

**PARLIAMENT OF KENYA**  
**THE NATIONAL ASSEMBLY**

**THE HANSARD**

**SPECIAL SITTING**

*(Convened Vide Gazette Notice  
No.4699 of 17<sup>th</sup> May 2021)*

**Wednesday, 19<sup>th</sup> May 2021**

The House met at 10.00 a.m.

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

PRAYERS

QUORUM

**Hon. Deputy Speaker:** Hon. Members, we do not have the required quorum in the Chamber. Therefore, I ask the Serjeant-at-Arms to confirm if there are Members seated elsewhere. In the meantime, I order that the bell be rang for 10 minutes as we confirm if there are Members in other holding areas.

*(Quorum Bell was rung)*

Order, Hon. Members. I can confirm that we are just still short of the quorum but very close to the required quorum. So, I will order an additional five minutes just to make sure that we have the right numbers. We are just short of the require quorum.

*(Quorum Bell was rung)*

Let us wait for that Member who is walking in and that will be it. Let us not allow any Member to go out now. You know the rules of procedure. Once the Quorum Bell is rung, no Member leaves the Chamber until it is determined one way or the other. So, we can now proceed.

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**COMMUNICATION FROM THE CHAIR**SPECIAL SITTINGS OF THE NATIONAL ASSEMBLY ON 19<sup>TH</sup> MAY 2021

**Hon. Deputy Speaker:** Pursuant to the provisions of Standing Order No. 29 relating to the procedure for convening of Special Sittings of the House during recess, I wish to report to the House that on 13<sup>th</sup> May 2021, I received a letter from the Leader of the Majority Party requesting that I convene Special Sittings of the National Assembly to consider certain urgent business.

Hon. Members, having taken cognisance of the urgency of the business so specified in the letter by the Leader of the Majority Party, I acceded to the request to convene Special Sittings today, Wednesday, 19<sup>th</sup> May 2021 commencing at 10.00am for the Morning Sitting and at 2.30 p.m. in the case of the Afternoon Sitting, for purposes of -

- a) Tabling of the Report of the Departmental Committee on Justice and Legal Affairs on the Vetting of the Nominee for Appointment to the Position of Chief Justice of the Republic of Kenya;
- b) Tabling of any other Papers with statutory timelines; and,
- c) Transaction of the following business-
  - (i) Notice of Motion and Consideration of Special Motion for the Approval of Appointment of a Chief Justice of the Republic of Kenya.
  - (ii) Consideration of the Reports of the Committee on Delegated Legislation on the following-
    - a) The Exemption from Income Tax for Japanese Companies, Japanese Consultants and Japanese Employees (Legal Notice No.15 of 2021 of 26<sup>th</sup> February, 2021);
    - b) The Public Finance Management (National Drought Emergency Fund) Regulations, 2021, (Legal Notice No.27 of 2021 of 5<sup>th</sup> March, 2021); and,
    - c) Exemption from Income Tax for Airlines with Government of Kenya Shareholding of at least 45% and its subsidiaries; (Legal Notice No.27 of 2021 of 17<sup>th</sup> March, 2021).
  - (iii) First Reading of the following Bills, subject to Article 110(3) of the Constitution-
    - a) The Livestock Bill, (National Assembly Bill No.16 of 2021);
    - b) The Irrigation (Amendment) Bill, (National Assembly Bill No. 12 of 2021);
    - c) The Community Groups Registration Bill, (National Assembly Bill No.20 of 2021); and,
    - d) The National Hospital Insurance Fund (Amendment) Bill, (National Assembly Bill No. 21 of 2021);
  - (iv) Second Reading of the Public Private Partnerships Bill, (National Assembly Bill No. 6 of 2021).
  - (v) Committee of the whole House on-
    - a) The Kenya National Library Service Bill, (National Assembly Bill No. 5 of 2020); and,
    - b) The Narcotics, Drugs and Psychotropic Substances (Control) (Amendment) Bill, (National Assembly Bill No. 27 of 2020).

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Hon. Members, pursuant to provisions of Standing Order 29, I did gazette the said Special Sittings of the House vide *Kenya Gazette* Notice No. 4699 of 17<sup>th</sup> May, 2021. In this regard, the sittings of the House this morning and afternoon are properly convened.

Hon. Members, with respect to the two Bills scheduled for Committee of the whole House, I have been notified that the Clerk's Office received proposed amendments from several Members last evening and others today morning, part of which ought to be brought to the attention of the respective committees for their input pursuant to the provisions of Standing Order 131. In this regard, I request the Leader of the Majority Party to confer with the Chairperson of the Departmental Committee on Labour and Social Welfare and the Chairperson of the Departmental Committee on Administration and National Security with a view to charting a way forward before the said business is reached during the Afternoon Sitting.

Having said that, may I remind the Hon. Members that today's Sittings have come at a time when the country is witnessing a spike in the number of cases of COVID-19 Pandemic infections as, indeed, stated by the Ministry of Health. In this regard, I urge Members to strictly adhere to the Ministry of Health's protocols issued for prevention of the pandemic. In particular, Hon. Members are advised to observe social distance while in the Chamber and in the other facilities, strictly sit only in the designated places in the Chamber and avoid changing seats or having close physical interactions. May I once again remind the House that, as leaders, we have a duty to contribute to the concerted efforts of flattening the curve of the COVID-19 Pandemic infections in the country.

The House is accordingly guided.

I thank you.

### PAPER LAID

**Hon. Deputy Speaker:** Under that particular Order, we have the Departmental Committee on Justice and Legal Affairs Committee.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Deputy Speaker.

I beg to lay the following Paper on the Table of the House:

The Report of the Departmental Committee on Justice and Legal Affairs on its Consideration of a Nominee for Appointment as the Chief Justice of the Republic of Kenya.

**Hon. Deputy Speaker:** Very well. We move to the next Order.

### NOTICE OF MOTION

#### CONSIDERATION OF NOMINEE FOR APPOINTMENT AS CHIEF JUSTICE OF KENYA

**Hon. Deputy Speaker:** That is actually to be done by the Chairperson of the Justice and Legal Affairs Committee. You have the Floor. It is a busy day for you.

**Hon. Clement Kigano** (Kangema, JP): Hon. Deputy Speaker, I beg to give notice of the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs, in its Report on Consideration of a Nominee for Appointment as Chief Justice

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of the Republic of Kenya, laid on the Table of the House this morning and pursuant to the provisions of Article 166(1)(a) of the Constitution of Kenya and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act 2011, this House approves the nomination of Hon. Lady Justice Martha Karambu Koome for appointment as the Chief Justice of the Republic of Kenya.

**Hon. Deputy Speaker:** Very well. We move to the next Order.

## MOTION

### EXEMPTION FROM INCOME TAX FOR JAPANESE COMPANIES, CONSULTANTS AND EMPLOYEES

**Hon. Deputy Speaker:** That one will be moved by the Committee on Delegated Legislation. Hon. Kamket, Member for Tiaty. Proceed.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of Legal Notice No.15 of 2021 on the Exemption from Income Tax for Japanese Companies, Japanese Consultants and Japanese Employees, laid on the Table of the House on Thursday, 13<sup>th</sup> May 2021, and pursuant to the provisions of Section 13(2) of the Income Tax Act approves Legal Notice No.15 of 2021 on exemption from Income Tax for Japanese companies, Japanese consultants and Japanese employees.

I believe Hon. Members have the Report of the Committee from the Table Office so that they can follow this Motion.

The legal basis for granting an exemption as contained in Legal Notice No.15 of 2021 is stipulated in Section 13(2) of the Income Tax Act, Cap 470 which empowers the Cabinet Secretary to exempt certain Income Tax. Section 13(2) of the Income Tax Act, Cap 470 empowers the Cabinet Secretary responsible for the National Treasury by notice in the *Kenya Gazette* to provide that any income or class of income which is accrued in or was derived from Kenya be exempted from tax to the extent specified in such a notice and that any exemption shall cease to have effect generally or to the extent specified in the notice. Furthermore, where the Cabinet Secretary issues such a notice, it has to be laid before the National Assembly without unreasonable delay. The Act further provides that if a resolution is passed by the National Assembly within 21 days on which it next sits after the notice is so laid, the notice be annulled. It shall, thenceforth, be void but without prejudice the validity of anything previously done thereunder or the issuing of a new notice. The House, therefore, has pronounced itself within the statutory timelines. If the notice is expressly approved, then it shall be deemed to have been implied approved.

Hon. Deputy Speaker, the exemption from Income Tax for Japanese companies, consultants and employees was published on 26<sup>th</sup> January 2021, submitted to the Clerk of the National Assembly, laid before the House and given to the Committee on 21<sup>st</sup> March 2021 in accordance with the Statutory Instruments Act. The main purpose of this exemption of Income Tax before us today, is in respect of income accruing or derived from Kenya by Japanese

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companies, consultants and employees involved in projects under the financing agreements signed between the Government of Kenya and the Government of Japan. The policy and requirement of the Government of Japan is to have Japanese companies, consultants and employees involved in the implementation of any project financed by the Government of Japan exempted from tax. This is not limited to Kenya only, but it is a requirement of the Government of Japan for all financing agreements between the Government of Japan and any other Government. All agreements signed between the Japanese Government contain this exemption.

Specific agreements are contained in the Schedule which is contained in the Report. I will just give a few examples, namely, the project for the improvement of the power distribution system in and around Nakuru County and Mombasa City County, the project for infrastructure development in Mombasa Special Economic Zone near Dongo Kundu Area, the project for enhancing trade facilitation and border control capacity in East Africa, the project for human resource development scholarship, Health Sector Policy Loan for attainment of universal health coverage, Olkaria 1 Unit for geothermal power project and the Mwea Irrigation Development Project among others. They are all contained in the Schedule.

On scrutiny of these instruments, the Committee examined exemption from Income Tax for the Japanese companies, consultants and employees in accordance with the Constitution of Kenya, the Interpretation and General Provisions Act, the Income Tax Act, and the Statutory Instruments Act. Pursuant to Section 16 of the Statutory Instruments Act, which requires the Committee, where it is practically possible, to confer with the regulation-making authority, the Committee held a virtual meeting with the regulation-making authority, namely, the Cabinet Secretary for the National Treasury and Planning on 15<sup>th</sup> February 2021 where he responded to the Committee's concerns. The Cabinet Secretary assured the Committee that the overall benefits to be derived from effective and efficient implementation of these projects outweigh the taxes foregone. In addition, the income from the jobs created from the projects or the income derived from the expenditure on the said projects generates revenue that is far much above the tax foregone as a result of the exemption.

Hon. Deputy Speaker, the Members raised some concerns that the exemption seems discriminatory and stands to benefit Japanese nationals more than the Kenyan citizens considering that local companies are not exempted from tax, yet Japanese enjoy expatriate benefits. In addition, some Kenyan companies doing business in Japan do not enjoy similar exemptions. Members also sought to know the status of each of the agreements earmarked for exemption. Documents were submitted indicating that four of the 16 projects are grants, while the rest are loan agreements.

The Committee observed as follows, having examined Legal Notice No. 15 of 2021 in accordance with the Constitution of Kenya, the Interpretation and General Provisions Act, and the Statutory Instruments Act:

- (i) The Legal Notice was submitted within the statutory timelines contemplated under Section 11 of the Statutory Instruments Act;
- (ii) The Legal Notice was published on 26<sup>th</sup> February 2021, submitted to the Clerk on 9<sup>th</sup> March 2021 and laid before the House on 23<sup>rd</sup> March 2021, which is all in accordance to Section 11 of the Statutory Instruments Act; and,

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- (iii) On the matter of public participation, the Committee observed that the National Treasury and Planning submitted before the Committee and in their documentation forwarded to the National Assembly that the Legal Notice is an understanding between the two governments and that public participation may, therefore, not apply.

Having considered the above, the Committee subjected the notice to the test specified in the Statutory Instruments Act and noted the following:

Section 13(2) does allow the Cabinet Secretary to exempt certain activities from taxation, save that if he so exempts then the notice must be published in the *Kenya Gazette* for the public to know without delay, and that it must be submitted to the National Assembly.

**Hon. Deputy Speaker:** Hon. Kassait Kamket, I know you are moving very well. You are meticulously doing your work. Since the Members have the Report, just summarise.

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Deputy Speaker, I am summarising. I am actually ending.

**Hon. Deputy Speaker:** Okay. That will be okay.

**Hon. Kassait Kamket** (Tiaty, KANU): Thank you, Hon. Deputy Speaker. Therefore, the recommendation is that pursuant to Standing Order No.210 (4) and having examined Legal Notice No.15 of 2021 in line with the Constitution, the Interpretation and General Provisions Act, the Income Tax Act and the Statutory Instruments Act, the Committee recommends that the House approves the exemption from Income Tax for Japanese companies, consultants and employees in accordance with Section 62 of the Income Tax Act (Cap 470).

I beg to move and ask my Vice-Chairman, Hon. Charles Njagagua, to second. I thank you.

**Hon. Deputy Speaker:** Hon. Charles Njagagua, in the same spirit of summary... I cannot seem to trace your card here. What seat are you seated on? There you have it now.

**Hon. Charles Njagagua** (Mbeere North, JP): Hon. Deputy Speaker, Number 19.

**Hon. Deputy Speaker:** Actually, it is No. 161 from my end.

**Hon. Charles Njagagua** (Mbeere North, JP): Thank you, Hon. Deputy Speaker, I know you are in a hurry because of the next Motion.

**Hon. Deputy Speaker:** No. I am not in a hurry at all. We have specific times until 1.00 p.m. So, I am just saying that we should summarise. This goes to even the Mover of the next Motion. We do not need a lot of details. I believe once the Members have the Report, they can get it easily. So, we do not really need to take a lot of time. I am not saying specifically to touch you, Hon. Njagagua, it is generally.

**Hon. Charles Njagagua** (Mbeere North, JP): Generally, now that I stand guided by you...

**Hon. Deputy Speaker:** Sorry.

**Hon. Charles Njagagua** (Mbeere North, JP): In support of what my Chairman has said, this is purely an agreement between the Government of Kenya and the Japanese Government. The Japanese Government is seeking an exemption for its employees, companies and consultants in respect of the work they do in Kenya. This is basically for the money they give to Kenya as grants or loans. They are saying: "We are bringing you this kind of money, so exempt our

people, consultants and employees from paying Income Tax in Kenya.” This is because even in Japan, they pay their Income Tax.

Hon. Deputy Speaker, the Cabinet Secretary for the National Treasury and Planning, Mr. Ukur Yatani, via a virtual meeting that the Committee held, explained why we should give these exemptions. Issues like whether Kenyan companies running businesses in Japan get the same kind of exemption were raised. We expect the Government of Kenya, through the Ministry of Foreign Affairs, to negotiate such exemptions for Kenyan companies doing business in Japan and in other countries that give us money.

However, we felt that the projects tabulated in the Schedule that has been provided by Chairman - the Mombasa Specialised Economic Zone in Dongo Kundu Area, the Mwea Irrigation Rice Development Project, the Mombasa Specialised Economic Zone Development Project (I), the Mombasa Gate Bridge Development Project and the Olakaria I, Units 1, 2 and 3 - accrue more benefits to Kenya by far compared to the Income Tax that would accrue by charging Income Tax on the consultants and companies.

Without belabouring the point, I beg to second.

**Hon. Deputy Speaker:** Thank you very much, Hon. Chairman. I will now propose the Question.

*(Several Members walked into the Chamber)*

Order Members! For those who are coming in, you can take your seats or freeze wherever you are.

*(Question proposed)*

Hon. Members, those of you who would want to speak on this debate and the next one, please, make up your minds because I will be picking speakers from the requests list. It might, therefore, disadvantage you by dropping you a bit lower. Let us start with the Leader of Majority Party.

I believe those who will be pressing the intervention button will be requesting to speak to this particular Motion. So, they may lose on the other one, but this is also an equally important issue.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Deputy Speaker. I rise to support the Report of the Committee on the exemption. Just to put it on record, in the first instance, as a country, we have already signed up to give these exemptions. So, Parliament is only ratifying what was already agreed as a condition for the grants. The logic is very clear. If the Japanese Government is giving to Kenya a certain amount of money as a grant or concessional loan, you cannot then seek to profit from the same grant by taxing the services that are being provided as part of the operationalisation of that grant by Japanese companies.

The grants or loans agreement have provisions for certain services and goods to be sourced in Japan, and the companies or consultants involved pay their taxes in Japan. Therefore, we are trying to operationalise the agreement. For all donor-funded projects, including those

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funded by Japan, the standard taxation policy is that they provide the money that comes in in terms of goods or services, but they pay their taxes at home, and not here. This standard is also within the operation of the United Nations (UN) and others international organisations.

The other thing I want to highlight is that if you look at the Schedule within the Report, most of these projects are roll overs of projects that started earlier. For example, the Olkaria 1, Units 1, 2 and 3 and the Mombasa Port project started in July 2017. Some of them are projects that begun in 2010 and 2012 when we did not have these legal requirements. Tax exemptions must be approved by Parliament. It was previously within the powers of the Cabinet Secretary to have the exemptions, but because of the constitutional changes that we have had, it now requires this matter to come to Parliament. We are basically rectifying what should ordinarily have been done, which had already been included in the financing agreement.

The observation by the Committee that Kenyan companies doing business in Japan are not getting similar treatment is comparing apples with oranges because Kenya is not giving grants or concessional loans to Japan that would require that Kenyan companies supplying goods or services to Japan be exempted from paying Income Tax in Japan. If we were doing so, we would then ask for reciprocity. It is good for this position to be on record for future generations to know the rationale for doing this and not seeking reciprocity for the Kenyan companies.

Hon. Deputy Speaker, this is a self-automating issue that we signed up for. We received the grants and the loans and we must, therefore, do our bit, which is basically to ratify the conditions of the loans and the grants so that we continue to receive goods and services from Japan without taxing those services or income earned from them. That is the only thing that makes sense for the Japanese in giving loans to Kenya. I am sure we will have several issues coming from other countries.

With those remarks, I beg to support.

**Hon. Deputy Speaker:** Okay. Member for Gilgil. This is a matter that we should be able to dispense with quickly. I can see only one more Member interested.

**Hon. (Ms.) Martha Wangari (Gilgil, JP):** Yes. Thank you, Hon. Deputy Speaker. This is just to support my Committee on this Report. I will not repeat what the Mover and the Seconder said. Our mandate was really simple. It was to confirm and check whether these agreements and exemptions are in accordance with the Constitution. Are they going against any Act of Parliament? We were to find out if they infringe on any fundamental right of the public.

I can confirm that we had several long meetings on it. Even if we are rubber-stamping or just forwarding it, as the Leader of Majority said, we still represented the people. We had a right to ask the questions that we asked as a Committee. We put the Cabinet Secretary to task to confirm and give us a list of these projects. We confirmed that majority of them were grants and not loans. So, the issue of double taxation was easy to understand because they were giving us grants to take care of several projects in the country. We were convinced that the statutory requirements are in line with the Statutory Instruments Act.

We were also convinced on the issue of public participation. We had raised this issue for us to gauge the fundamental rights and possible infringement of the public's right. That was the only way to do it. We are in agreement that we support. I support the Committee and the exemption as it has been moved by our Chairman.

Thank you. Hon. Deputy Speaker.

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**Hon. Deputy Speaker:** Okay. Seeing that there is no major issue here, nobody else is interested, we give the Mover to reply.

*(Loud consultations)*

Order Members! Order! Order Member for Tharaka.

**Hon. Kassait Kamket** (Tiaty, KANU): Thank you very much, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** I had asked Members to place their requests, but they did not. So, proceed and reply.

**Hon. Kassait Kamket** (Tiaty, KANU): I want to thank my Vice-Chairman for ably stating it as it is. I also thank the Leader of Majority for clarifying that if we want the matter of reciprocity to apply to us, we must pull up our socks, improve our economy, so that we also give grants to Japan for us to ask for reciprocity. I thank Hon. (Ms.) Martha for supporting the Motion.

I beg to reply.

*(Question put and agreed to)*

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

## SPECIAL MOTION

### CONSIDERATION OF NOMINEE FOR APPOINTMENT AS THE CHIEF JUSTICE

**Hon. Kassait Kamket** (Tiaty, KANU): On a point of order, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** I am surprised, Hon. Kamket, after your Motion has passed, you are requesting for a point of order. What is out of order with your Motion passing?

**Hon. Kassait Kamket** (Tiaty, KANU): Hon. Deputy Speaker, I need your guidance on a matter that I think is of national importance.

I am concerned about the whereabouts of our Hon. Speaker. We have been reading in the media that our Speaker is under some spell somewhere. He has been put in quarantine for about eight to ten days in someplace. How safe is our Hon. Speaker? We want to be assured as Members of this august House that the Hon. Speaker is safe and is in good health wherever he is being held by people we do not know.

**Hon. Deputy Speaker:** Hon. Kamket, and you have been a speaker yourself of an entity which is much smaller than this one and you know for sure that the person who sits on the Chair is actually the Speaker. Now, if you are asking about the health of the Speaker, well, normally there is confidentiality on that, but I assure you because the Speaker and his deputy interact on many issues, that the Hon. Speaker is completely safe. If there is a quarantine which I do not know the type you refer to, it is definitely not a medical one, especially now because there are issues to do with COVID-19. It should be clear that the Hon. Speaker is not under any quarantine whatsoever. The Speaker, like every other occasion, has many things he does and attends to and

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is attending to one of them. He is actually available on call especially from people who are fairly ... I do not want to go beyond there. He is okay and not under quarantine whatsoever. So, it is not something you should worry about. By the way, did you read the Gazette Notice? He is the one who signed it. He is actually on top of everything. For anything else you have read in the Press, I am not going to get involved because I am not completely briefed on that. The brief that I have is that he is perfectly in order.

Let us proceed. In the same spirit, anything that is detailed in your Report, you do not need to repeat it. Members can read it. Pick the salient areas then we dispense with every activity we have. We only have today to deal with the matters that were set out by the Speaker.

**Hon. Clement Kigano** (Kangema, JP): Hon. Deputy Speaker, I beg to move the following Motion:

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in its Report on Consideration of a Nominee for Appointment as the Chief Justice of the Republic of Kenya, laid on the Table of the House on Wednesday, 19<sup>th</sup> May 2021, and pursuant to the provisions of Article 166(1)(a) of the Constitution and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Hon. Lady Justice Martha Karambu Koome as Chief Justice of the Republic of Kenya.

Hon. Deputy Speaker, the Report of my Committee is fairly exhaustive. It is fairly self-explanatory and it is online. I would like to mention, at the outset, that my Committee was able to beat the deadline that was given by the Speaker of 24<sup>th</sup> May 2021 by 10 days.

Without delving into the major Report, I would like to highlight, with your permission some of the special attributes that make the Hon. Martha Koome stand out uniquely as a first above equals and with unmatched qualities for the Office of the Chief Justice.

Hon. Deputy Speaker, allow me to remove my mask.

**Hon. Deputy Speaker:** I am very uncomfortable with that.

**Hon. Clement Kigano** (Kangema, JP): I have kept social distance, as you can see.

**Hon. Deputy Speaker:** We have been very consistent in asking Members to wear their masks. It is only that you were in an N95 that is interfering with your voice. I see you have a problem of projecting that voice. You need to wear the mask. You will be brief. Put it on. By the way, the Member seated next to you does not have a mask. I might actually take very serious steps against her because the two of you not being in a mask is not good at all.

**Hon. Clement Kigano** (Kangema, JP): We take your advice.

Let me highlight some of the attributes that the ...

**Hon. Deputy Speaker:** We can hear you very well. Proceed Please.

**Hon. Clement Kigano** (Kangema, JP): The judge is a wife, mother and has a solid family background. She has very sound educational and professional background and wide experience in family law, children rights and human rights. She has vision to revolutionise the Judiciary and eliminate corruption in all forms and shades. I testify that she demonstrated that she believes in active constitutionalism and has distinguished herself in upholding the Constitution without influence, political, ethnical or parochial considerations. She is an able communicator who undertakes to improve the relationship between Parliament and the Executive

and the Judiciary to ensure that budgetary allocations to the Judiciary as a constitutional requirement is met so that independence of the Judiciary is sustained.

*(Hon. Babu Owino received a call)*

**Hon. Deputy Speaker:** Hon. Babu Owino, I know you are a first timer. Something called a phone is not allowed within the Chamber. You are actually out of order. You need to apologise. In fact, without even hiding it, you are standing up to do that. Hon. Babu Ongili, what do you have to say before I take any punitive steps against you?

**Hon. Babu Owino** (Embakasi East, ODM): I am sorry for that, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** It is okay, if you have apologised. It is not easy to get a “sorry” from you. So, once that happens, let us proceed.

**Hon. Babu Owino** (Embakasi East, ODM): It is out of respect, Hon. Deputy Speaker.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Deputy Speaker.

If I may continue, the lady is able to soberly dialogue to solve the stalemate in the appointment of the 41 judges. She is able to ensure that there is ratio in the Wambora Case. If you recall, it was said that the courts should, with a lot of circumspection and sparingly, issue orders that may inhibit parliamentary processes and procedures.

She confirms that she will avoid also to unnecessarily create bad blood with the other arms of Government. She has a vision to ensure a wide access to justice. She demonstrated this at her previous station in Kitale when she extended judicial services and justice to far flung areas like Lokitaung, Lodwar and Lokichar. She provided mobile facilities for justice. She created that facility. She is ready to avoid and curtail any activism and experimental, new and untried areas of jurisprudence. Particularly, she is ready, able and willing to breathe life to Article 259 of our Constitution. Its relevant passage is that this Constitution shall be construed and interpreted in a manner that promotes good governance. There are four considerations but the last one is crucial— that this Constitution shall be construed and interpreted in a manner that contributes to good governance. On the same Article, she says she is able to ensure that the law will always be speaking.

We found that she is able to think outside the box and that she will not be living in a judicial island, utopia or ivory tower. She aspires to do substantial justice other than delving in technical formalities. She will critically think beyond the Maraga Advisory by invoking the principle that the law serves man and humanity and not the reverse; that the law is not static and must be actualised in a manner that contributes to good order. She will be seeking to retain, claim and reclaim lost glory for the Judiciary in line with the principles enunciated by those professional colleagues and others that we know—the principles that were for a long time enunciated by the late Justice Chunilal Madan, the greatest Chief Justice Kenya has had so far. Then, there was another judge—the principles laid by a judge in Uganda in 1966, Sir Udo Udoma. He in 1966, after Obote overthrew Kabaka, said there appeared to be a vacuum in Government. That judge said that there can never be a vacuum in institutions of Government and that because the Obote Government appeared to be in control *de facto*, he needed to be in control, *de jure*, of the Government of Uganda. Last, there is Lord Denning who is famous for

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what we call the High Trees Case espousing on estoppel, and many other milestones. I mention this because these are her mentors.

Hon. Deputy Speaker, the other salient matters that were noted by the Committee are that there were some objections raised to her appointment. They were made by Nelson Havi and Khelefe Khalifa. These same objections had been raised before the Judicial Service Commission. They were dismissed in that forum. But, my Committee in its wisdom found that these objections had no root—they were unmeritorious, unsubstantiated, vexatious and malicious. The Committee was also satisfied with the response by the nominee to the objections. All the necessary statutory reports and other necessary reports by the Kenya Revenue Authority (KRA), the National Intelligence Service (NIS) and other bodies were furnished to the Committee. Requirements of Article 166 relating to appointment of the Chief Justice were met. All the statutory procedures preceding the approval had been duly met.

Now that the statutory procedures and constitutional provisions, the requirements in the First Schedule of the Judicial Service Commission Act of 2011 on provisions relating to the appointment and procedure for appointment of judges were met then, pursuant to Article 166 of the Constitution of Kenya; the Public Appointments (Parliamentary Approval) Act of 2011; and, Standing Order 216(5)(f) and Standing Order 199 of the National Assembly, the Committee unanimously recommends her. By “unanimous” I say that the Committee is constituted by 19 Members. Fifteen sat. Four were absent with apologies. These 15 members have appended their signatures endorsing the approval of Lady Justice Martha Koome for appointment by His Excellency the President, to become the next Chief Justice of the Republic.

Lastly, I wish to express gratitude to all members of the Departmental Committee on Justice and Legal Affairs for their efficiency and devotion in dealing with this matter and rendering a report professionally and expeditiously. The Committee also wishes to express gratitude to the Office of the Clerk of the National Assembly and his staff for ensuring that all processes attendant to this nomination were professionally handled and timelines met. In the circumstances, therefore, I beg to move and request that the Vice-Chair, ‘Chief Justice’ T.J. Kajwang’, to second. But this was not an approved CJ; he did not go through vetting. It is just a nickname. The people’s Chief Justice is here.

**Hon. Deputy Speaker:** Just a request to Members, especially the fairly new ones. There is a lot of merit in allowing other Members to speak even if you are the Chair because that makes it easy for you to canvass and have people support you. So, if you take all the time between yourselves, it becomes a bit difficult for you to get support. So, as a Member who has been here for a long time, it is better to be brief to give other Members an opportunity to contribute to the matter so that you may have something to say when replying.

Let us have Hon. T.J. to second.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Hon. Deputy Speaker, it looks like the Member for Kangema has very good words for me; he is praying for me. One of these days, I think he will vet me for the position that he seems to think that I merit.

Allow me, first of all, to express my appreciation to the House for nominating me to this Committee. I have not had an opportunity since I was nominated to thank the House. I also want to thank the Committee for expressing confidence that I can join them in the leadership of the Committee. I promise nothing, but lowliness of heart; humility and that I will act according to

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the law. Management of Committees is like a soccer match—the coach knows who and who to field. If he thinks that the match could end in post-match penalties, there are chances that he will reshuffle players including goalkeepers. So, when you see that I am in the game, probably I am there to shift the match.

**Hon. Deputy Speaker:** Now, Mr. Secunder, get back to the Motion.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Hon. Deputy Speaker, those issues are very relevant to this matter because they dovetail around issues concerning the Committee. I am a seasoned member of this Committee. I rise to second this Motion on approval of the nominee for the position of Chief Justice. If I could have the attention of the Speaker, please. The Leader of the Majority Party should also listen to me. You should watch the video of how this Committee conducted the vetting. It is how it should be done. As the Deputy Speaker and the Chair of the Liaison Committee, this video should be clipped and sent to the Committee so that we have a proper way with decorum for approval hearings in the Assembly.

**Hon. Deputy Speaker:** Now, who was the judge in the matter? Maybe what you should be suggesting, Hon. T.J.—you have actually excited the House to want to look at the video but do not say anything more on it. Definitely, we will be getting back to the Committee on whether we think they did a good job and, therefore, spread the gospel to the rest of the Committees. So, I can assure you we will want that video to see what happened in the Committee.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): I am sure you will return that. This is how things should be done. The approval is governed by Section 7 of the Public Appointments (Parliamentary Approval) Act. The three issues that we look at are the procedure adopted by the interviewing panels, constitutional and statutory suitability and suitability in terms of experience and competence. The report is replete with specific findings on the procedure that was adopted, the constitutional and statutory competences that the Lady Chief Justice nominee exhibited and issues on suitability. In those parameters, we have made specific recommendations approving the competence of Lady Justice Martha Koome. But I do not want to spend time on that because it is in the report. I just want to speak to Lady Justice Koome. I am sure wherever she is she would be delighted to hear the National Assembly speak to her. This is the last time she is in our hands as we conduct her vetting and approval.

I would want the CJ nominee, once she assumes office, to quickly look at Article 254 of the Constitution on reporting by commissions and independent offices. In this Article, every end of financial year, commissions, including the Judicial Service Commission (JSC), submit a report to the President and to Parliament. Previous CJs had a rather condescending attitude towards the National Assembly, arguing that they could not submit to the jurisdiction of the National Assembly and make reports. They would rather send the Chief Registrar of the Judiciary (CRJ). We want to see a CJ who respects institutions. One day, she should write to you as the Speaker to allow her to come and commend herself to the National Assembly and to report on the state of the Judiciary every financial year. That is what we want. We do not want a CJ who thinks that leadership of institutions is a question of bravado. These issues were put to her, and she understands the views that have been expressed by the National Assembly. I am sure that she would closely look at Article 254 of the Constitution. We would want to have mature relationship between the Judiciary and the Legislature that is beneficial to everyone.

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The question of independence of the Judiciary is a bothersome one. Nobody undermines independence of the Judiciary just like the Legislature is independent. But if we are not careful, this thing called independence of the Judiciary could be a big elephant in the room. We must start talking about it. We are talking about the excesses of the Executive and sometimes the excesses of the Legislature. The independence of the Judiciary is an issue that Kenyans need to look at; otherwise, we are going to get into what is called “judicial capture” or “judicial activism” under the guise of the independence of the Judiciary.

Recently, a decision was made at the High Court and many people were saying we should not criticize or say something about the judges. Why not? These are people who are exercising authority delegated to them. As legislators, we are criticised all the time, which is good. It is the only time that the public are able to engage us. When they make judicial decisions the way they did, I see no reason why Kenyans cannot have a response and engagement with the demerits of the decisions that they made. The Chief Justice knows that the question of independence of the Judiciary without assaulting it, there must be a clear balance. We all live in this country. You can choose to be independent but still live in this country. If you want to run a judiciary which goes by legalese rather than the practical aspects of how we live, then you know you are living in utopia.

I want to talk about gender. I can see that my time is running out but we are very few. Maybe, we should have more time now that we are a few of us. The Chief Justice knows that the Office of the Chief Justice and that of the Deputy Chief Justice are both of one gender. With that in mind and for the time they will be in that office, there is another gender watching them on how they are going to exercise themselves.

*(Loud consultations)*

**Hon. Deputy Speaker:** Hon. T.J, whether you are going to talk about gender or anything else, this is the same argument I had with your Chair. You and the Committee went through this issue. Probably, you need less time. I now need you to second. You have a minute.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): Hon. Deputy Speaker, you remember there were a few engagements we had with the Speaker? There is the other gender that is watching and we would want to be convertible. For the first time, power is in the hands of two people. We want to see how they are going to exercise this power where both genders are concerned. We are very interested.

Let me conclude by also talking about ethnicity. I know my senior, who is the Member for Kisumu East, is going to talk about this. However, I must speak about it. Everybody knows.

**Hon. Deputy Speaker:** Please, second.

**Hon. T.J. Kajwang’:** I am seconding. I have been in this House long enough to know how to second. If you are a first timer, you should know that I have an opportunity to say everything and anything about the Report.

**Hon. Deputy Speaker:** Well, it should be within the time allocated. So, kindly do second.

**Hon. T.J. Kajwang’** (Ruaraka, ODM): I second.

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*(Laughter)*

**Hon. Deputy Speaker:** Thank you very much. Let us now proceed and do what we are supposed to do.

*(Question proposed)*

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

**Hon. Deputy Speaker:** No, no. There is no putting of the Question. Hon. Members will be allowed to speak.

Hon. Member for Mbeere North, what is the issue?

## NOTICE OF MOTION

### LIMITATION OF DEBATE

**Hon. Charles Njagagua** (Mbeere North, JP): Hon. Deputy Speaker, with your kind permission, I would like to give notice of the following Motion:

THAT, pursuant to the provisions of Standing Order No.97 (1), and notwithstanding the resolutions of the House on 10<sup>th</sup> February 2021 on Limitation of Debate on Motions including a Special Motion, this House orders that the speaking time for each Member be reduced from 10 minutes to five minutes.

My justification for the request of this Motion is very simple. This is a momentous occasion. It is historical. You will appreciate that the Mover and the Seconder have taken close to one hour or 45 minutes. This is a Special Sitting. Time is not on our side. If we take the same amount of time, many of us will not be able to speak. Many of us want to speak in support of this Motion. This Motion is about a lady who is assuming the Office of the Chief Justice of the Republic of Kenya. I have no doubt, going by the Report that has been tabled by the Mover; that, if all of us were to take the entire 10 minutes, we will not give justice to this Motion. It is on that basis that I beg you and urge this House to find favour in my request so that we limit ourselves to five minutes each.

**Hon. Deputy Speaker:** We do not need to spend more time, Hon. Members. Just to give you an overview, about 30 Members want to contribute. That should, therefore, give you an overview on how to make your decision one way or the other. It is for you Members to make that decision. The Member for Mbeere North has made a request. I know that particular Member very well. I went to school with him. Actually, he went to school with me. I think it is the other way round. He wants us to limit the debate to five minutes.

*(Question put and agreed to)*

*(Resumption of Debate)*

Members, you therefore have five minutes each. We might ask the Leader of the Majority Party to relax a bit. Maybe, he will have an opportunity to have some more minutes based on his office. Let us give chance to a few other Members first. Let us start with Hon. Dawood, Hon. Wambugu Munene and Hon. Gitonga Murugara in that order so that we save time.

**Hon. Rahim Dawood** (North Imenti, JP): Thank you, Hon. Deputy Speaker. First of all, I want to thank the Judicial Service Commission for nominating Hon. Justice Lady Martha Koome.

I want to sincerely thank the Departmental Committee on Justice and Legal Affairs. I attended their meetings as a friend of the Committee because Justice Lady Martha Koome comes from my constituency. She comes from Kithio Village in Mwitheria Location, which is in North Imenti.

I agree with the Vice-Chair when he says that people should watch the video. I was in the sitting that made the approval. Initially, I was scared by the kind of questions that Members were asking her. I said to myself, if this is the way we are going to be vetting people, then nobody will go through. I have been to many vetting sessions when I was in the Departmental Committee on Finance and National Planning. It used to be like rubber-stamping. I was glad about the kind of questions that that the Committee asked her. I took special note of the questions by Hon. Olago Oluoch from Kisumu, who is a Senior Counsel. He asked Justice Martha Koome whether it would prick her conscience to come from the same area with the head of the other arm of the Government – the Executive, which is headed by somebody from the same mountain area. Justice Koome replied very well. She said that she did not choose to be born where she comes from. That should be the case in this country. I also come from North Imenti, and nobody would expect me to be the Member of North Imenti. That is the way we need to change our mindset.

Hon. Deputy Speaker, when Justice Martha Koome talked about all the things she would do in the Judiciary in her first 100 days, I believe she is a woman of integrity, a lady who can do what she says. This is because I have dealt with her when she was assisting us in one of the schools she has been through - Mbeu Primary School - and she is a very good mentor. She gives her time and energy because she mentored the children of Mbeu Primary School.

Additionally, when we as a country are grappling with the two-thirds gender principle and now we are getting the two-thirds gender principle in the third arm of government, I think that should be the best thing that can happen to this country because it shows we are serious with the gender principle. The President of the Law Society of Kenya (LSK), Mr. Nelson Havi, I think is a perennial litigant. He said that he put a stop to Justice Martha Koome... He said that she ruled in different ways and then he said he was representing the LSK. I think he was not representing the LSK. He was just representing himself.

The Supreme Court has given its verdict on why the elections should have gone on, on 26<sup>th</sup>. He held the Erad Supplies case against the National Cereals and Produce Board and I think it was all proven through the Supreme Court that there was a mistake in Nelson Havi's case. Therefore, Hon. Deputy Speaker, when we are talking about Justice Koome she has said that she is willing to work with the other arms of government not to work in exclusion. The Judiciary is one part of the Government and she is ready to talk to the other arms of government so that we can have the judges who have not been sworn in and who have no integrity issues. This is so that

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they would be sworn in once she speaks to His Excellency the President. Once we have that then we should....

On the question of the elections, Justice Koome said yes there will be elections as everybody knows. In August 2022, we will have elections. Therefore, at that time, the matter of the mountain will not be there. It will be anybody who gives himself or herself to be chosen as the head of the Executive, whoever wins will be the head of the Executive and it does not have to be that it has to be someone from the mountain or the other place.

Hon. Deputy Speaker, I want to say that she has even promised that she will sort out the land issues, which are a headache in the Judiciary. She will sort out the Judiciary Fund as well. Hon. Speaker, when she does what she has promised to do we should have a good Judiciary which is listening. Furthermore, she will give us an address of the nation from the Judiciary side.

Thank you Hon. Deputy Speaker and I urge Members...

*(Microphone went off)*

**Hon. Deputy Speaker:** Very well. Thank you. I will be putting the microphone on for the members I have mentioned so that we do not waste time. Therefore, proceed.

**Hon. Munene Wambugu** (Kirinyaga Central, JP): Thank you, Hon. Deputy Speaker, for giving me this chance to also contribute in support of the nomination and approval by our Committee of Justice Martha Koome to be the next Chief Justice.

Hon. Speaker, this lady has what it takes. First, she has good experience- 33 years of experience- and this experience is both in the bar and also on the bench. Before she became a judge, she had practised law for 15 years and on the bench she has been a judge for cumulative 18 years. This is a person who has gone through the rank. From the High Court to Court of Appeal and eventually we hope to the apex of this court.

Hon. Speaker, during the interview with the Justice and Legal Affairs Committee Justice Koome exhibited integrity and she also came out as a person who supports a lot of family values. Additionally, in the Judiciary and on the bench we need someone who supports the family because we all know that the family is the institution, which bounds the country together. Apart from her experience, she came out as someone who understands what a Chief Justice should do and should be all about; someone who leads one arm of government but at the same time as maintains the independence of the Judiciary. She was very clear that given the chance she would ensure that the Judiciary is independent. That is what we want. All Kenyans of goodwill want a very independent judiciary. However, she also acknowledged that judges do not live in a vacuum. In terms of giving services, they are inter-dependent and that the three arms of government must work together when giving services to the Kenyans.

Additionally, she assured us that because she has good association and diplomatic skills once we approve her nomination and she is appointed by the President she is going to ensure that the Judiciary is fully served by first negotiating on how to have the 41 judges appointed. This is so that the Judiciary is not clogged by the numerous cases which are pending before the Court of Appeal, the High Court and the entire Judiciary. However, she also acknowledged that judges and even magistrates when making a decision they make errors. They are not infallible, they

make mistakes. However, when they make mistakes, they use the mechanism provided by the law.

The most important question was whether she is progressive and whether she is going to introduce activism in the Judiciary. She was very clear that she is progressive and she is going to ensure that the Constitution of Kenya guides all the decisions the courts make. That is the most important thing; that whatever decisions the courts make they must ensure that they are guided by the 2010 Constitution which should actually be the case.

Lastly, we have to appreciate that she will be the first female Chief Justice. Kenya has had a number of about 23 Chief Justices...

*(Technical hitch)*

**Hon. Deputy Speaker:** Time is over, so you have supported anyway. We will give an opportunity to Hon. Murugara. However, Murugara you will be next and this is because I have heard some complaints that the ladies have not spoken. Therefore, I will interchange. We will have the Hon. Member for Gilgil coming before you as you prepare. That is how it can work.

**Hon. (Ms.) Martha Wangari** (Gilgil, JP): Thank you, Hon. Deputy Speaker, for the indulgence and from the outset I want to say that I support this nomination of Justice Martha Koome. It is, indeed, a historic moment to have one arm of the government in this country led by a woman. We are proud. Moreover, not only being led by a woman but also deputised by one as it is. I want to assure Hon. T.J. Kajwang' that we have been watching you in the other arms of government. Therefore, this time we say sit down and take notes because I have no doubts that Martha Koome will do us proud and I say that in cognizant and knowing very well that if a woman fails in whatever position, it is seen as though the whole gender fails. It does not apply for men. If a man fails it is seen as one. However, when a woman does... Therefore, she also knows the weight on her shoulder.

Additionally, the issue of her professionalism has been demonstrated in the report. I want to thank the Committee because they did a thorough job in terms of digging into her intellectual capacity, her legal judgment and even her background. Coming from a human rights defender background we expect that she will be progressive as has been said in the Report. She joins other countries in Africa including Mali, Senegal, Nigeria, and others that have had a woman Chief Justice. Therefore, for all the girls and the women in this country we are proud of Justice Martha Koome and I pray that one thing that we will be looking forward for her to do is what she said, she has to jealously guard the independence of the Judiciary as has been set before. That is not to say that they exist in a vacuum. It must be interdependent even with the other arms of government, but at the same time ensuring that the independence is guarded. I also hope that she will be at the forefront because she has done it before in her career to bring justice closer to the people in terms of the mobile clinics.

Hon. Deputy Speaker, I hope this time she will do an overhaul and ensure that the backlog in the courts of this country are reduced. We have seen people who have had court cases that drag for over 25 years. People die before knowing their verdict. So, I hope that she will be at the forefront to ensure that she has improved that.

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Hon. Deputy Speaker, I want to note even for people who have had matters in the courts recently. During this COVID -19 times, I have noted that if you have a matter in court and it is mentioned or has ruling, the Judiciary actually sends you a text message informing you that your matter was heard and you are given appropriate feedback. So, I hope that this can teach us that as we embrace virtual participation in courts, she will put more resources in terms of ensuring there are enough magistrates and improving the ratio to ensure that this justice is commensurate to the number of people seeking these services.

Hon. Deputy Speaker, the issue of operationalising the Judiciary Fund is something that I will be looking forward to see. More importantly, she must know that she is a trailblazer, she has set the pace and we are watching. Not only the other gender, even us who are of her gender are watching because we know that she has opened doors and broken a glass ceiling to be the first female Chief Justice of this nation. I support.

**Hon. Deputy Speaker:** Let us have Hon. Murugara

**Hon. George Gitonga** (Tharaka, DP): Thank you, Hon. Deputy Speaker. Allow me to add my voice to support the Report of the Departmental Committee on Justice and Legal Affairs. At the outset, Lady Justice Martha Koome has experience that is unmatched. It all begins with her own career as a young advocate during the clamour for multi-party reforms in the country in the late 1980s and 1990s when we were under the Kenya African National Union (KANU) dictatorship. She stood out and spoke for Kenyans. She has also worked well on Human Rights and the rights of the underprivileged especially in family law. That makes her stand out as a person who is amiable to the Kenyan citizens. She has worked as a Judge of the High Court at the Court of Appeal and has rendered exemplary service. This is a plus for her.

However, it appears we are going to approve her and she will be appointed. It is important I point out to the incoming Chief Justice that first and foremost, Lady Justice Martha Koome must guard zealously, jealously and religiously the following without any reservations:

- (i) The independence of the Judiciary, no doubt whatsoever. We know for sure in Kenya that it is under attack and it must be protected.
- (ii) She must also guard the supremacy of the Constitution because we have seen several persons trying to throw back on the gains we have made under the 2010 Constitution. She is going to be ranked because Kenyans have ranked former Chief Justice Mutunga, and former Chief Justice Maraga. She is now on the ranking list.

We will be looking upon her to ensure that this Constitution is not mutilated, violated or raped. It is a Constitution that must be safeguarded. She will also guard and protect the rule of law in the country; the dignity of the courts. We have seen court orders being disobeyed left, right and center. A democracy that purports to be under the rule of law would ever work with disobedience of court orders. Lady Justice Martha Koome, Kenyans are watching you. They are saying we must be protected.

Finally, she must enforce the law to the letter. No question of it in any other way. Just like that little boy outside the court carrying a fish who is naked, justice is nothing but the naked truth. We are looking upon the new Chief Justice to deliver. I support.

**Hon. Deputy Speaker:** Let us have Prof. Oduol.

**Hon. (Prof.) Jacqueline Oduol** (Nominated, ODM): Thank you, Hon. Deputy Speaker. At the outset, I would like to thank the Committee and acknowledge that not only listening to what they indicated and what is in the Report; I take this opportunity to indicate my support. We stand at a historic moment in our country. We are aware that Hon. Lady Justice would be the third Chief Justice in our country. As I support, I would like to indicate that what is coming out clearly is that leadership whether at the Judiciary or any other area is gender neutral. It seeks to look at competence and a foundation that would take our country to the level that we would like.

So, as I support the Committee and indeed confirm that the Hon. Lady Chief Justice Martha Koome is suitable, I do it by looking at the question that what we are looking at is a historic moment from the point of view that we do have a lady that would be coming in for the first time.

Hon. Deputy Speaker, I use it to celebrate the demonstration that leadership is about competence. That is what we need to help us sustain the forward-looking significant progress that we have seen in the Judiciary.

As I conclude, it has also been said that women and men do lead differently. I know the Hon. Member and my senior T.J Kajwang' did indicate that the other gender will be watching. I conclude by indicating that there is a difference in the way women and men lead. It has been proven that women tend to listen more. They tend to engage and are much more ready to negotiate and ensure that everybody is taken on board. So, I am glad that as we look at the fear that sometimes we have of excesses, we shall find in the Hon. Lady Justice Martha Koome opportunity for interdependence and opportunity for negotiation.

I thank you, Hon. Deputy Speaker and support.

**Hon. Deputy Speaker:** You actually did it in exactly one-and-a-half minutes.

Let us have Hon. Maore. Maybe that is to tell us how you will be leading.

**Hon. Maoka Maore** (Igembe North, JP): Thank you, Hon. Deputy Speaker for the opportunity to also support the nominee, the Hon. Lady Justice Martha Koome to be the next Chief Justice of the Republic of Kenya. As the country is celebrating the breaking of the glass ceiling by a woman, the Meru community as well is being taught a lesson that since independence, there is no time the Merus have gone to a ballot box in a general election and elected woman. This would be an eye opener in the sense that when the Lady Justice Koome showed up for nomination at the Judicial Service Commission, nobody saw a woman. What people saw was a serious judge. When you looked at her you could not discern her temperament or anything you would describe as feminine or belittle her because she is a woman, but you saw firm answers from her.

Those of us who are familiar with the conduct of Judges, you are not supposed to read the mood of a judge. You are not supposed to predict the decision a judge will make because that one is only left to those people we call the Judicial activists. In Judicial activism, they legislate from the bench, from where they are seated; they would pass laws which have not been taken to them for interpretation.

So, our Judiciary is under its own attack. It needs to cleanse itself. It needs to have an administrator. Even though we are asking for their independence, the Judiciary needs to have a soul searching. The independence of the judges we are supporting to lead a separate arm of

Government is not absolute, but is supposed to be controlled within the Judiciary. We do not have issues coming out and exposing activism in the Judiciary.

In conclusion, I would like to support the integrity and wisdom displayed by this nominee. Also, our area of Mt. Kenya East is really represented at national leadership.

Thank you, Hon. Deputy Speaker.

**Hon. Deputy Speaker:** Hon. Passaris.

**Hon. (Ms.) Esther Passaris** (Nairobi CWR, ODM): Thank you, Hon. Deputy Speaker. I stand here as a duly elected women's leader. I am proud of the fact that one of the arms of Government, the Judiciary will soon be headed by a woman. It is no mean feat and at the end of the day we have strived as women to get our space in society, politics and private practice. When you look at us you cannot deny the fact that we are women and want to have our space because we are 50 per cent of the population.

Lady Justice Martha Koome is a woman; let us not shy away from embracing her as a woman because today we are proud to have her as a nominee for the position of Chief Justice. I say this because I have seen many men when speaking they have been saying she is just a good leader. Yes, she is an amazing leader. We cannot stop underlining the fact that she is a woman and we have to celebrate this, not just for her but for the many women in this country, the girl-child and women who aspire to be leaders.

What I like about Martha Koome because I have been to a few of the forums she held when she was heading the taskforce for children is the fact that she is very humble. She has integrity, is grounded and compassionate. I recall an interview where she said: "Children have no voices, so I choose to speak for them. They are our bridge to the future and unless we nurture them, our future will be precarious".

We will have a Chief Justice who understands that if we want to steer this country in the right direction, then we have to start from the formative stages and this is the children. She understood more what needed to be done for our children to get justice in our courts. She understands that if we nurture our children well, then everything else we want to do in this country going forward will be easily met and done. Today, looking at our youth we see how easily they are used, misused and abused by leaders. If we want to stop this then we nurture the child from a young age. I know with Lady Justice Koome at the helm of the Judiciary, our children will be nurtured in a manner that will actually ground them to be future leaders and embrace this country's prosperity and growth.

To me, Lady Justice Koome is a woman who understands that this country has had a lot of issues in terms of corruption. She understands that corruption exists in the system and the Judiciary. This is one area I know if she tackles, she will do well. She will be heading the Judiciary at a time when it is being looked at and lots of questions are rising. Whether the judgement that was done was right or wrong at the end of the day, I know she will sit there and do the right thing. She will not be owned by this or that group. She is an independent thinker, has an independent mind, is educated and strong woman who will do what is right for this country. She is a women's rights defender and has always been. Her 33 years of experience will ensure that whatever she does in that seat will be for the betterment of this country.

Hon. Deputy Speaker, I support. Thank you.

**Hon. Deputy Speaker:** Okay. In order to save time for Members, I will read five names and then you will simply get the microphone as soon as your other colleague finish. So, Hon. Duale, Hon. Shamalla, Hon. Mutai, Hon. Wangwe and Hon. Mwamkale Kamoti, these are five so let us start in that manner.

**Hon. Aden Duale** (Garissa Township, JP): Thank you, Hon. Deputy Speaker. I rise to support the Report of the Committee on the Vetting of the Nominee for the position of Chief Justice. The nominee in question is one who is known for her vast experience in the legal profession, brilliance and acumen in her career as a judicial officer. She now goes to the books of history of this country as having been the first female Chief Justice.

When it comes to professionalism, capacity, ability and experience as required by the Public Appointments (Parliamentary Approval) Act 2011, there is no one who can object that the nominee ticks and fits in the box very well. However, allow me to say that the job of a Chief Justice does not just require one to fit or tick the box. It calls for one to abide by the dictates of Article 159 of the Constitution on judicial authority which is derived from the people. This is in the sense that we expect Hon. Lady Justice Koome to derive that authority from the people of Kenya. The citizens of this country are the real employers of the Chief Justice Martha Koome if she gets the job.

I had the privilege to sit in this Chamber when men I have a lot of respect for like Dr. Willy Mutunga and David Maraga were brought to this House. Now, under the new Constitution Lady Justice Koome has been brought. In executing her duties, she must at all times have fidelity to the law and the people of Kenya. This is what should guide her; it is not the Executive, this House or any other public body that should move her. It is her duty to the people of Kenya to uphold the Constitution in accordance to Article 159.

The reason I raise this matter is because concerns against this nominee were raised by the Law Society of Kenya on what was termed as misapprehension or skirting around her acting in the direction of the Executive, a fact that was evident. This is a very serious matter and I hope that the nominee shall not be on the beck and call of the Executive and always ready to do what she is told to do. Can judicial authority be exercised under the guidance of any other arm of Government? The principles are set out in Article 159(3) which includes that justice shall be done to all irrespective of their status.

Finally, I want her to read and maybe listen to what Thomas Jefferson, the founding father of the United States of America (USA) who served as the third President said, "In matters of style, swim with the current, in matters of principle, stand like a rock." This is like Justice Odunga, Justice Joel, Justice Matheka, Justice Chacha Mwita and Justice Ngaa. This House must respect the Judiciary. As a minority when the rubber hits the road, the people who will save this country and follow the Constitution both in spirit and letter is the arm of the Judiciary and its independence. She is not from Meru or Mt. Kenya East but is the Chief Justice of the Republic of Kenya. I hope she will follow what Hon. Willy Mutunga and Hon. Justice David Maraga stood for because we are watching her as the people of Kenya.

**Hon. Deputy Speaker:** Thank you. Nowadays you quote too much of these very serious philosophers. Proceed, Hon. Shamalla.

**Hon. (Ms.) Shamalla Jennifer** (Nominated, JP): Thank you, Hon. Speaker. I rise today to support the recommendations and the Report of the Justice and Legal Affairs Committee that the Lady Justice Martha Koome be approved by this august House.

Hon. Deputy Speaker, there are three things that stood out for me when it came to this particular nominee. First and foremost, she demonstrated her experience and passion for children and family. On that, I agree with Hon. Esther Passaris that, indeed, family and children are the bedrock of every society. If we get it right at that level, we will get it right at all levels.

The second issue that stood out for me was the unpackaging of the role of the Chief Justice if she was to be approved by this House. Lady Justice Martha Koome believes that the Constitution of Kenya, amongst other things, must be people-centred in terms of delivery. On this note, I want to talk about the issue of delivery in the context of corruption. Corruption is discussed within the Legislature. It is discussed and recognised in the Executive, but not in the Judiciary. I pray that should Lady Justice Martha Koome be approved by this House she addresses the issue of corruption in the Judiciary. We must call it as it is and we recognise that even the Judiciary has its cartels. It is not just in the Executive or in the Legislature.

The other amazing thing about this Lady Justice Martha Koome – which I cannot let go – is this: There were concerns about Article 25 of the Constitution of Kenya which states that the general rules of international law shall form part and parcel of our national laws. A member of the Committee asked a question on the issues of norms that may not be in accordance with the family values that we espouse as Kenyans. Lady Justice Martha Koome was categorical and she stated that she will uphold the value systems of this country where we recognise a marriage between a woman and a man and that she would incorporate indigenous knowledge systems while developing our jurisdiction.

With those few remarks, I do support.

**Hon. Deputy Speaker:** Let us have the Member for Bureti.

**Hon. Japheth Mutai** (Bureti, JP): Thank you, Hon. Deputy Speaker. I also rise in support of the Report on the approval of Martha Koome as the Chief Justice. First and foremost, I want to state that this is a lady and a Kenyan who fits the bill. Secondly, she complies with all the requirements of the law. Article 166(2) and (3) of the Constitution sets out the qualifications of a Chief Justice and in that regard, she qualifies. She has over 33 years of experience in the legal profession and 15 years in the bench. She has intellectual capacity and sound legal judgement. This is a lady who has done a lot of work in creating legal jurisprudence.

Hon. Deputy Speaker, one in mind – which was in the Committee you served – was in one civil appeal case of 309 of 2015 where, with Justice Nambuye and Sichale, she rendered a decision that created the current vicarious liability on Teachers Service Commission – that TSC cannot run away from their responsibility to create a safe learning environment for our children against defilement or violence. This is a lady who is committed to ensuring that Kenya moves forward and goes on the right direction.

I was also touched on her conduct and demeanor when she was faced with the memoranda that were against her. She did not shy away from facing that and setting the record straight. Lastly, I must commend and laud her on one issue that stands out. Currently, there is the issue of the Building Bridges Initiative decision by the High Court and there is an appeal. When she appeared before the Committee, she was clear in her thought and mind that criticism against

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judges has the net effect of lowering the dignity of the court. That is the reason there are appellate courts in a judicial system. That was a statement and I am proud of this lady. Our colleague here, Hon. Millie, knows that this lady did marvelous work when she was at FIDA. At one point, she was the Chairperson of FIDA. At that time, when us men were jittery when we heard the word “FIDA”, she did not do things against us. Instead, she was very fair. I believe in Justice Martha Koome we have a safe pair of hands that will take Kenya to the next level. Thank you.

**Hon. Deputy Speaker:** Hon. Mwamkale.

**Hon. William Mwamkale** (Rabai, ODM): Thank you, Hon. Deputy Speaker, for according me time to contribute to this. I am a member of this Committee and I had an opportunity of hearing Lady Justice Koome presenting herself to this Committee. I do rise for and support the approval of this Report. When she appeared before our Committee, Lady Justice Koome confirmed to the Committee that she was going to be guided by the Constitution of Kenya and she will not take instructions from any other place other than the Constitution of Kenya. It also came out in her vision that she would protect the rights of citizens as enshrined in Chapter Four of the Constitution 2010. She did inform us that she was part and parcel of this chapter. She played a big role when she was at FIDA and that she will defend the Constitution at all costs.

However, as it has been mentioned, when questions were put to her, she confirmed to us and to the Republic that she believes that judges are not saints. She said it clearly that judges are not saints and they sometimes misinterpret the law and that when the law is misinterpreted, it is normally addressed in the appeals. She said she believes that any wrong-doing of a judge can be rectified in an appeal. So, this is a lady who has her vision well cut out. By approving the appointment of Lady Justice Koome, as a country, we will be taking the gender principle to the higher level because it will not only be effected in the National Assembly or wherever else, but at the three arms of the Government. For once, we will have one arm of the Government being led by a lady and I think as a Republic, we will have put our face in the global map in as far as the gender principle is concerned.

I do urge the House to approve this lady because even the way she committed herself to relate well, she is even going to unlock the impasse of the 41 judges who have been in the waiting list.

**Hon. Deputy Speaker:** Hon. Rehema. By the way, you seem to be having a problem with your microphone. You might have to come in front. You are now okay.

**Hon. Rehema Jaldesa** (Isiolo CWR, JP): Thank you, Hon. Deputy Speaker for giving me this opportunity to add my voice. At the outset, I rise with a lot of pride and honour, to support the nomination of a very accomplished lady judge, a mother and a woman that we are all so proud of. During the time she was being vetted by Judicial Service Commission and Justice and Legal Affairs Committee, I took a lot of time to follow the interview. One of the reasons why I am supporting her, besides being a woman, is because of how she performed in the interview. Therefore, I want to thank JLAC and JSC for doing an excellent job. All through, she was composed, focused and she understood the subject matter. She is, indeed, a breath of fresh air in the leadership of the Judiciary.



I did a lot of research on her. I really wanted to be sure of the person we are getting into this very important institution, which happens to be the hope of ordinary citizens. I came across a lot of good achievements. Besides heading the women movements, her record on children and gender rights, as well as her role in drafting the Constitution 2010 and in particular the Bill of Rights, stood out. Last year, Justice Koome was a runner-up for the UN Persons of the Year Award for her advocacy for the rights of children. She is also a known fire-brand reformer for she was amongst the lawyers who were involved in the clamour to repeal Section 2A of the Constitution of Kenya in the 1980s, which made the country a one-party rule then. Therefore, we owe her for the multi-party democracy that we are enjoying now.

There are many good things that were said about her. However, when I looked at some of the petitions against her, they lacked substance. Amongst one of the things, she was being accused of, was making a ruling on gay rights which I find to be ridiculous.

I support the Motion. We are looking up to her. We hope she will uphold the integrity and the independence of the Judiciary.

**Hon. Deputy Speaker:** Let us have Hon. Olago Aluoch, and then come to the Leader of the Majority Party.

**Hon. Olago Aluoch** (Kisumu West, FORD-K): Hon. Deputy Speaker, there is a matter that I want the House to take notice of - how committees of this House can draw the line between vetting and interviewing. It is important. I am a proud Member of this Committee. The way we did it is what Hon. T.J. Kajwang' has told you. Other committees of this House need to know how we did it and draw the line.

Secondly, Martha Koome's professional and career exposure could have made her a better person to be a Chief Justice. A Member of this House has just mentioned it. In those days, in the 1990s, and not the 1980s as she has said, I had a chance to work with Hon. Martha Koome in the Council of the Law Society of Kenya at a time when we were fighting for multi-party democracy in Kenya. At that time, a lawyer who risked doing that would be risking his or her practice or even personal safety and security. In the LSK Council then, we had distinguished lawyers like Justice G.B.M Kariuki, Kinoti, Mirugi Kariuki, Racheal Omamo, Martha Karua, Nzamba Kitonga and Kamau Kuria. We were able to get through our agenda and we became the darling of the Kenyans. In my view, that puts Justice Koome in a better state to understand the needs of Kenyans. After the collapse of the East African Community, Kenyans in the LSK Council then - myself included - travelled in Uganda, Tanganyika and Zanzibar to form what is now called the East African Law Society. We were able to do that with Justice Koome and others and finally, a treaty was signed by our presidents that created what we now call the East African Community.

Hon. Deputy Speaker, there is a matter that we cannot afford to sweep under the carpet and Kenyans are concerned. We are going to approve Justice Martha Koome as the next Chief Justice of this country. However, the fact is, we are going to end up with the situation where the Head of the Judiciary, the Legislature and the Head of the Executive will all be coming from one region known as the "mountain". That is the matter that I raised in the Committee. However, I am satisfied that Justice Koome was able to convince us that the fact that she comes from the mountain, should not be a worry for Kenyans. I am personally satisfied that Justice Martha Koome will be our next Chief Justice.

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With that, I support the Motion.

**Hon. Deputy Speaker:** Thank you. Leader of the Majority Party. I can see we are almost done. I will give a few members.

**Hon. Amos Kimunya** (Kipipiri, JP): Thank you, Hon. Deputy Speaker for giving me this opportunity to support this Motion and thank the Committee for doing a splendid job as the last speaker has just said. It is probably one of the best practices in terms of how-to vet officers as opposed to grilling and attempting to redo interviews that were done elsewhere. I think this is just highlighting and clarifying issues for purposes of public participation.

The Swahili have a saying, if you allow me to quote, that: *Chema chajiuza, kibaya chajitembeza*. From what we have heard, the gracious lady has 33 years of experience spanning in all disciplines, from family law, private practice, *pro bono* works, environment, High Court, and all the way to the Court of Appeal. It is the cross-cutting that she has managed to sell herself to the Kenyan people and to the Committee. So, what we are doing here is repeating ourselves in increasing the accolades. We believe that she will do a good job as she has promised.

I just want to take on two commitments that she made to the Committee and Kenyans through this House. That this is about living true to her calling as a jurist in terms of independence, non-partisanship, non-political stunts and also in the war against graft. The war against graft is not limited to the Executive. It goes across all institutions. If you allow graft at the Judiciary, it does not matter who the head is. Nobody will ever get justice. If the war on graft starts there, and then cuts across all the institutions, then people will know it is very expensive to get involved in corruption.

The other thing I am happy about is her commitment for non-interference with the other arms of the Government. You are aware that we have been gagged before. We have been told we cannot process Bills. Last year, we spent a lot of time because we had been told we cannot do Bills. We were told that some of the Bills we had passed like the ones on appropriation and supplementary were illegal. Obviously, this is something that cannot be enforced because, how do you tell people to return the money that was spent on an Appropriation Bill? Some excesses were made. I hope that she will bring some order to the Judiciary from that perspective, and even remove those things of telling Parliament: “You cannot pass something or you must pass something in a certain way”, which is what I saw in the ruling that was done last week. The Judiciary was trying to even define how we should do the referendum law. We are not supposed to be receiving that kind of instruction.

Hon. Deputy Speaker, the founders of this doctrine of checks and balances, particularly James Madison, were very clear. It is not about having checks and balances, it is ensuring that of all the arms of Government, there will be adequate checks to ensure that none of those arms is so strong to stifle the others from making decisions or from operating. It is not just about creating checks and all those other things. But there should be checks within the law and within the institutions so that the Executive does not muzzle the Judiciary; or Parliament does not muzzle the Judiciary and the Executive, which we could do by refusing to give them money. Similarly, they cannot muzzle us by telling us that there are things we can do or by rendering every law that is coming from Parliament to be unconstitutional even on very flimsy grounds. Those are the kinds of things that we need to get some sober-minded person.

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I hope that Lady Justice Martha Koome will take it as part of continuing the reforms that were started by Justice Willy Mutunga, the reforms by Justice David Maraga, and now consolidate them for the common good so that it is not the people just trying to get even or revisiting one another, but looking at the Kenyan people and where the Judiciary should be not just for Kenya, but for the region. The whole region is probably also looking at us. I believe that we can learn from others and teach others in terms of the protection for human rights, political rights, as well as the economic rights of our people.

Hon. Deputy Speaker, like I said, I congratulate Hon. Martha Koome for, first of all, being the first nominee of the female gender to come into this position. I wish her the very best and to just say that we can only wish her well. It is a very tumultuous time. There are many challenges, but we believe that the 33 years of her experience should count for something in terms of sorting out the issues in the Judiciary, giving the Judiciary a face, and giving the people the confidence that they can have faith in the Judiciary so that we do not go, politically next year, into the same issues we had in the past when people lacking faith in the Judiciary ended up looking for justice on parallel systems. I believe that we should provide her with our support from this House as she does that exercise.

With those few remarks, I beg to support.

**Hon. Deputy Speaker:** Okay. Hon. Kimani Ichung'wah and then followed by Hon. (Ms.) Odhiambo-Mabona. What is it Hon, Alfred Keter? What is your point of order?

**Hon. Alfred Keter** (Nandi Hills, JP): Thank you, Hon. Deputy Speaker. I rise under Standing Order No. 95 (1)...

*(Loud consultations)*

**Hon. Deputy Speaker:** Just proceed, Hon. Keter. Order, Hon. Members! Hon. Alfred Keter has the Floor.

**Hon. Alfred Keter** (Nandi Hills, JP): May the Mover be now called upon to reply.

**Hon. Deputy Speaker:** Okay. I have heard you. Hon. Members, this is how we will proceed. I had mentioned that I am giving a chance to Hon. Kimani Ichung'wah. You will speak and then Hon. (Ms.) Odhiambo-Mabona will speak after you. Then I will put the Question on that particular bit. If it is acceptable, that is fine. If it is not, it is you to make the decision. By the way, Hon. Members, sometimes, Hon. Members just walk in and they want to be heard. So, let us wait. Hon. Kimani Ichung'wah, without digressing, just speak to this matter.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Deputy Speaker. A lot of accolades have been spoken of the Chief Justice nominee, Lady Justice Martha Koome. I join other Members and Kenyans in congratulating her on her nomination and her selection by the Judicial Service Commission to serve as the first Lady Chief Justice in the Republic of Kenya.

With all the accolades also, we saw a Petition from the President of the Law Society of Kenya, a petition that touches on a matter that relates to one of us here. The matter touched on M/s Erad Supplies and General Contract Ltd – a matter that was presided over by Lady Justice Martha Koome. There is also the sticky matter of the night ruling of the Court of Appeal in 2017. Those are issues that may put questions on her standing as a judicial officer, but I want to believe

that the Committee and the Judicial Service Commission considered all these matters and made an informed decision as they settled on Lady Justice Koome.

Hon. Deputy Speaker, I just want to speak to Lady Justice Martha Koome. It is now not a matter of how the JSC and the Justice and Legal Affairs Committee settled on her and approved her appointment as the Chief Justice. What counts now is what she will do as the first Lady Chief Justice of the Republic of Kenya. Whether she will allow the accolades that have been poured on her illustrious career as a judicial officer to be her guiding light or it is the small spots, be it of erroneous judgements or of the 2017-night ruling that will define her career. I want to ask her to jealously guard the independence of the Judiciary. She must protect judicial officers from the intimidation we have seen from the likes of Hon. Raphael Tuju of the Jubilee Party, who is said to have threatened judicial officers that they may lose their security protocols if they take certain decisions.

I pray that the Chief Justice nominee, Lady Justice Martha Koome, will not preside over another night sitting out of intimidation over the Building Bridges Initiative matter or any other matter in the Republic of Kenya. I want to remind her about the inter-dependence of the three arms of the Government. It does not mean that she or the Judiciary is dependent on the Executive or the Legislature. She must carry out her duties diligently and do the right thing in pursuit of justice. I ask her to not only defend the independence of the Judiciary, but also to jealously defend and protect judicial officers against intimidation for them to do what is right and what serves justice to Kenyans.

Let me finish by telling Lady Justice Martha Koome that we do not expect her to do any favours to anybody, but to do the right thing and serve justice to all Kenyans irrespective of who they are or what office they hold. Do not be intimidated by the likes of Hon. Tuju or other busy-bodies that are trying to intimidate people in this country.

I hope and pray that she will stand firm to defend justice, the rule of law and constitutionalism in this country.

**Hon. Deputy Speaker:** Hon. (Ms.) Millie Odhiambo.

**Hon. (Ms.) Odhiambo-Mabona** (Suba North, ODM): Thank you, Hon. Deputy Speaker for giving me this opportunity. I support the nomination of Lady Justice Martha Koome, especially given that she is the first woman to be given that position. It is a tragedy that, at this age and time, we are still talking of a “first woman this and that”. That is something that we should have left almost 30 years ago.

I hope that this development will not hound the Deputy Chief Justice out of office because she is a woman. In this country, there are very many men holding multiple positions. Nobody has hounded them out of office because they are men. Let us have the Lady Chief Justice and the Lady Deputy Chief Justice. Let us not hound the other woman out of office.

Hon. Deputy Speaker, I know many people are speaking about Lady Justice Martha Koome from what they have heard or seen in the media. I know her personally. I first met her on 8<sup>th</sup> March 1997, on International Womens’ Day, when she interviewed me for the position of Legal Counsel for FIDA. They gave me a flower thereafter and I got the job. When the time came for me to leave that office, she actually persuaded me to stay. She even increased my salary so that I do not leave. Unfortunately, my time had come and I had to leave.

I joined FIDA from a background of a Litigation Counsel in the Office of the Attorney-General. So, I had no knowledge of family law. Ms. Martha Koome was then the only expert in the entire country on issues of family law. She taught me. She is the person I consulted all the time when I wanted to understand issues of family law. I became an expert of family law, courtesy of Lady Justice Martha Koome. She is very focused, very targeted and very clear about the things that she stands for. She is also very passionate about the things that I am passionate about. She is passionate about women and children rights. I have worked with her both nationally and internationally on those issues and I can vouch for her competence. The English say that the hand that rocks the cradle rules the world. Even in the Bible, Jesus says that the little ones who are suffering can come unto me and he will give blessings to those who actually support children. She discovered the secret and rocked the cradle and she is ruling the world. I am the only one who is remaining and I believe that, after Hon. Raila Amollo Odinga becomes President, I will be the first woman President after him. I am speaking from my mouth to God's ear.

She talked about the faith of her mother. May she continue with that faith of her mother even as she serves Kenyans. And may it help her so that she does not succumb to the maladies that bedevil Kenya - ethnicity and state capture. Even as I hear the talk about independence, it does not mean you do not criticise. I support and respect some of the Judges greatly, including Hon. Joel Ngugi. But I disagree with them on some of the issues raised especially on the issue of constitutional structure. I will get an opportunity to talk to that from an intellectual perspective. That does not mean I do not respect. I respect, but disagree respectfully. I encourage others that when they disagree with them, please, do so respectfully so that we respect the three arms of Government even when we disagree with ....

**Hon. Deputy Speaker:** Hon. Savula. Finish! Hon. Savula and then I will dispense with Hon. ....

**Hon. Ayub Angatia** (Lugari, ANC): Thank you, Hon. Deputy Speaker for giving me the opportunity. I also rise to support the Special Motion with the following facts. Justice Martha Karua is a focused lady.

*(Loud consultations)*

**Hon. Deputy Speaker:** I hope we are speaking to the same Motion.

**Hon. Ayub Angatia** (Lugari, ANC): Martha Koome.

**Hon. Deputy Speaker:** That is better.

**Hon. Ayub Angatia** (Lugari, ANC): You know, Hon. Karua is a politician like me.

*(Loud consultations)*

Martha Koome is a focused lady, independent-minded and solution-based. The Judiciary is a centre stage of resolving disputes in this country. So, we need a lady with the qualities that she has.

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Martha Koome has the qualities like those of the Tanzanian President, Samia Suluhu Hassan. She will give new impetus to the Judiciary, bring in reforms and solve the backlog of cases.

Lastly, I also request the Judiciary to confirm the Chief Finance Officer, a Mrs. Oyatsi, who has been acting for the last six years while the rest of the judicial officers have been confirmed. She is still acting in that position.

Thank you and I support the Motion.

**Hon. Deputy Speaker:** Hon. Members, let me dispense with Hon. Keter's Motion.

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

Let us have the Mover to close the debate.

**Hon. Clement Kigano** (Kangema, JP): Thank you, Hon. Deputy Speaker. I am humbled. I have nothing useful that I can add to the support that has been given to the Motion. The only thing I would like to add is that I am assured - and we were assured by Justice Koome....

**Hon. Deputy Speaker:** Sorry, the Mover. In the meantime, I ask that I be given the full number of Members present because I have to be extremely sure. I can see you are more than 50 in the House, but let me also know the number of the ones who are in other holding areas.

Proceed.

**Hon. Clement Kigano** (Kangema, JP): Hon. Deputy Speaker, the only thing I was adding is that Justice Koome assured the Committee that she will judge the judges. I want to allay the fears expressed by Hon. Ichung'wah, but I will not answer anything because all the matters that he raised are extraneous. Tuju is not a member of the Committee and we are not considering Tuju or anybody else. If you allow me, I could donate a minute.

**Hon. Deputy Speaker:** Just to be clear so that you do not feel that I have denied you, whenever there is a Motion to cut debate, there will be no reason to donate minutes.

**Hon. Clement Kigano** (Kangema, JP): Very well. Then there is nothing that I can usefully add more than the accolades and the sentiments that have been expressed by the Members. I thank them. I thank my Committee again. It is for the support and the efficiency with which they handled the approval of Justice Koome.

I reply.

**Hon. Deputy Speaker:** Hon. Members, having confirmed that we have more than 50 Members within the Chamber and even more outside there in other holding areas, I will proceed. Order, Members!

*(Question put and agreed to)*

*(Applause)*

Next Order!

*[The Deputy Speaker*

*(Hon. Moses Cheboi) left the Chair]*

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

## **BILL**

### *Second Reading*

#### THE PUBLIC PRIVATE PARTNERSHIPS BILL

*(Hon. Amos Kimunya on 13.5.2021)*

*(Resumption of Debate interrupted on 13.5.2021 – Afternoon Sitting)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): That is by the Leader of the Majority Party. You have the Floor. Sorry, this is a continuation; this is resumption of debate. Let me get the list of the Members who have spoken to it. Hon. Members, this is actually resumption of debate. Hon. Amos Kimunya had moved. Hon. Gladys Wanga had seconded. We had Hon. David ole Sankok, Hon. Abel Ogutu and Hon. James Nyikal. We had on the Floor of the House Hon. Emmanuel Wangwe who had four minutes remaining. Hon. Wangwe, you have the Floor - four minutes.

**Hon. Emmanuel Wangwe** (Navakholo, JP): Thank you, Hon. Temporary Deputy Speaker. Indeed, I had a balance of four minutes.

What I wanted to insist in addition to what I had put forward is that the proposed Bill, if this House passes it, is a good document. It is because it is relaxing the cost of doing business. For instance, the Bill is proposing that the Cabinet bureaucracy be reduced or removed in totality. Should this Bill be passed, the hours taken to move the approval from the proposal, to Cabinet and back so that the person desiring to have the proposal of a Bill approved will have a reduction in time.

There is also a solution to the appetite of Government borrowing. If this Bill is approved the way it is, the current appetite for borrowing by the Government, which is very high will be dealt with. Therefore, let us not go into the issues of costly borrowing, especially commercial borrowing. Instead, let us look at the proposed PPP. For instance, the current construction of the Expressway is under a PPP. Instead of tying the funds, the investor comes in, puts funds, and recoups the funds in the long run. But my proposal is this: Let us cushion ourselves. Let us not give a blanket cheque to investors such that they take a long time recouping their investment. For example, recouping their investment in 15 years and making super profit in another 15 years. Let us look at the duration of 15 to 25 years, so that we also encourage others to come in

The last bit which I want to emphasise is the recognition of local content. A good example is the Expressway. It does not have 30 per cent local content. It is not clear how local content is being provided for. But this Bill lays bare how local content will be achieved. If you will be undertaking a project under PPP, you will ensure a 70/30 per cent ratio so that local

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investors also participate. In the current construction, steel, sand, labour and other costs which can be sourced locally should be determined. If the materials cost Ksh60 billion, 30 per cent of the amount should be used to purchase local content. Therefore, this Bill narrows down to make sure that, indeed, local content is secured.

This Bill also opens up the scope of participation. It is open to housing units, road infrastructure and electricity production. In the long run, it will be open to the medical world. This House passed the Medical Tourism Act. The moment we have medical tourism, we will also need to have experts coming to invest here. How much is it going to cost to invest? It will mean the Government will be suffocated and our budget will be higher. If we open the door to medical investors through PPP, we will end up with huge international hospitals like St. Mary's Hospital in London coming to invest here. Therefore, this is a good Bill that I urge my colleagues to pass so that we can have a better infrastructure layout in the country.

Hon. Temporary Deputy Speaker, I support.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon Yusuf Halima. That Member has taken leave. Hon. Kaluma Opondo. He has also taken leave. I guess many Members had actually logged in on the previous business. Order, Hon. Ichung'wah. Your time will come. Hon. Obo Mohamed.

**Mhe. (Bi.) Ruweida Obo** (Lamu, JP): Ahsante sana Mhe. Spika wa Muda, lakini mimi nilikuwa nimeweka ombi kwa Hoja iliyopita. Ahsante.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Kimani Ichung'wah, clearly your time has come faster than I had planned.

**Hon. Kimani Ichung'wah** (Kikuyu, JP): Thank you, Hon. Temporary Deputy Speaker. It is only that I heard you say Hon. Mugathe and I was wondering who that is in this House. I think it was a mis-pronunciation of the name of the Member for Lamu County.

I rise to support this Bill by the Leader of the Majority Party. Indeed, it comes at a very good time in trying to enhance what was enacted in 2013. It enhances efficiencies in the regulatory process of how we engage private entities to undertake public infrastructure projects in this country. This is one of the ways in which we are able to reduce our debt burden as a country. That is why I support this Bill. We must be cognizant of the fact that we live in a country where state capture is not imagined. State capture in this country is so real. If we enact such laws without the requisite safeguards, we will only be cementing the state capture that is already real in this country.

If you look at it from the agriculture sector, our farmers today are crying in poverty. Their goods get to the markets but, the entire value chain, right from production to goods on supermarket shelves, is a value chain that has been taken hostage by monopolistic cartels. We must, therefore, be careful so that we do not enact such laws to further entrench the state capture of all the sectors of our economy.

The only sector that is yet to be taken over by the state capture mandarins is infrastructure. This sector is capital intensive and, therefore, it makes sense to do it through PPPs. That is what happens all over the world. That is what governments the world over are using to reduce the debt burden. You will get a private entity to bring in their finances and expertise. They deliver projects in a timely manner. Therefore, it is good that the Government is



looking at ways of enhancing efficiency on how we deliver through PPPs. This House must stand firm to ensure that PPP projects are done in the most transparent and accountable manner.

The Bill talks to issues to do with direct procurement. Every time I see questions to do with direct procurement, I shudder because it is usually the genesis of corruption in this country. When the time comes, we will be looking at issues that touch directly on procurement to make sure that we seal the loopholes so that this law is not used as an avenue for corruption.

I heard the Chief Whip mention the issue of the Expressway from Jomo Kenyatta International Airport to ABC in Westlands. How transparent was the process? How open was the process of identifying the contractor of that project? On the issues we hear Members raising, how did we ensure that there is actual and tangible local content in that project? The people sweeping the roads and the streets are Chinese casual workers. Where is the local content in this project? Who are the beneficiaries? Is it really the Chinese contractor that you see on the road or are there local faces hiding behind the Expressway project?

We hear that we are now moving towards PPP projects of Kenya Wildlife Service Game Reserves. This is our land. This is the land that our forefathers and fathers fought with our colonial masters for. Are we going to see other new black colonial masters today? The people who have already taken enough of our land are now using PPP projects and the laws that have been enacted by this House to further take away more of our land to benefit private individuals and entities? We must be careful. During the Committee of the whole House, I will bring amendments to ensure that we protect not just our KWS land, but we also protect all public land in this country. After the colonialists left, there are those who took half or more of this country's agricultural land. Today, there are new avenues of using land as a factor of production to generate income: Mining, conservatory and wildlife reserves that we are seeing in KWS. There is a huge oil reservoir in Turkana, wind power in Marsabit where it was discovered in yester years, and solar energy in Garissa. In yester years, land in those areas was considered to be valueless and meaningless but, with the increase in technological advancements around the world, land that previously was not very valuable today is very valuable. You will see people coming to take huge chunks of land in Marsabit because of wind power or huge chunks of land in northern Kenya because of solar power or the water reservoirs in Turkana and elsewhere. That is why I am saying we must jealously guard our public assets so that we do not in a way auction part of our country and more so, our most important and primary factors of production like land. This is so that tomorrow we will not have expressways running from Westlands to JKIA or Mlolongo at the expense of the Kenyan taxpayer at a time when - and you have travelled Hon. Temporary Deputy Speaker and so have many members on this House on what you call benchmarking trips.

I hope those in the Committee on Transport, Public Works and Housing had benchmarked on how expressways are done around the world. I have never seen an expressway anywhere in the world where you come and find a road corridor that had three lanes and at times four lanes on either sides of the road and you come and shrink that passage below here so that you get people to use the expressway above at a cost. Those are some of the issues we must make sure that this House is able to interrogate.

I want to bring amendments to ensure that, for every public private partnership deal that goes through, this House must have a say. We must not allow those in the Executive to use their positions of power and privilege to amass more wealth through the disguise of public private

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partnerships. That is why I said in this country that state capture is not imagined, it is real. There are those who have quadrupled their wealth just by virtue of being in the office in the Executive. We must make sure that we stop that as this House, as the people's representative by protecting what are public assets by ensuring that public private partnerships are procured and done in a way that is transparent and accountable and one that enhances the value that Kenyans will derive out of those projects.

We need to ensure that whatever projects we do, we are not committing public assets into private hands forever. All over the world, 20 to 25 years at most are enough for PPPs. Therefore, we must also ensure that whatever projects a private entity is coming to get into is a project that, in about 15 to 20 years, they are able to exit and give that asset back to the Kenyan people because those are public assets that belong to the Kenyan people.

With that Hon. Temporary Deputy Speaker, I support but express my intention to bring amendments at the right time. I hope the Leader of Majority who has just walked out... I heard him commit in Nyandarua that if they lose the Rurii Ward seat, he would resign. I hope he will not have resigned by then. If he will not have resigned, I hope he will support the amendments that will safeguard the sanctity of our public assets. I do beg Hon. Kimunya, please, not to resign or not to swear that you would rather die than resign since the seat is gone and they are about to lose the Juja one.

Let me congratulate the people of Juja, Bonchari and Rurii Ward and the entire hustler nation. I want to congratulate the entire ODM party for also standing firm against the intimidation of State police and tell those that intend to continue using violence that...

Hon. Temporary Deputy Speaker, they have been lying to us that BBI is what will cure ethnic and electoral violence. What we saw yesterday...

*(Hon. Kimani Ichung'wah's microphone went off)*

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order, Hon. Ichung'wah. Order, Hon. Ichung'wah. Where are you coming from, Hon. Mutua? I am sure the two Members can talk. They are neighbours. In the meantime, let us be listening to Hon. Mutua.

**Hon. Didmus Barasa** (Kimilili, JP): Thank you, Hon. Temporary Deputy Speaker, for giving me this opportunity to support the Bill. This is a very important Bill even though I have identified a number of gaps, which I will be intending to bridge by bringing in amendments during the third reading. I say so because it is very important. Public private partnerships have always been used to siphon money. I am aware we must disclose the amount of money that both parties are putting in.

Hon. Temporary Deputy Speaker, I am aware that there is a project somewhere that was done by some foundations from Holland. I saw the County Government of Bungoma owning it by saying that they are the ones who put up that building.

So, we must craft this law in a clear manner that will assist the Auditor-General to pick up if we have elements of misappropriation of funds. This will help us avoid a situation where a government handpicks a contractor and money is siphoned from the Government simply because it is a project that is being undertaken by a private entity. So, we need to extend this law to cover any project that will be funded from public coffers, including county governments.

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This is an area that this House must assist Kenyans to realign this Public Private Partnership Bill and ensure that we do not continue with what we are seeing now where projects that are co-funded by the Government and some private entities are very expensive. We must ensure that we protect the interest of Kenyans in so far as prudent management of funds are concerned. During the Third Reading, I hope that the Hon. Leader of the Majority Party will be open to accept some of the amendments which some of us will suggest because we want to improve this Bill so that it can serve the purpose.

As we encourage the PPP, we must ask ourselves why it is that projects that are purely funded by private entities are much cheaper and are delivered within a short time, than the Government. Those projects that are co-funded by both the Government and the private sector turn out to be very expensive, time consuming and there is no transparency. I hope that the drafters of this Bill are guided by the view of improving the PPP for the common good and not other sinister motives. We will be scrutinizing this Bill word by word and clause by clause so as to remove those sections that we suspect are to benefit an individual and enrich the Bill so it can benefit the majority of Kenyans.

As I conclude, I also want to express my frustrations in the manner in which the police have continued to maintain lawlessness and disorderliness in the recent by-elections. I have seen a press statement by the Chairman of the Independent Electoral and Boundaries Commission (IEBC) saying that a certain governor entered a tallying center with goons to beat up IEBC officers. This is something we should not accept as a country. When it comes to certain people breaking the law, the police will say that someone will have to raise a complaint and record a statement for them to move in and arrest people.

Hon. Temporary Deputy Speaker, if it is a *chang'aa* brewer in the village, no one will go to record a statement before that *chang'aa* brewer is arrested. No one will be required to make a complaint before such a person is arrested. This is because it is a matter that falls within the purview of public law where the State is the complainant. Where the State has the responsibility to maintain law and order, if we allow our country to degenerate to a level where goons enter a tallying center assisted by uniformed police officers to beat up polling officers, we are staring at a situation where police and goons will enter the Chambers of Parliament, beat up Members of Parliament (MPs), arrest the Hon. Speaker from the Chair and manhandle him. So, we must call upon the National Police Service Commission (NPSC) to defend the Constitution of the Republic of Kenya by maintaining law and order. While exercising such powers, there must be equity in what they do.

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Order! Hon. Didmus Barasa. It is 1.00 p.m., but you have a right to your four minutes. When this debate resumes, you will have your four minutes so that you finish that line of contribution.

Hon. Kimani Ichung'wah and Hon. Gathoni Wamuchomba, you are busy and so are Hon. Sabina Chege and Hon. (Dr.) Lilian Gogo. Please, be upstanding. Everyone is busy doing something.

## ADJOURNMENT

**The Temporary Deputy Speaker** (Hon. Patrick Mariru): Hon. Members, the time being 1.00 p.m., this House stands adjourned until Wednesday, 19<sup>th</sup> May 2021, at 2.30 p.m.

The House rose at 1.00 p.m.