

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Wednesday, 8<sup>th</sup> May 2019

The House met at 9.30 a.m.

*[The Deputy Speaker (Hon. Moses Cheboi) in the Chair]*

### PRAYERS

**Hon. Deputy Speaker:** Hon. Members, I must commend you this morning for attaining quorum in the first shot. It is not normal on a Wednesday morning. Therefore, I must commend Members and, of course, wish our Muslim brothers and sisters Ramadhan Kareem. Please, proceed.

### PETITION

#### RELOCATION OF KIBOS SCHOOL FOR CHILDREN WITH SPECIAL NEEDS

**Hon. David ole Sankok** (Nominated, JP): Thank you, Hon. Speaker, and Ramadhan Kareem to our Muslim brothers and sisters. This is Petition No.39 of 2019 regarding relocation of Kibos School for children with special needs to pave way for the expansion of a factory.

I, the undersigned, on behalf of Kibos Primary and Secondary School for children with special needs, draw the attention of House to the following:

THAT, the Rotary International built Kibos School for the Blind through the help of the Salvation Army Church in 1963 on land donated by Kibos Prison;

THAT, the school admits children as young as four years old and includes a primary and secondary school section with a total enrolment of 187 and 170 children respectively;

THAT, an investor, Kibos Sugar and Allied Industries Limited (KSAIL), has been piling pressure on Kibos School for the Blind to vacate the land it has occupied since establishment in 1963, so as to pave way for the expansion of the factory;

THAT, the four Kibos Sugar and Allied Industries Limited (KSAIL) factories around the school, namely a sugar factory, distillery, paper mill and a charcoal plant, were built in 2007 despite an environmental impact assessment report advising against construction of the factory;

THAT, environmental pollution occasioned by operations of the factory in the form of deafening noise caused by the factory's machines operations, thick smoke, strong odour and release of effluent directly into River Kibos has been detrimental to the school's learning environment and children's health;

THAT, the grounds given for the intended relocation are to protect children with special needs from the harsh, continuous environmental health hazards emanating from the factory's

pollution, despite the pollution being deliberate to pressure Kibos School for the Blind to relocate;

THAT, due to the reluctance of the school management to relocate, Kibos Sugar and Allied Industries Limited has resorted to underhand tactics to force the school to reconsider their stand;

FURTHER THAT, the refusal by the school administration to relocate to the proposed location in Miwani is based on valid grounds, including difficulty to access it since the site is about eight kilometres from the access road and is right in the middle of a secluded sugar plantation;

THAT, the proposed land allegedly belongs to the Agricultural Food Authority (AFA) and had been earmarked for building the company's primary school;

THAT, the standoff has occasioned suffering to staff and students, affecting the health and violating their rights contrary to Article 54 of the Constitution;

THAT, sources intimate that the investor would only provide land, but the school will fund the building of the structures;

THAT, attempts to have the matter addressed by the relevant Government bodies have been futile;

THAT, none of the issues raised in this Petition are pending in any court of law, constitutional or legal body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Education and Research –

- (i) intervenes, through the relevant Government agencies, to review the proposed relocation of the special school by the factory and to ensure the interests and rights of pupils with disability at the school are safeguarded; and,
- (ii) recommends to the Ministry of Education to undertake a review of the challenges faced by children with special needs in all special schools in Kisumu County due to negligence by duty bearers, with a view to taking necessary remedial action;

And your petitioners will forever pray.

Presented by Nominee 001 representing persons with disabilities. We do not belong to *tanga tanga* or *kieleweke*, but to persons living with disabilities, the 49<sup>th</sup> tribe of Kenya.

**Hon. Deputy Speaker:** You see, this is the problem with the formalities of things like petitions where they say “Your petitioner humbly prays” when he is not humble himself. But that was not part of it. You put a lot of salt into that matter. Anyway, it is open. I would like to give chances to maybe two Members to speak to this Petition and then we will move on. Let us start with Hon. Wanyonyi Wetangula, Member for Westlands.

**Hon. Tim Wanyonyi** (Westlands, ODM): Thank you, Hon. Deputy Speaker. I support that Petition and commend the Member. When people are being relocated or moved from their original place, the places they are taken to must be as good as or even better than where they are coming from. When they are relocating children with special needs to the middle of a sugar plantation, I do not know how that will happen. It is something that is sensitive. It must be relooked into. Whoever is doing that must provide a better environment for the school and the children because these are kids who need support. They are kids who need attention all the time. If they are taken to such places, given that they are visually impaired, it will be a big challenge for them and even the parents.

So, I believe this is something that the Committee will have to look into, maybe even pay visit to the site and see what is going on. These are children with special needs and they need to be given due recognition.

**Hon. Deputy Speaker:** Very well. We will now have Hon. (Ms.) Dennitah Ghati. I will give a chance to two more Members because we saved a lot of time. By you being present in good time, I will give a chance to two more Members.

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Hon. Deputy Speaker, allow me to support the Petition and thank my colleague, Hon. Sankok. He has brought in an issue that has been all over in the social media and the region we come from. The issue of Kibos School and the children living with disabilities in this country requires urgent attention. I am happy that the Departmental Committee on Labour and Social Welfare will take up this issue and come to the aid of these children. Persons with disabilities in this country are vulnerable. You can imagine these are children with disabilities who are looking for education. It is high time the Committee on Labour and Social Welfare and the County Government of Kisumu looked into this issue. This is an issue in Kisumu County. Persons with disabilities in this country belong to counties, constituencies, wards and villages. It is our responsibility to ensure that whatever the children are going through is checked. We have a copy of the story of this school. It is a school that came first, even before the factory. The fact that the children are being compelled and chased out of the environment that they have known as a school and a home is utter discrimination. Discrimination based on disability is against the law.

Allow me to call upon the Committee on Labour and Social Welfare, the Ministry of Labour and Social Protection and the County Government of Kisumu to very quickly put our children into the atmosphere they belong to. Allow me to support the Petition 100 per cent.

**Hon. Deputy Speaker:** Okay. Now, Hon. Lekumontare Jackson.

**Hon. Jackson Lekumontare** (Samburu East, KANU): Thank you, Hon. Deputy Speaker. I want to support this Petition.

Children with disabilities need good attention.

*(Hon. (Ms.) Odhiambo-Mabona and Hon. Samuel Atandi  
consulted along the aisle)*

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

**Hon. Aden Duale** (Garissa Township, JP): Chair, can you see Hon. Millie and Hon. Atandi? That position is very compromising. They are very close.

*(Laughter)*

**Hon. Deputy Speaker:** My eyes are not very sharp.

**Hon. Aden Duale** (Garissa Township, JP): She is trying to move away now, but that should not have been. We are leaders.

**Hon. Deputy Speaker:** I had not seen anything untoward from Hon. Millie Odhiambo until you mentioned her name and then she started... Hon. Millie Odhiambo, please, take your seat. The other Member should walk away.

Okay, proceed.

**Hon. Jackson Lekumontare** (Samburu East, KANU): I want to say that children with disabilities need proper attention. They are the most vulnerable people. If they are to be relocated and their place taken, it is not good. I support the Petition and thank Nominee 001 for this. Otherwise, it is necessary for the children to be protected.

**Hon. Deputy Speaker:** Hon. Major Bashir, just wait there. You will be getting your connection. I think there is a problem with that microphone. So, come to the other one. There is a problem somewhere. Let us try that one of Hon. Caleb Kositany, which is working. I do not think that microphone is working. You will have to come to the one which, ordinarily, is used by the more senior Members down there. That one is obviously going to be working.

*(Laughter)*

*(Hon. Major (Rtd.) Bashir S. Abdullaih moved to the Dispatch Box)*

**Hon. Major (Rtd.) Bashir S. Abdullaih** (Mandera North, JP): I think this one is supposed to work because it is for the Deputy Speaker.

Thank you, Hon. Deputy Speaker for giving me this opportunity. First and foremost, I wish fellow Muslims in the country and across the globe Ramadhan Kareem. It is a blessed month. Therefore, I want to share this day and month with fellow Kenyans; fellow Muslims.

This Petition is quite in order. It talks about people with disabilities, especially children. The contention is that the Kibos Sugar Factory has asked for relocation of the school which has children with disabilities. I think the sugar factory is quite in order that the school and the factory should not be located in the same area. We are talking about children with visual impairment. Therefore, the sugar factory being close to the school will add another issue of making them deaf in the near future.

**Hon. Deputy Speaker:** Yes. Make brief comments because we will be sending it to the Committee for further transactions.

**Hon. Major (Rtd.) Bashir S. Abdullaih** (Mandera North, JP): My concern is to ask the Kibos Sugar Factory to bear the cost of relocating the school to a place which is accessible. I am told it is about eight kilometres from the road and these are visually impaired children. Yes, we want the school to be relocated, but at the cost of the Kibos Sugar Factory and it should be to an area that is accessible and with all the required facilities at the cost of the factory.

**Hon. Deputy Speaker:** Hon. Members, that Petition is committed to the relevant Committee, namely, the Committee on Labour and Social Welfare. Hon. Caleb Kositany, if you really want to speak, you will have to make a further request.

Next Order.

## PAPERS LAID

**Hon. Deputy Speaker:** Leader of the Majority Party. Well, as he prepares...  
The Leader of the Majority Party, please.

**Hon. Aden Duale** (Garissa Township, JP): I am talking to a very senior Member from Nakuru County.

Hon. Deputy Speaker, I beg to lay the following Papers on the Table of the House:

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Report of the Auditor-General and Financial Statements in respect of the following constituencies for the year ended 30<sup>th</sup> June 2018 and the certificates therein:

- (i) Sigor.
- (ii) Kibra.
- (iii) Mathare.
- (iv) Tetu.
- (v) Kamukunji.
- (vi) Kangema.
- (vii) Gichugu.
- (viii) Soy.
- (ix) Samburu East, and
- (x) Othaya.

**Hon. Deputy Speaker:** Very well. We will have the Chairperson of the Departmental Committee on Justice and Legal Affairs.

**Hon. William Cheptumo** (Baringo North, JP): Thank you, Hon. Deputy Speaker. I beg to lay the following Paper on the Table of the House:

Report of the Departmental Committee on Justice and Legal Affairs on a Petition by Mr. Dominic Ng'ang'a to amend the typographical errors in the Constitution of Kenya.

**Hon. Deputy Speaker:** Next Order.

## QUESTIONS AND STATEMENTS

**Hon. Deputy Speaker:** I do not think we have Statements under this Order. So, we will proceed to Questions. We will start with the Question by Hon. Col. (Rtd) Dido Ali Rasso. These are the Questions by Private Notice.

## QUESTIONS BY PRIVATE NOTICE

*Question No.021/2019*

### INSECURITY IN MARSABIT COUNTY

**Hon. Ali Rasso** (Saku, JP): Thank you very much, Hon. Deputy Speaker. I beg to ask Question No.021/2019. It is directed to the Cabinet Secretary for Interior and Co-ordination of National Government:

- (i) Is the Cabinet Secretary aware that on 4<sup>th</sup> September 2018 armed bandits attacked Horondeer area of Qilta Location, Saku Constituency and caused atrocities, including killing of Mzee Wako Tato at Horondeer area and other two individuals, and that no suspects have been apprehended?
- (ii) Could the Cabinet Secretary explain the progress, if any, of the investigations of the incident and clarify the action the Ministry has taken to ensure that the culprits are arrested and arraigned in court and recover guns and other weapons used during the attack?

- (iii) Could the Cabinet Secretary also state the number of Police Reservists who have been killed in the line of duty in Marsabit County since September 2018, the number of weapons lost to bandits and Government's effort to compensate Police Reservist killed in the line of duty countywide?

**Hon. Deputy Speaker:** Very well. That will be replied to before the Departmental Committee on Administration and National Security.

*Question No.022/2019*

DISAPPEARANCE OF CHIEF INSPECTOR OF POLICE MR. HERSI KENE TACHE

**Hon. Deputy Speaker:** Next is the Member for Isiolo North, Hon. Hassan Oda Hulufu.

**Hon. Hassan Hulufu** (Isiolo North, KPP): Thank you, Hon. Deputy Speaker. I rise to ask Question No.022/2019. It is addressed to the Cabinet Secretary for Interior and Co-ordination of National Government:

- (i) Is the Cabinet Secretary aware that one Chief Inspector of Police, Mr. Hersi Kene Tache (Force No.95050448), deployed in Embakasi Police Station under the Rapid Deployment Unit has been missing since 26<sup>th</sup> February 2019 despite having been reported to the police?
- (ii) Could the Cabinet Secretary explain the outcome of the investigations into disappearance of the said officer and his whereabouts?

**Hon. Deputy Speaker:** That one will be replied to before the Departmental Committee on Administration and National Security.

*Question No.025/2019*

FORMULATION OF HARMONISED POLICY ON TEACHER TRAINING IN KENYA

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Thank you Hon. Deputy Speaker, and Ramadhan Kareem to our Muslim sisters and brothers. I rise to ask Question No.025/2019. The Question is directed to the Cabinet Secretary for Education:

- (i) Is the Ministry refunding fees and other expenses incurred by the affected students in teacher training colleges in the country following their withdrawal from the said colleges, taking into account the Ministry's reference number: Ministry of Education Headquarters 3/13/3 dated 26<sup>th</sup> April 2019?
- (ii) Is the Government availing to the affected students a direct entry to the technical training institutions as per part of their withdrawal policy including paying fees?

**Hon. Deputy Speaker:** Hon. Lesuuda, is this the Question that is on the Order Paper, Question No. 025/2019? Is it the one?

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Yes.

**Hon. Deputy Speaker:** I am not able to really follow what you are saying. There was some distraction somewhere. Can you redo it, please, for me to confirm? The one I see here is the one on the declaration of 26<sup>th</sup> April by the Ministry. Do you have the Order Paper? I know you are a techno-savvy Member.

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): That is the Question, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Okay, proceed.

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): So, do I start?

**Hon. Deputy Speaker:** Proceed.

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Okay.

*(Consultation)*

**Hon. Deputy Speaker:** The Question that you are supposed to be asking is Question No.025/2019. Do it anyway because they are all your Questions. So, do that one first.

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Yes, it is on the same issue.

**Hon. Deputy Speaker:** Let us go by the Order Paper because this is what will go to the Committee.

*Question No.025/2019*

#### FORMULATION OF HARMONISED POLICY ON TEACHER TRAINING IN KENYA

**Hon. (Ms.) Naisula Lesuuda** (Samburu West, KANU): Okay, the one on the Order Paper. So, I rise to ask Question No.025/2019. It is directed to the Cabinet Secretary for Education:

- (i) Following the declaration of the Ministry of 26<sup>th</sup> April 2019, precluding students with KCSE grade D+ and below from admission in teacher training colleges, will the Ministry refund fees and other expenses incurred by the affected students?
- (ii) Could the Ministry consider formulating a harmonised policy on teacher training to ensure that such incidences do not recur in the future?

**Hon. Deputy Speaker:** Very well. That one will be replied to before the Departmental Committee on Education and Research. We will now go to Ordinary Questions. We will start off with the Member for Butula, Hon. Joseph Maero.

## ORDINARY QUESTIONS

*Question No.198/2019*

## DELAYED COMPENSATION OF LAND OWNERS IN BUTULA CONSTITUENCY

**Hon. Joseph Oyula** (Butula, ODM): Thank you, Hon. Deputy Speaker. I rise to ask Question No.198/2019. The Question is directed to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development:

- (i) Is the Cabinet Secretary aware that in 2006, parcels of land were acquired for the construction of Ejinja-Bumala Road in Butula Constituency and to date the land owners are yet to be compensated?
- (ii) Is the Cabinet Secretary further aware that despite the Kenya National Highways Authority (KeNHA) releasing partial payment of Kshs103 million for compensation in November 2018 to the National Land Commission to effect the payments, the payments have not been made to the land owners?
- (iii) What measures is the Ministry putting in place to ensure that immediate compensation is made to the beneficiaries, taking into account the current value of the said parcels of land?

**Hon. Deputy Speaker:** That one will be replied to before the Departmental Committee on Transport, Public Works and Housing.

Before I allow the Member for Mathioya to ask his Question, let me recognise, in the Public Gallery, ACK St. Andrews Zimmerman Primary School from Kasarani Constituency of Nairobi County.

*(Applause)*

Proceed, Hon. Peter Kihara. There is a microphone next to you.

*Question No.206/2019*

## STATUS OF REPORT ON LAND REF.NO.MN/397/1BAMBURI (KWA BULO)

**Hon. Peter Kimaru** (Mathioya, JP): Thank you, Hon. Deputy Speaker. I rise to ask Question No.206/2019 and it is directed to the Cabinet Secretary for the National Treasury and Planning.

- (i) Could the Cabinet Secretary provide details on the status of the report submitted to the Ministry on investigations by the Inter-Governmental Agencies Taskforce on Land Ref. No MN/397/1/Bamburi (Kwa Bulo)?
- (ii) What is the status of implementation of the recommendations in the said report?



- (iii) What measures are being taken by the Ministry to address the recommendations therein considering the specific timelines on the said report?

**Hon. Deputy Speaker:** That one will be replied to before the Departmental Committee on Lands.

Hon. Abdi Ibrahim, Member for Lafey.

*Question No. 222/2019*

MEASURES TO ADDRESS THE WORKING CONDITIONS FOR BUS DRIVERS IN NORTH EASTERN

**Hon. Ibrahim Abdi** (Lafey, EFP): Thank you, Hon. Deputy Speaker, my Question is directed to the Cabinet Secretary for Transport, Infrastructure, Housing and Urban Development.

- (i) Is the Cabinet Secretary aware that long distance bus drivers in the North Eastern Region of Kenya work for long hours without rest, hence endangering passengers and leading to accidents?
- (ii) What action is the Ministry taking to curb this practice in order to control the occurrence of accidents?

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** That Question will be replied before the Departmental Committee on Transport, Public Works and Housing.

That marks the end of that particular Order. Next Order.

**PROCEDURAL MOTION**

EXEMPTION OF BUSINESS FROM PROVISIONS OF STANDING ORDER 40(3)

**Hon. Deputy Speaker:** The Leader of the Majority Party

**Hon. Aden Duale** (Garissa Township, JP): Hon. Deputy Speaker, I beg to move the following Procedural Motion:

THAT, this House orders that the business appearing as Order Nos.11, 12 and 13 in the Order Paper be exempted from the provisions of Standing Order 40(3) being a Wednesday Morning, a day allocated for business not sponsored by the Majority or Minority Party or business sponsored by a Committee.

Order No.11 is nominating our colleagues who have just won by-elections to committees. Order No.12 is important because it is now more than a year since we constituted as a House, the National Cohesion and Integration Commission. There is a big vacuum and the courts have said that Parliament cannot vet and the same time, do an interview. We are on the Second Reading of this law, which is trying to create a system where Parliament's role will just be to vet. Order No.13 is the Report on the examination of financial statements for the national Government for the Financial Year 2015/2016. Taking into consideration that we are going on a very long recess beginning Friday, so that our committees can deal with the Budget - the House agrees with the Calendar and will be back on 4<sup>th</sup> June - we need to finish very important business before the

House. Those are the reasons and my colleague, the Leader of the Minority Party, who was in the House Business Committee last night, will second.

**Hon. Deputy Speaker:** Leader of the Minority Party.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Deputy Speaker. The reasons for requesting this House to agree with us or with the House Business Committee on allowing businesses that are sponsored by Majority or Minority parties to be debated on a day that we need to be debating Private Members' Motions and Bills have been given. The Leader of the Majority Party has talked about our colleagues who are not in Committees and need to be members of such. On the issue of national cohesion, we will understand why it is important that we debate it now. There is the issue of Public Accounts Committee reports. We know that we are going to the Division of Revenue Bill, which is already contentious with outdated accounts or accounts that date back to 2015. We want to be as current as possible.

Finally, I just want to urge this House that as we proceed on recess, there is a proposal which will allow us to sit tomorrow morning so that we can transact some urgent business of the House.

Thank you, Hon. Deputy Speaker.

*(Question proposed)*

*(Question put and agreed to)*

## **BILLS**

### *First Readings*

#### THE TRAFFIC (AMENDMENT) BILL

#### THE COUNTY GOVERNMENTS' RETIREMENT SCHEME BILL

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

**Hon. Deputy Speaker:** What is it, Leader of the Majority Party?

**Hon. Aden Duale** (Garissa Township, JP): Hon. Deputy Speaker, I do not want to take you back, but if you look at Order No.10, the County Governments' Retirement Scheme Bill (National Assembly Bill, No.29 of 2019), a similar Bill has been passed by this House. It is in the Senate and we are waiting for it. In fact, the Senate is supposed to do the Committee of the whole House. So, I am wondering why a similar Bill can just come back.

**Hon. Deputy Speaker:** I would really want to know if there was a similar Bill. Is it just the title?

**Hon. Aden Duale** (Garissa Township, JP): When I saw it last night, I went through. It is a copy and paste. So, we need the Speaker to give direction. We are asking for the Speaker to make a communication on this Bill before it is sent to the Committee.

**Hon. Deputy Speaker:** Let us have the Leader of the Minority Party and then, of course, we will have the Motion getting to know why we have a similar Bill.

**Hon. John Mbadi** (Suba South, ODM): Hon. Deputy Speaker, I think we need to look at this matter and make a ruling that we are not going to have legislation in this House becoming untidy. The Bill that is with the Senate now is a Government Bill and was moved by the Leader of the Majority Party. There was another Bill by Hon. Njagagua, which is the same in content as this Bill by Hon. Chachu Ganya. The one by Hon. Njagagua, even though the House agreed to transact with some doubts around it, the House pronounced itself on it at the Second Reading and defeated it because it was similar to the other one. Now, we are getting a third Bill which is similar to the other two. It is time this House stopped wasting time in making decisions. In fact, our Standing Orders are very clear that once we make a decision on a matter...

*(Loud consultations)*

I can hear the Members are asking about the HBC. The reason we bring Bills to the Floor of the House is because the HBC need not be accused by Members of killing their Bills.

**Hon. Deputy Speaker:** Actually, the Leader of the Majority Party has just spoken to it. You are the Leader of the Minority Party and you are speaking to the same. You are both Members of the HBC. If you were clear that this is a Bill that has the same content as the previous one, you would have stopped it at that point, so that we do not even have to have the Speaker pronouncing himself on it.

**Hon. John Mbadi** (Suba South, ODM): If this House can allow us by setting that precedent that Bills can be killed at the HBC, we would, but I think it is dangerous. Let us not just look at this matter here and make a decision which may affect Members in future. If you give the HBC too much power to be deciding which business should come to the House, we can use that power, but we may use it dangerously. So, I am just pleading with this House to make a decision.

**Hon. Deputy Speaker:** I hear you. I do not think I need to give opportunity to any other Member of the HBC. The Leader of the Majority Party and the Leader of the Minority Party have spoken. Hon. Makali Mulu.

**Hon. Makali Mulu** (Kitui Central, WDM-K): Thank you, Hon. Deputy Speaker. You may have to guide the House in terms of what the Leader of the Majority Party and the Leader of the Minority Party are saying. The fact that the Bill is the same as it was last year does not mean it cannot come to this House because times have also changed. Maybe with time, this Bill might now make more sense than it did last year. I think this is critical and should be analysed, otherwise, we will kill all these Bills.

**Hon. Deputy Speaker:** I do not think I quite agree with you. This is a Bill, as the Leader of the Majority Party and the Leader of the Minority Party have said, that is still actively being transacted. It is now in the Senate. We could not start it before we cleared with the other one. It has not failed there. In any case, if the Bills are the same, if it was decided one way or the other, it should not come to the House within the six months period. Anyway, allow us to be very clear that these Bills are the same, because if they are, then truly, we cannot proceed with it because we will be wasting the time of this House. So let me confirm something.

*(The Deputy Speaker consulted with the Clerks-at-the-Table)*

All right. Let us give each other time, probably until this afternoon, for the Speaker to make a decision on it. This is an effort by a Private Member. The other one, of course, was a Government Bill. Let us be satisfied fully that they are the same. I really wish the Member who is moving this Bill was in the House - I do not see Hon. Chachu Ganya - because we would have heard his opinion. In the afternoon, I believe, this will be something that can be easily dispensed with.

Let us go to the next Order.

## MOTION

### APPROVAL OF APPOINTMENT OF MEMBERS TO COMMITTEES

**Hon. Aden Duale** (Garissa Township, JP): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, pursuant to the provisions of the Standing Order No.175, and further to the resolution of the House of 11<sup>th</sup> October 2018 on appointment of Members to respective Committees; this House further approves the following additional appointments to the Committees specified hereunder—

- (i) The Hon. David Ouma Ochieng, MP, to be appointed to the Departmental Committee on Health.
- (ii) The Hon. Ahmed Kolosh, MP to be appointed to the Departmental Committee on Administration and National Security.
- (iii) The Hon. Julius Mawathe Musili, MP to be appointed to the Departmental Committee on Energy and the Select Committee on National Cohesion and Equal Opportunity.

The Committee that I chair, in its fourth sitting on 6<sup>th</sup> May 2019 considered requests from the National Super Alliance Coalition that Hon. Julius Mawathe Musili, after winning back his Embakasi South seat, be nominated to his former two committees, which were the Departmental Committee on Energy and the Select Committee on National Cohesion and Equal Opportunity, and Hon. David Ouma Ochieng', Member for Ugenya, be nominated to the Departmental Committee on Health, which was served by the previous Member. Hon. Ahmed Kolosh, Member for Wajir West, is nominated to the Departmental Committee on Administration and National Security with concurrence from the Leader of the Minority Party and the Whip.

This is just to make sure that our colleagues who won back their seats, apart from Hon. David Ochieng', who won afresh, are in committees. They have been sworn in, but they have no committees and committees are very important for a Member to do his oversight and representation role.

So, I beg to move that we approve them, so that we can go to business. I ask the Leader of the Minority Party to second.

**Hon. John Mbadia** (Suba South, ODM): Thank you, Hon. Deputy Speaker. I think Parliament staff need to look at my machine. It keeps hanging. I am rising to second this Motion.

The three Members listed here participated in by-elections and won their seats. Hon. Julius Mawathe Musili was on the two Committees before he lost his seat through a court decision, but he has since won his seat back. What we have decided to do is to retain him on the two Committees where he was sitting before the by-election.

Hon. David Ouma Ochieng' has been appointed to the Committee which his predecessor, Hon. Karan, was sitting on, namely, the Departmental Committee on Health. I am aware that Hon. Ochieng' has since expressed interest in moving to the Departmental Committee on Justice and Legal Affairs. However, we have asked him to be on this Committee for the time being as we check around if there is any Member on the other Committee who would want to come to the Committee on Health. In order to have him sit at least on a committee, I think he can start with the Committee on Health.

Finally, Hon. Ahmed Kolosh, who changed shirts and moved to Jubilee, was on two Committees, namely, the Public Investments Committee and the Departmental Committee on Administration and National Security. By operation of our Standing Orders, he can now not sit on the Public Investments Committee because the NASA Coalition must have one Member more than the Jubilee Coalition. However, we decided, as a matter of give and take, to allow him to continue sitting on the Committee on Administration and National Security. This is informed by the fact that we do not have space. All the Committees are full. It would also be unfair to have one of our colleagues without being in a Committee. Therefore, I would urge the House to approve these Members to sit in these Committees.

Thank you, Hon. Deputy Speaker. I second.

*(Question proposed)*

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

**Hon. Deputy Speaker:** Okay, it seems that is the wish of the Members. So, I put the Question.

*(Question put and agreed to)*

**Hon. Deputy Speaker:** Next Order.

## BILL

### *Second Reading*

#### THE NATIONAL COHESION AND INTEGRATION (AMENDMENT) BILL

**Hon. Deputy Speaker:** Chairman of the Select Committee on National Cohesion and Integration, Hon. Kamanda, you have the Floor.

**Hon. Maina Kamanda** (Nominated, JP): Thank you, Hon. Deputy Speaker. From the outset, I thank the HBC. They have seen the need to have this Bill read a Second Time this morning because of the urgency.

**Hon. Aden Duale** (Garissa Township, JP): On a point of order.

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

**Hon. Aden Duale** (Garissa Township, JP): Procedurally, before the Chair thanks us, he needs to move that the National Cohesion and Integration (Amendment) Bill (National Assembly Bill No.12 of 2019) be read a Second Time.

**Hon. Deputy Speaker:** That is perfectly in order. The thanks have been recorded anyway. Now proceed and move.

**Hon. Maina Kamanda** (Nominated, JP): Hon. Deputy Speaker, I beg to move that the National Cohesion and Integration (Amendment) Bill (National Assembly Bill No.12 of 2019) be now read a Second Time.

The National Cohesion and Integration (Amendment) Bill, 2019 was read a First Time on 27<sup>th</sup> March 2019. Pursuant to the provisions of Standing Order 127(2), the Bill was committed to the Select Committee on National Cohesion and Equal Opportunity for consideration. The Bill mainly seeks to amend Section 17 of the National Cohesion and Integration Act, 2008, which deals with the procedure of appointing commissioners to the National Cohesion and Integration Commission (NCIC).

Hon. Deputy Speaker, you will remember that in your Communication issued during the afternoon sitting of Wednesday, 3<sup>rd</sup> October 2018, you notified the House of the expiry of the term of office of the chairperson and commissioners of the NCIC. You further directed that the National Assembly Committee on National Cohesion and Equal Opportunity be charged with the responsibility of shortlisting, interviewing, ranking and recommending to the House, persons suitable to be nominated as commissioners, pursuant to Section 17(1)(b) of the National Cohesion and Integration Act (No.12 of 2008).

The Committee embarked on the process of recruitment of commissioners. After putting out an advert calling for applications, the Office of the Clerk received 395 applicants for the position. The Committee, following a rigorous short-listing criterion, shortlisted 54 applicants, of whom 34 or 63 per cent were male while 20 or 37 per cent were female. The shortlisted applicants were to be interviewed from Monday, 12<sup>th</sup> to Wednesday, 14<sup>th</sup> November 2018, both days inclusive. However, on 7<sup>th</sup> November 2018, the National Assembly, through the Directorate of Litigation and Compliance Services, was served with a constitutional petition filed at the High Court, Nairobi. In the said petition, the petitioner contended that the recruiting of persons for appointment as commissioners of the NCIC is contrary to the principle of separation of powers. The court agreed with the petitioner and suspended the recruitment process on 9<sup>th</sup> November, 2018, awaiting judgment on the matter.

The court, in its judgement made on 14<sup>th</sup> January 2019, ruled that NCIC is a public office and therefore, the appointment of its commissioners falls under the purview of the Public Service Commission (PSC). While the National Assembly has appealed against the judgement, NCIC is still without commissioners close to nine months later. It is in this regard that the Committee seeks to amend the National Cohesion and Integration Act of 2008 to be aligned with the constitutional principle of separation of powers.

Hon. Deputy Speaker, Clause 2 of the Bill proposes to amend Section 17 of the Act on the membership of the commission. The Bill proposes to change the procedure for appointment of commissioners to the NCIC where it is proposed that the President nominates the commissioners and the National Assembly approves the nominations as opposed to the current position whereby the National Assembly nominates the commissioners and the President appoints them.

Clause 3 of the Bill proposes the insertion of a new Section 17A. This introduces a new section that deals with the powers of the chairperson. Clause 4 of the Bill proposes to amend Section 18 of the Act on qualification of commissioners. The Bill outlines the requirements for a person to qualify as a commissioner in terms of experience as regards number of years, relevant disciplines and educational background.

Clause 5 proposes to amend Section 19 of the Act on the term of office of the commissioners. This amendment extends the term of office of the commissioners to a single term of six years, which is non-renewable as opposed to the current three-year term with a possible extension of another term of three years.

Clause 6 proposes to amend the First Schedule to the Act. This amendment transfers the recruitment process to a selection panel facilitated by the Cabinet Secretary, who oversees the Commission. The selection panel forwards 15 names to the President. The President nominates one person for appointment as chairperson and seven persons for appointment as commissioners. The President thereafter forwards the names to the National Assembly for approval. The selection panel shall consist of:

- (a) one person nominated by the Office of the President;
- (b) one person nominated by the Public Service Commission (PSC);
- (c) one person nominated by the Attorney-General;
- (d) one person nominated by the Ethics and Anti-Corruption Commission;
- (e) one person nominated by the National Gender and Equality Commission; and,
- (f) one person nominated by the Judicial Service Commission.

During its deliberations, the Committee resolved to propose an amendment that the person nominated by the NGECE shall not be the chairperson of the Commission. The chairperson of the NGECE is a member of the NCIC. Therefore, his/her inclusion in the selection panel presents a conflict of interest.

Hon. Deputy Speaker, in considering the Bill, the Committee called for submission of memoranda from the public in the major dailies on 10<sup>th</sup> April 2019. The Committee, however, did not receive any memoranda. The Committee requested for comments from the Kenya Law Reform Commission (KLRC) and the Attorney-General on the Bill, but only received comments from the KLRC. The Committee also held meetings with the NCIC, the institution mandated to implement the Act.

Hon. Deputy Speaker, during the scrutiny of the Bill, the Committee made several observations. First, the proposed amendments change the procedure of appointing commissioners to be aligned with the constitutional principle of separation of powers. Secondly, the proposed amendments introduce a new section which clarifies the role of the chairperson in the Commission. The proposed amendments also enhance the requirements for a person to qualify as a commissioner to enhance the effectiveness of the Commission. Further, the term for the previous commissioners of the NCIC expired on August, 2018 and the recruitment of the commissioners was suspended following a petition filed by Mr. Okiya Omtatah on 7<sup>th</sup> November 2018.

Finally, the Committee notes with concern that the term for the Chief Executive Officer, who is the Commission Secretary, is set to lapse in July, 2019 and by then, we may not have commissioners. Given that the institution does not have commissioners, the Committee is proposing that the term of the Executive Officer be extended until the new Commission is in

place. The Committee tabled this Report on the Floor of the House on 30<sup>th</sup> April and its contents will guide the House in considering the amendments clause by clause.

I urge the Members to read the comprehensive Report of the Select Committee in order to fully appreciate and enrich debate on the context of this Bill and the amendments which will come during the Committee of the whole House stage.

With that, I beg to move and call upon my neighbour, who happens to be the Leader of the Majority Party in this House, to second.

*(Hon. Sankok consulted loudly)*

**Hon. Deputy Speaker:** Order, Hon. Sankok! Proceed.

**Hon. Maina Kamanda** (Nominated, JP): Thank you, Hon. Deputy Speaker. I call upon my neighbour and the Leader of the Majority Party in the House to second the Motion.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Deputy Speaker. I second and thank the Chair of the National Cohesion and Equal Opportunity Committee for rising to the occasion and bringing this very important National Cohesion and Integration (Amendment) Bill 2019. This Bill, as he said, was read the First Time on 27<sup>th</sup> March 2019. The Bill mainly seeks to amend Section 17 of the Nation Cohesion and Integration Act of 2008, which deals with the procedure for appointing commissioners to the NCIC.

I am sure those of us who were in the 10<sup>th</sup> Parliament, Hon. Mbadi and Hon. Millie, participated in the legislation of this Act. As the Chairperson has mentioned in moving, on Wednesday, 3<sup>rd</sup> October 2018, this House was notified of the expiry of the term of office of the chairperson and commissioners of this Commission. The National Assembly Select Committee on National Cohesion and Equal Opportunity was directed to start short listing, interviewing, ranking and recommending to the House persons suitable to be nominated as commissioners pursuant to Section 17(1) of the Act (No.12 of 2008). When the Committee embarked on the process...

*(Hon. Sankok consulted loudly)*

**Hon. Deputy Speaker:** Order, Hon. Sankok! Order!

**Hon. Aden Duale** (Garissa Township, JP): I thought Hon. Sankok is Hon. Kamket because he is seated next to two ladies. Sankok is an innocent man because he happens to be seated on his chair.

**Hon. Deputy Speaker:** Order, Hon. Sankok!

**Hon. Aden Duale** (Garissa Township, JP): Chair, we are dealing with cohesion and I am sure that is what they are discussing.

**Hon. Deputy Speaker:** There are three Members who are laughing in an un-parliamentary manner.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Deputy Speaker, when the Committee embarked on the process of recruitment on 7<sup>th</sup> November, it was halted with a constitutional Petition No.385 of 2018 by none other than the famous...



**Hon. Deputy Speaker:** Hon. Leader of the Majority Party, Members should not use sign language in the Chamber. I can see two Members exchanging with a senior Member on my left using sign language.

**Hon. Members:** It is allowed.

**Hon. Deputy Speaker:** It should be the ordinary sign language not others we cannot comprehend. Proceed, Hon. Leader of the Majority Party. I can see there is a lot of distraction.

**Hon. Aden Duale** (Garissa Township, JP): Hon. Deputy Speaker, sign language is recognised in the Constitution. But I am sure the sign language you are referring to is the one of the village. For example, when we were young, growing up, that is how we used to reach out to the other side. There was a sign language. Hon. Deputy Speaker, I think you need to separate this group and also remind Hon. Fatuma that she is fasting and should not be with this group because her fast can...

Hon. Deputy Speaker, our great friend, Okiya Omtatah, filed a petition against the Attorney-General and the National Assembly. Of course, he contended that the recruiting of persons for appointment as commissioners to the Commission is contrary to the principle of separation of powers. I agree with Okiya Omtatah and the court because we cannot be the ones interviewing and then sending the names to the President who again sends the names to us for vetting. I think Parliament has the role of vetting and the other arms of Government are the ones to do the rest.

Hon. Deputy Speaker, you know I am fasting, so the ladies should not pass in front of me. This is because I might look at one side and if you read the principles of Ramadhan, you have to control eye contact. As I am speaking, can you allow only men to pick water?

*(Laughter)*

**Hon. Deputy Speaker:** I will not even allow the men themselves because that will be against the Standing Orders. The other one will be against the tenets of fasting and Ramadhan. But this particular one which I will use is that there should be nothing that will impede my direct contact with the Member who is speaking on the Floor. That is you as far as the Standing Orders are concerned.

**Hon. Aden Duale** (Garissa Township, JP): No problem, Hon. Deputy Speaker. As they pick water, I will look the other side because I have to follow the tenets.

**Hon. (Ms.) Gladwell Cheruiyot** (Baringo CWR, KANU): On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Member for Baringo, are you insisting that there must be eye contact?

**Hon. (Ms.) Gladwell Cheruiyot** (Baringo CWR, KANU): On a point of order, Hon. Deputy Speaker. Is it really in order for the Leader of the Majority Party to discriminate against one gender in this House by saying that he does not want to see women? He has a woman in the House and he is still fasting.

**Hon. Deputy Speaker:** You are not the one in the House.

**Hon. (Ms.) Gladwell Cheruiyot** (Baringo CWR, KANU): I cannot be the one who will prevent him from doing the right thing while he is fasting.

**Hon. Deputy Speaker:** Leader of the Majority Party, I can even answer for you.

**Hon. Aden Duale** (Garissa Township, JP): The one in the house is special. She has been recognised according to the Quran. I am asking, out of good courtesy, that they also respect Ramadhan, so that as I speak, they can wait for 10 minutes before they pick water. That is what I am asking. But if they insist on picking water, then I will look the other side because this is a holy month.

**Hon. Deputy Speaker:** So, you are also suggesting that as they come, they must warn you appropriately that they are on the way, so that you can look the other side.

**Hon. Aden Duale** (Garissa Township, JP): This month, even Hon. Millie Odhiambo knows, I behave very well and eye contact is not allowed. There are many things. Hon. Deputy Speaker, you told me that you can do anything to me because I will not react. That is true. This is cohesion.

**Hon. David ole Sankok** (Nominated, JP): On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** You are wasting a lot of time Members. I hope it is a varied point of order. What is it, Hon. Sankok?

**Hon. Aden Duale** (Garissa Township, JP): He must state which Standing Order.

**Hon. David ole Sankok** (Nominated, JP): On a point of order, Hon. Deputy Speaker. Is the Leader of the Majority Party, who I respect, his excellency Aden Duale, in order to turn the whole House into a mosque? You know we are turning this House into a mosque.

**Hon. Deputy Speaker:** No! I think you are completely out of order yourself. Ignore that, Leader of the Majority Party, and proceed.

**Hon. Aden Duale** (Garissa Township, JP): There are no chairs in the mosque, but mats. I am seeing chairs here. So, Hon. Sankok just wants to harass me.

The court agreed with Okiya Omtatah and on 9<sup>th</sup> November, it suspended the recruitment process. Again, Parliament complied with that court order. But the court went further and gave its judgement on 14<sup>th</sup> January 2019 and ruled that the NCIC is a public office and, therefore, the appointment of its commissioners falls under the purview of the Public Service Commission and that Parliament can only play its oversight role of vetting.

Therefore, lack of commissioners is impeding the work of the NCIC. For the last two years, we have had no commissioners. I think this Bill is very important. We should pass it. The people in the selection panel which has been stated in this Bill are the right ones. One person is from the Office of the President, the rest are nominated by the PSC, the Attorney-General, the EACC, the National Gender and Equality Commission (NGEC) and the Judicial Service Commission (JSC). That looks like a very transparent process.

During the deliberations, the Committee also resolved to amend that the person nominated by the NGEC shall not be the chairperson of the commission. The chairperson of the NGEC is a member of the NCIC. Therefore, her inclusion in the selection panel is not a conflict of interest. My only problem, which we will deal with when we come to the Committee of the whole House, is where the term of these commissioners has been taken to six years. A good reason must be given why six years and then with an extension of three years. So, somebody can be a commissioner for nine years. We will amend that when we come to the Committee of the whole House and give them a renewable term of three years. If you give them a term of six years then it should be like the people who are serving six years; like the Director of Public Prosecutions (DPP). You serve for six years and then you go home. You cannot serve for six

years and then you are given another term of three years. That means you are there for nine years. I am sure the Chair will agree with us. When we reach there, we will amend.

We thank the Chair and the Committee for a job well done. I thank the House Business Committee and Hon. Members for agreeing with us to bring this matter. It is a very important matter and I hope before we go on recess tomorrow, we will complete this matter so that by the time we come back, the process would have been done. There is a lot of hate speech and bad language by many people including politicians. That commission should be in place to deal with... A person who used to make hate speech is now a presidential candidate. Hon. Moses Kuria has to be very careful now. There are some particular people who need this commission. Hon. Moses Kuria was a regular visitor to the commission, but now that he wants to vie for the presidency, he must behave like a presidential candidate. He needs votes from every community. In the middle of the night, he tweets like Trump. The only person who tweets at 2 a.m. or 3 a.m. is Hon. Moses Kuria. I will tell him to behave well. We need this commission. It is very important that we safeguard the cohesion of our country and the interest of our communities.

I beg to second.

*(Question proposed)*

**Hon. Deputy Speaker:** I give the first shot to Hon. Obiri Momanyi, Member for Bobasi. Sorry, I had not seen the Leader of the Minority Party's interest. Having seen it now, the Leader of the Minority Party will have the first shot.

**Hon. John Mbadi** (Suba South, ODM): Thank you, Hon. Deputy Speaker. Let me also take this opportunity to thank and congratulate this Departmental Committee on National Cohesion and Equal Opportunity for coming up with amendments to this Act.

I want to give some historical background to this Act, how it came about, why we are where we are and why the court found that some of the provisions in this Act are unconstitutional, which has necessitated these amendments. We all remember that after the Post-Election Violence (PEV) of 2017, there was the committee that was put in place to try and resolve the issues. Part of Agenda Four items was how to bring Kenyans together; cohesion. Therefore, it became necessary to have a commission that would bring cohesion and integration in the country hence the birth of the NCIC.

However, we all remember that at that time, a section of Kenyans was not so comfortable with the Executive, the PSC and even the Office of the President. Therefore, it was felt that to constitute such an important commission that would bring Kenyans together and deal with cases of hate speech; Parliament then was seen as more representative and a bit more balanced. That is why the responsibility to constitute this commission was placed on the shoulders of the Parliament of Kenya.

The courts have since determined that Parliament doing recruitment and again vetting the same recruits is actually a contradiction and something that compromises the separation of powers. If you look at the current Act the way it is, it says the process of recruitment starts with the Clerk of the National Assembly putting out adverts whenever there is a vacancy like it is now and after that, then applications are submitted to the Clerk of the National Assembly who would then ask a committee of Parliament, which is the Departmental Committee on National Cohesion and Equal Opportunity, which would go ahead and interview members and come up with 15

names. The 15 names then would be sent to the President who would pick eight out of the 15 and send back to Parliament for vetting. Remember when those names then come back to Parliament, the same names would be taken to the same committee of Parliament that interviewed the applicants, which is the Departmental Committee on National Cohesion and Equal Opportunity. Then that committee recommends to Parliament for approval. It makes the vetting process just but a drama.

Therefore, I think the courts were right to find that Parliament can now not be participating in recruitment of these commissioners. Times have since changed and now a selection panel is proposed. I think there are about four fundamental amendments to the Act that the Committee is proposing. One is to amend Section 17 by repealing it and introducing a new clause which will become a section when we pass the Bill. That also is tied to the First Schedule. The Committee is recommending that we have a selection panel which will have members appointed as follows; one member from the Office of the President, one member from the PSC, one member from the Office of the Attorney-General, one member by the EACC, one member by NGEN and one person nominated by the JSC. This will then form an interview panel which will be the one to convene a meeting and agree, within seven days, to invite applications. The applications will be sent to the PSC. Those applications, once sent to the PSC, this panel will interview and once they interview, they will recommend 15 names to the President out of whom the President will, this time round directly nominate a Chair and seven other members. These eight members will come to Parliament for vetting and then they will go to the NCIC which will vet and make their report available to Parliament and then Parliament approves the eight members or rejects and the process will continue. To me, that is more decent and separates the vetting work of Parliament as an oversight body that oversees the Executive and its functions and work.

Another amendment that has been brought is to clearly define that the Vice-Chair, once elected by the eight members in their first meeting, will expressly have the powers to act when the chairperson is absent. I think that was not clear in the law. This has been borrowed from what happened at the IEBC last time. The IEBC Act was amended to accommodate the Vice-Chair to be acting in the absence of the Chair. So, the same has been brought here. The Vice-Chair will be acting.

Another amendment is on qualifications. I agree with the Committee. The law as it is today just allowed anybody to be a member of this commission. Now it is clear that you must have a degree to be in this commission so as to appreciate and understand the issues of cohesion, integration, and interview people and even recommend prosecution. You should have basic education that is commensurate with the work that you will do.

Experience has now been defined. In the current law, it just says you need to have experience in matters cohesion and integration without specifying what kind of experience. Now it is clear in law that for you to be the chair, you must have five years' experience. To be any other member of the commission, you must have two years' experience.

It was just said that you must be a person of integrity without mentioning that that integrity should be in line with Chapter Six of the Constitution. Again, this law was passed before we actualised the current Constitution. This will accommodate the provisions of the current Constitution.

I disagree with the Leader of the Majority Party. The term of office is now fixed at a single term of six years. The law says that you shall be appointed to this commission to serve. That is the amendment to Section 19. The chairperson and members of the commission shall be appointed for a single term of six years and are not eligible for reappointment. If people are appointed to positions and expect reappointment, it compromises the integrity and independence of those members. We need to move to a system where public officers are appointed for a single term so that once you are in office, you exercise your responsibility without fear or favour knowing very well that you have only one single term after which you go home or do something else productive for the country. This amendment proposing one single term of six years is long overdue. It is necessary and we should support it.

I have issues that the Committee needs to look at on how a Member of Parliament is disqualified from being a member of the commission. It says that a person shall not be eligible for appointment as the chairperson or a member if such person is an MP or a Member of the County Assembly (MCA). I have no problem with that. MPs or MCAs should not be members of this commission. But why do you not just say all State officers? We should move away from this culture of criminalising MPs or MCAs. When you specify by saying an MP or MCA, you are then saying that governors can be members of this commission. What of governors? What of their deputies? What of other State officers? How come you are singling out MPs?

I remember in the 10<sup>th</sup> Parliament, we developed a very bad habit. This habit came from the civil society which criminalised the membership of this House. In fact, looking at most of the laws that we passed in this House, we made it clear that if you have served in this House as an MP for five years, there are certain jobs that you cannot get in this country. I asked myself what is wrong if after I have served my people in this House and been out for three months, I cannot get some of these jobs? What makes me a criminal? How come governors can leave and be appointed to these positions? We should not succumb to some push from the civil society which does not make sense. Whereas I agree that MPs and MCAs cannot be members of this commission, let us not put it as if this is a special class of people or people who should be criminalised. If you are a State officer, you cannot be on this commission.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Leader of the Minority Party. What is it Hon. Maina Kamanda?

**Hon. Maina Kamanda** (Nominated, JP): Yes, I just want to clarify...

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, it has to be a point of order not clarification. You remember, Hon. Maina Kamanda that you will have an opportunity to reply. Is it a point of order? You will get an opportunity to reply at the end.

**Hon. John Mbadi** (Suba South, ODM): Actually, Hon. Temporary Deputy Speaker, the Chairman should not talk about Parliament or county assemblies. Talk about State officers or leave it. After all, there is no MP who can be on this commission. Either you leave it or say State officers cannot be in this commission. I am against the culture which has taken root and is supported by this Parliament by passing legislation where we criminalise MPs. That is what I do not want. We have put it in law that if you have been an MP, once you leave, you have to be out there for over five years before you can be a member of the Commission on Revenue Allocation (CRA). Why? The same applies to the National Land Commission (NLC). You are not setting the same condition for governors.

This came about because at one point, some people thought that Parliament was the enemy of this country for whatever reason. You can see the kind of stereotyping and criminalising of Parliament such that people do not even reason. Even things that happen to other State officers, when you do it to Parliament people think you have committed a crime yet other State officers continue to enjoy some of those things. It is coming out of some of these decisions we make. That is something that needs to be changed.

I know the other colleagues want to contribute. This Bill is good. The other thing that we also needed to check is the membership of this panel. I can see that three are from the Executive and three from other commissions. I do not know whether having someone from the Judicial Service Commission (JSC) is a good idea. Just as we have left out the Parliamentary Service Commission (PSC) from participating in the recruitment, we should also leave out the JSC. The JSC can arbitrate when you do not follow the law like it happened in this case. Now if they are part of the decision-making and then you ask them to arbitrate, it may compromise the integrity of their decision.

I support the Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. To my right, top on the list is Hon. Ole Sankok David.

**Hon. David ole Sankok** (Nominated, JP): Thank you very much, Hon. Temporary Deputy Speaker. I support the Chairman of the National Cohesion and Equal Opportunity Committee.

There is the issue of profiling MPs to the extent that they are not able to do anything yet we are given that mandate by the Constitution. It is a high time that the citizens of this country realised that MPs are elected by the people of this country. They are not elected from Uganda or Tanzania. They are elected by the citizens of this country. It is funny that Kenyans trust other institutions more, including Principal Secretaries and Cabinet Secretaries who are handpicked, but they no longer trust and believe those that they have elected themselves.

I support the Bill from the Chair of the National Cohesion and Equal Opportunity Committee. It is high time we got that Committee running because even though the politics of 2022 are very far, there already have been a lot of political flare-ups. There have been a lot of high temperatures and voltage. Politics in this country needs National Cohesion and Integration Commission to handle and tone down these early campaigns, so that we can wait and work for the citizens of this country. If the citizens trusted us and Mr. Okiya Omtatah did not take us to court, that commission would have been in place now and would have tamed these high voltage political campaigns and we work for the people until the period set aside for campaigns. There is normally a period set aside for such politics and campaigns. Because we do not have a commission in place to tone down the political temperatures, we are witnessing such high voltage of early campaigns.

Hon. Temporary Deputy Speaker, I support my brother and friend, Hon. Maina Kamanda, for bringing this particular Bill. Thank you very much.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Shall we have Hon. Baya Yaa?

**Hon. Owen Baya** (Kilifi North, ODM): Thank you very much, Hon. Temporary Deputy Speaker. I stand to support this Bill. As a country, this has taken two years to get this commission in place. We need to generally look at the laws that we have. Parliament passes laws and they are taken to court and then they are overthrown and we get back again and come up

with others. There is general need to totally engage the legal staff here to look at these things so that we, as a House, are not always embarrassed in court.

Secondly, I want to look at the selection panel that is envisaged to nominate the commissioners. You realise that several Government bodies, including the Judiciary, have been given the power to nominate members to sit in the panel that will eventually recruit the commissioners. My problem with it is that at the end of the day, despite the diversity of this country in terms of tribe, we may get all these institutions selecting people from the same community to nominate the commissioners. I would like to urge the Chairman to re-look at this and ensure that the selection panel reflects the diversity of the country in terms of the tribal landscape that we have in this country. This will ensure we do not end up with the Judiciary and the National Gender and Equality Commission nominating people from the same tribe. You may end up with that without anticipating it. Everybody might nominate the person at the same time and when they sit together, they realise that they can speak the same language. So, there is need to have a look at that and ensure that the diversity of the country is reflected in the nomination of these people.

I would like to add that the earlier we do this law, the better. The Leader of the Majority Party said that we need to hasten this process so that this law is passed by tomorrow before we proceed on recess, so that we can have NCIC in place.

Lastly, I would like to echo the words of the Leader of the Minority Party about passing laws to discriminate against one group. A Member of Parliament or a Member of the County Assembly cannot sit here for whatever reason. We should change all the laws that we have. For example, the National Lands Commission Act has the same problem. A person who was a Member of Parliament cannot sit as a member of the NLC and yet probably he would be the best suited to give leadership to that commission. It is the same case with the Kenya Revenue Authority Act. Just like we did in the Statute Law (Miscellaneous Amendments) Act, we need to change all these laws, so that this House does not continue to be discriminated and criminalised by the laws it passes.

I thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Abdullaih Sheikh, Member for Mandera North.

**Hon. (Major (Rtd.) Bashir S. Abdullaih** (Mandera North, JP): Thank you, Hon. Temporary Deputy Speaker. At the outset, I want to support this amendment on this very important commission. It was wrong in the first place for Parliament to give itself the role of recruiting and vetting.

I want to really appreciate one Kenyan, Mr. Okiya Omtatah. This gentleman has done a good job for many Kenyans. He has seen the light and seen that whatever that was going on in the initial stages of recruiting and vetting was unconstitutional. I want to ask for Mr. Okiya Omtatah to be awarded because he has done a great job. Were it not for him, this team would not have seen the light of the day. I want to acknowledge and appreciate one, Mr. Okiya Omtatah, for taking this matter to court and ensuring that the Committee is seized of this matter.

Nevertheless, I also want to appreciate the Committee and its Chair for seeing that this amendment is timely and critical. The NCIC, as it is now, lacks mandate because its term has lapsed and we do not have commissioners in place. We have seen the hue and cry of Kenyans in various appointments to State bodies and foreign service. When I look at the issue of foreign

service; where 80 per cent comprises one ethnicity, it leaves a lot of questions for national cohesion. Once that commission is in place, we will also ask it to update Parliament and give us the status of all appointments, in terms of region and ethnicity. This Bill is very timely. We want to ensure that the recruitment and vetting is done as soon as possible.

Even as we appoint commissioners in this commission, we want you to take cognisance of the fact that there is diversity, ethnicity and other factors. I am sure going forward, we will in future ask Parliament to change the Act to say that appointments to the boards of parastatals shall have vetting of Parliament, so that sometimes when we see that there is irregularity and unconstitutionality, we can reject it on the Floor of the House. There is a lot of irregularity in those appointments. For example, the entire Board of the Postal Corporation of Kenya comprises of only one ethnic community. Will they transact business in their mother tongue? What happens in that kind of situation? Parliament cannot say that we approve or disapprove the people who were appointed because it is not in our mandate. It is completely wrong.

The ambassadors who were appointed the other day were 18 and 13 of them come from one section of Kenya. Whom are they going to represent? Is that the face of Kenya? I do not think so. I want to urge that the commissioners for the NCIC be in place as soon as possible and their work is cut out. I want them to do their work without fear or favour and to hold the Executive to account. As Members of Parliament, we will not shy away from our responsibility of supporting the Executive when it does a good job and pointing out where they make a mistake. I want Members across the political divide to look at the appointments that were made recently and poke holes. If it is right, it is right, but if it wrong, it is wrong. I speak as a Member of Parliament and as a Vice-Chair of the Pastoralists Parliamentary Group which is a caucus of 107 Members. When I look at those appointments, an entire section, region or diversity is missing, and we are here saying that we have no role to do.

I want to call upon the veterans here to make amendments for appointments of parastatal boards so that we vet the nominees and reject those we think are not in line with the Constitution. As I support this Bill, I want to urge the Members to equally support this Bill and ensure that the commissioners are in place as soon as possible so that these kinds of things are rectified.

Thank you. I support the Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Let me go to my left side. Hon. Wakhungu Wamalwa. Hon. Gedi, when Hon. Sheikh was presenting, you looked very excited for some reason. You will get your chance to speak at some point. It is Hon. Wamalwa's time.

**Hon. (Dr.) Chris Wamalwa** (Kiminini, FORD – K): Thank you very much, Hon. Temporary Deputy Speaker. As I support the amendment, I want to recognise the value added by Mr. Okiya Omtatah as far as oversight in this country is concerned. Mr. Okiya Omtatah was running for Senate under my party of FORD-Kenya in Busia County and the people of Busia can see what actually they missed. We wish him well in his future endeavours. A lot of things have gone wrong and Mr. Omtatah has been on the forefront to correct them. We know very well that there are many Non-Governmental Organizations (NGO) which are funding different Community Based Organizations to help in matters of oversight. How I wish they can see the eye of Mr. Okiya Omtatah.

Hon. Temporary Deputy Speaker, the principle of separation of power or talking of checks and balances, from the word go, the process of recruiting these commissioners was very wrong. This was highlighted very well by Hon. Kamanda, who is the Chairman. I want to



congratulate Hon. Kamanda because at his age he has done very well. We are happy and we want to see this being cascaded down for it to go farther. What the Vice-Chair of the Pastoralists Caucus, Hon. Bashir S. Abdullaih, has said is actually very true. I was very disappointed when I looked at the Gazette Notice. It is a shame that 90 per cent of the Board members of the Postal Corporation of Kenya are from one community. I sit in the Public Investments Committee, where we have been meeting with many boards of parastatals. The membership of a majority of them does not reflect the face of Kenya. It is, indeed, important that this Committee goes further to ensure that there is equity in these State corporations.

Article 10 of the Constitution is very clear on the principles of governance. Why is it talking about inclusiveness? Inclusiveness means the face of Kenya. It is talking about the issue of equity. It is a shame that this thing is being practised with impunity. I am requesting Hon. Kamanda to move ahead as we go on. My leader mentioned something very important about the membership of the selection panel. Talking of matters of cohesion and integration, the church has been ahead. So, as we proceed to the Committee of the whole House, my humble request is that we bring an amendment so that we remove representative from the Judicial Service Commission and replace it with representative from the church. Doing so will add a lot of value. Retaining JSC brings a conflict of interest because in case of arbitration, in the long run you have to go to courts and the courts have limited jurisdiction when it comes to matters of conflicts. So, if we put somebody from the Judicial Service Commission and later on one want to go to court, there will be an element of conflict of interest. I am requesting the Chairman, who is listening keenly; that, during the Committee of the whole House, I will be proposing an amendment so that we can have a church person.

In this country, we normally have the National Prayer Breakfast and the churches have been advocating for integration and national cohesion. Therefore, it is very important to have a church person on that particular selection panel. It is bound to be debated as we move on.

On the issue of term limit, I think the Leader of the Majority did not get it right I listened keenly when Hon. Kamanda was moving. The Leader of the Minority Party got it very well. He said that instead of having a term of three years renewable, they have proposed a six-year term non-renewable. I was keenly listening. So, the Leader of the Majority Party did not get it right. I do support the Committee. We support the Chairman. This is a commission established by a statute; it is not a commission created by Chapter 15 of the Constitution. We can borrow good ideas from Chapter 15 of the Constitution, whereby commissioners are allowed to be in office for six years non-renewable. You do your work the best way you can and once you are done, you go and new people come. We do not want this issue of renewable. We thank the Committee for the good work.

On the issue of qualifications, it is indeed important that in this era we have people with a minimum qualification of a university degree. The education system in the country has been liberalised and, therefore, anybody can find time to study. So long you have time and you are committed, you can study for your first degree, master's degree and proceed to do PhD. You can do as many PhDs as possible. It is not a tall order. Qualification of a degree certificate is important. Let it be there. We know very well that we put qualifications for people vying for various seats. So, we do not want to wait until the last minute. We should revisit that. Many members of county assemblies and Members of Parliament have gone to school. So, we should

not compromise that on matters of education because anyone can study, however old he or she may be. If one has time, they can study and attain the highest possible level in academia.

As we move on, I should bring on board the Division of Revenue Bill, but since it is in the next Order, let me not do so. We strongly feel that money should be devolved to counties. The Constitution stipulates that when there is a shortage of money the national Government should take care of that. We should not starve the counties of money. We will discuss that in the next Order when it is moved.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Wamalwa, you are anticipating debate. You have said it yourself.

**Hon. (Dr.) Chris Wamalwa** (Kimini, FORD-K): Thank you, Hon. Temporary Deputy Speaker.

As I conclude, we needed this commission like yesterday. There is a lot of hate speech in the country, which has resulted in divisions such as *kieleweke* and *tanga tanga*. Freedom of expression should not be hate speech. It is important that hate speech should be prevented. We want to see this commission being functional as quickly as possible. When Hon. Kaparo was appointed the Chair, I was one of the people who opposed it. Now that he has left office, I have not seen anything meaningful. We know very well that many people here have been going around making hate speeches, but nothing has been done to them. An example is the case of the presidential candidate that Hon. Duale referred to. We have many cases of hate speech, but no action has been taken against people who make it. That is why hate speech continues in this country. As we move toward election in about three years' time, we need this commission in place with clear deliverables. We need it to be institutionalised so that we can see the deliverables. They cannot continue using taxpayers' money yet people continue making hate speech.

We also need a clear definition in the Act of what hate speech is. I have read the Act and it does not have a clear definition. I hope the Chair is listening. We do not have clear definition of hate speech. We need to amend the Act to put in place the threshold of hate speech. Some people use it at their discretion and, with different political formations, to frustrate others. We should not allow that gap of discretion. I have looked at the Act and it does not have a clear threshold of hate speech. Somebody can abuse it. So, it is important for the Committee to look at the issue of hate speech so that we get clarifications and not just having it in an amorphous way.

I thank the Committee for the good work they have done and request Hon. Members to support this wonderful Bill.

With those remarks, I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): We go to the far end to have Hon. Dennitah.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Before she speaks, what is your point of order?

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Hon. Temporary Deputy Speaker, I have been waiting here but I have noticed that my sister has disappeared. I do not know what is happening with the system.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): That can be checked. From what I see on my screen, you are not there. So, I direct that that be checked. I have seen you seated there for some time. Not all Members seated here have registered interest. Sometimes some Members just want to listen. But that is noted.

Before I give a chance to Hon. Dennitah, let us have Hon. Angwenyi, a very senior Member.

**Hon. Jimmy Angwenyi** (Kitutu Chache North, JP): Thank you Hon. Temporary Deputy Speaker, for allowing me to comment on this important issue. First, I want to thank the Committee that has developed this Bill.

Second, I want to stress on the point raised by the Leader of the Minority Party that we seem to be legislating here against ourselves and former Members of Parliament. We are our own worst enemies.

Three, this Bill should have come much earlier because for a period of about two years, we have not had an effective Commission. As you can see, the 2022 elections have taken root. Wherever we attend church functions, funerals, or barazas, we must talk something about 2022. In the process, we give hate speeches. As my colleague, Wamalwa, said, let us define what hate speech is. Is calling people *washenzi* hate speech? Is calling people names hate speech? Let us look at that and include that definition in this Bill.

The Bill has improved the system of appointing these people so that we get people of integrity who can work without fear or favour.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Dennitah, the Floor is yours.

**Hon. (Ms.) Dennitah Ghati** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker, for the opportunity to support the amendment. I also thank the Chair, Hon. Maina Kamanda.

If ever there is a time that we need cohesion in this country, it is now. I am surprised that it has taken over two years to have such a critical body that seeks to help us put aside our historical injustices and have equity.

I am happy with the amendments. There is nowhere in this country or in the world where you can have commissioners or officers in place without a clear law that guides how the people are to be selected and appointed. It is good that our lawyer out there, our *pro bono* lawyer in the name of Okiya Omtatah has tried to put sense into this country. Okiya Omtatah speaks for very many of us in this country who otherwise would not have that opportunity to speak and bring such amendments to this House. He requires special recognition. For many of us who come from minority communities, we know what it feels to be discriminated. We know what it feels for people who come from minority communities in Kenya to fight over meagre resources in this country and recognition.

I want to challenge the President. This provides a rare opportunity for the Head of State to ensure that the commissioners who will be brought to the House are learned men and women who come from minority communities.

Article 54 of the Constitution talks about issues of persons with disabilities. People with disabilities in this country have for a long time been forgotten. An opportunity presents itself in the name of commissioners who will come to this House for approval.

I want to bring sense to this country and say that for the first time we want to see PWDs being appointed as commissioners in this country. I am happy with this amendment. The selection panel that the amendment proposes is big and inclusive. We have the Public Service Commission (PSC), the Attorney-General and the National Gender and Equality Commission (NGEC). Issues disability, gender and minority are better handled by NGEC. I single out the NGEC. It is a Commission that looks at issues of marginalisation and PWDs. I am sure that once we have said and done all these, for once we will have PWDs featuring in terms of commissioners. How many commissioners do you see as PWDs? How many PWDs do you see in parastatals as heads and chairs? We cannot see and we have not seen. We can only say about two.

I want to single out the Commission on Administrative Justice (CAJ) that has a PWD as a commissioner. I also have to single out the National Land Commission (NLC) that has a PWD. Look at our ministries. Look at the various commissions and parastatal heads. In as much as the Constitution talks about PWDs and equality, we do not see most of these organisations implementing this requirement in the Constitution of 5 per cent employability.

When the President brings to this House the seven names as commissioners, as a Member of Parliament representing PWDs, I will be very keen to see a PWD as a commissioner.

On the issue of gender, I am happy that Hon. Chair, Maina Kamanda, will look at the amendment and see how he will ensure that if the Chair of the Commission is a man, as is always the case in this country, then the Vice or the Deputy Chair is a woman. Women hardly become chairs. I am happy that there is an amendment that talks about the Vice-Chair having the powers to act in the absence of the Chair. Traditionally, that is how it is in Kenya. If the chair is a man and is not around, it is the woman who is the vice-chair who will take that opportunity. For the first time, I want to see a woman becoming the Chair of that Commission.

Lastly, I support the six-year single term with no opportunity for renewal. That is okay. People in this country need to work and finish their work and go home to create opportunities for other people. Allow me to say that the composition of the selection panel is okay. For the first time, let the President consider minorities in this country in the nomination of the names that he will bring from State House.

It is unfortunate that we have just seen a list from State House proposing foreign ambassadors to represent this country. If you look at the names that are proposed as ambassadors to represent this country in very many countries, you will realise that we do not see the face of Kenya. For the first time, allow me to fault the President because that is not what this Constitution talks about. Representation talks about disability. I want to challenge this House to understand that the issue of disability is also diversity in this country. We have very many diversities in Kenya. You can see diversities that we do not even talk about sometimes. There are some funny cases of diversity that we allow in this country, and yet when it comes to issues of disabilities, we have issues. Disability is diversity in Kenya and it must be followed as per the Constitution and the law of this country.

I will be keen to see my people, PWDs, also being appointed in those high level offices that will be created in this country.

I support. Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Very well. Before I give this chance to the next person, I recognise, in the Speaker's Gallery, Nembu Girls High School from

Dagoretti South Constituency, Nairobi County. They are welcome. Hon. Opiyo, do you want to speak to this? I know the next agenda is yours. You are top on the list that I have here.

**Hon. Opiyo Wandayi** (Ugunja, ODM): Hon. Temporary Deputy Speaker, this is a rare opportunity for me to add my voice to this very important Bill. At the outset, I support it. I want to support it because firstly, we have lost a lot of time. Since the lapse of the last Commission, the country has lost a lot of time in terms of putting into place a new commission. I must also hasten to add that even though I was not particularly impressed by the work of the former Commission in dealing with issues that fall within its mandate, I still believe that the framers of our Constitution had a purpose for creating this particular Commission. I am saying this because as we speak, a lot of commotion is evident in the political field. Already we are seeing drums of war being beaten from all over in terms of 2022 elections.

It is, therefore, critical that we have the National Cohesion and Integration Commission in place. I hope that the proposals contained in Hon. Maina Kamanda's Bill in terms of identification of those who will fill the positions in this commission will go a long way in ensuring that we end up with only men and women who merit the positions. The problem in this country is that, once persons have been appointed to such offices, they disappoint Kenyans.

In the past, we have seen a clamor from people demanding that we get foreigners to fill such positions. It is for a reason because most Kenyans who have found themselves in those positions have been a disappointment. The National Cohesion and Integration Commission is very important that the men and women who will end up in those positions as commissioners should be beyond reproach. I want to plead with Members that we adopt these amendments to enable the selection panel get down to work, and to ensure that we have this Commission in place as soon as possible. This will enable the Commission to rein in on hate speech which is a serious threat to cohesion and unity in this country.

I beg to support. Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Before I get to my right, shall we have Hon. Akoth.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Temporary Deputy Speaker for giving me this opportunity. You know sometimes the challenges of technology... I have been here for quite a while and since I was preoccupied, I only realised now that my system had gone dead. I think we need to look at the systems around here because they keep misbehaving.

I want to congratulate Mr. Okiya Omtatah for doing a good job. I know he has a love-hate relationship with Members of Parliament. There are times we love him for what he does and there are times we hate him in equal measure. I think that is the kind of love-hate relationship that the House has with civil society. But the civil society, just like Parliament also has an oversight role in terms of the work of the Executive. Therefore, I want to say in terms of the history of this Bill that we passed it in the Tenth Parliament. I was a Member of the Justice and Legal Affairs Committee and I chaired the subcommittee that brought amendments to this Bill. So, I worked very intimately on this Bill.

I can say that the thinking around this Bill at that time was that our country had just come from a very bad past where we had killed one another. We had lost over 1200 people and many people had been displaced. There was also a lot of negativity in the country. So we brought this Bill when Hon. Martha Karua was the Minister for Justice so that we could bridge that gap. The

thinking at that time was we were so divided and we had a coalition Government. Many decisions that were being made were political. Many Bills that came to Parliament that time were brought so that there was a blurring in terms of separation of powers.

We needed negotiations and agreements, and most of the work that was done then, was done by Parliament because we were making more political decisions to move the country forward. There no longer obtained a reason for us to have the structure as obtained then because we needed it at that time to heal the country. We needed it at that time for political agreement because there was a lot of suspicion among different groups. It was agreed that any decision that was being made in terms of appointments could only be made by Parliament where all the political players were. That time, because of the kind of Parliament we had - every key political leader sat in Parliament - most of the decisions were made within Parliament. Therefore, I agree with the Committee that it is actually time that we separated that role so that Parliament cannot perform the executive plus legislative roles and that our roles then become oversight.

I am hearing Members say that we need to define what hate speech is. The law is very clear. I think the challenge that we face most times as Kenyans is that we presume what I think is hate speech is what the law defines as hate speech. What the law defines as hate speech is not for instance calling somebody *mshenzi*. That is not hate speech. Hate speech that we brought under this Bill was informed by the fact that there were people who were saying things that would bring divisions against ethnic communities. So, it has a tilt on issues of creating division on ethnic communities. If I decided to call my brother names, that is not hate speech. If you want to bring other crimes around such issues, then perhaps we may legislate on that.

I would also like to say, that what is provided under this law is akin to what we have with the handshake. It is just that we have not brought the handshake Bill. Therefore, I do not see why some people are very jittery about the issue of the handshake. Unfortunately, we have a culture that after every five years, we hate each other, we fight and then we make up. It is the psyche of Kenyans. So, the handshake now is attempting to end that cycle so that we hopefully can have a permanent solution so that we do not fight and kill each other.

I would like to urge the ones who are jittery that the time for electioneering will come and you will convince Kenyans based on your work, and beyond convincing Kenyans, you will also convince the system because we know that Kenya, other than elections, there is the system. So, you will have to convince those two major factors but before then I think it is incumbent up on each of us, as leaders, to try and unite the country because we cannot be electioneering all the time. Kenyans want to recover the businesses that they lost, the economy that went down. We need to recover so that we can move ahead.

I want to also comment on something that I heard Hon. Mbadi speak to. I want to agree with him that we do not need to criminalise Members of Parliament. I know that we are the ones who are normally focused on a lot of issues by the public because of the work that we do. This is because it touches directly on members of the public. We do not, as Parliament, need to further that and criminalise ourselves. Usually, you will find that even when you talk about salaries, we are the ones who are willing to legislate against ourselves. Of course the media will report otherwise but we will legislate in salary reduction.

I am doing my third term and I can tell you for a fact that what I earned in my first term is not the same as now. I am earning less. But the public is being told that we add our salaries

every year. So, I am wondering how peculiar our salaries are, that the more they are deducted, the more they rise. I do not understand.

If you look at the provisions that we put in the Constitution relating to judges, we said that you cannot reduce judge's salary downwards, but for Members of Parliament we can do. In all fairness, if you want to reduce all salaries, and we think people are being paid high, let us reduce it across the board. It cannot be that it is only Members of Parliament whose salary is reduced, and yet they are the ones that serve the public.

I want to encourage my brother, Mbadi, and others that even if we do not want to criminalise Members of Parliament, let us also not criminalise the civil society. There is also a tendency here that when we see anything from the civil society, we want to think it is wrong. Right now we are praising Okiya Omtatah. Though he is one individual and he is from the civil society, he has done a lot of good. A lot of good that has brought this country this far has been as a consequence of the civil society. So, even when we disagree with them, let us also acknowledge that they have done a lot of excellent work in this country.

With those few remarks, I beg to support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): I can see an intervention from Hon. Wanyama.

**Hon. Daniel Wanyama** (Webuye West, JP): Thank you, Hon. Temporary Deputy Speaker. I just wanted to bring to your attention the fact that given the urgency of this Commission to be put in place... We have heard very many comments about the matter. As a senior member of the Committee, I was just appreciating the fact that...

*(Loud consultations)*

I was just requesting that you call the Mover to reply so that it gives Members better time to incorporate the issues. I think it will be good enough.

Thank you, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Wanyama, you seemed to be doing well until you said that you are senior. I could tell from the murmurs that Members were not happy about that statement. But I want to speak to that.

When a Member rises and asks the Speaker to call upon the Mover to reply, the Standing Orders provide that the Speaker shall put that question forthwith. It is not for me to determine. It is the House to determine whether the Mover should be called upon to reply. So I will put the Question.

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

Clearly the "Nays" have it. In that case, we will have a few more Members speak to it, but I think it is good to appreciate what Hon. Wanyama had raised about the urgency of this matter. I am thinking, and I cannot give direction on this. Members who have registered interest can speak and then we will call upon the Mover to reply.

Hon. Jesire, you have the Floor.

**Hon. Gladwell Cheruiyot** (Baringo CWR, KANU): Thank you, Hon. Temporary Deputy Speaker. I also want to support this Bill.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order! What is it Hon. Gedi? You seem to have pressed the intervention button. Hon. Jesire, please resume your seat. She is on a point of order.

**Hon. Fatuma Gedi** (Wajir CWR, PDR): Hon. Temporary Deputy Speaker, I do not intend to interrupt my good friend, but looking at the mood, can we reduce the time to two minutes so that some of us who want to contribute can get time?

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Gedi, all what you would have to do is to persuade the Members. When you want to reduce the time, it is done before the Members speak to that Motion. Maybe the Members are convinced by your proposal, Hon. Gedi. So let us see, starting with Hon. Jesire.

**Hon. Gladwell Cheruiyot** (Baringo CWR, KANU): Thank you, Hon. Temporary Deputy Speaker. You know I have been wondering about people talking about “the urgency” of the matter and yet for two years we have not had a commission. One hour cannot make a big difference.

I am supporting this and I thank Hon. Kamanda for it. I am, however, thinking of something on the membership of the Commission. The membership of the commission is 12 people. They will be making decisions on behalf of the commission. My thinking is, from what we know through Mwongozo and other practices sanctioned in other Bills, the membership of a body should be an odd number, say, nine or 11. This particular body has 12 members. I am wondering, when they differ on matters and they need to vote, what will happen? I think the membership is not in order. So it should be looked at, if we will do things as per other alignments that we have had in other Bills.

The other thing is that as much as people are supporting the term of office to be six years, I have some reservations. I am imagining we have had a commission which is not performing at all and then we give them six years. It is even longer than the presidential term. So, in case this membership does not perform and we have given them six years, what happens? It is a question we need to discuss. All other boards in this country serve for three years, which are renewable. When we put this one to be six years, it could also be expensive for Kenyans, especially if it turns out that the membership is not performing as expected. So, we need to debate this matter further.

I want to support what Hon. Mbadi said about a member of the Judiciary. When we put the Judiciary in the cohesion commission directly like that, what happens when we have a matter to take to the same body? It means we are taking membership to its own other part of the Judiciary. I do not know. It is something I feel we should look at more clearly. Of course, I know they are matters that should be discussed.

I know that the victims of this commission, most of the time, are politicians; either the members of county assemblies or we the Members of Parliament. We are actually the people who are likely to speak in a manner suggesting that we are dividing this country. We are victims. When you are a victim and you are kept aside and people discuss you always, what happens? You also need to be given an ear. As much as we are saying sitting Members of Parliament must not be members of this Commission, I do not think it bars those who are no longer Members



from being members of this Commission. It is because they will know where it pinches most among the sitting Members. That way, we will be safe.

The other thing that I wanted to speak about, which Hon. Millie Odhiambo has touched on, is the issue of hate speech. I was also wondering, when we say “hate speech” what does it mean? But my learned friend has explained to me. At a given moment, I thought that His Excellency the Governor of West Pokot had actually done something wrong by calling a boy, *mulmulwas*, which he described to be a short, round person. If, as she has explained, calling names is not hate speech, then I do not know if it is now in order for us to be calling each other names because it seems we will not be taken anywhere. If hate speech is not inclusive of calling people names, then does it mean when you stand in a baraza and you start calling somebody a serious, funny name which reduces the dignity of that person it is not counted as hate speech? I think we need to define further what hate speech is. If we only limit it to issues dividing the country, what about issues that affect an individual?

If you infringe on my rights and reduce my dignity by calling me a name, especially a woman, there are names when you call us, we die while alive--- So, we want to define this Bill further. With all due respect, it is wrong for us, as a House, to come here and purport to be complaining that this has taken too long. Who took too long? It is us. Next time, it is our duty to put those measures in place that enable us to create this body as fast as possible immediately it stops working.

With those few remarks, I beg to support this Bill. Thank you.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Jesire, what are those names that would kill you. You die and you do not die. Do not answer that. It is for reflection.

Top of the list to my left is Hon. Osotsi.

**Hon. Godfrey Osotsi** (Nominated, ANC): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to also support this Bill.

This Bill seeks to amend Section 17 of the parent Act on matters to do with procedures of appointment of commissioners and qualifications for appointment. It also seeks to extend the term of office from three to six years. As alluded to by the Leader of the Majority Party, I think we will have to interrogate this issue of extension of term from three years to six years because we need to understand the basis of that extension.

This Bill was enacted in 2008 before the promulgation of the new Constitution. If you go through the parent Act, you will realise that there is need to re-look at the entire Act because it is not properly aligned to the Constitution of Kenya. This is especially Article 10 that talks about national values. Issues of equity, inclusivity, regional balance and national unity should be reflected in this Bill.

The parent Act talks a lot about discrimination and hate speech, but it does not talk about real issues that are reflected in our national values under Article 10. This Commission has been one of the toothless commissions. It cannot bite and the reason why this is happening is because there is no independence. This is the case and yet Section 26 of the parent Act says that this Commission shall not be subject to the direction or control of any other person or authority. If you look at the process of appointment, you will find that out of the 12 commissioners, seven go through a process that involves appointment by the President. But if you look at the process of their removal, you will find that it is very easy. So, these people can never be independent. I think the Committee should have also proposed that those people should have a security of

tenure because that Commission is supposed to perform a very important function in this country; the function of dealing with issues of discrimination and inclusivity.

Now that we are talking about the referendum, we need to look at the commissions we should have in the Constitution and those we should remove from the Constitution. This is one of the commissions we need in the Constitution. In fact, the Kenya National Human Rights Commission (KNHRC) and this one should be integrated into one commission and put in the Constitution as one of the constitutional commissions. Other countries that have challenges like us such as Nigeria have a commission called the “National Character Commission” which is a constitutional commission. We need this Commission in the Constitution so that it can have teeth to bite. As currently constituted, it is toothless and cannot bite.

There is no need of having a useless commission such as the Salaries and Remunerations Commission (SRC) when this very important commission is not in the Constitution.

Lastly, the Committee should have gone further to look at other possible amendments that need to be brought to this House, instead of only focusing on Section 17. For example, this parent Act is not very clear in the definition as to what constitutes hate speech. We need that definition of what hate speech is in the parent Act. We are also having references to the “Minister” when we know in the new constitutional dispensation we have what we call “Cabinet Secretaries”. These are some of the clean ups we expect to bring at the Committee stage so that we deal with issues instead of doing amendments in piecemeal. We can deal with these amendments in totality.

National cohesion must reflect in employment, procurement and many other aspects. Last week, we saw the appointment of ambassadors and it was not right that most of the appointments were from one region of the country. Those are things this law should be dealing with so that we have a criterion on how appointments are made - on merit and regional balance.

Ambassadors are people that represent us outside the country. So, if we transport our tribalism to foreign countries, what image are we sending out? So, we need to re-look at this law wholesomely and have it as one of the constitutional commissions instead of having commissions such as the SRC.

Thank you. I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Kimani Kuria, you have the Floor.

**Hon. Kuria Kimani** (Molo, JP): Thank you, Hon. Temporary Deputy Speaker. I congratulate Hon. Maina Kamanda for bringing this great Bill. However, on the appointment of the commissioners, much has been emphasised on the issue of achieving regional balance. An Hon. Member has raised the issue of representation of people with disability in the commissions, but may I raise the voice of the young people in these commissions.

All Government appointments that have been made, be it in parastatals or corporations, no youth in this country has been appointed and yet, we have very many competent and educated young people who can serve on those commissions. The issue of excluding MPs in those commissions is also wanting.

There is a perception in this country that, once you become an MP, you either fail to think, stop thinking or stop being a professional. This House needs to correct that and set the record straight that even before we joined politics, we had careers. We have engineers,

accountants, doctors and professors in this House. We have people of integrity that can serve in those commissions. Therefore, the provision of excluding MPs should be excluded from this Bill.

I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): It is only Hon. Kuria who has taken the earlier advice from Hon Gedi that Hon. Members be magnanimous in terms of time. Nevertheless, there is no direction or order from the Hon. Speaker. It is just that we seem to have a critical matter and an urgent one.

Let us have Hon. Oduol.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Temporary Deputy Speaker. I would like to support this Bill. I would also like to indicate that, as a member of the Committee, I would not take much time. I want to inform the Hon. Member that one of the reasons why the Committee reduced the length of experience from 15 years to a lower figure was in recognition that we have in terms of diversity of our people who are young and qualified. We did this with the specific objective of opening the dimension for those who are young. What I want to highlight, as I support this Bill, is the urgency and the context in this country where we are operating in an environment where there seems to have lots of factors which seem to divide us. Sometimes, maybe, it is because people do not necessarily understand each other. A number of times, it is because we have inherited to some extent the practice of being negatively ethnic and engaging in prejudicial discriminatory behavior.

It is for this reason that we, as a Committee, did not choose to look at the overall amendments but, in particular, we ensured that we responded immediately to addressing the important principle of separation of powers. We also want to ensure that, as a House, we are able to allow the Commission to be put in place.

As I conclude, I want to highlight to the Members that as we look at the proposed amendments by the Committee, we should be very keen and perform our very important mandate of ensuring that we have respect for diversities and all the different categories defined in the Constitution namely, gender, youth, persons with disabilities and any other marginalized groups. In a way, we should ensure this is something that is taken care of.

Finally, I know Hon. Chris Wamalwa indicated that we should open up and have the church sitting in the panel. But the Committee seems to have a balance and seeks to ensure that everybody is included. It will be a tall order seeking to determine that we include the church whereas in Kenya we know we have many other people organised of faith. This will mean we start opening up beyond asking which church, what to do with our brothers and sisters of the Islamic faith and all the others who are of different faith.

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

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

I hope we can pursue the House to look more at keeping the Judicial Service Commission (JSC) because it brings in a balance and comes from the Judiciary. We should not open up a Pandora's box that would create greater division than the kind of cohesion we want. With this, I

support and say that this is a Commission that is very timely and one that, as a country, is extremely important to have. Therefore, we would like, as a House, to support the Bill and allow the Commission to undertake its role.

Thank you, Hon. Temporary Deputy Speaker.

**Hon. Ndindi Nyoro** (Kiharu, JP): On a point of order, Hon. Temporary Deputy Speaker.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): The Hon. Nyoro Ndindi, what is out of order?

**Hon. Ndindi Nyoro** (Kiharu, JP): Hon. Temporary Deputy Speaker, I rise under Standing Order No.95. Since I came to this Chamber for this Session, we have constantly been repeating ourselves. We have exhaustively debated this matter. Therefore, I rise to request that the Mover be called upon to reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Order, Hon. Members!

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Let the Mover reply.

**Hon. Maina Kamanda** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to reply.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kamanda, you are an old hand at this, and I just want to help you if you will allow me. Before your contribution in replying, you may wish to donate a minute or two to any of the Members who are anxious to speak. That is before you begin, if you so desire.

**Hon. Maina Kamanda** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I donate two minutes each to *Mhe*. Gedi and Hon. Tonui.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): So, we shall have Hon. Gedi and Tonui taking two minutes each. Proceed Hon. Gedi.

**Hon. (Ms.) Fatuma Gedi** (Wajir CWR, PDR): Thank you, Hon. Temporary Deputy Speaker. I thank the Chair of the Committee and the entire Committee for bringing the Bill to this House. This Bill is timely because a Committee cannot vet and do interviews for Commissioners.

I support this Bill because, as a country, we have moved on from where we were in 2017. Going forward, we want this country to embrace unity. We want to see a commission with qualified commissioners who are firm, committed, cannot be used or become sycophants to any quarters. We are approaching a referendum soon and the census is also coming. So, we need to have leaders who are decisive and who do not use hate speech to divide Kenyans.

Concerning the appointments, I want to correct the impression that one section of the community is being appointed. That is not true. The recent appointments of ambassadors that we saw were promotions. Promotion means the President has the right to appoint or extend terms of ambassadors. From the region I came from, we are glad we got three ambassadors in the recent parastatal appointments. My county got six...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Gedi, I have heard you speaking for your region. You should be speaking for the country of Kenya. Hon. Tonui proceed.

**Hon. Ronald Tonui** (Bomet Central, JP): Thank you, Hon. Temporary Deputy Speaker. I want to thank the Chair for donating two minutes to me. I want to support this Bill and thank Omtatah for standing for Kenyans. When we make unfair laws in this Assembly, there are people out there who protect the public from those unfair laws that we make. That is because they are many. This includes the one on Housing Levy. So, Omtatah should be congratulated for this.

What is proposed in this Bill is the fairest way. This is because there will be a panel to interview the commissioners and then forward the names to the President to nominate and forward the names to the National Assembly for approval. This is the right procedure. The way we were to do it before was unfair. On the issue of security of tenure, I believe this should not be the case because we do not want a rogue Commission.

On the issue of a six-year term, I believe this is not fair. Even elected Members are given only five years. No one should go beyond the five-year term. I believe this need to be relooked into. Regional balance should be a key factor in appointing the commissioners so that the whole country can be considered. I know Hon. Gedi has talked about ambassadors. I wish to state it was very unfair because Bomet did not get even a single one and we rarely get. So, we have accepted that any presidential appointment may not come to Bomet and we should move on.

Thank you very much for that little time.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kamanda, proceed.

**Hon. Maina Kamanda** (Nominated, JP): Thank you, Hon. Temporary Deputy Speaker. I beg to reply. Let me thank the Members who have contributed to this Bill. Members are complaining that they are also supposed to be in the commissions. I want to tell Members that before we were taken to court, in the list that we had shortlisted of 54 persons, this Committee had even proposed more than six former MPs to be in it. This is because we believed those are leaders who understand the issues of the country. Having lost an election does not mean that you cannot serve somewhere else and, maybe, be useful in another area.

On the eight commissioners, I can assure you that if the President brings people from one community, the Committee will reject it. That is because, at the end of the day, it will be brought to our Committee. If they are eight, I think the President, in his wisdom, will go to the previous provinces and maybe pick one from every region and give eight people from those regions and include a person with disability. Even in the last shortlisting we did, we had shortlisted people with disability. We cannot agree as a Committee to have eight members and we do not see either one or two. If need be, they can even be all if possible. If it is one or two, the Committee will appreciate and thank the President. I thank the Members.

One of the areas I want to stand with Members is where we keep on saying that Members of Parliament cannot be Members of County Assembly (MCAs). I agree with Members. We will move an amendment as a Committee so that we say state officers. I agree with Hon. Mbadi and my senior here, Hon. Angwenyi. It will not be repeating the words "Hon. Members and MCAs" as if they are the only people who are state officers. Many of those other people are state officers. It is good to put it and we are going to move an amendment as a Committee when we come to the Committee Stage so that we clear that bit.

On the issue of hate speech, we will work very closely with the new commission that will be put in place. You can now see it is more than nine months without having the commission. This will not be the last amendment. This is just an amendment to bring the commission in place. There will be other amendments. Even the Senate is doing an overhaul of that amendment.

Maybe, there are areas we can agree on. Maybe, there are areas we will agree with them. We will overhaul the Act so that we can relook at areas we think we have left out in hate speech or where we feel the commission has no biting teeth and make sure that they are empowered to have biting teeth.

On security of tenure, I can assure my brother that this is not a constitutional commission. So, he should wait until when, if need be, there will be an amendment to the Constitution. That is the time we can talk about it and put it in the Constitution. We found it fit to give this Commission six years. Three years is just to realign them and understand the ground. After that, if you do not extend, then you find there is a vacuum. That is why we decided to let them have, at least, six years non-renewable.

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

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, I direct that the next necessary steps on this particular Bill be undertaken at such a time as the matter will be set down for consideration by the House again. I, therefore, direct that we move to the next business.

*(Putting of the Question deferred)*

### MOTION

#### REPORT ON EXAMINATION OF FINANCIAL STATEMENTS FOR THE NATIONAL GOVERNMENT FOR 2015/2016

THAT, this House adopts the Report of the Public Accounts Committee on its examination of the Report of the Auditor General on the Financial Statements for the National Government for the Financial Year 2015/2016, laid on the Table of House on Tuesday, April 23<sup>rd</sup>, 2019.

*(Hon. Opiyo Wandayi on 30.4.2019)*

*(Resumption of Debate interrupted on 30.4.2019)*

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Opiyo Wandayi, you were on the Floor and you had done five minutes. You have 55 minutes to finish.

**Hon. Opiyo Wandayi** (Ugunja, ODM): I will definitely not take 55 minutes as it is my practice that I do not talk much. I will stick to the point. I will pick it up from where I left when I was moving this Motion.

Hon. Temporary Deputy Speaker, I just want to reiterate that the Public Accounts Committee (PAC) is really on track in terms of delivering on its mandate not only to this House, but to the people of Kenya. In fact, as a Committee, we are almost setting a record in terms of the number of reports we are generating and bringing to this House.

My Committee has committed itself to ensure that the county governments have no excuse whatsoever in terms of equitable sharing of national revenues between the county governments and the national Government because, in the remaining few months of this session

of Parliament, we shall again be tabling a report on the Financial Year 2016/2017 and, hopefully, early next session, we should be tabling the report on Financial Year 2017/2018. That should ensure that the national revenues are equitably shared in accordance with the Constitution and, again, according to the latest audited reports of the Auditor-General as approved by this House.

I want to also emphasise that there is need for some semblance of continuity in the offices of the accounting officers we deal with from time to time. We have had to contend with a very high turnover of accounting officers, particularly principal secretaries. This creates a situation where you find that the current accounting officer who is called to appear before us is unable and, sometimes, unwilling to respond adequately to audit queries pertaining to a period when there was a different substantive accounting officer.

I plead with the appointing authority to, at least, try and ensure that accounting officers, once they begin a financial year, are left to conclude it so that when the time comes, we can be able to interrogate them. In fact, as a Committee, where there are adverse issues in the Auditor-General's Report, even if the accounting officer who was in office then is no longer in office, we have insisted that we shall be demanding that they be called to shed more light particularly in view of the fact that the current accounting officer may not be able to do so satisfactorily.

In the course of our examination of these financial statements, we came across a tendency by accounting officers to abuse the provisions of the Public Procurement and Asset Disposal Act, particularly when it came to the idea of direct procurement and/or restricted tendering. That particular legislation is very clear on circumstances under which a procuring entity can resort to the practice of direct procurement or restricted tendering. We found out that the accounting officers were resorting to these two methods of procurement with careless abandon - in fact, as a default. We have been very clear in our Report and have recommended sanctions against such accounting officers.

Article 227 of the Constitution is very clear that the method of procurement should be transparent, fair and open as much as possible. Therefore, by continuing to violate these provisions of the law and the Constitution, some of the accounting officers are, in effect, entrenching impunity which this House needs to deal with decisively by first adopting our Report and then by following it through the support of the Committee on Implementation.

There was also a worrying trend of accounting officers failing to produce supporting documents. You could find this in almost every entity. In some instances, those supporting documents were missing and were eventually produced at the tail-end of our examination of those accounts. Suffice it to add, as a Committee, it is not our work to examine such documents. That is the work of the Auditor-General. Therefore, it is incumbent upon every accounting officer to ensure that they avail all supporting documents at the correct time when they are demanded by the Office of the Auditor-General. What was interesting is that those documents would be missing and then eventually they would resurface. That tells you that they were deliberately hidden from the Auditor-General with a view to ensuring those issues were not interrogated conclusively. We have also raised those issues.

There was also the tendency by accounting officers to reallocate funds from one budget line to another. The law is very clear. The Public Finance Management (PFM) Act is very clear that for such reallocation to happen, authority must be sought from the National Treasury. You must seek that authority and ensure you get it before you attempt to do such reallocation. We

have also flagged out such cases and recommended specific sanctions against specific accounting officers.

There is obviously the recurring matter of pending bills. This House must put its foot down and deal with this matter once and for all. Pending bills have a tendency of distorting the expenditures and the financial planning of the agencies in the subsequent financial year. We have to come to a decision that if we are sure that the Kenya Revenue Authority (KRA) has no capacity to generate or collect revenues that would be enough to support the budgets, we must scale down the budgets accordingly rather than putting a wish-list in the budget and then we end up with a situation where there are no Exchequer releases from the National Treasury. The National Treasury cannot release Exchequer if there is no revenue collected by KRA. It is a vicious cycle. It is a merry-go-round that is creating avenues for unscrupulous officers to do monkey business.

As you know, these pending bills are treated as the first charge in the subsequent financial years. It is very easy for accounting officers to lump in issues as pending bills at the tail-end of the financial year with the knowledge that, come the next financial year, they will be settled automatically. Let us try to strike a balance between being too ambitious in our budgeting in terms of projections of revenues and prudence in terms of what we are sure is likely to be collected. The budget must balance. If you cannot generate enough revenues, you must borrow either locally or externally. If from the borrowings and the local revenues you cannot support the budget, scale it down. It is common sense. It is not rocket science. That is an issue that my Committee has pronounced itself on and we hope that something will be done soonest to address it once and for all.

Finally, so that my colleagues can contribute to this matter, is the issue of pervasive corruption. Let me call it endemic. It is evident in a number of agencies and institutions that our Committee came into contact with. I want to plead with the relevant investigative agencies to take the Report of the PAC seriously by acting on the recommendations that are contained therein within the shortest time possible. We have, as a standard, given them three months, upon the adoption of the Report of this House, to initiate specific actions on specific issues and sometimes against specific officers. But they could do it even faster.

I do not even see the reason why the investigative agencies cannot second officers to our Committee so that, as these issues arise, they can pick them even before we do our Report. This is so that we ensure that people understand that you cannot misuse and pilfer public funds and go scot free. They must be made aware that if you misuse public funds, you must pay for it.

I want to be very brief and move that the House adopts this Report. I call upon my very good friend, very able and consistent Member of the Committee, the Member of Parliament (MP) for Molo, Hon. Kimani Kuria, to second.

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

**Hon. Kuria Kimani** (Molo, JP): Thank you, Hon. Temporary Deputy Speaker. I rise to second the Motion as moved by my able Chairman. From the outset, I would like to recognise the importance of the National Assembly in carrying out its role of oversight of not just the expenditures, but also the revenues of the Government of Kenya as outlined under Article 95(4) of the Constitution. This role is further given to PAC through our Standing Order No.205.

Without over-emphasizing the importance of the Motion today, this will be used as a basis for the sharing of the revenues between the national Government and the county



governments. This Report has to be approved by the National Assembly. That is why, as the Hon. Temporary Deputy Speaker has said, PAC, unlike other committees, is working to make sure that we provide timely reports so that we do not disadvantage the sharing of revenue between the national Government and the county governments.

This Report outlines the various issues that were raised in the over 64 sittings that were held by PAC, tabled on the Floor and is available to the public. This is a call to our honourable colleagues. The fight against corruption and misuse of public resources will not be won in public rallies. It will also not be won in funerals or churches but it will be won when we scrutinise such reports that have been done by professionals and tabled on the Floor of the House. Only then shall we say that we have achieved the levels of integrity and prudent expenditure of Government resources as we should.

Kenyans are tired of this rhetoric that we will end the war against corruption and jail people and yet, when facts are laid on the Floor of this House on the evident misuse of public funds, no action is taken against those public officers. Article 226 of our Constitution outlines that State officers will be personally liable. Those are the accounting officers of that who authorised or approved the misuse of public funds. Hon. Temporary Deputy Speaker, because of this, we invited retired civil servants and public officers who have been sent to overseas missions because they have to be accountable to what they did during their terms in office. It really does not matter whether you are transferred from one ministry to the other. To emphasise on that, there is need to have consistency in our public offices and the appointments to the various offices. If someone is incompetent in a particular office, he should not be transferred to another one. It even gives us a lot of work because you ask a State officer a question relating to Financial Year 2015/2016 and you are told he is now an ambassador. For him to access that information and come to present it before the PAC becomes a tall order.

In the Financial Year 2015/2016, we had an under-expenditure of Kshs254.3billion. This was money that had been approved and appropriated by this National Assembly. However, the line ministries and parastatals did not spend this money because of delays in the Exchequer and the Integrated Financial Management Information System (IFMIS) issues. There is this animal called "IFMIS". We, as a House, need to re-visit the IFMIS system in this country. The other day, we watched as some items which belong to State House were in a county government somewhere. The explanation given was that this system does not work. This House needs to rise and inquire about the efficiency and the ability of IFMIS to provide accounting services to our people. The reason employees and contractors are not paid is because of IFMIS. We need to fix this.

In the Financial Year 2015/2016, pending bills were Kshs1billion. This means that we had stalled projects, and the contractors who had put in their money to do Government projects were not paid. Probably, that is one of the reasons when you ask on the streets; people say that there is no money because the money that should be in circulation is lying in the National Treasury because it has not been disbursed to the various projects. They say that justice delayed is justice denied. But I dare say that service delayed is also service denied. This is part of our Constitution. The Public Services Act, 2015 states categorically that the provision of Government services needs to be prompt, effective and responsive. Therefore, when we have a stalled project and pending bills of 2, 3, 4, 5, 6, 7 or 8 years, that is in contravention of an Act of Parliament that this House passed.

There is also the issue of public debt. Article 201 of the Constitution says that the benefits and the burdens of the use of resources and public borrowing shall be shared equitably between present and future generations. What are we doing now? We are spending money now that my children's children should spend 20 years to come because of our appetite for debt. As per the audited financial reports of 30<sup>th</sup> June, 2016, our outstanding debts stood at Kshs3.38 trillion.

According to our Budget Policy Statement (BPS) of the Financial Year 2019/2020, our refinancing gap for the Financial Year 2019/2020 is Kshs1.04 trillion. This will further increase our public debt by 478 per cent. By that time, 50 per cent of our revenue will go to public debt. I am also a Member of the Departmental Committee on Finance and National Planning. I have heard contradictions between the National Treasury and the Central Bank of Kenya (CBK) on the exact level of debt in this country. We do not even seem to know it. We also have the pending bills which are also debts that this Government owes people. Money should be paid to these people. What is the solution? Our Budget-making process as enshrined in our Constitution should be zero-based. Is it how we do it or do we just carry forward projects of the budget of last year and add an increment to it?

There are a lot of uncollected revenues. For example, as per the financial reports of 30<sup>th</sup> June, 2016, Huduma Centre had Kshs138million that had not been banked in the appropriate account at the CBK. In addition, the Postal Corporation that is mandated to collect those levies on behalf of the Government was not able to show us a contract that they have to show that they are supposed to do that. These are the loopholes that we have that make sure that we do not have money to spend and, therefore, we end up borrowing. E-citizen had Kshs1million that had not been banked and no substantial explanation was given. All this revenue ends up being lost. There is also an allegation that, probably, even the fare that is paid at the Standard Gauge Railway (SGR) never makes it to the correct accounts.

There is also the issue of non-payment of loans. This Government has been issuing loans to Agricultural Settlement Fund, associations, sugar factories, Kenya Co-operative Creameries (KCC) and Kenya Power and Lighting Company (KPLC) worth Kshs158 billion, which has not been repaid and yet our young people are struggling with Tala Loans, Branch International Limited, Fuliza and others. We should even have these particular agencies listed on Credit Reference Bureau (CRB) to make sure that they honour their commitments. We also need to clean-up our books. For example, we have Rural Enterprise Fund that has billions of shillings. It was not wound up, despite the PAC Legal Notice of 2012 which said that this Fund needs to be wound up. The war against corruption and misuse of public funds will be won when we, as Members of Parliament, carry out our legislative role at the Floor of the National Assembly.

With those few remarks, I beg to second.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Kuria Kimani, I have enjoyed your contribution immensely. You have told us that we are borrowing and taking the bread from the mouth of our grandchildren, instead of investing in sovereign bonds, so that we can secure their lives. That was really good.

*(Question proposed)*

I see interest in this Motion from Hon. Simiyu Eseli, the Member for Tongaren.

**Hon. (Dr.) Eseli Simiyu** (Tongaren, FORD –K): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to support the Report. I am a Member of this Committee.

As I start my contribution, I would like to quote a few things. One, leadership without integrity is hollow. Wealth without work is theft and that is where Kenya is at the moment. As a nation and community, we have condoned theft, including theft of public funds. We condone it and clap for those who steal. As a nation, our problem is that we did not grow out of the colonial era where it was justified for us to plunder Government resources because they belonged to our colonisers and oppressors. It was a way of resisting our oppressors by plundering their wealth. We gained Independence later and we did not realise that those resources belong to us and are our taxes. Those are the taxes of the *mama mboga, boda boda* riders and everybody because every Kenyan pays taxes either directly or indirectly. We did not realise that. So, we have continued to plunder Government resources without realising that we are actually plundering our resources. At the end of the day, we will remain with nothing to plunder.

That is a mentality that needs to be changed among Kenyans, so that they recognise that we rely on public resources to build hospitals, pay workers' salaries, put drugs in hospitals and build our roads. We need a change of mind-set as Kenyans. We must realise that we must protect and utilise public resources properly so that they are useful to the rest of Kenyans. The kind of money we talk about, if you were to go to villages and told them that our Budget is over Kshs2 trillion, they will ask what kind of figure that is.

Those of us who have lived through the Moi and Kenyatta era, the Budget had not surpassed Kshs300 billion when Moi left office. We were not talking about trillions. I do not know whether people know what a trillion means. If we put that money to proper use with proper accountability, I am sure we will transform this country. The leaders talk about transformational leadership. Let us manage our resources properly. How do we do that?

We have oversight institutions. Parliament, of course, is the apex. The Auditor-General is very key for our performance and yet, his office has not been facilitated enough. Imagine they now have to audit 47 governments in addition to the national Government and other public institutions. But they have not been empowered enough to get resources and have enough personnel to do a proper job. The Constitution is very clear that apart from the usual audit, they should also do performance audit and value for money audit.

In the 10<sup>th</sup> Parliament, I had an opportunity to visit Canada where they do value for money audit. They do not do the usual book audit of papers because papers can be cooked. We should empower the Auditor-General's Office to do performance audits always. That is why a road in Kenya costs much more than one in Tanzania done by the same contractor. If we did performance audits, we will get rid of that.

Another thing we should worry about is the current trend to discredit oversight audits. There is a current trend to discredit the Auditor-General's Office. That is very dangerous. We should not allow it to happen because that is what drives the oversight activity of this Parliament and, indeed, PAC is the ultimate oversight authority that actually uses the Auditor-General's reports to come up with a report like the one that was tabled by my able Chair. So, we should avoid any move to try and discredit the Auditor-General's Office.

Another thing I want to talk about is the Recurrent Vote. On the Recurrent Vote, apart from the salaries, the rest of the money goes to waste in a lot of travelling and on many other things. You find that there are huge amounts of money in the Recurrent Vote for seminars and

things like that. We talk about austerity measures. We should be objective and cut off the fat and leave the lean meat so that we use our money properly.

There is the issue of the convoluted procurement law. The law has not helped in reducing costs of our development endeavours. In fact, sometimes, the procurement law is amenable to the vendors such that you find a lot of vendor-driven procurement. You get most of this kind of procurement where our Chairman said is restricted tendering and things like those. That is vendor-driven activities. They cost a lot and they are littered throughout the report in the agencies, ministries and State departments.

There is also the issue of the Public Works Department. I know part of it has been devolved to counties. They play a role like issuing certificates of completion, at times, when the work has not been done. So, there is collusion with Public Works. I must say that clearly. All you need to do is drive to Karen, be a tourist and just walk around and see the people who live there.

Majority of them come from the Ministry of Public Works. It is a big problem. They are part of the drivers of the corruption the Member who seconded the Chairman was talking about. This is the problem we are talking about. Take a sample in the report, for example, police insurance. Police insurance was procurement driven. It costs way beyond what it should. You can see it has collusion. We keep bringing these reports here but the investigating agencies do not seem to want to follow them up. They do not want to follow them up because, as Kenyans, we have eventually condoned corruption. In fact, we have started setting up personality surrounding the robber barons of the country. That is not right and we will mess up our country if we go in that way.

There is this idea we have been told many times that the Government has no business in doing business. In fact, it has become the law in Kenya that the Government has no business in doing business, and we should sell off parastatals. When you examine the way the parastatals have been sold off, you will realise that they were disposed of for a song because someone had an interest. But why are we saying that?

Chinese companies are doing business with the Kenya Government. The Chinese Government is doing business. Why we are unable to do business is because of the quality of people we put to head our institutions. As I said earlier on, leadership without integrity is hollow and that is what we are facing as a country. We are at a very critical point in a country. The loss of public resources is starting to anger Kenyans and we, as a House, must stand to be counted that we are at the forefront of ending this scourge of corruption so that our children can inherit a place that is better than we found it.

I wish to support and repeat that, as a nation, we should not condone corruption. Thank you.

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Eseli, what happens to our Committee on Implementation which is supposed to follow up on the votes we have? What has it done about the reports? The buck stops with us as a House. Our processes must make sense and be effective. The Chair of PAC and his Members may wish to have a conversation with the Committee on Implementation so that we see how effective they have been able to follow up.

Yes, Hon. Nyoro.

**Hon. Ndindi Nyoro** (Kiharu, JP): Thank you very much, Hon. Temporary Deputy Speaker, for giving me this opportunity. Indeed, I am a member of this Committee and to follow

in the footsteps of my senior, Dr. Eseli Simiyu, I start by quoting something I have learnt in my interactions as a PAC member. It says: "You get what you inspect and not what you expect." I have seen that live in Government operations and in our various interactions as PAC.

Generally speaking, they usually say that a stable country has three elements. One is a functional modern state. Two, the rule of law and of course, three, is accountability especially through democracy. If you look at economies that are doing very well, there was a sequence of having those characteristics. They also say - and I believe it - that when a country gets a democracy before a strong bureaucracy, that country takes too long to pick up. You will have people with a lot of rights but without a proper functional state. Maybe, we are victims of a country that is too democratic but also with a very weak bureaucracy and state. I say so because we keep on talking about some of the issues that my Chairman and the other Members have talked about, especially corruption. If you look closely, the same issue we keep on repeating, and our failure to fight it, is premised on a country having a very weak state.

Our state apparatus charged with fighting graft and other vices are the ones that are failing us. At the grassroots level, the role of the current chief cannot be compared with that of the chiefs of yester years. This is because our bureaucracy is too weak that you may actually know that somebody is corrupt, or somebody sells bhang in the village, but there is nothing you can do as a government official. What belongs to everyone belongs to no one. We now have a situation where we have very many people doing the same thing. There is no one who asks for results. If you come to the fight against corruption, you will find that we have very many entities, but we do not know where the buck stops.

The Chair has talked about many things and I agree especially with the fact that we are working extra hard. We are actually over-working ourselves. We should be commended by the leadership of this House for being one of the most hardworking PACs by delivering one report after another. Audit is part of budget-making because budget-making starts with formulation of the budget. Then we go to the implementation and, at the tail end, we come in as PAC. If you look at the whole budget-making process - because we are part of it - you will find that we are failing. We are failing in many respects. There is no way of knowing whether something is working by the results. The budget of a country is supposed to bring about some positive change within that economy.

If you look at the two-pronged way of how to measure the economy - the monetary policy side and the fiscal side - you will realise that the fiscal side is what budget-making should address. We are doing very well when it comes to monetary policy. That is why we have been able to get a very stable local currency, arrest inflation and even foreign exchange. But if you come to the fiscal side of our economy, you will find that the side that budget-making should address, we are failing. That is why we report 6.3 per cent growth in GDP and Kenyans look at us leaders and see clowns who are lying to them. If there is no growth in the individual pockets of Kenyans, then that growth is just in newspapers and in Government reports. I feel that is an area we should also address. Even as we do audits, we better do audits in an economy that is burgeoning and growing rather than doing a lot of reports in a country whose citizenry is poor.

Looking at our Report and where the main issues are. Of course, the Chair has talked about pending bills. I agree with him. I go back to the same budget-making because we make a budget of Kshs3 trillion. Out of that budget, the only money we are sure of is just 60 per cent or so of that budget. You allocate, for example, Kshs10 billion to a certain commission or

Government department. But the disbursement, including our own National Government Constituencies Development Fund (NG-CDF), is an eyesore. So, we keep on talking about pending bills, but we manufacture those pending bills as we make the Budget. If you do not know where the money to finance your budget will come from, but you go ahead to allocate money to the various Government spending agencies, do you want them to do *Harambee* to fill the deficits?

Our prudence has to start with budget-making so that we make realistic budgets. We are in that process. For us not to talk about pending bills many years from now has to start now by budgeting with what we have. I call upon my colleagues that when this Budget ultimately comes to this House, we call for a Budget that reflects what we have.

Since we are part of that process, there would be no public debt if we prudently budget the monies that we have especially by weighing with the revenues. The issue of debts, from where I sit, is actually not a bad thing. Possibly, I side with Treasury in their back and forth with the Central Bank that even if we had 60 per cent of the GDP that is debt, we are still in green, not red. We are still doing fairly well.

The elephant in the room when we talk about public debt is corruption. Do we actually see value for money when we borrow to do this and that project? Sometimes, I sit with Government people and especially the Executive Arm to see the kind of projects the Government is doing, for example, in my County of Murang'a. You will hear a lot of billions. This agency was guaranteed a loan by the Government of Kenya or there is a Kshs4 billion project. If there is a water project and there is no water flowing, then to the Kenyan people, we are paying for a debt that we are not enjoying utility for.

If we zero in on corruption, we will actually never question the Treasury for borrowing more. We have many countries that never question themselves for borrowing a lot. They include Japan, which is at 242 per cent of ration of debt to GDP. Even the UK - our colonisers - is beyond double because they are at about 104 per cent debt to GDP ratio. The US - the super power - is over 110 per cent debt to GDP ratio. The elephant in the room is corruption where we borrow and we do not see where the money goes.

As I wind up, on a specific issue - and Dr. Eseli has talked about it - is the kind of blatant stealing that we have seen and should cause a revolution in this country. One of the main insurance companies in this country bid for police insurance through the Ministry of Interior and Coordination of National Government for Kshs600 million. Then they went ahead to give a company that bids for Kshs1.7 billion. We must also start auditing confidential budget because we have seen people going around this country every weekend using money that we cannot audit. People go to some office along Harambee Avenue, they get money to go and spew...

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Proceed, you still have a minute.

**Hon. Ndindi Nyoro** (Kiharu, JP): That is taxpayers' money from a certain office along Harambee Avenue to spew hate on Sundays on the pulpits. We must move away from this issue of being told this is a confidential vote or a security thing and you cannot audit. You are telling me I cannot audit a vote when some of the leaders and our colleagues will come here and boast about money they are getting from Government coffers to do campaigns over the weekend.

As I wind up, the issue of records was talked about by the Chairman. This is a circus. People appear before PAC and are not able to get this kind of document. But within the same period that they are appearing before PAC, somehow, the documents are found. I keep telling our PSs that even the authenticity of the documents that they bring, especially those that are not found during the audit time and are found when they are coming before PAC, could be works of River Road. Dr. Eseli talked about a big government. Sometime we got the PS for Industrialisation who could actually not....

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Ndindi, now your time has run out. Well spoken. I hope that I will see you in the frontline of fighting and bringing this revolution against corruption in this country.

### ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Christopher Omulele): Hon. Members, the time being 1.00 p.m., this House stands adjourned till today at 2.30 p.m.

The House rose at 1.00 p.m.