in this House are here legally. I do not think anybody---

(Loud consultations)

What I will say to my many friends – I have many friends on the other side – is that, if anybody thinks that he is here illegally, you can resign. We will find you a better referee who will see how you win that election. The vindication of IEBC is through the by-elections that have been done a few months ago in different places. If you look at the by-elections, almost everybody who had a case and went for a by-election came back. They won the same way they did during the elections. I want to thank this Committee because they have done a good job. It is also a good learning experience for our country that elections are “zero sum games” meaning that some people win and some lose. Those who lose will probably win another time. We should learn to move on.

With those few remarks, I support.

Hon. Kajwang’: Hon. Deputy Speaker, I want to speak, hard as it is, as a conscientious Member for Ruaraka. I also want to say that I am one of those who have appended their names to the signature of the Minority Report. Even when the Majority wants to have their way, it is responsible democracy that everybody be heard. This is not a subject for those of us who are in this Chamber. This is a subject for the nationals of this country who are anxiously watching how the practice of democracy and how *wananchi* are being treated. A member of this country has come to this Assembly using the constitutional rights that have been provided for by the Constitution and people out

there are watching, therefore, how we treat the people we claim to represent and if, therefore, the Petitions will be dismissed and treated as rags.

I have less than five minutes and I cannot say much. But what are we called to do in this House? Article 251 of the Constitution, particularly Sub-section 3, says that we shall consider the Petition and if satisfied that it discloses a ground under Clause 1, shall send the Petition to the President. We are not called to disband the IEBC. We are not called to even remove those people right now. All we are called to do right now is look at the Petition that has been presented to us by a member of this nation and if we think that there is even a simple evidence or what the lawyers call *prima facie*, then we can send the Petition to the President who, therefore, commences the process of appointing a tribunal. This is what we are here for.

The Report has been presented and issues have been raised. I would like to start with the one that the Member for Tiaty seems to be confessing; that there are issues of procurement. He said that as far as he is concerned, that is an issue that he thinks was wrong.

Article 88(4) of the Constitution says:-

“The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by this Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for-

(h) the facilitation of the observation, monitoring and evaluation of elections.”

What this means, therefore, is that the buck stops at the foot of the Independent Electoral and Boundaries Commission (IEBC). It does not matter to me that some people are in court over procurement. It makes sense to me that there was the IEBC that was superintending all these things.

If, as the National Assembly and as the Member for Tiaty wants to confess--- He has said on record that there were procurement issues. That alone is an issue good enough to send to the President so that he can form a tribunal and investigate. This is because it is not for us to investigate. The tribunal will pass a verdict whether the IEBC was wrong or right.

Secondly, there are issues of Kencall; that the IEBC allowed a server which was also being co-hosted by another political party that was a contestant in the game. Our role is not to determine whether that affected the elections or not, but our role is to determine whether they exercised due diligence and competence. This is because elections are in perception. Did they pass the necessary judgement? In my submission, they did not. We can send that to the President on the ground of incompetence.

Hon. Deputy Speaker, there is the big issue of the disjointed results. Up to now, nobody has given all data of presidential candidates. That includes the data of President Uhuru. All we have is the Gazette Notice that he is the duly elected President. But if you ask him how many votes he got in Tharaka-Nithi and Ruaraka, you will find that the IEBC has not given us any report. That is why we have had problems with political parties. That, in itself, is a ground that we can send to the President that there was incompetence---

Hon. Deputy Speaker: Your time is up, hon. Kajwang! You have prosecuted your case. Yes, hon. Pricilla Nyokabi.

Hon. (Ms.) Kanyua: Thank you, hon. Deputy Speaker. I also rise to support the Report of the Committee. The Committee spent a lot of time looking at the questions it was invited to look at. There were three questions put before the Committee.

The first question in terms of the grounds supporting the Petition was violation of the Constitution and law. The Committee spent a lot of time looking at that question. We did not find any evidence that IEBC did not respect the Constitution and the Elections Act. We actually found that the IEBC followed the law it was supposed to follow. This decision is the same as what the Supreme Court found in the case that the Chair has mentioned in moving the Report.

Hon. Deputy Speaker, the other question that was put before the Committee was the question of gross misconduct. This is where the Petitioner got it completely wrong. Our Petitioner, Mr. Wafula Buke, did not allege any grounds of misconduct on any of the members of IEBC.

On questions of misconduct, we do not have shared responsibility. The Petitioner needed to show us that the Chairperson - Mr. Isaac; the Vice-Chair – Madam Lilian and all the other Commissioners made mistakes that amounted to gross misconduct in how they handled the election. This ground completely failed.

There is no time when, as Members of this House, we will be called upon to answer questions collectively. The Member for Nyeri County answers questions alone, the Member of Samburu County answers questions alone, and this is what was required of the IEBC. The petitioner should have done his work, which was to show grounds of gross misconduct for all of the ommissioners of the IEBC. He did not do this. He did not give us any evidence whatsoever that showed that any of the commissioners grossly misconducted themselves in how they handled the election. The final ground that this petitioner brought before the Committee was that of incompetence. Again, no evidence was given to the Committee to show incompetence on the part of the IEBC. On all of the three grounds, the Committee was completely convinced that the IEBC did what it was supposed to do and there was no reason whatsoever for the Committee to recommend to this House that a tribunal be set to commence removal proceedings. So, today we say that this House has got to confirm the work of the IEBC. But, we do have questions. Did the IEBC do a good job on the 2013 elections? The answer is a complete yes, a confounding yes; six elections were undertaken on the same day; hon. Uhuru Kenyatta was elected the President; a good job was done by the IEBC.

With a lot of humility, we have to ask the second question: Did the IEBC do a perfect job? Of course not; the IEBC is not perfect; nobody is perfect; it could not have conducted a perfect election, and that is what this House has got to do. We did find that there is need to reform the IEBC. Is the Committee ready to engage in reform matters? Of course yes. Do we need to look at the law on the register and require that the register that is used elections is given to every Kenyan as happens in other countries? Of course we want to do that. But is that the question before us today? Not at all. The question before us today is whether the IEBC commissioners did a good job.

On the question of reform. I want to confirm that the Committee--- I want to confirm that the President, when he was elected, did confirm to everybody that reforms have got to be undertaken. On the question of procurement, again many gaps do exist and we did find that in fact the IEBC commissioners were not allowed to play a direct

role in matters of procurement. We want to look at that question; we want to give the IEBC commissioners a role in the procurement of the BVR kits and the electronic voter devices (EVD).

On the final question on timelines, we think that some of the timelines have got to be looked at; the petition that has been brought by hon. Wafula Buke is a good one and allows this House to look at reforming the IEBC. But the IEBC commissioners must continue with their work; they must be supported; they must stand for our country.

Thank you Deputy Speaker.

Hon. Dukicha: Thank you madam Deputy Speaker. To me, the people of this country--- We are tired of petitions every morning, afternoon and evening; we are totally tired.

Deputy Speaker: Order hon. Member. Remember that a petition is a right of every Kenyan. Can you say what petition you are talking about?

(Loud consultations)

It is in our Constitution; say which kind of petition you are talking about.

Hon. Dukicha: Hon. Deputy Speaker. I also have a right to get tired.

(Applause)

The IEBC conducted a by-election in Makueni County, and we said it was free and fair. When the by-election in Bungoma came, it was free and fair. What we are saying is, let us call a spade a spade and not a big spoon. The people of Kenya have elected us, so that we can undertake development for them. So, the idea of removing the commissioners is day dreaming. The idea of the referendum is day dreaming. These are negative thoughts, which cannot build a nation. We need positive thoughts and ideas that can build this country. We are not here to petition people. Even they - you know who I am referring to - are not ready to go home. They are just saying things. From my heart, I know that even they are not ready to go home. They have no otherwise, but to act---

(Loud consultations)

Hon. Deputy Speaker, protect me from this euphoria. Chair, you are highly dignified.

When I say even they---

Hon. Deputy Speaker: Order, hon. Member! Do not keep on repeating yourself. You have already said that. Please move to the next point.

Hon. Dukicha: Hon. Deputy Speaker, they have already heard me very well. There is no removing of commissioners, no going home, the petition is baseless and has no foundation.

I support the Report.

(Loud consultations)

Hon. (Eng.) Gumbo: Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Order, Members! Let us hear each other in silence. Hon. Dukicha has had his time. So, allow hon. Gumbo to be heard.

Hon. (Eng.) Gumbo: Hon. Deputy Speaker, as George Bernard Shaw once said, the moment we want to believe something, we suddenly see all the arguments for it and become blind to all the arguments against it. This report, in my view, just like the Supreme Court ruling on the Presidential Petition before it, endeavours to give us reasons that sound good. What we need are good reasons why we should not be sending the IEBC commissioners packing.

It is a fundamental requirement of democracy that any electoral process must accord citizens the freedom to exercise their political rights in a free and fair manner. Was this done? My submission is no. An electoral process should be conducted with sufficient fidelity to produce graceful winners, who can have the humility to embrace losers. Have we produced graceful winners? My submission is no. We have not produced graceful winners. While elections are supposed to re-unite us and bring us together, every five years we see a cycle of disunity and more disunity; people are set apart by elections as opposed to what we hope to achieve. Our electoral process, I submit, must change into one that can produce a winner who will inspire confidence and hope in the losers. He should also be a winner who can embrace even his worst critics.

If you look at Article 251 of our Constitution, it is very clear on what the grounds for a petition are. We are missing the point here. The petition was about removing the commissioners as has been said by other speakers before me. I want us to agree on these fundamental things. Being in the Opposition is not a permanent thing. A lot of people who are in the Government now were in the Opposition at some point. I can assure you that a time is coming when you will be in the Opposition. So, let us look for laws that you will be comfortable with even when those laws are in the hands of your worst critics. Let us move forward and create laws for posterity. Let us create laws that do not look only at the present. They say that the best laws are laws which make you comfortable even if your worst enemy is the one in authority. Do we say so? We know that there are lots of structural faults not just with the IEBC but also with many of the commissioners. This is really what we hope to achieve. Clearly, there is no electoral process which is perfect. We do not seek to get a perfect electoral system. Can we make it better? Yes! Are there ways in which this House can come together in a bipartisan manner to make our electoral process better? Yes! That is what we should be looking at.

Let us not look at it as if we are targeting anybody. This petition is not about the presidential petition. We all accept the fact that Uhuru Kenyatta is the President. Agreeing with it is not the issue. The Supreme Court gave the verdict. We accepted it even though we did not agree with it. We are not going back there. What we are saying is that there are fundamental problems with the IEBC. This House must come together to rectify those problems, if we are looking forward to electoral processes which bestow fidelity in the process and the participants in elections.

With those remarks, I beg to oppose.

Hon. Deputy Speaker: Yes, hon. Alloys Lentoimaga!

Hon. Lentoimaga: Thank you, hon. Deputy Speaker. I rise to support this exemplary Report. The Members of the Committee have done a good job. The

Commission did a good job. That is why we are here today. They need to be commended for the good work they have done. If it were not for their good, transparent and fair work, some of us would not be here today.

Hon. Deputy Speaker, procurement is not a function of the commissioners. It is a function of procurement officers. It is a matter for the Commission's Accounting Officer, who is the Chief Executive Officer. That particular matter is already before a court. I want to plead with my brothers that removing the commissioners from office would be killing the entire Commission.

The heart of the Commission is the commissioners. So, we should not remove them from office without following the due process just because we want to satisfy the CORD leadership. You are being watched out there. If you do not oppose, it means that you are not singing the song of your leaders.

I want to appeal to you that we give commissioners time. Let us implement reforms slowly. By 2017, we will be able to do some good work.

With those remarks, I beg to support.

Hon. Deputy Speaker: Yes, hon. Joseph M'eruaki.

Hon. M'uthari: Thank you, hon. Deputy Speaker.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, it is not a question of which side. I have been trying to balance. If I were to follow the order of requests, the Members to speak would be Kipruto Bentley, Robert Pukose, Keroro Paulina, Jonah Kibyegon, *et cetera*, in that order. If you allow me, sometimes I try to balance but not when you keep on coming here and asking, "Can I see who is coming next?"

Hon. M'uthari: Thank you, hon. Deputy Speaker. From the outset---

(Loud consultations)

Hon. Deputy Speaker: Order! Order Members! Allow the Member to make his contribution.

Hon. M'uthari: Thank you hon. Deputy Speaker for protecting me.

From the outset, let me say that I support this Report and it is high time the citizens of this country accepted the reality. Things must not always go your way; you have to accept them as they are. Even the Members who are agitating in this House---

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, your consultations are too loud; we cannot hear contributions. Order! Order Members! Stop shouting across the Floor, hon. David Ochieng and hon. Ken Obura.

Hon. M'uthari: I am saying that I support this Report; if we do not support it, then it means even the Members who are claiming that the IEBC is not competent---

Hon. Deputy Speaker: Hon. Cheptumo, you are standing in between the Chair and the person on the Floor!

Hon. M'uthari: I am saying this is the time we have to reason as citizens and Members of this House. Let people also be honest with themselves. When you claim that the IEBC is incompetent and the election was not conducted properly, and at the same time you are being paid by the tax payers, was the same referee who declared you are elected not fair? It does not mean that because certain individuals were not elected, the IEBC was wrong. It is high time we accepted the verdict of the referee and allowed life to move on. There will be another election; when the next elections come, let the candidates present themselves and then let the best win.

Otherwise all of were declared elected by the IEBC; these were the 47 Senators, the nominated Senators, the 47 Governors, the 290 of us in this august House, the 1450 MCAs and the nominated MCAs; it then means if the process was not correct, you should also not be speaking in this House. You are not honest to yourself. If you were honest to yourself the best thing to do would be to say, "I was declared elected by an incompetent authority" and then you resign and go home to wait for the right body.

When you talk about the referendum, there are people who do not believe in other people winning. If you lose you accept it; if you do not accept it, then you are not good in competing. If you are in competition, you have to accept there will be winners and losers. If you lose you accept it; if you do not accept it then you are going the other way round. One Member here was shouting that there will be another way. Which is the other way? You have to substantiate; you are talking about a referendum. You are in dreamland; you will not say that; I said there will not be a referendum; it will not be there.

It will not be there; if it will be there, it will about the people of Kenya; they will talk, and decide through their votes. You can shout; even if you shout you have heard what I have said. You have to go back to reason. If you shout louder, at least your masters will know you have already spoken and you are against; you will be okay.

Thank you, hon. Deputy Speaker.

Hon. Deputy Speaker: Yes, hon. Chachu Ganya.

Hon. Ganya: Thank you, hon. Deputy Speaker. From the outset, I support this Report.

(Loud consultations)

Hon. Deputy Speaker: Order! Order Members!

Hon. Ganya: We took an oath to defend this Constitution. The IEBC commissioners discharged their constitutional duty and they did it extremely well. The IEBC conducted elections under very difficult circumstances. I was in the 10th Parliament when we appointed the new commissioners. Some of them, of course, were in the Commission before. They had one month to basically register voters electronically; this was demanded by the political class. We decided not to go for manual registration of voters but electronic registration of voters, which meant we had to invest millions and billions of money in it.

With the resources constraints that they had, being a very new institution, and having been in existence for very few years, they went ahead and did there duty as mandated by the Constitution. We have interacted with the IEBC in our constituencies

and counties. They were fair, very neutral and very free. We must be honest to ourselves. This country voted for the Constitution, which is no longer new, for a reason. We created constitutional bodies for a reason. If they do not perform as per our expectations, we are ready to send them home; that is not right; it is not fair to this country.

We had our contest in the Supreme Court and the verdict was very clear; we have to live with it.

It is true we have invested in the electronic election equipment in this country; it failed us and we need answers for this. Through your Committee the reforms you have mentioned must be seen to be undertaken. We need reforms so that when we invest billions of shillings to have our process working, it must work and it must be seen to be working. Up to today, we do not know why and how it failed on that particular day and not on any other day. This is because it has been used in by-elections. We need answers.

Hon. Deputy Speaker, looking at the totality of the evidence given by the Committee it is very clear that the petitioner was actually using the provisions of the Constitution in a very mischievous way. Actually the Constitution must have sanctions against people who use its provisions for mischief. I think there should be sanctions because the rights that we are given also come with responsibility.

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members!

Hon. Ganya: That is my position. I strongly believe that the Committee did a very good job and we will stand by them.

Thank you.

(Loud consultations)

Hon. Deputy Speaker: Order hon. Members! When you are here, everyone speaks. When you are here every hon. Member is a debater in their own right and they debate in the best way.

Hon. Barchilei: Thank you, hon. Deputy Speaker for this chance. As I support this Motion. I want to thank the Departmental Committee on Justice and Legal Affairs for the critical job they did. It is crucial to handle well matters that touch on the Independent Electoral and Boundaries Commission (IEBC). I want to say that this commission is competent. All of us are here because of the competence of this Commission. We are here because of the credible job done by the IEBC. Mr. Isaak Hassan, who is the first on the list, is a competent person. He conducted the referendum so well that some of us here said “No” in the referendum; others said “Yes” and now they are saying “No”. Do they want changes or a referendum?

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members! Your consultations are too loud.

Hon. Barchilei: Hon Deputy Speaker, I want to say that it was very important that the minority gave their views. It is also very important for us to be pragmatic in handling some issues. It was not the wish of Mr. Isaak Hassan that hon. Raila Odinga should lose the election. It was the wish of Kenyans.

(Loud consultations)

Hon. Deputy Speaker: Order! Order, hon. Members!

Hon. Barchilei: Hon. Deputy Speaker, I want to say that Kenyans spoke during the 2013 general election, and the voice of Kenyans never made IEBC commissioners to be unfit to hold office. I want to say---

Hon. Deputy Speaker: Order! What is your point of order? What is out of order? Allow the hon. Member to raise his point of order. That is provided for in the Standing Orders.

Hon. Wandayi: On a point of order, hon. Deputy Speaker. It is very clear in the Standing Orders that someone who is not in this Chamber, and who cannot defend himself or herself cannot be mentioned adversely.

(Loud consultations)

Hon. Deputy Speaker, the hon. Member has mentioned the name of hon. Raila Odinga who cannot defend himself on the Floor of this House. Will I be in order to demand that the hon. Member retracts the statement and apologizes? This obsession with Raila Odinga from the Jubilee side---

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Order! Those hon. Members walking around, order! Really, you all understand how difficult it is to make this House orderly. You need to assist because it is your House. This is not the Speaker's House; you are also responsible for abiding by the rules that we have set in this House. Every Member shall be heard in silence. These shouting matches are not helping us progress with the agenda before us. I have also said that you do not need to mention names. You do not need to harangue each other. Just make your point. You do not have to make your point through shouting.

In fact, normally the best points are made almost in silence because people listen to you. When you shout at each other, we will not make progress. I want to appeal to you that we have order in the House. Make the point that you need to make and convince us with your points and not your shouting. Let us, therefore, have order.

Hon. Barchilei: Thank you, hon. Deputy Speaker. The reason the petitioner is saying that the commissioners are unfit to hold office is because of the petition that was between the presidential candidates. It is mentioned here. The President is not a member of this House, but he is also mentioned. In order to make my point clear, I want to say that the voice of Kenyans cannot make somebody unfit to hold public office. I would like to term this an irresponsible political scheme to revenge the loss of elections. Those are

innocent commissioners. For now I term them competent, and so they should hold office until their term expires.

I support.

Hon. Deputy Speaker: Hon. Fatuma, Member for Wajir. I am following my list, and trying to be as fair as possible. We have not heard a woman's voice. Allow her to speak, Members.

Hon. (Ms.) F.I. Ali: Thank you, hon. Deputy Speaker. I stand to strongly support the Committee's Report. I want to confirm that I am a Member of ODM elected by the people of Wajir and not by hon. Ochieng and others.

(Loud consultations)

I want to support hon. Ochieng. He has done good work in the Committee. I also want to recognize the petitioner, who has made great efforts to file a petition, so that his grievances and concerns are addressed. I want to confirm here that the Departmental Committee on Justice and Legal Affairs was very fair to the petitioner in particular, and was very thorough with the IEBC commissioners when they appeared before it. I want to confirm here that the Petitioner was given a lot of space to present his facts and a lot of information. The information presented was as a result of our decision that there was no case against the commissioners.

Hon. Deputy Speaker, I think this country is going into a very dangerous trend. The dangerous trend is that if individuals, groups or parties are dissatisfied with any institution, the first thing they want to do is to disband, remove, censure or impeach it. It is very dangerous for this country, and we will never progress. Instead of reforming institutions to correct and strengthen them, we want to deal with individuals. I want to confirm here that the Petitioner did not present information to say that commissioners should go home. We want to confirm that.

In the USA, when Bush Jr. and Al Gore argued that California State results had irregularities they never disbanded a commission. The elections body was respected. They conceded defeat and life continued, unlike in this country where when you lose, you want to disband bodies. When we interacted with the commissioners, they confirmed that there were certain weaknesses in the institution that require reforms. They acknowledged that and that is what we need to do, reform institutions and not disband them or appoint a tribunal to hear the commissioners.

The commissioners in the IEBC have a track record of being good performers, and some of them are exceptionally good. If you read the report, the international observers---

Hon. Deputy Speaker: Can you conclude? Your time is up.

Hon. (Ms.) F.I. Ali: Hon. Deputy Speaker, the international and domestic observers have said that the election was fair, free and accountable. It is in the Report.

Hon. Deputy Speaker: Your time is up.

Hon. Ochieng: Hon. Deputy Speaker, thank you.

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members! I have given the Floor to Hon. Ochieng. Can we hear his submissions?

Hon. Ochieng: Hon. Deputy Speaker, on this side of the divide, we agree that Jubilee stole the elections. We also agree that this Petition will not lead to Uhuru losing his presidency. What we are saying is that the EVDs failed; they were designed to fail. The IEBC had seen that the EVDs would not work and that was why they wanted to---

(Loud consultations)

They can shout as much as they want!

Hon. Deputy Speaker: Hon. Members, it is very obvious that the minute you start casting aspersions and making claims without any evidence is the minute we do not move in this House. When you are not given an opportunity, you complain that you are not given an opportunity. When you are given an opportunity you let the House go up in uproar!

(Loud consultations)

Hon. Ochieng, you rose and said that you wanted to give a summary of the minority Report I gave you the Floor. Is that what you are doing? Please stick to the agenda or points that you are supposed to raise? This winding up the House is not helping us.

Hon. Ochieng: Hon. Deputy Speaker, that is what I am doing.

The IEBC confirmed to the Committee that 48 per cent of the EVD did not work. They also confirmed that the EVD equipment was delivered just two days to elections. So, how could IT work? Where was it tested?

Hon. Deputy Speaker, it is also very important to note that the Independent Electoral and Boundaries Commission (IEBC) decided to be hosted by Kencall when they knew that Kencall was also hosting TNA, a political party competing in the elections. The electronic voting system was supposed to work but it never worked. Incompetence means not being able to apply your mind correctly. Given the circumstances that we had at that time, did the IEBC apply its mind correctly while deploying the electronic voting equipment? The discrepancies in the results cannot be gainsaid. That is why there are no documents here.

I have heard people talk about the court judgment. Even the Supreme Court cannot quote the same judgment because it was wrong, and was prepared without the right documents. Where are these documents they are talking about? Why did they not bring them to Parliament to prove that the elections were free and fair? We know that Jubilee stole the election fair and square and we will live with it.

Thank you very much, hon. Deputy Speaker.

(Laughter)

Hon. Chepkong'a: On a point of order, hon. Deputy Speaker. The question of the stealing of the election was not in the petition. I am surprised that an eminent Member of

this Committee can use the Floor to insult others. The reason why I have not intervened with respect to the others is because they were not Members of that Committee. So, they can roam around. However, with respect to hon. David Ochieng, he has no business roaming around and looking for what was not discussed in the Committee.

Hon. Deputy Speaker, when the petitioner appeared before the Committee, which hon. David Ochieng attended, there was never a mention of stealing of elections by anyone.

Hon. Kaluma: No!

Hon. Deputy Speaker: Stop shouting, hon. Kaluma!

Hon. Chepkong'a: Hon. Deputy Speaker, on the question of the documents that are being alleged to have been hidden--- Shame on these gentlemen.

Hon. Members: No! Shame! Shame!

(Several hon. Members stood up in their places)

Hon. Deputy Speaker: He is on a point of order. Could you be seated? Hon. Ken Obura and hon. Jared, sit down.

Yes, hon. Chepkong'a.

Hon. Chepkong'a: Hon. Deputy Speaker, you know I am talking to Africans who should have respect for people older than themselves. It is very serious. In fact, they can be cursed right now and they can die. They have to be very careful.

(Laughter)

Hon. Deputy Speaker: I believe that, that is with a light touch.

Hon. Chepkong'a: Hon. Deputy Speaker, a curse always leads to a death. I am just warning them. Hon. Ochieng is a very good man except when he decides to be annoyed for nothing and become unruly the way he is right now. I have always warned him in my Committee to be orderly.

Hon. Deputy Speaker: Please, tell us your point of order.

Hon. Chepkong'a: Hon. Deputy Speaker, he is never disorderly in the Committee; he is very orderly except for today; I see that he is trying to be disorderly.

Hon. Deputy Speaker, it is very clear that the documents that were presented by the petitioner were secondary documents and hon. Ochieng went through them. In fact, if you look at the minutes of the Committee, you will see that hon. Ochieng dismissed grounds Nos.1 and 2.

Hon. Deputy Speaker: Hon. Ochieng, have you finished---

Hon. Ochieng: Hon. Deputy Speaker, it is very clear that hon. Chair of that Committee never read the petition clearly. The Petitioner asked us to look at so many documents including the petition presented in the court; four of them. If he read them, he should have known that the major allegation in that petition was that Jubilee stole the election. That was the major allegation there. He should have known that.

Hon. Deputy Speaker: Order! The list that I have before me has 65 Members. Hon. Mbarire what is your point of order.

Hon. (Ms.) Mbarire: Listening to the debate, it is very clear what the mood of the House is, and even if we continue for another two hours, we are clear.

(Loud consultations)

Would I be in order to ask you to put the Question because it is time to do so?

Hon. Deputy Speaker: Order, Members! She is perfectly in order to make that request and you know that. We will just have a few more Members then we will put the Question. Yes, we have been doing that. Has hon. Ochieng just spoken or who was speaking right now? I said hon. Pukose.

Hon. (Dr.) Pukose: Thank you, hon. Deputy Speaker for allowing me to contribute to this debate.

(Loud consultations)

Hon. Deputy Speaker: Order, Members!

Hon. (Dr.) Pukose: Thank you, hon. Deputy Speaker for allowing me to contribute to this debate. I want to thank the Committee Members for a work well done.

[Hon. Deputy Speaker left the Chair]

[Hon. Speaker took the Chair]

Let me thank Wafula Buke for having brought this petition before the Committee. The only challenge to me is that the Chair and the Committee Members have not told us that Wafula Buke is a Member of ODM and by extension, this is a petition by ODM.

(Loud consultations)

Hon. Speaker: Hon. Pukose will be heard in silence. Hold your horses.

Hon. (Dr.) Pukose: These are marks of mischief because if a party wants to bring a petition, they should do it rightly.

(Loud consultations)

Hon. Speaker: Hon. Angwenyi, every Member has only five minutes, so it is not fair that--- Five minutes is such a short time. Allow hon. Pukose to make his point, please. Hon. Opiyo, just hold your---

Hon. (Dr.) Pukose: Thank you, for your protection. As we are aware, the issue about removal of IEBC and the issue about disbandment is a question of syntax and semantics. If you remove them, you will be indirectly disbanding IEBC. So, when *Mheshimiwa* talks about the issue and he has only a degree for that matter---I have Masters and more than that, so I know what I am talking about. We are aware that when we cast aspersions on IEBC on the question of incompetence knowing very well---

Hon. Speaker: Hon. Members, I want you to familiarize yourselves very thoroughly with Standing Order No.107. Hon. Ken Obura read because you have persistently raised purported points of order and that is gross disorder. Hon. Peter Kaluma, you are unlikely to educate me on this.

Proceed.

Hon. (Dr.) Pukose: Thank you, hon. Speaker. When we cast aspersions on incompetence, this Commission was formed through negotiations and consultations between the former Prime Minister and the former President. Therefore, when you look at the Commissioners and talk of removing them, you should look at the areas where they come from. Mr. Isaac Hassan comes from Wajir, which gave ODM votes. The Vice-Chair, Lilian Mahiri-Saja is from Migori, which was predominantly won by the ODM. Mr. Thomas Letangule is from the Jemps and Endorois areas of Marigat, which was predominantly won by the ODM. So, if we want to say that these people stole elections, they must have stolen elections for the---

(Loud consultations)

Hon. Speaker: Hon. Mirenga, you listen. I will not allow Members to keep just shouting the way you people want to do it. I do not have the time and I mean what I am saying.

Proceed.

Hon. (Dr.) Pukose: Thank you, hon. Speaker, for exerting your authority.

With those few remarks, I support the Report.

Hon. (Ms.) Korere: Thank you, hon. Speaker. From the outset, I support the Report. I commend the Committee on Justice and Legal Affairs. For the dissenting voices from the same Committee, I find it mischievous. Again, I sympathise with the few who dissented. I understand because *baba* must watch from where he is seated and see that hon. Kaluma fought vigorously to disband the Commission although he does not mean that.

Having read this Report very carefully, the petitioner, although he has done a very good job in drafting a petition---

Hon. Speaker: Hon. Members, it will have to be a point of order. If you have read and familiarised yourself with Standing Order No.107, know the consequence. It must be a point of order. What is your point of order, hon. Jared Opiyo?

Hon. Opiyo: On a point of order, hon. Speaker. Thank you, for indulging me. I just wanted you to find the speaker on the Floor out of order for insinuating that the debates that are conducted in this House by hon. Members who are duly elected by the people they represent are controlled from outside this House. That is really out of order.

Hon. Speaker: Hon. Opiyo, like I said earlier, you are at liberty to make your own contribution and make whatever allegations on the Floor. The fair thing is that whoever does not agree with you should also wait for their chance to disagree with you and somebody else to say their bit. So, if the Member thinks that there is somebody controlling the debate, I want to say that all I know is that this debate is on a report of a Committee of this House.

Hon. (Ms.) Korere: Hon. Speaker, the IEBC did a commendable job. We elect leaders but God chooses leaders. Those of you who are seated in this House were not elected 100 per cent by your constituents. Some elected your opponent, but God chose you to be leaders, including the President and the Deputy President of this country. They are chosen by God.

I am a duly nominated Member of the National Assembly by the numbers marshaled by the URP Party including the Leader of Majority Party. The procedure for removal of the Commissioners from office is clearly stipulated in Article 251 of the Constitution. The Petitioner has completely failed to show sufficient ground.

Thank you, hon. Speaker.

Hon. Speaker: Yes, Member for Banisa.

Hon. Abdi Mohamed: Thank you, hon. Speaker, for giving me the opportunity. From the outset, let me say that I am a Member of the Justice and Legal Affairs Committee, which prepared this Report.

As a Committee, we looked at this petition. The petition sought to achieve a goal that was not achievable through the ballot on 4th March, 2014 and, subsequently, through the presidential election petition that was presented to the Supreme Court. So, basically, what was not achievable through the ballot and the court process is what this petition is seeking to achieve through this House. Therefore, it is an abuse of the process of this House.

Hon. Speaker, in exercising his right to petition Parliament, the Petitioner presented a textbook presentation of how Commissioners are supposed to be removed from office. It was a classical textbook presentation. There was neither substantiation nor evidence. Therefore, it can only be concluded that the CORD coalition just wants to hoodwink the public by pretending to be active and fighting to stay relevant. This person did not do his homework. There is no homework to be done. The IEBC Commissioners did their job perfectly. So, it looks like they are just playing to the gallery and hoodwinking the public.

Some of the facts that the Petitioner wanted to rely on are, for example, the number of election petitions that were presented to the High Court. We know that some petitions are still in court. We also know that out of the 15 elections that were nullified, except in one case, the electorate re-elected the same persons they had elected on 4th March, 1993. Therefore, the IEBC Commission generally did its work fairly given the fact that the same persons were re-elected during the by-elections.

Hon. Speaker, the Commission needs to be congratulated because they delivered their mandate under difficult circumstances and challenges. For the first time in the history of this country's elections, they presided over six-in-one election and produced results. It is true that there were challenges and lots of shortcomings, but those challenges do not warrant the sending home of the Commissioners. As a Committee we are asking ourselves, what are the problems that are lying there? We have decided that before the next general elections we will improve on what is available and have better results and performance from IEBC. It is the duty of this Parliament and this House to improve on institutions. Yes, there are shortcomings, but just because there are one or two shortcomings, you do not disband institutions. From the gains that are there, we are able to improve and do better than this.

With those few remarks, I support this Report.

Hon. Speaker: Yes, hon. Kajuju, what is your point of order?

Hon. (Ms.) Kajuju: On a point of order, hon. Speaker, reading from the mood of the House and the fact that the opposers have surrendered to fate and tyranny of numbers, I request that under Standing Order No.95, we call upon the Mover to reply.

Hon. Speaker: Now, hon. Members, you will recall the ruling that I gave earlier. I hear murmurs that some of those who presented the Minority Report may not have had a chance to contribute. Hon. Members, I just confirmed from the records here, hon. Peter Kaluma has not spoken. Remember the content; the majority will have their way, while the minority will have their say. So, it is fair that everybody keeps saying and having their way. Let us hear the say, hon. Peter Kaluma.

Hon. Kaluma: Thank you, hon. Speaker. The IEBC performed well in terms of declaration of elections at the ward, constituency and county level. This is possibly because the people who voted were at those levels. The issue that was before us was whether IEBC engaged in gross misconduct. This petition was by a Kenyan because IEBC was being accused of weakening with time and we needed to be more objective about it.

Hon. Speaker, unfortunately, I do not have the material that the Petitioner and, of course, other Kenyans sent to the National Assembly. I wanted to confirm that IEBC, as we stand today, has issued about four Reports on results of elections. One is on their website; the other is on presidential votes, the Political Parties Fund - A report was requested and it came to the Justice and Legal Affairs Committee. The last one was presented to the Supreme Court.

We may say all we need, but I invite hon. Members of this House to take time and consider these reports. You will find that they are all different. What does that say about IEBC? It means for every specific purpose, there was a specific report being given. I do not know how we would term that if it is not callousness or gross misconduct. We did not want Commissioners removed from office, but we wanted a tribunal to be constituted so that these issues can be interrogated. Why are we having results which are not valid in reports? It does not just speak to gross violation of the Constitution, but it speaks, fundamentally, to the competence or otherwise of those Commissioners. In terms of the presidential tally, I wanted to tell Members that I am one person who said that we detach ourselves from those individuals.

Let me tell the House that there are so many ways of dealing with those individuals. They can be prosecuted in public or by a private petition on the basis of the material available. It can happen! The nation is gearing for referendum and it is an issue to be dealt with there. We may think we are saving these people, but we are not.

The IEBC as a commission is so important because it determines the leadership of this country per time. I am a Member of Parliament because IEBC presided over the elections. The President of the country today is there because IEBC said that he is the president, but when we have evidence confirming that elections were stolen, really it becomes unfair. When we request for documents and they are hidden from the public and you say this thing was in order, it is not fair to that petitioner outside there. We are now debating this matter without those critical documents which would have surprised you.

Hon. Speaker: Hon. Members, I said that everybody must be accorded an opportunity to say what they have to say. Any mature Kenyan knows that issues to do with theft and others are reported to the police. If it makes you happy, you are at liberty to say it in plenary of Parliament.

Hon. Kaluma: Thank you, hon. Speaker. Let me wind up on one issue. We know that the Chief Executive Officer of IEBC then is in court being tried, including very senior staff.

Under Article 173 of the Constitution, who comes to this House of Parliament to get money for the Commission? Can IEBC be out there saying that they never committed any wrong when we give them money and then you deal with the staff? That is why we were recommending that the IEBC Commissioners ought to be there. As to how we deal with them on other issues, we can deal with that but let us agree that elections were stolen and this is a fact in the minds of Kenyans. We will deal with it another time. Thank you.

Hon. Speaker: Hon. Members, this cannot go on endlessly. I will put the Question.

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

Hon. Chepkong'a: Hon. Speaker, I must thank all the Members who have contributed; those who are for the Report and those who are against the Report. This has enriched the Report in the sense that democracy has been enhanced. You clearly stated that the majority will have their way, but the minority will have their say.

I must thank hon. Peter Kaluma. He spoke very well except for the last sentence where he erred. It is human to err and we accept that error. First and foremost, I would like to confirm that the IEBC did release the final results before our Committee. When they appeared before us, they also presented the same final tally of the results, together with a soft copy. A copy was given to the hon. Members who dissented. They have not come back to us to say that there was any discrepancy even as they spoke today. They were given a hard copy and soft copy. Even as we speak, they are saying they have not seen the documents, but they were given everything.

I would like to assure the House that the Committee did a very good job. The Minority was well taken care of. We, in fact, protected them from the ire of the majority, including hon. Kaluma himself. He was protected by the Chair and he can confirm that.

Thank you, hon. Speaker.

(Question put and agreed to)

ADJOURNMENT

Hon. Speaker: Hon. Members, it is now time to adjourn the business of the House. The House, therefore, stands adjourned until tomorrow Thursday, 31st July, 2014 at 2.30 p.m.

The House rose at 8.16 p.m.