

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 25<sup>th</sup> February, 2015

The House met at 2.30 p.m.

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

### PRAYERS

### PETITION

#### REVOCATION OF LEGAL NOTICE NO.103(2) ON SORGHUM FARMING

**Hon. Speaker:** The Member for Igembe North.

**Hon. M'uthari:** Thank you, hon. Speaker. I stand to present a Petition on behalf of the people of Kenya.

I, the undersigned, on behalf of the citizens of Kenya, in particular the sorghum and millet farmers, draw the attention of the House to the following:-

- (i) THAT, sorghum farming is an important agricultural and income-generating activity especially in Western, North Rift Valley, Eastern and parts of Central Kenya. The crop is drought-resistant and, therefore, popular in the dry parts of this country.
- (ii) THAT, the Kenya Arid and Semi-Arid Lands Programme (KASAL), in conjunction with the Kenya Agricultural Research Institute, introduced Gadam sorghum for commercial production as a measure to improve income generation and food security.
- (iii) THAT, the Government offered a tax relief for beer made from sorghum. Consequently, the East African Breweries Limited (EABL) ventured into manufacturing of a brand of beer using sorghum as one of the raw materials and further clustered farmers to combine their harvest for bulk sales to the company.
- (iv) THAT, the Government set the price of the beer at a reasonable price that made the brand affordable to low-income earners and served as an alternative to illicit brews and *chang'aa*. This led to a rise in the demand for sorghum hence the number of farmers recruited by East Africa Maltings Company, a subsidiary of EABL, increased to over 20,000 farmers.
- (v) THAT, the Government collects Value Added Tax (VAT) in excess of Kshs1.5 billion from the sale of beer made from sorghum. Further, in September 2013, the Government increased the Excise duty for the beer produced from sorghum as a raw material which led to a decline in sales,

subsequent job losses and loss of income for those small-scale sorghum farmers.

- (vi) THAT, the Government did not consider the impact of the Legal Notice 103(2) of 18<sup>th</sup> June 2013 in regard to the welfare of its citizens and, in particular, those sorghum farmers.
- (vii) THAT, we confirm that the issues in respect of which the Petition is made are not pending before any court of law.

Therefore, your humble Petitioners pray that the National Assembly, through the Departmental Committee on Finance, Planning and Trade, obtains without delay an undertaking from the Cabinet Secretary in charge of the National Treasury that:-

- (i) The National Treasury de-gazettes Legal Notice 103(2) of 18<sup>th</sup> June 2013;
- (ii) The National Treasury reviews and reverses the Excise duty grant to one hundred per cent remission on beer produced from sorghum or millet;
- (iii) The Government invests more in drought-resistant crops; and,
- (iv) The Government supports alternative uses of sorghum, including production of bio-fuel.

And your Petitioners will ever pray.

Thank you, hon. Speaker.

**Hon. Speaker:** The Member for Kikuyu.

**Hon. Ichung'wah:** Thank you, hon. Speaker. While I thank the hon. M'eruaki for that Petition, I wanted to draw your attention to the fact that there is already a Bill that I was prosecuting in this House, in the last Session last year. That is the Alcoholic Drinks Control (Amendment) Bill of 2013 which is largely addressing the same issues, especially to do with farmers growing sorghum and millet. Indeed, many of the people who had also petitioned us were traders in sorghum and millet. They were basically traders who are buying sorghum from the areas in Meru and Tharaka-Nithi. I have also had a lot of consultations with farmers, mostly from Tharaka-Nithi and farmers who grow millet in the areas of Kericho.

I would seek your indulgence. Given that the issue had actually come for the Third Reading and referred back to the Budget and Appropriations Committee and the Committee is yet to come back to us, we ask the Committee to conclude the issue of the Bill for us to be able to handle it together with the Petition that has been done by hon. M'eruaki.

**Hon. Speaker:** Let us not make it a question and answer session. The Petition will still come to your Committee, the Departmental Committee on Finance, Planning and Trade. I do not know whether you are in that Committee. This Petition goes to the Departmental Committee on Finance, Planning and Trade.

No. This kind of Petition will go to the Departmental Committee on Finance, Planning and Trade. The opportunity available now is the usual 10 to 15 minutes for individual Members who may wish to say one or two things, but not too lengthy contributions; only one or two things as permitted in our Standing Orders. But not for those who want to say that it should go to this or the other committee. Having listened to the Member for Igembe North read the Petition, our Standing Orders allow that the Speaker can allow a few Members to make comments. I can see the Member for Emurua

Dikirr is burning to shoot up. Is it because he mentioned Narok or what is it, hon. Kipyegon Ng'eno?

**Hon. Kipyegon:** Hon. Speaker, protect me from hon. A.B. Duale. The reason I am agitated is because, as I speak, the agricultural sector, which is the backbone of our economy, is dying. When we talk about maize, wheat, sugar industry, *miraa* and livestock sectors, they are all dead. Our livestock keepers have nowhere to sell their animals. So, it is dead. The reason why most farmers from Meru and other parts of this country resorted to farming sorghum was majorly because there has been a serious problem with the agricultural sector. That crop is resistant to diseases and drought. It is very unfortunate that today farmers who have been growing that crop have met a lot of challenges, especially those that have to do with market for their produce. This Parliament passed a law that over-taxed the breweries where the farmers used to sell their crop.

I wish to support hon. M'eruaki on this Petition. As I speak, several people in this country cannot afford to buy food. Those are the crops that farmers had resorted to. I am also a farmer from Narok and I farm maize and sorghum. As I speak, I have several sacks of sorghum, which I do not know where to sell. Many other Kenyans are crying, for instance, from the Western, Rift Valley and Embu region.

**Hon. Speaker:** Hon. Ng'eno, this is the problem. When I say few comments, it may be that you do not talk a lot in the House other times, but this is not the opportunity to debate.

**Hon. Kipyegon:** Hon. Speaker, I wish to support the Petition. I urge the relevant Committee to seriously look into this matter so that we can save our farmers.

**Hon. Speaker:** Any other Member? Let the Petition remain committed to the Departmental Committee on Finance, Planning and Trade. What has been said is enough. You will go before the Committee and say those things. When the Committee brings its report, that is when there is proper debate. This is merely to make comments. When I give a chance to a Member, he decides to debate and there is no Motion. This is not a Motion. It is a Petition. Let the matter go there.

Next Order. Please, do not give moral support now. You will give moral support later. Hon. Kajuju, because the Petition has come from the Member for Igembe North, I am sure he has your natural moral support given the county you represent. I am sure the people of the county appreciate that the Member for Igembe North has moral support from the Member for Meru County.

Let us go to the next Order.

### PAPERS LAID

**Hon. A.B. Duale:** Hon. Speaker. I beg to lay the following Papers on the Table:-  
The Office of the Controller of Budget First Quarter County Budget Implementation Review Report for the Financial Year 2014/2015.

The Report of the Auditor-General on the Financial Statements of the Kenya Wines Agencies Limited for the year ended 30<sup>th</sup> June, 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of Yatta Vineyards Limited for the year ended 30<sup>th</sup> June, 2014, and the certificate of the Auditor-General therein.

The Report of the Auditor-General on the Financial Statements of the KWAL Holdings East Africa Limited for the year ended 30<sup>th</sup> June, 2014, and the certificate of the Auditor-General therein.

The Annual Report and Financial Statements of the Energy Regulatory Commission for the year ended 30<sup>th</sup> June, 2014, and the certificate of the Auditor-General therein.

The Annual Report and Financial Statements of Kirinyaga University College for the year ended 30<sup>th</sup> June, 2014, and the certificate of the Auditor-General therein.

Hon. Speaker, the First Quarter County Budget Implementation Review Report is very important from the Controller of Budget on counties. So, the Members can look at how their counties are fairing in terms of implementation.

**Hon Speaker:** The First Quarterly County Budget Implementation Review Report from the Controller of Budget will go to the Budget and Appropriations Committee. The others will go to the relevant Committee, which is PIC.

Next Order.

## NOTICE OF MOTION

### DECLARATION OF CATTLE RUSTLING AS NATIONAL DISASTER

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

THAT, aware that cattle rustling is a major menace and insecurity threat in the South and North Rift regions and other regions in the country; noting that cattle rustling leaves behind destruction of property and loss of lives; deeply concerned that the menace has since left irreparable and negative socio-economic impact which include but not limited to increased number of widows, widowers, orphaned children, poverty, displacement of people leading to the emergency of internally displaced persons (IDPs), disruption of education programmes and other economic activities owing to the destruction and/or closure of educational, health and other institutions; deeply concerned that the people living in the affected regions have been denied the enjoyment of their social, economic and political rights as guaranteed to them under the Bill of Rights as enshrined in Chapter Four of the Constitution; this House urges that the national Government declares cattle rustling a national disaster and establishes a special fund to be used in mitigating the losses suffered by and in compensating all victims of cattle rustling and resettle all internally displaced persons across the country created by the menace.

## STATEMENTS

**Hon. Speaker:** Leader of the Majority Party, there is some clarification which was irregularly sought by the Member for Nakuru East. I want to educate him that, that is not the way to raise those kinds of issues - about Cabinet Secretaries coming. I am alive

to what happened but since the Order has been called out, let the Leader of the Majority Party respond. I took advantage of this particular Order of Statements.

**Hon. A.B. Duale:** Thank you, hon. Speaker. Hon. Gikaria is one of the fast learning Members and is very sharp. I also heard it in the morning over the radio. I want to clarify that the Cabinet Secretary for Sports and Culture is among the Cabinet Secretaries that will appear next Tuesday. I will make sure that the Office of the Clerk avails him space and an opportunity so that you can raise your issues. However, I am sure you need to take note of what the Speaker has said. You are doing very well, so, do not take us two steps back.

**Hon. Speaker:** Yes, hon. Lessonet!

**Hon. Lessonet:** Hon. Speaker, with your permission, I wish to inform Members that tomorrow, Thursday, 26<sup>th</sup> February, 2015, at around 11.10 a.m., we will have a *Kamukunji* in this Chamber to discuss the findings and observations contained in the court ruling on the Constituencies Development Fund (CDF) case and agree on the way forward.

Thank you, hon. Speaker.

**Hon. Speaker:** A member who is just coming back after being disciplined wants to engage in indiscipline. He will now face the full force of the Chair. So, please, desist from indiscipline. When you know you have dirty things and you are closer, you hide a bit. We noticed that you are supposed to be here but just follow the normal processes.

Hon. Members, I have discussed the matter with hon. Lessonet. Unfortunately, he had intended that I be present at 10 a.m., but I have another prior meeting happening at the same time, which has also got to do with the welfare of hon. Members. So, I need to get the concurrence of the House whether you can proceed while I finish with the other meeting so that when I join you at around 12.00 pm, we can proceed. In the meantime, hon. Lessonet, and the other people he has invited, can take you through the various issues which were raised in that court case so that hon. Members can proceed from a position of knowledge and information. If you agree, you can start at 10.00 a.m., and then I can join you later at around midday, when I finish the other meeting. Is that okay? That way, there will be ample time. If the *Kamukunji* starts at 12.00 p.m., there may not be sufficient time for as many of you as possible to comment on the information that will have come from the CDF Committee. Is that agreeable to the House?

**Hon. Members:** Yes!

**Hon. Speaker:** I do not seem to see concurrence. Hon. Musyimi, what do you want to say?

**Hon. Musyimi:** Thank you, hon. Speaker. We all appreciate the tremendous efforts that the CDF Chair has made with respect to the issue at hand. We have also been deeply encouraged by your position on this matter, especially because we know who will suffer. The small difficulty we have is that the Budget Policy Statement (BPS) is with the Committees and, as we speak, it is being prosecuted. We had hoped that the Chairs of Committees would appear before the Budget and Appropriations Committee tomorrow morning. Unless you indulge us so that we table the Report late next week because of the *Kamukunji* tomorrow, it will be very difficult for us to meet the deadline. We have a two-week window between the day the Report was tabled - which is last week on Tuesday - and the day I am supposed to table the Report in the House. So, I seek your indulgence on

this matter, taking into account all the other challenges, which are ours and we must also deal with.

Thank you, hon. Speaker.

**Hon. Speaker:** Are all the Chairs appearing before the Budget and Appropriations Committee tomorrow?

**Hon. Musyimi:** Yes, including the Chair of CDF. He is aware since we have already talked about it.

**Hon. Speaker:** Hon. Members, even this afternoon, several Chairs have written to me to be allowed to sit and conclude their consideration of the BPS. After that, they will make their presentations to the Budget and Appropriations Committee. So, it is fair that we strike some balance.

Hon. Musyimi, will next week be too late?

**Hon. Musyimi:** Is it for the tabling of the Report or for the *Kamukunji*?

**Hon. Speaker:** For the tabling of the Report.

**Hon. Musyimi:** If you allow us, we can table it on Thursday next week. Unfortunately, we will be late by 48 hours. It cannot be done on Tuesday because I know that on Monday and Tuesday, we are meeting the Cabinet Secretary for Treasury and we need the time to go through the Report, adopt it and then table it. The earliest we can do it would be Wednesday, but I seek your indulgence so that we table it the following day, which is Thursday next week.

**Hon. Speaker:** Yes, Leader of the Majority Party, what is your point of order?

**Hon. A.B. Duale:** Hon. Speaker, the CDF matter is very important. That is number one. So, tomorrow, we will have to hold a *Kamukunji*. If we organise ourselves, the Chair can meet part of the Committee in the early sessions of the morning, from 9.00 a.m. to 11.00 a.m. Through you, he can continue meeting the Committees in the afternoon of tomorrow. Then he can do the remaining balance on Monday so that on Tuesday, he meets the Cabinet Secretary and then Wednesday afternoon, he can table the Report so that we can be within the deadline. I am sure the Chairman is very good at burning the midnight oil and this is the Budget cycle. The Budget is important and so is the CDF. We have to balance and sacrifice some time.

**Hon. Speaker:** Yes, hon. Musyimi.

**Hon. Musyimi:** Thank you, hon. Speaker. If you allow us to meet tomorrow in the afternoon with the Chairs of Committees, then we can seek to do as much as possible after the *Kamukunji*. However, you will allow us to miss the afternoon Session in the House. With that, then I can see us tabling the Report around Wednesday. I am not sure we can do it on Tuesday.

Thank you, hon. Speaker.

**Hon. Speaker:** I am sure that your meeting with the Committee Chairs will not deny the House the necessary quorum, especially if you structure your meetings to begin not at 2.30 p.m. but from 3.00 p.m. Is that okay? The Chairs of Committees, as many as you may need, will meet the Budget and Appropriations Committee from 3.00 p.m. tomorrow. Is that okay?

**Hon. Musyimi:** Yes, hon. Speaker.

**Hon. Speaker:** Having resolved that, the *Kamukunji* may commence tomorrow Thursday, 26<sup>th</sup> February, 2015 at 10.00 a.m, all Members are invited to the *Kamukunji* which will happen in this plenary hall. Hon. Gumbo.

### NOTICE OF MOTION FOR ADJOURNMENT UNDER S.O. 33(1)

#### FATE OF CONSTITUENCIES DEVELOPMENT FUND

**Hon. (Eng.) Gumbo:** Hon. Speaker, I rise under Standing Order No. 33 to seek leave for the adjournment of the House to discuss a definite matter of urgent national importance with regard to the fate of the Constituencies Development Fund (CDF) following the recent ruling by the High Court.

*(Loud applause)*

That ruling has brought anxiety and uncertainty in all parts of the country. As duly elected representatives of the people of Kenya, it is our duty to give leadership and direction on this matter to the Kenyan electorate who, alone, are the holders of the sovereign power of our country.

In my view, we will be failing in our duties if the true aspirations of our people do not form the primary agenda of the business of this honourable Assembly. I am aware that there is a *Kamukunji* tomorrow but while there, we will mainly be dealing with the experts to tell us the way forward. I think it is important that this House tries to pronounce itself on this matter so that we can calm the nerves of our people with regard to this important Fund.

Thank you, hon. Speaker.

*(Several Members stood up in their places)*

**Hon. Speaker:** Hon. Members, you may resume your seats. Hon. Members, I, of course, appreciate the matter raised by hon. Gumbo. That is, indeed, why I had to consult with him and the Chairman of the CDF Committee, hon. Lessonet. I acknowledge the fact that there will be a *Kamukunji* and I agree with hon. Gumbo that in the *Kamukunji*, you will be going through the various technical issues. As the representatives of the people, you have every right to debate this matter formally in the best way you know. I will not give you the time when you will commence that debate. Commencement of the debate of that Motion raised by the hon. Gumbo is tied to the conclusion of the business appearing as Order Nos. 8, 9 and 10, respectively. You should, therefore, aim to conclude debate particularly on Order Nos. 9 and 10.

Next Order.

### BILL

#### *Second Reading*

## THE PUBLIC PROCUREMENT AND ASSET DISPOSAL BILL

**Hon. Speaker:** Hon. Members, debate on the Public Procurement and Asset Disposal Bill was concluded yesterday, but the Question was not put for obvious reasons. What, therefore, remains is for me to put the Question and I, hereby, proceed to do.

*(Question put and agreed to)*

*(The Bill was read a Second Time and committed to a Committee of the whole House tomorrow)*

**Hon. Speaker:** Next Order.

**MOTION**

## REPORT ON PETITION FOR REMOVAL OF NGECH CHAIRPERSON

**Hon. Speaker:** Hon. David Were, Member for Matungulu and also the Chairman of the Departmental Committee on Labour and Social Welfare.

**Hon. Were:** Thank you, hon. Speaker. I beg to move the following Motion:-

THAT, this House notes the Report of the Departmental Committee on Labour and Social Welfare on the Petition for Removal of the Chairperson of the National Gender and Equality Commission, laid on the Table of the House on Wednesday, 18th February, 2015, and in accordance with the provision of Article 251(3) of the Constitution and Standing Order 230(5), finds that the Petition does not disclose sufficient ground for the removal of the Chairperson of National Gender and Equality Commission.

Let me start by acknowledging that we sincerely thank your Office and that of the Clerk of the National Assembly for the necessary support extended to this Committee in the execution of its mandate. I take this opportunity to thank all members of the Committee for their patience, sacrifice, endurance and commitment to public service under tight schedules which enabled us to complete the task within the stipulated period. The Committee wishes to record its appreciation for services rendered by the staff of the National Assembly attached to it. Their efforts and input have made the work of the Committee and production of this Report possible. On behalf of the Departmental Committee on Labour and Social Welfare and pursuant to the provisions of Standing Order No. 227 (2), it is my pleasure to duly present the Committee's Report on the Petition by Mr. Erastus Odiyo regarding the removal of the Chairperson of the National Gender and Equality Commission.

Pursuant to Standing Order No.225 (2) (b), the Speaker of the National Assembly subsequently conveyed to the House that his Office had received a Petition by Mr. Erastus Odiyo regarding the removal of the Chairperson of the National Gender and Equality Commission, Ms. Winfred Lichuma. The Petition was filed by Mr. Erastus



Odiyo and presented by hon. Silvanse Osele who is the Member of Parliament for Kabondo Kasipul. The said Petition was tabled on 31<sup>st</sup> October, 2014.

The terms of reference for the Committee were:-

(a) to ascertain whether the Petition disclosed grounds for the removal of the named Chairperson under Article 251 (a), (b) and (d) of the Constitution of Kenya (CoK); and,

(b) if there is need for the formation of a tribunal to investigate the said Chairperson by His Excellency the President.

Hon. Speaker, the Committee, in considering the Petition, invited and held meetings with both the Petitioner, Mr. Erastus Odiyo and the respondent, Ms. Winfred Lichuma, who is the Chairperson of the National Gender and Equality Commission.

The Committee also held meetings with Professor Rose Odhiambo - former Chief Executive Officer (CEO) of the National Gender and Equality Commission, Juliana Mutisya - Deputy CEO, Christopher Keter –former procurement officer at NGEN, Mr. John Kiroho, Mr. Otiende Amollo - Chairperson of the Commission on Administrative Justice (CAJ) and Ms. Kagwiria Mbogori, who is the Chairperson of Kenya National Commission on Human Rights (KNCHR).

The Committee also received memoranda on the subject and the views of the witnesses are captured in the Report.

Hon. Speaker, requirements for the removal from office of a member of a constitutional Commission under the Constitution falls under Article 251 (1) and it provides:-

“A member of a commission (other than an *ex officio* member), or the holder of an independent office, may be removed from office only for—

- (a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;
- (b) gross misconduct, whether in the performance of the member’s or office holder’s functions or otherwise;
- (c) physical or mental incapacity to perform the functions of office;
- (d) incompetence; or,
- (e) bankruptcy.”

We held a meeting with the Petitioner, Mr. Erastus Odiyo, and the grounds on which he relied on for his Petition were:-

(a) On serious violation of the law the petitioner alleged that:-

(i) The Chairperson hired four staff from her tribe/county without embracing diversity which is a key pillar of the Constitution. The employees were listed to be;-

- (a) Khabongo Comfort Mwaitisi.
- (b) Matikho Jemima Makuba.
- (c) Ann Judy Odero.
- (d) Awori Sydney Baraza.

(i) The Chairperson swore her Personal Assistant Dona Mokeira Anyona to take minutes of the Board on 21<sup>st</sup> July, 2014 whereas the Secretary to the Commission was the Chief Executive Officer (CEO), Mrs. Rose Odhiambo. The Petitioner stated that Ms. Mokeira took minutes of the Commission usurping the domain of the CEO.

- (ii) The Chairperson rejected procurement staff that had been seconded from the National Treasury---

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

**Hon. Speaker:** The Leader of the Majority Party, what is your point of order?

**Hon. A.B. Duale:** I want to welcome hon. Ng'ongo back, but he has started a serious caucus.

**Hon. Speaker:** No! You cannot welcome him.

**Hon. A.B. Duale:** Look at the way hon. Members are sitting on the Floor. It is not proper.

*(Laughter)*

**Hon. Speaker:** You see as a result of that, hon. Were has started sweating profusely on the head.

Proceed.

**Hon. Were:** On serious violation of the law, I was reading the third allegation that the Chairperson rejected procurement staff that had been seconded---

*(Several hon. Members stood up in their places)*

**Hon. Speaker:** Hon. Members, when you want to just crack a joke, those are not points of order. I now want to tell you that they will not be entertained. I can see hon. Mirenga now thinks that this is a debate. This is not debate. You can go and debate that on radio talk shows and other places. Please, let us listen to serious business.

**Hon. Were:** Hon. Speaker, I will repeat that. The Chairperson rejected procurement staff that had been seconded from the National Treasury on the ground that they were unqualified, whereas the actual reason for removal was ethnicity.

(b) On grounds of misconduct, the Petitioner alleged that:-

- (i) The respondent signs all the Commission cheques and irregularly orders suppliers to pick cheques directly from her office. The Petitioner alleged that this was the role of the CEO and not the Chairperson's role.
- (ii) The Petitioner further alleged that the respondent ordered the procurement officer to single-source the services of a lawyer at a cost of Kshs.3,000,000, which is contrary to the Public Procurement and Disposal Act, 2005. Further, that the services of the officer were terminated after he declined to honour the intentions of the respondent.
- (iii) The Petitioner alleged that the Chairperson issues cheques in her own office to suppliers who must part with cash as a prerequisite to receiving the cheques. He further alleged that the Chairperson signs payslips thus usurping the role of CEO.
- (iv) The Petitioner also alleged that the respondent collected a bribe of Kshs100,000 from one Mr. John Kirowo after he was given a contract for partitioning of Commission offices.
- (c) On gross incompetence, the Petitioner alleged that:-
  - (i) The Chairperson had been constantly interfering with the smooth running of the activities of the Secretariat by supervising staff at the lower cadre and

giving instructions to junior officers not to respect their immediate supervisors.

- (ii) The Petitioner further alleged that the Chairperson is at loggerheads with other commissions, including the Ombudsman's Office, the Kenya National Commission on Human Rights (KNCHR) and the National Cohesion and Integration Commission (NCIC).
- (iii) The Chairperson contravened the approved established structure by the Salaries and Remuneration Commission (SRC) in consultation with the Directorate of Personnel Management.

After listening to the various people who appeared before us, the Committee came up with the following observations. Having heard the prayers by the Petitioner, evidence by witnesses and the respondent as well as written memoranda/submissions, the Committee made the following observations:-

The allegation that all staff in the Chairperson's office come from her tribe and county was not proven. All the staff in the Chairperson's office were employed competitively. Further, it was found out that, out of the four staff in her office, one was not from her community. There was one Sydney Baraza who was in that office, but had already been transferred to the IT department. So, only two from her community were left.

The general composition of staff at the Commission is wanting in terms of ethnicity. It was evident in the documents presented before the Committee that majority of the staff were predominantly Kikuyus, Luos, Luhyas and Kambas, whereas the Commission is an equality Commission which should be a champion of equity in terms of regional representation and ethnicity in the Public Service and embracing the principle of diversity. However, it was established that the aforesaid staff were employed through a competitive process and most of them were inherited from the former Commission.

The allegation by the procurement officer, Mr. Christopher Keter, that he had been sent away by the Chairperson was not proven. The Committee found out that Mr. Keter had served his secondment period in the Commission for three years and a further six months, which was extended by the Ministry upon a request by the Commission.

The allegation in the Petition that the Chairperson single-sourced the procurement of a law firm was not proven. There were no documents tendered before the Committee to substantiate the allegation laid against the Chairperson.

On allegation of constant conflict between the Chairperson and the Secretariat, the Committee established that this was due to lack of clarity on the roles at the Commission as provided in the National Gender and Equality Act. The Act gives the Chairperson the role of supervision and directing, but does not define the extent to which the Chairperson is to direct. On the other hand, the same Act does not provide roles of the CEO.

The allegation of National Gender and Equality Commission being at loggerheads with other commissions was not proven. We had Mr. Otiende Amollo and Ms. Mbogori and both said that they had very good working relationship with the Chairperson of NGEN. Mr. Kirowo, who is alleged to have given a bribe of Kshs.100,000 to the Chairperson stated that he gave the bribe to an emissary whom he could not identify.

The allegation of changing the internal organisation structure of the Commission was not proven. The Committee established that consultations were still ongoing with the National Treasury upon approval by the Commission.

The swearing in of Ms. Dona Mokeira to take minutes on behalf of the CEO was a resolution of the board for purposes of confidentially, upon the request by the CEO to be assisted in taking minutes. The Committee, however, observed that good governance requires that the holder of the duty delegates it. This is in appendix three.

The signing of the cheques by the Chairperson and one other commissioner was vide a Commission resolution and the CEO was a mandatory signatory to every account in the Commission.

Two different payslips for the month of March, 2014 for one officer namely Mr. Nzioka Nzomo bearing the signature of the Chairperson in one (Appendix 5) and the signature of the CEO in another (Appendix 6) were presented before the Committee, but the allegation of the Chairperson usurping the role of the CEO was not proven.

The Constitution and the National Gender and Equality Commission Act have not been violated by the Chairperson.

The Petition does not disclose grounds for the removal from office of a person under Article 251(a), (b) and (d) of the Constitution of Kenya.

The Committee recommends that:-

(i) The Petition for the removal of the Chairperson of the National Gender and Equality Commission be dismissed for it does not disclose grounds for the removal of Mrs. Winfred Lichuma as Chairperson of the National Gender and Equality Commission under Article 251(a), (b) and (d) of the Constitution.

(ii) The Commission should strive towards embracing ethnic diversity in employment and placement of staff in its future recruitments to reflect the face of Kenya.

(iii) The Criminal Investigation Department should investigate the source of the two payslips for the month of March, 2014 belonging to one Mr. Nzioka Nzomo, an employee of the Commission, which was tabled during the proceedings. It bore the signature of the Chairperson and CEO.

(iv) The National Gender and Equality Commission Act be amended to provide for clear roles of the secretariat and the full time commissioners to ensure that commissioners perform oversight roles while the secretariat performs the day-to-day operations. This will address the conflict attributed to mandates.

Hon. Speaker, I beg to move. I ask hon. Serem to second.

**Hon. Speaker:** Hon. Serem, who has forgotten his card, is permitted to use the Dispatch Box. Hon. Members, this is the inconvenience of not coming with the cards. Hon. Kamama, help him.

**Hon. Abongotum:** Digital migration!

*(Laughter)*

**Hon. Serem:** Thank you, hon. Speaker. I rise to second the Motion after looking at the Report on Mrs. Wilfred Lichuma. In my view, she is a very hard-working woman whose efforts need to be embraced. We know our society. Men have not embraced the idea that women can actually lead institutions. If you look keenly, you will realize that

those who actually accused the Commissioner felt that, maybe, someone else should have been given that responsibility. If you look at the responsibility given to the Chairperson, you can understand very well that people might not understand that the Commission had a very difficult structure in terms of the role of a chairperson. It is very difficult for one to tell the difference between the CEO and the Chairperson. That is because we have the Chairperson who plays an executive role. So, you might not understand this. In fact, employees actually had a rough time embracing her as a chairperson.

If you look at the accusation that the Petitioner relied on, he felt that the Chairperson was guilty of the offence of abuse of office. Our Committee is not in a position to determine whether the accused is guilty or not. So, in my view, we did not have reasons to give a determination on whether the Chairperson was guilty or not. If they wanted to know, they would have gone to a court of law.

Hon. Speaker, if you look at the whole accusation, the issue of corruption seemed to be a story of hearsay. The witness should have been put back to jail because you cannot say that you gave out money. He actually participated in corruption! I second.

*(Question proposed)*

**Hon. (Ms.) R.N. Wanyonyi:** Thank you, hon. Speaker. I want to take this opportunity to thank the Committee for the deliberations on the Chairperson of that particular Commission. I want to thank the Committee for analysing the situation as it were and coming up with those resolutions. The Committee has demonstrated impartiality. It has also shown that it understands some of the challenges being faced by certain commissions. The Committee is keen to seeing that gender matters are actually upheld rightly. I just take this opportunity to congratulate you for coming up with these issues. It is important that we assist the Gender Commission. We should equip it. If the Act is not clear enough, then we better amend it so that the role of the Chairperson is clearly made distinct from the role of the CEO. If we do that, we will not have those conflicts that we are witnessing. We also need to have the Commission operating with minimal interferences. We need this Commission to cater for the issues that pertain to gender matters. This is the only Commission that we have that currently handles gender matters. I congratulate the Committee for coming up with this Report.

**Hon. Speaker:** Hon. Iringo.

**Hon. Iringo:** Thank you, hon. Speaker, for giving me this opportunity. Let me take this opportunity to thank the Committee for coming up with this conclusion. I am happy that they looked at the critical areas which had been alleged by the accusers. I strongly believe that they went through the process of vetting or re-looking at the accusations correctly. I believe that they took the right direction. I support their decision.

Hon. Speaker, sometimes, people take the opportunity to square their own fights or problems with others. In the process, they do witch-hunting. If the act by this person who gave out Kshs100, 000 was not taken as a crime, then there was something wrong! When you talk about someone taking minutes, there could have been a reason why the minutes were being taken by that person. Maybe, she was just doing it for the sake of it but, at the end of the day, the Chairperson is not the one to conclude how the minutes would be taken.

Being a Chairman does not mean that you are everything. Your business is just to sit and conduct business. The resolutions which come up are from the whole team. Therefore, the buck should not have stopped with the Chairman only, but with the Members of the Committee.

Finally, this is a lady and, maybe, somebody had vendetta. We are trying to promote gender equality in this country. Let us not punish our lady leaders, so that we can score our cards against them. We should instead encourage them because that is entrenched in the Constitution.

I support the report.

**Hon. (Ms.) Chidzuga:** Shukurani, Mhe. Spika. Nasimama kuunga mkono Ripoti ambayo imeletwa na Kamati hii ambayo inasimamia mambo ya jinsia. Ninawapongeza kwa kuwa Ripoti hii imetuonyesha waziwazi kuwa ni kweli kuna akina mama ambao wamepatiwa nafasi. Hata hivyo, kuna watu ambao hawako tayari kuwaona akina mama wakiongoza. Kwa sababu hiyo, kwa niaba ya akina mama wenzangu Kenya nzima, tunashukuru kwamba Kamati hii imemtoa mama huyu katika dhuluma ambayo alikuwa amepangiwa na wale wachache ambao hawataki kuona akina mama wakisonga mbele katika uongozi.

Nawapongeza na naunga mkono Ripoti hii.

**Hon. Wakhungu:** Thank you, hon. Speaker. I know hon. Amina is saying that because when we talked of the CDF, as a nominated Member, she did not stand up in solidarity.

I want to support the Report of the Committee. It is, indeed, disappointing to see that the Committee never gave any recommendations as far as Mr. Karowo is concerned. This is somebody who is alleged to have given a bribe, maligned Madam Lichuma's name and there are no measures for him to be prosecuted. It is unfortunate if we are going to act on any Petitions that come to the Floor of this House without proof. This lady's reputation has been spoilt. This person is alleged to have given Kshs100,000 and yet, no recommendations were given. That person should be investigated and should pay for the damages caused. If we continue using this, then we are setting a very wrong precedent.

We are told that, that lady employed people from her county. She comes from Western Kenya where I come from and when you look at the ethnic balance, it is predominantly Kikuyus, Luos, Luhyias and Kambas. It goes further to say that the staff was inherited. Just like you are the Speaker of the National Assembly, I do not think you contributed so much in terms of the staff that is employed in this institution. You inherited them from your predecessor. It is very wrong to have such an allegation that, that person has employed people from her tribe; her county and yet, the staff was inherited.

On the issue of competitiveness, if coincidentally a certain community is there and it is because of a competitive process, it is allowed. We should not entertain Petitions to come to the Floor of this House, which have not been proven. This Petition has been widely spread and there is nothing of merit. We must strengthen our Standing Orders so that in case a Petition is forwarded, before it is allowed to come to Floor of the House or referred to a given Committee, it must meet a minimum threshold and, at least, some evidence is established.

I support the Report.

**Hon. Speaker:** Hon. Members, I will read this for avoidance of doubt so that you do not make your contributions in ignorance. If you ask the lawyer next to you, they say *per incuriam*. Article 251(1) says that:-

- “A member of a commission (other than an *ex-officio* member) or the holder of an independent office, may be removed from office only for-
- (a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;
  - (b) gross misconduct, whether in the performance of the member’s or office holder’s function or otherwise;
  - (c) physical or mental incapacity to perform the functions of the office;
  - (d) incompetence; or
  - (e) bankruptcy”.

Article 251(2) reads as follows:-

“A person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in Clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.

For us, as long as a member alleges violation of any of the five listed grounds, we cannot stifle or sit on Petitions by Kenyans or anybody else for that matter. Our Standing Order 230 provides that once the petition is presented - and even the Constitution - we have to refer it to the relevant Departmental Committee. It is for the Committee to go and investigate whether those allegations in the Petition are valid or whether they disclose any cause of action against the commissioner or holder of independent office as the case may be.

So, hon. Wamalwa, we have discharged our responsibility and we are happy. As you said, the Committee has also discharged its responsibility, investigated the matter and found that the Petition discloses no cause of action.

When you say that we should not consider petitions, then the proposal could be dangerous because it means that the Office of the Speaker or the Clerk will be the one deciding on what to do. Let the petition be presented, let us look at it and, indeed, let the entire House listen to the allegations and dismiss them. I have sympathies with the fact that some of the allegations made against the people against whom the petitions may be presented could actually cause untold and irreparable damage to the reputations of those persons. Unfortunately, you as Members of Parliament should be the ones to decide whether the matter should be referred to the Ethics and Anti-Corruption Commission before it is brought here. But that would be an amendment to the Constitution. For now, we have to continue doing what we are doing because it would be unfair for the Office of the Speaker that once an allegation is made on the violation of any of those five grounds which are listed, to start demanding to see what evidence there is. I have not been given that responsibility. Perhaps, I would be able to do it, but with the necessary infrastructure being set up. It would also require the Speaker to become a judge and start taking evidence.

We saw it fit to put it in the Constitution that once an allegation of this nature is made, let it be presented to the National Assembly, the relevant Committee of the

Assembly will investigate and, like in this particular case, come up with a report, which the House will have an opportunity to express itself on one way or another. When it is lost, it is a shame to the person making the allegations against the particular individual. It is fair for us to go by the Constitution.

Hon. Wamalwa, you have already concluded your debate. The next one on line is hon. Kathuri Murungi.

**Hon. Murungi:** Thank you, hon. Speaker, for giving me this chance to contribute to the Motion.

I want to congratulate the Chairman, hon. Were, and his Committee for a job well done. There are many Kenyans out there who have some differences with members of this country. It is important that when such petitions are brought, the Committee concerned does the work that has been done by this Committee, to interrogate the issues raised so that we do not sacrifice Kenyans out of their careers. Therefore, I support this Motion because the Committee was very objective and careful. They did a careful analysis of the issues raised. The presentation of the Chairman was very clear that they interrogated all the matters that were raised in the Petition. In this case, I can see for sure that the Chairperson needs to continue with her job. Let her not continue because she is a lady; let her continue because the Committee has done a good job. If we say that she is being targeted because she is a lady, Kenyan women will become careless, knowing Parliament will intervene and make sure that they do not suffer. So, this is a caution to the Kenyan women. Let them work diligently; we will not be able to support them simply because of their gender.

Hon. Speaker, while I support the Motion, hon. Regina should be able to caution our women to be strong, careful and diligent in their work.

Thank you.

*(Laughter)*

**Hon. Speaker:** Yes, hon. Dennitah Ghati!

**Hon. (Ms.) Ghati:** Thank you very much, hon. Speaker.

Allow me to thank the Committee that has worked tirelessly to investigate and set this woman free. I think this is a very hardworking lady. I have worked in the women's movement and for most of us who have come from a women's movement perspective, we know where we have come from. We are even struggling at this moment with the two-thirds gender rule. Wherever a woman is on top, there are usually masses of people who want to pull her down. I do not think that is fair. The Petitioner, in my view, owes this lady an apology for defamation. I feel that this is a lady who has worked tirelessly. She has worked in the Commission for a very long time. Most of us who have come from the women's movement perspective know her.

The women of this country have worked so hard to find themselves where they are. Therefore, any opportunity that presents itself for women, it should be supported. We are, at this moment, struggling very hard to see how we are going to approach the two-thirds gender rule in this country. When we see a lot of witch-hunt, which is what I am seeing for Mrs. Winfred Lichuma, I feel sorry about the direction in which this country is headed.



I want to thank the Chairman for a job well done, for investigating and presenting a serious Report from his Committee.

With those remarks, I beg to support.

**Hon. Speaker:** Yes, Leader of the Majority Party!

**Hon. A.B. Duale:** Thank you, hon. Speaker. On the outset, I want to say that this Report is before the House, pursuant to Standing Order No.225 (2) (b) and Standing Order No. 227 and Article 251(a) (b) and (d). Regardless of your gender, once you hold a constitutional office, you will be taken through Article 251. So, I want to ask my good friends, the lady Members of Parliament; that if you are a lady, there is no exemption in the Constitution as far as Article 251 is concerned. If you abuse the Constitution, a Report will be passed in this House, a tribunal will be formed and you will be sent home. The Committee did a good job and we should go ahead.

The other important thing is that we must appropriately recommend to independent institutions, when we feel that a petition was based on malice or has ethnic undertones or tribal leanings, and where corruption was used to bring a petition to Parliament--- If a Committee feels that there are no grounds for a petition before it, we should not be stopping at that but rather, we should recommend to the Ethics and Anti-Corruption Commissions, and to the Director of Public Prosecutions, for them to pursue the individuals and deal with them appropriately. The same people went ahead and brought a petition for the disbandment of Independent Electoral and Boundary Commission (IEBC). Some of them refused to appear before the Committee on Justice and Legal Affairs. The constitutional provision for petitioning Parliament is being misused. This is provided for under Article 251 of the Constitution as well as in our Standing Orders, but this provision should not be misused. Petitions should not be turned into a tool for witch-hunting, where people seek to settle political, ethnic and regional scores.

Hon. Speaker, I had the privilege of serving in the last Parliament and support a Committee that appointed the subject of this petition. I know the calibre of the person we are discussing. Therefore, I urge my colleagues to support this Report. On the allegations raised, probably, the threshold was not presented but this is a wake-up call for Ms. Lichuma. I want to confirm that my office and the Office of the Speaker of the National Assembly have the face of Kenya. If Ms. Lichuma has, in her office, people from her village and her county, then this House is telling her that she has a chance to correct the situation. She might not survive next time. Kenya is one and she must employ all Kenyans. There is an allegation by a procurement officer, Mr. Christopher Keter; that he had been sent away by the Chairperson. The allegation was not proven. The gentleman served in the Commission on secondment for three years and a further six months. Civil servants and other people who serve in the constitutional Commissions do so as Kenyans. They do not serve in Commissions as Onyango or Keter or Mohamed or Musyoka. If one does not follow the rules and regulations put in place by any commission, one should not use any one of us in this House on ethnic grounds.

The Committee's recommendation is very important. The Chairperson of the Committee on Implementation, hon. Soipan, is here. The Criminal Investigation Department should investigate the source of the two payslips for the month of March, 2014 belonging to one Nzioka Nzomo.

*(A mobile phone rung)*

Hon. Speaker, that is gross violation of our rules. It is disorderly conduct. Given the technical error, I do not know whether I am recorded.

Hon. Speaker, in the era of technology, I do not know whether I am being recorded maybe for the Petitioner to hear what I am saying. However, hon. Speaker you need to protect me but I am sure when I am in the Chamber I am protected. The Committee on Implementation should follow up the Criminal Investigation Department (CID) and this should be investigated. The National Gender and Equality Commission Act should be amended to provide for clear roles of the secretariat and full time commissions to ensure that the commissions perform oversight roles while the secretariat performs administrative roles. We should not bring a legislative amendment just because a Chief Executive Officer (CEO) and a Chair cannot work together. CEOs have a role. I am sure in the Gender Commission Act, there are functions of the CEO and this House has passed them. They are well documented. The functions of the Chair are also well documented. The Chair cannot become a “squatter” on the functions of the CEO and neither can the CEO do vice versa.

Secondly, the element of part time or full time commissions was also decided to the best knowledge of the last Parliament. That is why we made the Salaries and Remuneration Commission (SRC) part time. That is why we allowed some commissions to perform on full time basis. That is why we gave some commissions Executive authority based on their functions including the Independent Electoral and Boundaries Commission (IEBC). That is why we gave some commissions timelines like the Transition Authority (TA) and the National Land Commission (NLC). The Chair has been given a non-renewable statutory period of six years.

So, I really want to support this Report but Madam Lichuma this is serious. You are among the first chairs of Commissions to have received a Petition. Where there is smoke, there is fire. So, let us even give that Petitioner some benefit of the doubt, that he did not meet the threshold of evidence. So, Lichuma, you better put your house in order. You better lead from the front. You have a serious constitutional agenda on the two-thirds gender rule. You have got a hot potato in your hand. If she does not solve it, she better tell us so that we throw it back to the Supreme Court. That is where we have seven wise men and women who can decide whether we should have half of Parliament in one gender, but that is a story for another day.

I support, and I am sure those who know Madam Lichuma, as I am sure she must be coming from a constituency, will tell her in privacy that she has survived but she is not off the hook in the near future.

**Hon. Speaker:** Let us have hon. John Kobado of Uriri Constituency.

**Hon. Kobado:** Thank you very much, hon. Speaker for giving me this chance to add my voice to this. I am a very dedicated and committed Member of the Departmental Committee on Labour and Social Welfare. I can see the direction that the discussion has taken. I do not mind being a lone voice. I am happy. I want to appreciate the Leader of the Majority Party for making a wonderful summary of the whole thing and at least today you have talked like you can provide leadership to this House. Let me to pick from where

he started that where there is smoke, there is likely to be fire. The reports that will be coming again from the Departmental Committee on Labour and Social Welfare are unlikely to pass credibility tests. I want to say that the Report we are discussing this afternoon does not pass credibility test. As we are producing reports we need to be objective so that we help this House. The House will make its decisions based on the reports that we produce. In producing a good report, the facts and evidence gathered should be analysed, discussed with specific reference to the issue at hand. I want to report to this House that, that was not done.

I am not against Madam Lichuma and the issue of gender does not arise here. When you talk about gender, she has already sent home the CEO who is a lady and the Deputy CEO who is a lady plus six others.

**Hon. Speaker:** What is your point of order? There is a point of order from hon. Serut.

**Hon. Serut:** Thank you. Is the Member in order to bring an issue of a lady who decided to go to court instead of bringing her issues before the Committee? The lady he is referring to decided to go to court to sue the Chair and we could not entertain her evidence because they belong to a different jurisdiction. Thank you.

**Hon. Speaker:** Hon. Kobado, if the matter is in court I think you can only make reference to the fact that there is something in court but not the details because we do not want to also breach the *sub judice* rule.

**Hon. Kobado:** I stand guided, hon. Speaker. The issue of looking at the National Gender and Equality Commission Act is escapist. As far as I am concerned, there is no serious confusion in the Act. I am an expert in management and I can tell you that there is no confusion. Much as it says that the Chairperson is supposed to provide supervision and direction to the Commission, that does not give her a licence to micro-manage the secretariat. This Commission hired an institution of the Government to prepare their organisational structure because basically institutions operate on legal structures. In the event that there is confusion in the Act, they should have used the legal structure to be able to operate. The Directorate of Personnel Management (DPM) was hired at a cost of Kshs5 million to prepare a structure for the Commission which the Chairperson decided to throw away and reorganise and prepare her own structure which she has been using. In the structure it is clear that the role of the Chairperson is to oversee. It is really to provide direction as far as management of the Commission is concerned. However, the day to day operational running of the Commission remains the responsibility of the CEO.

We have been told of two payslips existing, in the Report. These two payslips are signed by the Chairperson, a responsibility which is not hers. If you critically look at the payslips, one that is directing payment to the bank is signed by Madam Lichuma who is the Chairperson of the Commission, yet the CEO had already signed another payslip. This is total mismanagement and micro-management of the institution. We cannot have a Chairperson who is signing payslips, who is a procurement officer and who is doing more or less everything. Things cannot work like that. Structures are there to be able to guide proper management of institutions. However, you cannot direct everything into one office and you expect to be able to get any results.

So, we are dealing with a Chairperson who is autocratic, dictatorial and who more or less runs the institution like her own business. These are things we need to look at so that we do not end up with a repeat of these kinds of things.

The Chairperson has violated the Employment Act, 2007. Much as I may not go deeply into that but that is part of the confusion that has brought role conflict and role ambiguity in the institution. That is the serious constant interference and intimidation of staff working under the Chairperson.

Hon. Speaker, there is procedural impropriety reigning supreme in the organization. The funding that the National Gender and Equality Commission has been receiving is declining every year. It has declined terribly from the year she took over to date and as at now they are receiving something close to Kshs.5 million. So much as she is a lady, we should not just allow things to run the way they are running. We are defending her simply because she is a lady or simply because she comes from one region. If you look at her office, she employs five staff and out of the five staff, four of them come from one region; from one ethnic community where she comes from and majority of them were recruited by her without following the due process. These are things we have to look at critically and we should not allow them to go just like that.

There is a lot to be looked at. Some issues need to be investigated further as has been recommended by some other people. We need to look at this issue of pay slip and take it to the CID to investigate critically what happened. On the issue of procurement - single sourcing - she is single handedly sourcing and dictating that some of those things must be done according to her instructions. I want to say that the Committee should stand the credibility test. Some of the evidence that was produced in this Report to support the Petition has been expunged from the file and I have a copy where they have been expunged. The evidence---

*(Hon. Angwenyi stood on a point of order)*

**Hon. Speaker:** Hon. Angwenyi is on a point of order. Use your microphone hon. Angwenyi. You know these things changed.

*(Laughter)*

**Hon. Angwenyi:** On a point of order, hon. Speaker. I am still analogue but I am catching up. Is hon. Kobado in order to discuss a Committee in which he serves and discuss a Chairman of a Committee in which he serves without bringing a substantive Motion?

**Hon. Speaker:** Well, I have not heard him discuss the Chairman. He made a different allegation but as the Speaker, I am not supposed to be the one to ask him to withdraw. You know the rules yourselves but he made a different allegation. I can see an intervention from the Chairperson, hon. Were.

**Hon. Were:** On a point of order, hon. Speaker. Is hon. Kobado in order to say that some evidence that was brought before the Committee was expunged yet all the information we got through the Clerk's Office was considered? Whatever we got through the Clerk's Office was stamped as received and all the information we got is what we

used. So when he says that some information was expunged, we do not know what he is talking about. What I know is that he was walking with a briefcase but we do not know what he was carrying in that briefcase.

*(Laughter)*

But whatever information we got through the Clerk's Office was considered and summarized. So whatever he says was expunged is maybe what he had in his briefcase, which we did not know the contents.

**Hon. Speaker:** Hon. Kobado, what I know is that Committees usually have retreats to go and consider reports and approve final recommendations. Did you raise the issues you are raising now at that point? And if so, were they rejected? You are at liberty to record a dissent? Sometimes I find we are taking too much time to---

*(Hon. Kimaru stood up in his place)*

Look at this one again, you cannot take two years to learn simple things.

Hon. Kobado, you are at liberty to record a dissent so that if what you are saying was not put in the Report, then that is what should be contained in your dissent. As hon. Members of Committees, we must live to the standards expected of us. You should have raised that issue at the time of adoption of the Report because this is now becoming ridiculous. Were you there when the Report was adopted?

**Hon. Kobado:** Thank you, hon. Speaker. First of all, I walk with the briefcase because I am professional. My briefcase contains only professional documents. Two, I registered dissent. If you look at this Report, it is not signed by any hon. Member of the Departmental Committee on Labour and Social Welfare. I registered dissent which should be in the minutes if they wrote the minutes correctly.

Hon. Speaker, on the issue of leaving out some evidence, the evidence that is contained in this Report is one sided; it is only for those who were opposing the Petition.

**Hon. Kimaru:** On a point of order, hon. Speaker. I do not know whether the Report is properly before the House because we do not see any signatures appended as to who were present during that process and whether hon. Members really agreed to the recommendations; whether there was any dissent. The Report that we have in circulation is not signed. Is it properly before this House?

**Hon. Kobado:** Hon. Speaker---

**Hon. Speaker:** Just a minute hon. Kobado. I must go through it to find out.

*(Loud consultations)*

Hon. Members, this is the document that the Clerk has given me "Minutes of the Third Siting of the Departmental Committee on Labour and Social Welfare held at New Members' Lounge, Main Parliament Building on 12<sup>th</sup> February, 2015 at 10.00 a.m.

Members present:

Hon. D. Were, MP	-	Chairman
Hon. (Ms.) T. Galgalo, MP	-	Vice-Chairperson

Hon. (Ms.) Peris Tobiko, MP  
Hon. (Ms.) Janet Wanyama, MP  
Hon. John Mlolwa, MP  
Hon. (Ms.) Janet Teiya, MP  
Hon. John Ndirangu, MP  
Hon. John B. Serut, MP  
Hon. (Ms.) W. K. Njuguna, MP  
Hon. Samwel Gichigi, MP  
Hon. Mwanyoha H. Mohamed, MP  
Hon. Patrick Wangamati, MP  
Hon. Mosomi Moindi, MP  
Hon. Cornely Serem, MP  
Hon. Kinoti Gatobu, MP  
Hon. (Ms.) Regina Changorok, MP  
Hon. Abdinoor Mohamed Ali, MP  
Hon. Dan Wanyama Sitati, MP  
Hon. J.O. Omondi, MP

Absent:

Hon. John Owuor Onyango Kobado, MP  
Hon. Mustafa Iddi, MP  
Hon. Wesley Korir, MP  
Hon. James Onyango K'Oyoo, MP  
Hon. Elijah Lagat, MP  
Hon. Silvance Onyango Osele, MP  
Hon. (Ms.) Aisha Jumwa Karisa Katana, MP  
Hon. (Ms.) Gladys Wanga Nyasuna, MP  
Hon. (Ms.) Rose Museu Mumo, MP

Immediately thereafter, the Report reads: "The Committee Members present unanimously adopted the Report regarding the Petition on the removal of the Chairperson of the National Gender and Equality Commission." It is signed by the Chairman on 17<sup>th</sup> February, 2015.

This is what I have.

**Hon. Serut:** Thank you, hon. Speaker.

I want to agree with you that, that is the position. We unanimously agreed that the Chairperson of the Committee signs the minutes on behalf of the Members present and also indicate clearly that those of us who were present had unanimously adopted the Report. Those who were not there, we said it is up to them to follow up and find out whether they were in favour or against the adoption of that particular Report.

*(Hon. Kimaru stood up in his place)*

**Hon. Speaker:** Hon. Kimaru, just sit. You are only two years old and not that experienced.

*(Laughter)*

Hon. Kobado, you have two or so minutes remaining and they are still going to be preserved. Do not worry. Let me get these Members. The Members who were present are 19. Is any one of them saying that what is shown here, as having been unanimous decision of the Committee, is not correct? Hon. David Were! Hon. Tiyah Galgalo! Hon. Peris Tobiko! Hon. Janet Nangabo! Hon. John Mlolwa!

**Hon. (Ms.) T.G Ali:** Thank you, hon. Speaker. The position given is what we agreed in the meeting. So, we do not have any objection on that Report.

**Hon. Speaker:** Hon. Janet Nangabo! She is not present. Is Peris Tobiko present? She is not present too.

**Hon. (Ms.) Teiya:** Thank you, hon. Speaker. Yes, that is what we agreed in the Committee.

**Hon. Speaker:** Hon. John Ndirangu Kariuki, hon. W. Njuguna, hon. Samuel Gichigi, Mwanyoha Mohamed, Patrick Wangamati and Mosomi Moindi. It seems they are all absent apart from hon. Mosomi Moindi.

**Hon. Angwenyi:** He is absent!

**Hon. Moindi:** Hon. Speaker, I am here. That is what we agreed as a Committee.

**Hon. Speaker:** Cornel Serem actually seconded this Report. Hon. Kinoti Gatobu, hon. Regina Nyeris, hon. Abdinoor Mohamed Ali, hon. Dan Wanyama and hon. John Omondi Ogutu!

Hon. Members, we do not need to belabor the point. I know I have allowed several Committees to sit because of the Budget Policy Statement. So, I could understand the reason some Members are not present. I do not know whether all of them are in those Committees that are sitting now, but those who are shown here to have been present have all said that this is what you agreed. I, therefore, have no reason to think otherwise whether they are signed by the Chairman and not by each individual Member. If they confirm in their own words---Rules are meant to facilitate us to conduct our business in an orderly way. We cannot just create rules each and every time because we think it is inconvenient to us at some point. If the Members who are here--- Is that hon. Elijah Lagat?

**Hon. Lagat:** Hon. Speaker, yes it is me.

**Hon. Speaker:** You have not been on my radar for some time. Are you a Member of that Committee?

**Hon. Lagat:** Hon. Speaker, I was absent.

**Hon. Speaker:** You were absent.

**Hon. Lagat:** I was absent, but that is the position we agreed as a Committee because I went through the minutes.

*(Laughter)*

**Hon. Speaker:** So you support?

**Hon. Lagat:** Hon. Speaker, yes, I support the Report.

**Hon. Speaker:** Hon. Lagat is a marathoner and he learns as fast as he runs. So he is supporting the Report.

Hon. Members, so that we can make progress, and because I see hon. Gumbo has come back, I take the position that since Members have confirmed that, that is what they agreed. The point that hon. Kobado is making is his right. He has the right to even dissent with the Report. He could have done so if he had been present. So, hon. Kobado, the only thing that shows you to have said that there was something incorrect is that you recorded a dissent. You could not have done so if you were absent. It is not possible. Hence it cannot be factually correct that you recorded a dissent and yet on that day you were not present. As much as you say you are an expert in management and other things connected therewith, that cannot be right. However, you have every reason to disagree with the Report. That is your right and nobody can deny you that.

Proceed, hon. Kobado!

**Hon. Kobado:** Thank you, hon. Speaker. They timed me. They knew I had factual information. So when I left for home to attend a funeral, they decided to call the meeting urgently and pass that Report in my absence.

**Hon. Speaker:** Hon. Kobado, I think you are casting aspersions on your colleagues and that is not fair.

**Hon. Kobado:** Hon. Speaker, let me conclude. You cannot make decisions based on notes! Usually Committees make rational decisions that are objective based on myths. Some of the critical decisions that were made were based on notes that were hand written. This is there in the Report. Therefore, as a House, we really need to fight for integrity and the image of this Parliament. If things are going to continue like this, the whole country will view us differently.

I beg to differ and oppose this Report even if I remain alone.

**Hon. Speaker:** That is your right and there is nothing wrong. You are perfectly within your right, hon. Kobado.

**Hon. (Dr.) Simiyu:** Thank you, hon. Speaker. I rise to support the Report although you have said most of the things that I would have wanted to say. One of the main issues is that under a new constitutional dispensation, this House is going to receive very many petitions. We, therefore, need to be patient. We need to go through them justly and bring Reports here. Whether we will pass the petitions or reject them will depend on the Committee that is looking at them and the House at that time.

However, some of us, from time to time, are going to be called upon by constituents and citizens to present petitions to the House. I have had occasion to be requested to present a certain petition to the House and after I went through it, I found it to be a bit malicious. I told him, "Look, I do not think I will risk presenting this to the House. If you want, submit it through other channels."

I would like to alert Members of Parliament to be wary of some of these petitions. For instance, looking through the Report of the Departmental Committee on Labour and Social Welfare, I get a feeling that there seems to have been a clash of management styles between the Chief Executive Officer (CEO) and the Chairperson. When such clashes occur and the House is called upon to arbitrate, it becomes a bit more serious. So, I would urge the Committee that before you start receiving petitions like this one - these commissions are under the Committee's purview - perhaps the Committee could call these commissions and ensure that they are doing things above board and properly. Usually, whenever there is a clash of personalities in cases of management involving two



senior management officials, definitely one or the other will be hurt. In this particular situation, one is a subject of a court case and so we cannot dwell on it. So, the other one became a subject of a petition.

It is important that while we accept and in fact encourage freedom of Kenyans that came through the new constitutional dispensation to be able to petition their Parliament--- The freedom that Kenyans may petition Parliament on any issue is the best freedom that has ever been given to them. However, it is up to the Parliamentary committees to exercise due diligence when they go through all these petitions and ensure that nobody's name gets damaged because of people's differences. People may want to use the Constitution and say that so and so has violated the Constitution and so we should take action against those people.

It is important that if this Parliament stays true to its calling, with time these frivolous petitions will reduce in number. People will realise that Parliament cannot be taken for a ride. They will reduce these frivolous petitions. However, the 11<sup>th</sup> Parliament should be prepared to deal with very many petitions. As you said hon. Speaker, whether the petitions are frivolous or not, the citizen is entitled to bring them. Our role is to treat that petition properly.

So, I support this Report of the Committee and also agree with the Leader of the Majority Party. This is not just to the great lady Lichuma, but to all other commissioners. They need to pull up their socks and work diligently for Kenyans without undue friction within their commissions. This is not the only commission with friction. Various commissions have frictions. It is important that the commissioners, chairpersons and CEOs of those respective commissions wake up and realise that they are serving Kenyans. They also need to know that people can go to the extent of not just taking them to court, but also bringing petitions to Parliament.

Hon. Speaker, I support. Thank you.

**Hon. Angwenyi:** Thank you, hon. Speaker. I rise to support this Report. I also commend the Committee for analysing all these situations and coming up with a proper conclusion. There are people who are misusing our new Constitution by raising frivolous petitions and court cases. We cannot work properly if we entertain all these frivolous petitions. I wish the former Deputy Chief Justice had this opportunity to face this Committee because she was removed from office for only touching a nose.

*(Laughter)*

Just imagine. My friend from Odhiambo's constituency, if you allege that this lady was working with our communities only, then it looks like the person who brought the petition is your cousin.

*(Laughter)*

This is because he comes from your community. If we take things in such an ethnic way, this country will never move. This lady joined that Commission and found there were people who were employed long before her. Just to clear any doubt, Ms. Anyona is a Kisii. She is not a Luhya. That is the lady who works in her office.

Let our committees execute their mandates. If you are a member of a committee, and hon. Speaker you need to put this across, and you are dissatisfied with the performance of that committee, bring us a Motion so that we discuss that committee and disband it. It is not good for a member of a committee to come here and say: "That committee failed the threshold". What is he or she saying? For a Member to come here and say: "That committee expunged some of the evidence", does he know what he is saying? They are saying that this Parliament has got Members who have no integrity, can expunge information and can steal. You are damaging the image of Parliament including your own image. You could have raised those issues in the Committee.

So, the Committee has done a good job. Let us encourage Ms. Lichuma to work hard. If she had made any mistakes, let her correct them and do a good job for this nation.

Thank you.

**Hon. Speaker:** Hon. Members, I will put the Question in the interest of the business before the House.

*(Question put and agreed to)*

*(Applause)*

## MOTION

### ADOPTION OF REPORT ON PUBLIC SECTOR OWNED/ CONTROLLED SUGAR COMPANIES

**Hon. Speaker:** The Chairperson of the Departmental Committee on Finance, Planning and Trade, hon. Benjamin Langat.

**Hon. Langat:** Thank you, hon Speaker. I wish to move the following Motion:-

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the Privatisation of the Public Sector Owned/Controlled Sugar Companies (Nzoia Sugar Company, South Nyanza Sugar Company, Chemelil Sugar Company, Muhoroni Sugar Company and Miwani Sugar Company), laid on the Table of the House on Tuesday, December 2, 2014.

I want to first of all thank the members of my Committee who sat to produce this Report. I wish to indicate that the sugar sector supports a lot of Kenyans. In fact, it is estimated that it supports almost six million Kenyans directly and indirectly, especially in the western and coastal regions. This sector has had a lot of challenges and opportunities at the same time. One of the greatest opportunities this sector has is that the sugar we produce has excess market in this country. Unfortunately, we have had challenges in this sector. One of our greatest challenges has been the high cost of production. In fact, when you compare the cost of producing sugar in Kenya with that of other countries, you realise that the cost of production in Kenya is two times higher.

Our research in the sugar industry has been wanting. We still produce sugarcane that stays in the *shamba* for two years. Other countries have varieties that stay for six months. We produce sugar alone. For instance, sugar from Brazil is cheaper than Kenyan

sugar, even after it is transported from Brazil all the way to Mombasa, Nairobi, Eldoret and Mumias, because we produce sugar as the main product. This needs to be addressed so that in addition to sugar, we can produce fuel like they do in other countries, so that we have sugar as a by-product.

One of the other challenges that we have in the country is the small-holder sugar farms. In western Kenya, farmers have two or three acres of land. When I say western Kenya, it includes even my constituency. We have sugarcane but on a small scale. For us to have economies of scale in the sugar sector, we should have large quantities of land under sugarcane. The other challenge the sector has been facing is huge debts. In fact, the companies that I have mentioned owe Kenya Government close to Kshs60 billion cumulatively. The debts have been accumulated as loans, tax arrears and land rates. There is no way they can survive with the huge interest rates. Those are some of the challenges the sector is facing. They are many, but I do not want to mention all of them. I have mentioned the main ones.

That is why a decision was made in the last Parliament around 2010 that all sugar factories that are owned by the Government should be privatized so that we can get the private sector doing the job. I come from a tea growing region and all our tea factories are owned by farmers privately. The Government holds no shares and the sector has succeeded in many ways. Under the Privatisation Act, the Government in 2010 approved the privatisation plan to privatise the five sugar factories that I have mentioned and we are at the tail end of the process.

The last Parliament, almost at the close of its business in January 2013, fell short of approving the plan. They agreed to have the county governments legislation on Agriculture and Food Authority in place. These have been put in place. We are supposed to approve this Report pursuant to the Privatisation Act, which requires that Parliament should approve the privatisation plan of the Government before it proceeds to sell the factories.

I have heard many Members saying that the Government has not supported the sugar sector in terms of waiver of interest and loans. The last Parliament, again, approved waiver of loans amounting to Kshs33 billion, which was meant to have been paid cumulatively by all these factories. For the record of the House, the loans owed are as follows:- Miwani Sugar Factory owes the Government Kshs2.9 billion and Muhoroni owes Kshs8 billion both to the Government of Kenya and Kenya Sugar Board. The Nzoia Sugar Factory has a cumulative loan of Kshs28.4 billion, SONY Sugar has a cumulative loan of Kshs1.2 billion and Chemelil Sugar Factory has a cumulative loan due to the Kenya Sugar Board amounting to Kshs1.1 billion. That totals Kshs41 billion as direct loans.

Then they have tax arrears amounting to Kshs10.9 billion cumulatively. They have not been paying taxes because of liquidity problems. Then they have other creditors of Kshs6.3 billion. That puts the total loans and debts to Kshs59 billion. Out of that the Government through the privitisation programme will waive Kshs33 billion directly. The balance of the loan will be converted into equity in the new companies, which will be established once these factories are sold.

Under the approved privitisation plan, it is intended that the companies which will be established under the private sector will be viable. They will have area under sugar,

which has been computed to around 29,000 hectares for them to sustain a factory economically and efficiently. To achieve the required acreage of sugar, two companies will be combined into one. This will enable us to achieve the necessary acreage of sugar under one management. That is Chemelil Sugar and Muhoroni Sugar, with 18,400 hectares and 22,100 hectares under sugar respectively. That will give a combined total of 40,000 hectares. That is above what is required. The Nzoia Sugar has enough, which is 49,000 hectares. SONY Sugar Company also has enough, which is 31,000. The only two companies which will be merged are Chemelil and Muhoroni. Miwani Sugar has a court case and its fate will be determined after the court case.

The Government intends to get strategic investors for each of these companies. These are people who can invest more than 51 per cent to buy new machines and bring in new technology. The structure of the shareholding is that 51 per cent will be sold to the private strategic investor; 24 per cent will be sold to---

**Hon. Speaker:** There is a point of order from the Member for Muhoroni.

**Hon. Oyoo:** On a point of order, hon. Speaker. There are falsehoods that have been peddled for a very long time that Miwani Sugar Company has a court case. Miwani's court case was long determined by the Court of Appeal and the title deed should be resting with the Kenya Sugar Board. This has been used because the unscrupulous people who grabbed the land are going to bed with senior Government officials. This has inhibited willing investors to---

**Hon. Speaker:** Proceed, hon. Langat. That is not a point of order.

**Hon. Langat:** Hon. Speaker, I want to thank him because he has actually given me some information. He is my good neighbour.

**Hon. Speaker:** Exactly! He needed to say that he was on a point of information.

**Hon. Langat:** Hon. Speaker, he does not mean bad for me because he is my very good neighbour.

I was proceeding to tell hon. Members that 51 per cent for each of those companies will go to a strategic investor; 24 per cent will go to farmers and employees with a further 6 per cent to make it 30 per cent, which will be held for them, so that as they get money they buy--- The Government will still retain the balance of the shares. That is the structure adopted. This is a better arrangement; getting a strategic investor who will take charge of the company. What went wrong at Mumias Sugar Company is that most of the investors who bought shares are small investors. Each of them bought very few shares. There is no one who can say that the company is theirs. Nobody is really in charge.

That is where the failure is. We need to correct the mistake of Mumias Sugar Company so that we can get somebody who will be overall in charge, to take the final risk on investment and to control the management of the companies. Otherwise, if we sold them in bits of 10 per cent, we will have a situation where we all own the company but in the end nobody owns it. We will go the Mumias Sugar Company way, where nobody takes charge, and therefore, left, right and centre there will be no sugar. So, that approach was accepted by the Committee and we call upon the House to approve it. The overriding interest is that we want the farmer to deliver the cane to the nearest factory, the factory to buy the cane and the farmer to be paid there and then; if not, by the end of the month. That is the overriding interest we want to see.

Hon. Speaker, we believe in the arrangement of getting strategic investors with interest in the company, who will develop the cane industry and do the right research. Therefore, we look forward to having this sector back again. I have already talked about the debts and explained to the House how the debts of Kshs33 billion have been written off. The balance will be converted into equity, meaning that the factories will inherit no debts. We want to see new companies which are ready to take off.

This process is long overdue because at the end of this month, the Kenya Government has been securing the Common Market for Eastern and Southern Africa (COMESA) safeguards on sugar imports on the promise that they are on track in terms of privatisation plans. The last safeguard expires this month and I am being reminded by my colleague, the Chair of the Departmental Committee on Agriculture, Livestock and Cooperatives; that next week the last safeguard on COMESA will expire and we may not get another one. We should move with speed to see that this process is concluded so that the private sector can take over and compete with the other companies from the world.

I urge the House to support this process. I have already indicated that the benefit to the farmers, as a package, is the waiver of interest. We have already told the Cabinet Secretary that any outstanding debts to farmers and employees should be settled before the takeover of the new company.

I thank the House and request Members to support this Report. I ask my good friend and my namesake, the man who has been fighting for the sugar sector for a long time, hon. Washiali, to second this Report.

**Hon. Speaker:** Yes, hon. Washiali!

**Hon. Washiali:** Thank you, hon. Speaker. I want to start by saying that I support this Report. I actually want to second it and thank hon. Langat for picking me to second this Report.

Parliament, in its wisdom, decided that matters that require investigations and a little bit more than what the plenary can do, should be referred to Committees. I want to say right here that the Departmental Committee on Finance, Planning and Trade had quite a bit of time trying to investigate the pros and cons of this issue. I sit in the Departmental Committee on Agriculture, Livestock and Cooperatives and initially, as a Member of this House and especially a Member who comes from where sugarcane is grown, I was opposed to this privatisation because of the experience we have had. However, after I had some time to join the Departmental Committee on Finance, Planning and Trade as a friend of the Committee when they were discussing this issue of privatisation, I was convinced and that is why I have accepted to second this Motion.

I just want to remind the House that we are signatories to the COMESA treaty. The COMESA treaty actually dictates that you can buy sugar where it is cheap and sell the same commodity where you find a better market. For a while now, as a Member of the Departmental Committee on Agriculture, Livestock and Cooperatives – I am happy my Chairman is here – we have been fighting day in, day out on sugar that is coming from COMESA countries because it enjoys preferential duties. For us to solve this problem once and for all, we must comply with COMESA regulations because in the sugar industry, it is not just about the investment, which is the factory and everything else, but we also have farmers who farm cane and their income is the proceeds of that sugar cane. We have workers like the cane cutters and those who do the weeding, who

are actually meant to earn their daily income on what they do in the sugar industry. That is why we must make our sugar sector as competitive as any other sector in our COMESA member states.

I come from Mumias where Mumias Sugar Company was privatised a long time ago; in 2003. Indeed, out of privatisation, we improved our technology because we now have a diffuser system, which has a better extraction of sucrose than any other factory in the country. In Mumias, we have diversified. We are not only producing sugar but also power, ethanol and water, which is supposed to add income to the parent factory so that it can give more to the farmers.

As we debate this Motion, I want to agree with what the Chairman of the Departmental Committee on Finance, Planning and Trade has said that privatising these factories like it was done to Mumias Sugar Company (MSC) is a wrong way of privatising. This is because MSC, a company which should have set the best example of privatisation, is on its deathbed because the style in which we privatised it does not have any honour. In fact, if it were not for the Government, MSC would have been long gone. The directors have become cartels because they have no one to answer to and they have made decisions that have actually spoiled the business environment that was in the factory much earlier.

Hon. Speaker, you can be shocked by what has happened in MSC over time. In one meeting, the Board of Directors (BoD) decided that they had to remove the audit department of their company despite the fact that audit is actually a function of the Board. The audit department is the one that informs the Board on the decisions to make so that they can realise and correct where they have gone wrong and improve on where they have gone right.

The set up of MSC is such that the directors of the Board have nobody to answer to. That is why they have made decisions that are detrimental to the life of the factory. In very few words, I want to support this Report and Motion and just like the Chairman of the Finance, Planning and Trade Committee has said, we need to support his request for Members to look at this Report positively.

Hon. Speaker, this matter did not start in this Parliament but in the Tenth Parliament when hon. Njeru Githae was the Minister for Finance and we had different ways of looking at it then. However, because we have COMESA safeguard measures that are coming to an end on 28<sup>th</sup> February, 2015, I think it is important for us as a House to show direction in this area and country so that we allow privatisation. That way, we can effectively compete with other COMESA states.

Then there is this issue of corruption. You have heard the Chairman mention how much money these companies owe banks and other lenders. You have heard of Kshs28 billion. If the law followed its course, maybe these companies will be under receivership. This is because if a company owes lenders Kshs 28.4 billions, it means that those lenders can take it over any time. For us to safeguard the interests of farmers and employees who are dependent on these factories by working and earning a livelihood in those companies, the best way to go is to privatise them so that we see the relevant competition. We expect that technology will then improve so that these companies can effectively compete with other companies in this area.

In Western Province where I come from and especially in Kakamega County, we have seen some companies that are private now. We have seen West Kenya Sugar Company which is paying farmers in two weeks. We have also seen Butali Sugar Mills Limited into which a private entity pumped in Kshs.2 billion and are paying farmers in two weeks' time. That is very good.

All we need to do as a House is to be careful on how much these private companies are going to pay the farmers. This is because once that is done, it can come out as a legislative measure so that we control how much they will be paying the farmers. That way, everybody will be happy and I am sure that even the country will be happy because it will be able to save the foreign exchange reserve which is very critical for us to develop as country.

Otherwise, hon. Speaker, I wish to second.

*(Question proposed)*

**Hon. Speaker:** Hon. Dr. Nyikal.

**Hon. (Prof.) Nyikal:** Thank you, hon. Speaker. I rise on a point of order.

The sugar industry is a big one and the companies named here are large companies with huge tracts of land. Many of us particularly those who come from those areas know the pain which farmers have gone through. To merely say that privatising the companies will solve the problem and yet we already hear that MSC went through that, and it was not the solution, is not proper.

Most of the Members are probably seeing the Report now. I, therefore plead with you that Members are given more time to discuss this in detail so that those who have interest in it know further details. These are huge tracts of land which we do not know how much they are likely to be sold for and I think that this requires time and serious consideration because once the decision is made we cannot go back and yet the lives of farmers will be at stake.

Hon. Speaker, I also know you had ruled that after this Motion we go into discussion of the matter of the Constituencies Development Fund (CDF) issue. We have two very important issues. Mine is to request that we move to the CDF issue and give time for Members to consider this Report and read it in detail so that we can participate more actively.

Thank you, hon. Speaker.

**Hon. Speaker:** Though I get the sense, that is not the--- I know hon. Langat who is the Mover of the Motion is alive to the date of 28<sup>th</sup> of February. However, I think that the House seems to express some fair sense of the urgency of both this Report and the Motion for Adjournment requested by hon. Gumbo.

Hon. Members, tomorrow is a sitting day and I want to agree with the sentiments expressed by hon. Nyikal that this is a fairly serious Report and we request that you give every Member a fair chance to make a reasonable input into it. Since almost the entire House had earlier on expressed support for the proposed Motion for Adjournment, it is evident that what hon. Nyikal is asking me is to exercise my discretion.

Hon. Langat, is it the date of 28<sup>th</sup> that you are scared of? Let us hear you because you are the Mover of the Motion.

**Hon. Langat:** Hon. Speaker, I do not oppose the request by Dr. Nyikal not for the reasons he has given. The Report was tabled on 2<sup>nd</sup> December, 2014. This thing of requesting for more time has always been coming up. I think it is high time you guided us that once a Report is tabled, Members can access it and prepare for the debate.

However, I support what he is saying for the reason of the CDF issue, hon. Speaker.

*(Laughter)*

Again, we cannot say just because you are not prepared as a person, we always postpone the debate of the House. So I think it is fair because the way it is coming out, it is like we never gave hon. Members time to prepare, which is not true because the report was tabled in the last four months or so. Anyway, for the other reason he has given, I do not necessarily oppose.

**Hon. Speaker:** Since tomorrow is still a Sitting day and the Report has been moved, seconded and the Question has been Proposed, debate can continue tomorrow. So at this moment, we suspend the business appearing as Order No.10 and it will be the first business appearing as Order No.8 tomorrow so that it can continue. We want as many hon. Members as possible to contribute to this Motion on privatisation because I know there is a lot of interest, not least in the House Business Committee (HBC) as well. I will allow hon. (Eng.) Gumbo to move his Motion for Adjournment. This business will be transacted tomorrow afternoon.

### MOTION FOR ADJOURNMENT UNDER S.O. No. 33(1)

#### FATE OF CONSTITUENCY DEVELOPMENT FUND

**Hon. (Eng.) Gumbo:** Thank you, hon. Speaker. Pursuant to provisions of Standing Order No. 33(1), I wish to seek leave for adjournment of the House to discuss a definite matter of national importance with regard the fate of the Constituencies Development Fund (CDF) following the recent High Court ruling.

The recent High Court ruling on CDF has brought anxiety and uncertainty to all parts of the country. As duly elected representatives of the people of Kenya, it is our duty to give leadership and direction on this matter to the Kenyan electorate who alone are the holders of the sovereign power in our country. It is my conviction that we would be failing in our duties if the true aspirations of our people do not form the primary agenda of the business of this honourable Assembly.

First of all, I want to thank you and the membership of this House for granting us the opportunity to ventilate on this matter. If there is a matter which has gripped this country entirely at the moment, it is the matter of the CDF. Ever since its inception, just over ten years ago, the CDF has, in more ways than one, become synonymous with Kenya. So much so that the CDF today is no longer just a fund; it is a way of life in Kenya today. In fact, I want to believe that if there is a truly ingenious Kenyan innovation it has to be the CDF. In terms of brand names, as I sit here today, I think CDF probably is as more powerful a brand as *Mpesa* or even *Safaricom*. I cannot imagine any other brand



in Kenya which is more powerful than CDF today. I recall an incident when we met a delegation from Botswana who had come to study the CDF structure here, and as we were concluding the leader of the delegation jokingly said that he hoped the person who came up with the idea of CDF, that is Senator (Eng.) Muriuki Karue, was one of the most decorated Kenyans because he thought it was a very brilliant idea. Such a powerful development idea which has directly impacted millions of lives cannot be discarded merely because of a few correctable structural and procedural lapses. The problem with the CDF has always been that there is partly the wrongly held notion that the CDF is a fund for Members of Parliament. Perish the thought: The CDF is a fund for the people of Kenya. As we stand here today, it would be more difficult to find a village in Kenya which has not been touched by the CDF in the ten years that it has been existence.

I have sat in the Departmental Committee on CDF for the seven years I have been privileged to be in this House throughout. In one of our field tours, we found constituencies in this country which did not have a single girls' school before the CDF came. Some of them now have four or five girls' schools. We found cases and testimonies of very poor children who could not have gone to school had it not been for CDF. This is just but a background. I have seen and you had advised us and I have looked at some of the areas that the court had been asked to look into and one of the areas that the court was concerned about is that when the Act was passed, the Senate was not involved. I sat in this House in the early part of 2013. In fact, the CDF Act was passed at just around midnight because it was that important to Members of Parliament. At that time it was just not possible to involve the Senate because they were not there. It did not exist. The other area that the court has talked about---

**Hon. Speaker:** Hon. (Eng.) Gumbo, Sixth Schedule of Constitution has provided that the National Assembly existing then was to operate as both the National Assembly and the Senate

**Hon. (Eng.) Gumbo:** Absolutely. So we did the work of the Senate. I thank you.

The other area which I have a problem with is the principle of separation of power. The court cited that the CDF offends the principle of separation of power. With due respect to the honourable court, I want to believe and I want to say here, - I am not a lawyer but I have the Constitution - that the principle of separation of power is sometimes flouted for convenience and expediency purpose. Why do I say this? If you look at our Constitution, this principle of separation of power is mentioned only once under Article 185(2) and it is only with regard to the county assemblies. Suppose we were to pursue the principle of separation of powers--- In my understanding, if you were to pursue a clean principle of separation of power, this house should make laws, the Judiciary should be able to interpret and enforce those laws and the Executive is supposed to execute. If you look at Article 94 of this Constitution, it gives this House the powers to make laws but are we the only one? For the laws that we make here, all of us here will agree that most of them actually originate from the Executive.

Article 114 is very clear that when it comes to money Bills, we cannot pass them without the input of the Cabinet Secretary in charge of finance. Article 115 even goes ahead to give the Head of Executive, the President, the power of assent. That power of assent is not just putting the signature, it also involves making suggestions to parts of the law that the President might feel are not in conformity with the Constitution. Is that not

engaging in making the law? I think this principle of separation of power is an ideal situation. How practical is the principle of separation of powers? I have just said that in an ideal situation, the Judiciary should engage in interpreting and enforcing the law. Those of you who are observant, must have recently seen the Judiciary putting a full page advert to establish a building department complete with architects, engineers, quantity surveyors and land surveyors. If indeed we were observing the principle of separation of power, why can we not have the buildings in the Judiciary done by the Executive, the Ministry of Lands, Housing and Urban Development?

I want to say that it is not right that it only applies to Parliament when people talk about the principle of separation of power. I know there are many hon. Members interested in this debate and I do not want to take too much time. But as I conclude, I have engaged with the Chief Executive Officer of the Institute of Social Accountability, Ms. Wanjiru Gikonyo, at length. I am surprised, those of you who are observant must have seen the article she wrote yesterday. In the article, she appears to be glorifying county governments *vis-à-vis* the need for accountable use of public funds. Who does not know what is happening in our counties today? We are not merely talking because we are here. If you were to talk about counties that do not have audit queries, there are very few and far between. Clearly, the nobility of CDF as an idea is not in question. This is the one fund which has affected Kenyans. In fact even as we debate CDF, we are forgetting about the social aspects. In my constituency, I have a small quarry called Magare Quarry. Before the advent of CDF, there were less than ten people working in that quarry. Today over 2,000 people are working in the quarry because the demand for stones in Rarieda, Bondo and Seme where hon. (Prof.) Nyikal comes from, is just too much. You see young girls and boys doing welding everywhere.

Hon. Speaker, as we debate this and engage in the *Kamukunji* tomorrow, let us look at ways--- I think there is a constitutional principle which requires national State organs to ensure reasonable access to each service. We will not be offending anything to make sure that--- Also, as Members of Parliament, it will not be wrong for the Constitution to facilitate us to do our work properly.

I beg to move. Thank you.

**Hon. Speaker:** Hon. Chanzu.

**Hon. Chanzu:** Thank you, hon. Speaker. I also want to thank *mhe* Gumbo for bringing up this issue. It has been with all of us, but it required one of us to bring it up. It is important that we have the *Kamukunji* tomorrow, so that we can air our views. This could be an eye opener and our colleagues here will float their ideas. In 2003, the Constituencies Development Fund (CDF) came into existence. It is now 12 years and a lot has been achieved. The biggest problem now is that we are trying to do a comparison. Somebody made comments on air in one of the FM stations. I told him that we get Kshs 60million or Kshs70 million per year, and if you go to the constituencies, you will find a toilet, a classroom, or a school bus, all courtesy of the CDF. We have been having these county governments with billions of shillings, but there is nothing you can see that they have come up with, save for graders that you will see on sites as they try to construct roads. This is because, with roads, procurement is very easy. Somebody just sits down and says that so-and-so is going to do this job for Kshs20 million or Kshs30 million. It is for this reason that we are saying that this issue of CDF must be thought of very

carefully. I am happy because we have talked about the issue of the Senate. Those who were in this House that time will know that we agreed that Senate was going to be part of Parliament.

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

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

Article 6 of the Constitution talks about the two levels of Government being distinct, but interdependent. The court said that CDF must fall within the county government. They are forgetting that there is the national Government. The court did not look at the position that we have got the national Government, which also has got functions. The court wants to put us together with the county governments without knowing that the Constitution provides for functions which are to be carried out by the national Government. Members of Parliament deal with issues of education and security. There are other matters that we have given to the county governments such as agriculture, water and health.

All of us live in the constituencies and counties and we see what happens. It is interesting to note that some of the governors now that they like crowds, go to education functions just to sit there. They are not attending to hospitals where people are dying day and night. It is a matter that we really need to consider.

We had a meeting and we said that the money allocated to the CDF is not a lot; it is only two-and-a-half per cent of the national revenue. Compare that with the over 40 per cent that we are giving to county governments. We are now concluding the law on procurement. It is important that we have these laws in place.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Your time is up, hon. Member.

**Hon. Chanzu:** I support, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Silverse Anami.

**Hon. Anami:** Hon. Temporary Deputy Speaker, thank you very much for this opportunity. Last week, I had a rare opportunity of interacting with the people of Shinyalu. I saw the projects that CDF has facilitated. When this issue came up, every other institution and community that I went to said this must be reversed. We must quickly, as Parliament, do all that we need to do, so that CDF can continue to be the friendly fund that listens to people's cries and provides development for them. Indeed, CDF has initiated development that you can see and own. The development that happens in the communities through CDF is development that the communities, the people and citizens of this country have participated in. It is their decision that they would like this and that to be here or there.

There is a lot of confusion as to where county governments should come in. Before people and county governments understand what they are supposed to do, time will have lapsed. A lot of schools will have collapsed and a lot of roads will be rendered impassable. So, it is very important that, as Parliament, we do something to make sure that CDF stabilises and continues to be the mitigating fund that it is. The provisions in the

Constitution are alive to the fact of implementation of CDF development initiatives. This is what we will lose if we allow this Fund to go away. Of course, there is the issue of accountability. Members of Parliament, being representatives of the people and the main oversight arm of Government, feel obliged to account to the citizenry and to the electorate. That is actually a guarantee that there will be accountability. Indeed, the citizens have the opportunity to vote out a Member of Parliament if he does not represent them effectively in matters of CDF.

We need not lose on the gains that have been made by literally following the views of other people. We need to consider the ruling of the court, analyse it and seize the opportunity to realign where we need to. That is why I support this Motion, but the ultimate idea is that Members of Parliament should oversee. The CDF should be a facility that the citizens can interact with and initiate their own development using it.

I support this Motion.

**Hon. Gikaria:** Thank you, hon. Temporary Deputy Speaker for giving me this opportunity.

First, I want to thank hon. Gumbo for bringing up this Motion. One of the things that we need to start asking ourselves, as we look at this issue, is the reason why it was brought up and taken to the courts. Parliament did not take a lot of interest. This was to an extent that, I am told, lawyers who were representing the Board were not as competent as they should have been. Now I hear some of the Members saying that we are even ready to contribute money, so that we can get competent lawyers who can defend us in the Court of Appeal. As Parliamentarians, we should not be taking things lightly when they are brought up, only to start lamenting once decisions are given by the courts. It is important for us to start thinking; if, indeed, the Board is going to appeal, how can Parliament chip in by getting lawyers to represent it? There were names of some very prominent lawyers which were suggested.

Secondly, it is about the Judiciary. Recently, the Minority Party went to court regarding the security laws. They wanted the whole Act to be termed unconstitutional. The Bench that was picked by the Chief Justice looked at what they were asking and picked only those unconstitutional clauses in that Act. The court ruled that they were not going to outlaw the Act, but they were going to state what sections needed further scrutiny, so that we could look into them. The court needed to have checked the CDF Act, identified the unconstitutional sections, so that we could start addressing only their unconstitutionality. That way, we would have been in a better position instead of just giving a blanket ruling that the whole Act is unconstitutional. I hope that sooner or later, once we go to court, we will argue and hopefully get good lawyers.

Thirdly, it is about the CDF. About 80 per cent of the Members of this Houses are first timers. At least, I was a councillor, and this is my first time as a Member of Parliament. If, indeed, 80 per cent of the Members of Parliament do not come back to Parliament, then the Judiciary needs to know that CDF does not help Members of Parliament. I came here when I never had the CDF; but I was elected in my constituency. The Judiciary needs to be told that CDF has nothing to do with Members of Parliament. At the same time, Members of Parliament also need to be a little bit careful. Recently, I was listening to a Member of Parliament on what the Speaker calls “talk shows”. He was saying that in his position as a Member of Parliament, he had done certain projects using

the CDF. Obviously, people will see that Members of Parliament are the ones who directly initiate the programmes. We also need to identify ourselves with the oversight role and stop telling the public that the CDF is under the control of Members of Parliament. When we are called to those “talk shows”, we need to identify what to talk about based on the Act.

As far as I am concerned, I am just an overseer of the CDF. I play no active role. In fact, I have never attended any of the CDF meetings in my constituency. The law is very clear that there should be public participation, identification of projects by the constituents and many other issues that are supposed to be raised. Members of Parliament also need to be careful regarding what they talk about.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Your time is up. Hon. Lessonet, I am giving you this opportunity because you are the Chairman of the Committee on CDF.

**Hon. Lessonet:** Thank you, hon. Temporary Deputy Speaker. First, I take this opportunity to thank Members for their defence of, and getting the point very clear in terms of the CDF. It is true that there was a ruling in the High Court on Friday, 20<sup>th</sup> February. It ruled that the CDF is unconstitutional and invalid. When you look at the participants in that court, the Petitioner was a group calling itself “The Institute of Social Accountability (TISA). I wonder whether they live here in Kenya or they only succeeded to come here during the court case. If they live here in Kenya, then they should have known what the CDF has done. Another participant was the Chairman of the Commission for the Implementation of the Constitution (CIC), who was proudly there to support that the CDF is unconstitutional.

When you look at today’s newspapers, there is an advisory material by the CIC; I do not know where they get powers to publish such advisories. They assume that they are more senior than the Supreme Court in this country, that is why they can publish in the newspapers an opinion, or advisory, for all Kenyans to read. They have put it there like a statement of fact when they are like any other commission. There is no difference between the CIC and any other commission, and they should not behave as if they are playing a more superior role than the Supreme Court.

We are going to meet here tomorrow to ventilate on this matter further as the Members of Parliament, and agree on the way forward. As we do that tomorrow, take note that today there are 1,000 teachers who do not want to go to North Eastern. There were no such teachers ten years ago who did not want to go to North Eastern, because there were no schools in North Eastern. Ten years after, 1,000 teachers do not want to go to North Eastern because of the schools the CDF has built in North Eastern. There were no schools ten years ago in North Eastern. We are told that this country has a shortage of 100,000 teachers. The reason is just one, the CDF.

Going forward, I want to look at this ruling positively; once we come out of this process which we are in now, the CDF shall be bigger. It is going to be bigger than that 2.5 per cent.

*(Applause)*

After this, the CDF will be used to build courts. There will be no more funding for the Judiciary because we shall finance the construction of courts in our constituencies. After we come out of this, the CDF is going to build police stations, police houses and buy armoured vehicles for the police. After this, there shall be no more cattle rustling. The people of Baringo South are going to buy enough armoured vehicles to take care of security using the CDF. We are not going to hire arms, but we are going to buy them using the CDF. That is what the CDF will be after we get through the court case. We are confident that we are going to get over this small hurdle.

The CDF is going to be bigger. As I finish, I want to request Members not to be anxious. We do not even need a law to put money in any constituency. The Constitution has given us the power to appropriate money. It is for you Members to decide where to allocate money. Why is the CDF Act there? It is only there to give us power for the management of that fund. Without the CDF Act, the money will---

**Hon. Members:** Give him two more minutes!

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Lessonet, I give you one more minute to wind up.

*(Applause)*

**Hon. Lessonet:** Thank you, hon. Members.

Hon. Temporary Deputy Speaker, I am here to confirm to Members that the main reason as to why we have the CDF Act is to make us disciplined in the management of that the CDF, so that we can have infrastructure in the country. Otherwise, this House can give money to anyone at any time. We do not need to get the approval of the Judiciary to give money to anybody. The power to appropriate the Budget is given to us by the Constitution. With that in mind, we shall meet tomorrow and explore the various options available to us. Of course, we will be exploring options which are going to be extremely good for this nation. As I said, the CDF is going to be bigger.

Thank you, hon. Temporary Deputy Speaker.

*(Applause)*

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Yes, hon. Eseli!

**Hon. (Dr.) Simiyu:** Thank you, hon. Temporary Deputy Speaker, for giving me a chance to contribute to this matter. I wish to thank hon. (Eng.) Gumbo for having the presence of mind to bring this Motion for adjournment of the House.

Recently, Kenya was declared a middle income economy in the lower middle income scale. What people have not done is to look back and see the contribution of the CDF to this country. Definitely, without the CDF, we would not have attained the middle income economy status of now. That is a factor Kenyans need to realise. The wisdom of the colonialists is 'If it is not broken, do not fix it'. The CDF is not broken, why fix it? It is running well. Another wise man said, 'Do not throw the baby out with the bath water'. If there is anything that anybody is against in the CDF Act, we do not need to throw out the whole Act just because of a few things that might be sticking points to some people.

I believe that we need to look at this thing carefully. We can adhere to the Constitution and ensure that we do not lose the CDF as it is constituted. As an earlier speaker said, there is an 80 per cent turnover of Members of Parliament every time we have a general election. This confirms that the use of the CDF cannot ensure Members' re-election to office. There is no way Members of Parliament can use the CDF to perpetuate their stay in office and still end up with such a high turnover every time we have a general election.

We need to be aware of the fact that there are powerful forces against the CDF. They are from as far as Washington DC – the World Bank. When the CDF was first introduced in this country, the World Bank was totally against it. In fact, the World Bank was the first to raise the issue of separation of powers. That view is now percolating in the country. That is why I talked about Kenya being a middle income economy. The World Bank will be the main losers when Kenya's economy grows as we will be taking fewer loans from them and they will not be making profit.

As the people representing Kenyans, we need to recognise these facts and come out strongly but also intelligently. Let us look at the Act and come up with an Act that nobody can turn around and say it is unconstitutional. The Eleventh Parliament has had a history of losing court cases. We even lost a court case on our own benefits even though it was very clear in the relevant law that we should have got a percentage of what we earned; we lost it. I do not know whether we have appealed. If we have, it is good. Why are we losing cases? Perhaps, we are not having a proper look of the facts that we should be canvassing. In this particular situation, we need to clean up the law, so that we can have an Act that cannot be subjected to a court process on the basis of constitutionality.

The CDF is not just audited by the internal auditors and the Auditor-General; it is also audited by the electorate because they see what we do with the money. Most of the CDF money is used under the Development Vote. Very little money is used under the Recurrent Vote. The CDF is audited at many levels. That is why it has led to such contribution to this country's development, making Kenya to become a middle income economy. Just 2.5 per cent of the national Budget has helped Kenya to attain a middle income economy status. That is a fact we cannot lose track of. We need to keep it in mind tomorrow at the *Kamukunji*, as we come up with the details of how to approach this war. We should strive to win it not for ourselves but on behalf of Kenyans, who sent us here.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Yes, hon. Rose Nyamunga!

**Hon. (Ms.) Nyamunga:** Thank you, hon. Temporary Deputy Speaker. I stand to thank hon. Gumbo for bringing this Motion to the House.

It is very important that we save the CDF. Much as we know that there should be only two levels of devolution, namely the national level and the county level, we should find a way of amending the Act, so that CDF is also delegated to us directly by the national Government. I do not think that, as it is, the CDF is supposed to be allocated to the county governments, as the governors claim.

Secondly, the county governments are still grappling with teething problems. The only thing that can save the people of Kenya is the CDF. Attempting to scrap the CDF is like an assault on the people of Kenya. The development that can be seen across the

country today is as a result of the CDF. I am here, courtesy of the CDF. Somebody I know, whom I live with, worked so well with the CDF that when the time came for me to contest the seat for woman representative in my county, it became apparent that I would win. Most of the people told me: “We are going to vote for you because of the way your husband used the CDF. We believe that you are going to do the same.”

*(Applause)*

Therefore, the CDF has done a lot for this country. We must support it at whatever cost. I know that there are issues; there are areas where the CDF has not been used well. There are some Members of Parliament who have gotten themselves so much into the disbursement and projects of the CDF – which should not have been the case. You can just provide oversight and still achieve a lot. I believe that there are a few areas which need correction, especially on how some hon. Members have related to their respective funds or have utilised the fund. It is not every constituency that has used the CDF money in a proper manner. We need to tie the loose ends in the CDF Act as a way of correcting the situation. However, we cannot wholly take it that the CDF has to be scrapped. As one of our colleagues said, it is very important that we look at the Act, section by section, and remove the sections that contravene the Constitution. As the lawmakers, we have to make sure that we amend the CDF Act to conform to the supreme law. However, we cannot wholly condemn the CDF.

Therefore, I will always stand here and support the CDF because it has done a lot for this country. I believe that it will continue to foster development across the country. We need to use the CDF well. We also need to be prudent and play our oversight role properly. We need to make sure that CDF projects are spread across all the constituencies, so that everybody can feel satisfied with the CDF.

If you go to the rural areas today and talk against the Constituencies Development Fund (CDF) or say that it has been scrapped, and that we are going to rely on our governors then that will be bad. You know the issues that are going on at the county level at this hour. This is one thing that is supported across by every person with knowledge of it. It is important that we make corrections. The CDF is here to stay. Thank you.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Let us have hon. Patrick ole Ntutu

**Hon. ole Ntutu:** Thank you, hon. Temporary Deputy Speaker for also giving me this opportunity to contribute to this very important Motion. I want to thank hon. (Eng.) Gumbo for bringing this Motion here today. I think that the CDF development record cannot be overemphasised. Anybody who lives in Kenya knows what the CDF has done. I suppose it is because most of our judges live in Nairobi that they gave us this judgement.

I think our Judiciary is full of activists. The reason why I say this is because in this House we have very good lawyers who are well educated. When we enacted the CDF Act, it went through this House and nobody has raised any issue like it being unconstitutional. The President signed the Bill and we have our Attorney General who is the President’s or the Government’s legal advisor. Do you want to tell me that he can tell the President to sign something that is unconstitutional?



When you look at what has been happening in our courts, there are about three judges who are known; every time they get a case, their ruling depends on who brought it. I say so because I remember there was an issue that had to do with the recruitment of police officers and they ruled against it. Our children are still at home waiting for the police to recruit again. It is taking many years simply because of their actions. The other day they also ruled against the security laws which went through this same House. Today, again they are telling us that this CDF is unconstitutional. You hear a judge say that an Act is unconstitutional and we are given a period of 12 months to amend it. I thought as a layman that once something is considered unconstitutional, it should be scrapped. Why give us 12 months when you know that it is unconstitutional?

There is a lot to be looked at. This House must make sure that we do what we are supposed to do even if it means amending the Constitution for the first time. We have about Kshs 6 billion lying in the Treasury. This is the Equalisation Fund. It is lying there while our people are suffering. There are 14 counties that should receive this money. Since people are taking time, what will the Judiciary say? This is people's money and they must get it so that they can improve their lives.

Anybody who knows how we are using the CDF knows that it has changed lives. Yesterday I was called by one of the ladies whose children I have been helping to go to school. She is a poor widow and she asked me one question in my mother tongue: "Do you want to tell me that the money that you have been paying for my children's school fees is no more?" I told her to just be patient because we are working on it. I did not want to tell her the whole story. As we were talking, I told her that, maybe, our governors will help us to pay some of the school fees. She said she had never seen that 'animal' called governor.

*(Laughter)*

Therefore, let us not joke with this thing because it is really something that---

**An hon. Member:** They are nowhere.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Let us have hon. Naomi Shaban

**Hon. (Dr.) Shaban:** Asante sana mhe Naibu Spika wa Muda kwa kunipa nafasi hii ili niongee na kuwaunga wenzangu mkono kuhusu swala hili la CDF hapa nchini Kenya. Ni wazi kwamba labda watu wakiwa Nairobi hawawezi kujua hazina hii imefanya nini, haswa katika maeneo ya mashinani na mashambani, ambako kumekuwa na matatizo kwa muda mrefu sana.

Mara nyingi pesa za kujenga shule zilikuwa zinategemea wananchi kufanya Harambee. Ilikuwa mara nyingi shule zinajengwa ovyo ovyo. Zinabomoka na zinaangukia watoto. Kwingine tumesikia kuwa watoto wamekabiliwa na vifo katika darasa kwa sababu ya shule ambazo zilijengwa kwa njia hafifu.

Tangu hazina hii itengenezwe kupitia sheria za nchi hii wakati mhe Rais Kibaki alikuwa amechukua hatamu za uongozi wa nchi hii, tumeona shule zikijengeka kisawasawa. Wakati huo huo tumeona kuwa kumbe shule zinaweza kujengwa kwa gharama zinazofaa. Vile vile tumeona mahabara. Shule zilikuwa zinaendeshwa bila

mahabara yoyote. Zikiwa na mahabara sasa watoto wetu wanaweza kusoma masomo ya sayansi bila matatizo.

Zahanati ambazo zilikuwa ziko mbali, tumeona zikikaribia wananchi, na wanaweza kupata matibabu kwa urahisi. Akina mama walikuwa wakijifungua njiani, na kuhatarisha maisha yao na maisha ya watoto waliobeba. Imekuwa wanaweza kufikia matibabu kwa haraka iwezekanavyo kwa sababu hazina hii imeweza kuwafanyia kazi.

Ni ajabu kuwa majaji wanaweza kutoa uamuzi bila kufikiria yote yaliyotendeka kupitia hazina hii. Wanaweza kufanya uamuzi kuwa wananchi hawajapata faida kutokana na hazina hii. Mimi kwa upande wangu, ninafahamu kuwa kuna kaunti, lakini je zimeweza kufanya nini tangu zianze? Tunaingia mwaka wa tatu sasa tangu tuwe na kaunti, na hatujaona kazi ambayo zimefanya, kulinganishwa na hazina hii. Ni wazi kuwa mabilioni ya pesa yanapeanwa kwa magavana waweza kufanya kazi lakini je hiyo kazi inafanyika? Kwa hivyo, wakati majaji walipokuwa wanafanya uamuzi huu, wangelifikiria kwa sababu sheria zinatengenezwa binadamu na mwananchi mwenyewe ni lazima afaidike na sheria hizo. Sheria hazitengenezwi ili kusomwa tu kwenye vitabu halafu mwisho sisiweze kutumika.

Wakati hazina hii ya maendeleo ilipokuja, Taveta ilikuwa na shule tatu za sekondari ambazo hazikuwa hata na mahabara ya kuweza kuwafundishia watoto masomo ya sayansi. Leo hii nikiongea, shule za sekondari Taveta zimefika kumi. Zina mahabara na kila kitu ambacho ni cha kisawasawa. Akina mama walikuwa wakitembea zaidi ya maili 20 ili kuweza kufikia hospitali kuu ya Taveta. Leo hii kila mtu akitembea kilomita tano unakuta kuna mahali anaweza kupata huduma ya afya kwa urahisi. Akina mama walikuwa wakitembea kilomita nyingi ili kuweza kufika mahali kuna maji ya kunywa. Sasa hivi hazina hii imeletea watu maji nyumbani.

Je, hao majaji wanaishi wapi? Wanaishi hewani ama wanaishi hapa nchini Kenya; hawafahamu vile hazina hii imefanyia watu kazi? Ni jambo la kusikitisha kuwa majaji wengi wanaotoka katika maeneo ya Bunge yenye matatizo kama lile langu; wamesahau kule walikotoka na sasa wanafikiri maisha yao ni ya Nairobi.

Watu kule mashinani wanahitaji hazina hii na hazina hii ni lazima ifanyiwe kazi ili sheria iwe vile inavyotakikana; Katiba haikuja kuwanyanyasa Wakenya bali ilikuja kuwasaidia.

Naibu Spika wa Muda, naunga mkono Hoja hii ili Bunge hili la kumi na moja liweze kurekebisha matatizo yaliyoko, na hazina hii iweze kutumika kuendeleza Wakenya mbele.

**Hon. (Ms.) Chidzuga:** Shukrani mhe. Naibu Spika wa Muda. Nasimama kuunga mkono kwamba CDF ibaki. Ningetaka nikichangia hii Hoja nianze kwa kuwauliza waheshimiwa Wabunge wenzangu maswali. Swali la kwanza, je wanaotengeneza sheria ni akina nani? Wanaotengeneza sheria za Kenya ni sisi hapa na sisi ndio tulitengeneza sheria ya CDF, na hivyo basi CDF lazima ibaki. Kwa hali na mali, CDF ibaki. Hii ni kwa sababu magavana hivi sasa wanazunguka; unasikia wameenda kufungua miradi. Wangefungua nini kama ingekuwa si CDF? CDF imetuwekea mashule. CDF imetuwekea zahanati. CDF imetuwekea wadi za akina mama ambazo magavana wanaenda kufungua. Ingekuwa si CDF, wangefungua nini? Hii ni kwa sababu katika hiyo miaka yao mitatu ambayo tumewamiminia pesa chungu nzima hakuna cha kutuonyesha.

Pesa zao za bursary pia hatuelewi ziko wapi pesa za bursary ambazo zinatoka CDF wazazi wanazifurahia. Ninaomba CDF ibaki na tuiongeze zaidi na zaidi.

*(Applause)*

Tusiongeze tu CDF bali pia na mfuko ambao tunauita “Social Fund” ambao utasimamiwa na wawakilishi wa wanawake. Zile pesa za magavana zikatwe na ziongezwe kwa hii Social Fund; tufanye kazi pamoja tuinue Kenya yetu.

Kuna watu tunaweza kuwaita mabepari ambao bado wanataka kutuwekea ukoloni Kenya, na ni hao wanaoitwa World Bank. Wameona kwamba hatutaenda tena kukopa pesa kwa sababu CDF na Social Fund zinashikilia ile nafasi ambayo wao walikuwa wakishikilia. Hatutaki tena madeni. Sisi wenyewe tunaweza kujisimamia na tunajisimamia kupitia Social Fund na CDF.

Wabunge wenzangu, katika bajeti ya mwaka huu, ikiwa hakuna CDF na Social Fund, *there will be no Budget. There is will be no Budget for this country.* Kwanza tupitishie yetu halafu tuangalie hayo mengine.

Kwa hayo mengi, *thank you very much.*

**Hon. Kimaru:** Thank you, hon. Temporary Deputy Speaker. I stand to support this very honourable Motion by my friend, hon (Eng.) Gumbo. As my colleagues have said, I wonder where these judges come from. They must be from an area called “utopia”. If they came from any village and had seen what CDF has done, they would not have dared pass that judgment.

Secondly, I am left wondering where the Government really was. The Attorney-General himself gave a commentary, or an advisory, that the CDF is unconstitutional. Were we reading from the same script with this very Attorney-General? I have heard of the devil’s advocate but I have never heard of a hostile counsel. In this case, we had a hostile counsel, who instead of pursuing our interest, went there to fight against the CDF. I really wonder who had given him the brief. He must have been representing somebody, and if he was representing that person, I think there is more to it than meets the eye. There are forces who do not want the CDF to continue. I would have preferred the Attorney-General to have been the devil’s advocate, if, indeed, the CDF was unconstitutional. I hear he is a mortician; he only deals with dead bodies; it is no wonder that even in that case, he could not defend the CDF.

On the gains that the CDF has had over time, for very many years we did not see any development anywhere, but because of the several devolved funds like KURA, KERRA and the CDF, we have achieved development. When somebody sits in a court and says that the CDF should be channeled through the county government, this is a person who is day dreaming. This is because today what devolved governments have done--- Even with the meagre resources that the CDF has had, it has outdone the governors. So, why would you entrust your sheep to that very same wolf that swallows up everything? It is not judicious. I do not think these people used any jurisprudence as they should have. Judges are supposed to read not only the letter of the law but the spirit of the law. The idea is to benefit the common *mwananchi* in the village. They should have been judicious enough. They should have exercised jurisprudence. They should have read the bigger picture and not the small irrelevant details.

Even if it means going to a referendum to entrench the CDF in the Constitution, I would say that be it.

*(Applause)*

The *mwananchi* out there will vote. Who has the supreme power which rests with the *mwananchi*? I am sure *mwananchi* wherever he is will be for the CDF to be entrenched in the Constitution.

I do not know if these very same judges will again say that the Constitution itself is unconstitutional when it comes to that. It would not be too hard to expect that from them, given the way they have gone about making their judgment. These activist judges, I am not afraid to say so, will take this country the wrong way. If we decided to rise, I am sure the sovereign power of the people does not rest with judges. It does not rest with judges and I dare them come to a referendum with *mwananchi* and ourselves and see who will reign supreme at the end the day.

I support this Motion and even if it means going to a referendum so be it

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Your time is up and your point is made. Hon. Koyi.

**Hon. Koyi:** Thank you, hon. Temporary Deputy Speaker, for giving me this chance to contribute. I stand here to support CDF to stay. The CDF in many constituencies of this country has done a lot in terms of development; it has built schools, paid fees for our children and constructed hospitals everywhere. We cannot just leave it to go that way. I just want to thank hon. (Eng.) Gumbo for bringing up this issue. All of us have realized what the CDF has done.

If there is any hon. Member who supports that CDF should go, like hon. Anami who was here and was supporting that--- I think he knows that he is not going to come back to this Parliament, otherwise if he was a normal hon. Member, he would not have said that.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Koyi, are you sure about what you are saying?

**Hon. Koyi:** Hon. Temporary Deputy Speaker, I am sure and I cannot withdraw that. He said that he supports that the CDF be removed.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): No, you need to be very careful the way you are speaking about another hon. Member. If the HANSARD does not show that, you will be forced to withdraw.

**Hon. Koyi:** If I did not hear properly, hon. Temporary Deputy Speaker, I withdraw that.

Some of these judges - I am not a lawyer – are the forces behind the CDF removal.

We are also wondering about the Chairman of CIC. He has always been against Parliament. If he is coming here, then there are politicians who are behind him. They are supporting him to be the Chairman of CIC because I hear he is preparing to become a Governor, and that is the reason he wants to remove CDF. He should not even try. From today, if he hears the words ‘Members of Parliament’ I am warning him that he should stop.

**An hon. Member:** On a point of order, hon. Temporary Deputy Speaker!

**Hon. Koyi:** Which order? I do not need any points of order. You have been a *kiherehere* most of the time

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, please complete your contribution; do not allow your time to be taken up.

Hon. Members, you are raising points of order which are not---

*(Loud consultation)*

**Hon. Koyi:** Hon. Temporary Deputy Speaker, please protect me from Members who are making noise, and interfering with my speech.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): I can only protect you if you do not mention other Members' contributions, because you are not sure of what they said.

**Hon. Koyi:** The other day, there was a chief officer in Nairobi County who was found---

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): What is your point of order, Rachel Nyamai?

**Hon. (Ms.) R.K. Nyamai:** Thank you very much hon. Temporary Deputy Speaker for giving me this opportunity. I wish to request that you order hon. Waluke to take his seat. I got concerned when he said an hon. Member is *kiherehere*. I feel that, that language is not parliamentary and it is important that we respect each other despite our gender in this House.

**Hon. Koyi:** Hon. Temporary Deputy Speaker, I never said that because you also could have heard it.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Waluke, I think you are taking this issue too lightly. I am not really impressed by the way you are handling it.

**Hon. Koyi:** I am sorry.

I was saying that you saw the other day that somebody was found with Kshs900 million.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Your time is up hon. Waluke. Hon. Johana Kipyegon, the Floor is yours.

**Hon. Kipyegon:** Thank you, very much hon. Temporary Deputy Speaker for giving me this opportunity.

I also wish to support this particular Motion by the Member, particularly concerning the court ruling which purported to nullify, invalidate and make CDF an illegal fund, yet it is actually in the village. I wish that we appeal this particular ruling. We will use any other means necessary in this House to ensure that we enact laws and amend the Constitution, if it is necessary to ensure that CDF is fully anchored in the Constitution.

The CDF does not belong to Members of Parliament; it belongs to Kenyans. Under Article 94 of the Constitution, Members of Parliament are meant to represent the people and their sovereignty in this country. How then do we represent them if we cannot make laws that will ensure that the security of their economy is catered for? During the

constitutional making period, this House went through a lot of debate, especially during the creation of constituencies. The reason why people argued severally was because of the creation of constituencies. The reason more constituencies were created was because this was equated to development.

If we are to say we are removing CDF, what will be the purpose of even having the 80 extra constituencies? The reason why people wanted constituencies was because they knew services would be closer to them. We can remove Members of Parliament from the CDF but we cannot remove the CDF from constituencies. Therefore, whichever way we want to make the law, we will ensure that CDF remains in place because it serves the people of this country. There is no citizen who has complained. If it is a question of constitutionality, or unconstitutionality, we should ensure that we entrench it in the Constitution.

Africa, as we all know, is suffering; it is a continent that is full of corruption. If we were to leave this fund to be managed by the counties--- As we speak today, they are the most corrupt entities in this country. Counties are the only places where you only find 'kings' who want to rule over poor citizens; they want to be seen driving big cars and flying in helicopters. There are some "kings" in this country, who do not even know how to drive on the roads because they are used to 'living in the air'. Are these the very people we are saying we divert CDF to? I think even the ruling itself was erroneous.

You claim that CDF is a devolved function, yet it is used to build schools, which are part of education system; this shows it is not devolved. How then can schools be built? Are we going to be waiting for His Excellency the President to build for us dormitories and toilets in our villages, because education is not devolved function? These are some of the functions which CDF has been performing.

It is high time, as a House, we took seriously that we are the law makers and not law breakers. We can unmake any law that we believe does not suit the people of this country. We need to make laws that are seriously geared towards helping our people. In short, CDF is there to stay and we should do what we can.

Thank you, hon. Temporary Deputy Speaker.

**Hon. Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Chrisanthus Wamalwa, the Floor is yours.

**Hon. Wakhungu:** Thank you, hon. Temporary Deputy Speaker.

I want to thank hon. (Eng.) Gumbo for bringing this. First, I want to tell Kenyans that CDF is not going anywhere; rather we are going to do constitutional amendments, even if it through a referendum. I know we have two referendum proposals, namely *Okoa Kenya* and *Pesa Mashinani*. We are going to have *Okoa CDF Mashinani* referendum; this one is going to be managed by both sides of the House. We are going to form a committee immediately to drive this point home.

The judges who made the ruling gave us 12 months, and it is high time we appealed and extended the time-frame given, so that we are able to do amendments. Parliament is there to legislate. I want to tell hon. Members that this is a blessing in disguise.

We should not talk any more. Whatever sections that are unconstitutional, this House has the power to align them to the Constitution. We are going to do it immediately and without wasting time. Before I came to this House, I was teaching at the university. I

was involved in a consultancy in which we were looking at the impact of the Constituencies Development Fund (CDF), and I happened to be with Eng. Karue in a consortium. Some of the results showed that more than 95 per cent of CDF money was used positively at the grassroots. In that report there was a recommendation--- I want hon. Members to listen to this. In fact, we are going to increase the allocation from the minimum 2.5 per cent to 7.5 per cent, so that we can have more development at the grassroots. Recently when I was touring my constituency, I realised the governor was telling *wananchi* that he was the one who had brought water to them, yet I am the one who took that water to the people. They have no projects that they can show at the grassroots. In fact, they are showing CDF projects as being done using their money. From the amount they have been given, nothing tangible can be seen.

Last week I was in a fundraising event in my constituency to buy a bus, and I was trying to explain to the *wananchi* what projects CDF has done in the form of bursaries, roads, hospitals and bridges. When the governor came, I challenged him to tell *wananchi* what he has done for them. We were shocked that the governor was unable to mention a single project that he has done.

This is the only fund that the common *mwananchi* has seen. This is the only fund that the poor Wanjiku and Kipnetich have seen. It has enabled people go to school. I have three students who are going to do medicine and they have benefitted from the CDF funds. CDF has built bridges in my area, which were not passable, back to life. Poverty has been reduced in the area. I have put up secondary and primary schools in storey buildings because we have shortage of land. People have really appreciated that. If this fund goes away, where are we going to go? This one cannot be acceptable. We are not going to accept it. We want to tell Kenyans that because we are the legislators, we have all the powers. I am happy to note that Women Representatives are today supporting this noble cause.

*(Applause)*

We had some who were saying some funny things. However, just like Saul became Paul, I can see they are in the frontline to support this. They need to know that if CDF goes, they are not going to get the Social Fund.

**Hon. Members:** Yes.

**Hon. Wakhungu:** So, start by giving us this and then we are going to extend it even to our Senators.

I want to congratulate Prof Kindiki. He has come out and said he is going to support the CDF. We are telling all Senators that we must come together as a Parliament to support this fund because its benefits go to their voters.

Thank you, hon. Temporary Deputy Speaker. I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Cyprian Iringo. Honestly, Members, there is no way you can catch my eye by waving in the air. Your names are in the list here.

**Hon. Iringo:** Thank you, hon. Temporary Deputy Speaker, for this opportunity to contribute to this important Adjournment Motion. On the outset, I support and congratulate hon. Gumbo for bringing this Motion. I believe this is a precursor to what

we are going to deliberate tomorrow in the *Kamukunji*. I believe all my colleagues agree with one voice that we are saying CDF has to stay.

Even the judges, or whoever was making this decision, were biased in their own way, or maybe they had been coerced by some quarters. There are those people who want to get money and spend it without accounting for the same or having it audited. We have had counties whose governors have gone to court to prevent the Auditor-General from auditing them. I wonder how accountable they are if they can go all the way to the courts to stop being audited, yet they are using public funds.

The CDF is the only fund in Kenya, whose more than 95 per cent funds are used for the purpose of development only. Recurrent Expenditure is very little. The structures which govern this fund are some of the best. Almost every cent is accounted for and you do not get money before you identify the projects which are going to be done with that money. The other money which goes to the counties is committed to projects after it has been received. In CDF, you have to get the projects in place first before you get the money. Even when you go to the grassroots to the recipients of these services, they are happy with what CDF is doing. I believe every Member of Parliament here is every time involved in opening, commissioning or starting a project in this or that part of their constituencies. Personally, every weekend I open two or three classrooms. Last weekend I opened a whole police post with houses and offices for police officers.

If the CDF is removed from the people, it will have a ripple effect up to the grassroots. The people at the grassroots are saying that even if we call for a referendum, they will support it because they have seen its fruits. Unfortunately, those who are agitating against the CDF cannot account for the funds they have been given.

On average, a constituency gets around Kshs100 million. In Meru County, we have nine constituencies and we get close to a billion. If you travel across the county, you will see what the CDF has done in terms of constructing new day secondary schools, but when you look at the county government, which gets almost Kshs6 billion, you do not see the effect of the same. Therefore, I strongly support that, as Parliament, we need to sit down and put the right laws in place to entrench the CDF in the Constitution, so that no law will interfere with it again.

I thank all the Members who are supporting it, especially our 47 County Women Representatives; we will also support their bid. If the CDF dies, even their fund will also die. I believe they will support this cause; we should get it in place and then we move together. I thank Prof. Kindiki, who has come out openly to support us. I have talked to other Senators, and they are supporting this. Let us move forward as a team and entrench this noble fund into the Constitution.

I support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Manson Nyamweya.

Hon. Members, let me make it clear that there is a list that I am following. If you want me to go against the list, you will be taking away the right of those who came in time and put in their cards. If you want me to use discretion, I will use discretion only on regional and gender balance. Otherwise, the other way is to go by the list of requests. Hon. Manson Nyamweya.



**Hon. Nyamweya:** Thank you, hon. Temporary Deputy Speaker. I support what we are discussing today, but there is one point that I want to bring to the attention of the Members. We oversee the national Government and not the county governments. Why did the judges not rule that this money should go to the national Government and not to the county governments? We are not MCAs. This kitty is donated by the national Government and if there are irregularities, the money should go back to the national Government. That should be the ruling if, indeed, they were looking at the facts in terms of how we operate. That is the first point that I want to raise. Even common sense tells you clearly that there is bias in the ruling.

Secondly, we are all working for the common good of this country to improve the welfare of Kenyans. When the judges make decisions, they want justice to prevail. What type of justice are they talking about when they say that the CDF is unconstitutional, yet they are aware of its benefits? They need to go round the country and see what the CDF has done. It appears they have not gone anywhere. If they did, they would have seen that dispensaries and schools have been constructed using the CDF. Roads have also been done by the CDF. These funds are from the national Government. I expected them to rule that since Parliament is doing the oversight role, let this money go to the national Government, so that it can oversee projects in the constituencies.

More importantly, the CDF Act was not passed by the current Parliament. In the ruling, they have clearly stated that the Senate was not involved. Which date were they using? There was bias in this ruling. We need to get good lawyers to go through the process. We will be meeting tomorrow, as Members of the National Assembly, so that we can agree on the best way to tackle this and retain the CDF. We also need to involve the Senators who are supporting us.

If, indeed, we want to be all inclusive, let us approach this issue in togetherness. Those who appreciate what the CDF has done, be they Senators, governors or Members of the County Assemblies (MCAs), are all doing one job to improve the welfare of Kenyans. We have a simple basic role. What is critical is for us to work together. If it requires a constitutional amendment, we have the strength to do it. However, let us not go there. Let us apply the best method and use the best lawyers. We should not use the Attorney-General because he is already decided on this matter. He said that the CDF should not be there. He has made a decision and pronounced it. So, we cannot use him.

As hon. Members, we should remember that we are in Parliament and he is in the Executive. So, we cannot use the Attorney-General of the Republic of Kenya. It is for us Members and the CDF Committee to sit together and support the CDF Secretariat to get the best lawyer to handle this matter. As Members of Parliament, we are not working for ourselves. We are working for the common good of all Kenyans.

As elected leaders, let us walk in unity. Let us not do chest thumping. Let us look for the Senators who support us, so that we can work on the necessary amendments and continue having the CDF.

With those remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Yes, Mary Emaase!

**Hon. (Ms.) Otucho:** Thank you, hon. Temporary Deputy Speaker, for this very precious opportunity which has become a rare commodity in this House.

From the outset, I want to say that the CDF is one of the success stories as far as development is concerned. When I look at my own constituency, I attribute 99 per cent of the infrastructure development in schools, dispensaries and polytechnics to the CDF. This replicates itself in all other constituencies across the country. Therefore, the notion that the CDF is a fund for Members of Parliament is misplaced and misleading. The CDF is a fund for the people and it is bringing a lot of development.

Having said so, it is very unfortunate that the CDF has been declared unconstitutional by a court. However, we have lost nothing because even in their own wisdom, they suspended the orders for one year. That gives us time to do what is necessary. I am not a lawyer but I know that we have lawyers in this House. We have our Justice and Legal Affairs Committee. We should immediately task this Committee and a few other hon. Members, who may not be in that Committee, to put their heads together and come up with the way forward. The focus should be on the way forward because there is time for us to align whatever we need to align to the Constitution. I must also say that the CDF is a national Government fund. I do not know where they got the notion that it is not a national Government fund. The CDF is funded from national Government resources. We represent the national Government. So, saying that the CDF is unconstitutional is misleading the country. We should look at what it has achieved over the years. Children from poor families and the less fortunate are now getting the basic, tertiary and university education, courtesy of the CDF. So, we are saying that the CDF is there to stay, and that it should be enhanced. We shall be considering enhancing it through the Budget and Appropriations Committee.

Hon. Temporary Deputy Speaker, I know that there are many other hon. Members who want to contribute. Therefore, I want to leave it there. However, going forward, the Speaker should be given discretionary powers to enable him balance regions and gender, so that every hon. Member can get an opportunity to contribute to debate. It is sometimes very discouraging to come to this House prepared to contribute to debate and fail to get an opportunity to do so.

Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Mary Emaase, you are taking precious time. You can raise that as a point of order later.

The next chance goes to hon. John Nakara.

**Hon. Nakara:** Thank you, hon. Temporary Deputy Speaker. The work of Constituencies Development Fund (CDF) cannot be by-passed by anybody. In this country, CDF is only comparable to *M-Pesa*. The sectors that are going to be affected if this CDF is eliminated include education. In Turkana County, where I come from, if it were not for CDF, it would have taken us another 30 to 40 years to be where we are now. Because of the CDF, I found few projects which were done in very remote areas, where certain types of vehicles cannot reach.

Hon. Temporary Deputy Speaker, there are bursaries from CDF. You know we are pastoralists and we depend on livestock. Without CDF, people sold all their livestock to take their children to national schools or colleges. The CDF helped our people to pay their school fees, hence be able to take their children to school.

In terms of infrastructure, classes, dormitories, laboratories and much more are done by CDF. In my constituency, a former Member of Parliament built a secondary

school in a very remote place called Kerio. For four years nobody came to the rescue of the school and build a laboratory for it. The CDF completed everything but nobody came again after that. It was not until I came in that we built a laboratory for it. No other person, including the Non-Governmental Organisations (NGOs), which are there and the county money came to their rescue except the CDF. I do not want to emphasise this very much.

In the health sector, the CDF has made sure that dispensaries are built in rural settings where women have had to walk many kilometres to the nearest hospital. Some of them even die on the way before they give birth. We have tried, through the CDF, to build at least a dispensary where one can get first aid before being taken to Lodwar District Hospital.

If somebody says that they are going to eliminate CDF, then he is killing people and it is such people who should be taken to the International Criminal Court (ICC).

(Laughter)

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Member, can you conclude, so that I give one last person a chance?

**Hon. Nakara:** Finally, there is an activist chairman called Nyachae in this country.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): You know the rules about speaking about an individual. Please, let me give somebody else a chance.

**Hon. Nakara:** Okay, hon. Temporary Deputy Speaker. I stand corrected. The Chairman of CIC spends a lot of money putting adverts in newspapers now and then. That is the money that would have been used to help poor people somewhere.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Okay, your point is made.

Hon. Washiali, you will be the last one to speak.

**Hon. Washiali:** Thank you, hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Hon. Members, remember there is a *Kamukunji* on the same issue tomorrow. So, I will suggest that you come there because time does not allow us to go on.

**Hon. Washiali:** I want to start by thanking the only genuine engineer I know in this House, hon. Gumbo, for bringing up this Adjournment Motion.

Just yesterday, when the Constituencies Development Fund Committee (CDFC) of Mumias East Constituency was issuing out bursaries to the tune of Kshs14.8 million to students, there was one parent who came and asked me, because I was present to play my oversight role: "Is it true that this CDF is unconstitutional? If it is, then we must have passed a very bad Constitution."

The reason is that this fund touches on the real common *mwananchi*. If you want to know how this fund has helped the *wananchi*, you do not ask the governors. This is because they want every penny around added to their purse. You also do not ask senators, especially those who are jealous because they feel they are not in control, and that they are not near this fund. They would, therefore, want us to be the same as them. You do not also ask judges.

**ADJOURNMENT**

**The Temporary Deputy Speaker** (Hon. (Ms.) Shebesh): Okay and thank you, hon. Washiali. I cannot let you go on further than that.

Hon. Members, the time being 6.30 p.m., this House stands adjourned until tomorrow, Thursday, 26<sup>th</sup> February, 2015 at 2.30 p.m.

The House rose at 6.30 p.m.