

NATIONAL ASSEMBLY

OFFICIAL REPORT

Tuesday, 5th July, 2016

The House met at 2.30 p.m.

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

PRAYERS

PAPERS LAID

Hon. A.B. Duale: Hon. Speaker, I beg to lay the following Papers on the Table:-

Reports of the Auditor-General on the Financial Statements in respect of the following institutions for the year ended 30th June, 2015 and the Certificate therein-

- (i) Kenya Accountants and Secretaries National Examinations Board (KASNEB);
- (ii) Kenya School of Monetary Studies;
- (iii) Ministry of Industrialization and Enterprise Development;
- (iv) Agro-Chemical and Food Company Limited;
- (v) Jaramogi Oginga Odinga University of Science and Technology;
- (vi) Karatina University;
- (vii) Postal Corporation of Kenya;
- (viii) State Department of Devolution;
- (ix) State Department of Infrastructure;
- (x) State Department of Interior;
- (xi) Kilifi North Constituency Development Fund;
- (xii) Coast Development Authority; and,
- (xiv) National Museums of Kenya.

Thank you, Hon. Speaker.

STATEMENTS

COURT ORDER REVERSING DECISION OF THE HOUSE ON HON. WANDAYI

Hon. A.B. Duale: Hon. Speaker, I rise to seek your direction on a matter of great importance to this House, arising out of the media reports of a court order reversing a matter of proceeding and procedure of this House. I would like you to give directions on three Articles of the Constitution.

Article 75 of the Constitution provides that a State officer who behaves in a manner that is demeaning to the office that he holds, he is subject to the applicable disciplinary procedure of the relevant office and may in accordance with the applicable disciplinary procedure, be dismissed or

otherwise removed from office. That is what the Article says.

In light of the reported court order, what is the fate of our Standing Orders, in particular the disciplinary procedure set out under Standing Order Nos.107 and 112? Standing Order Nos.107 and 112 are made pursuant to Article 124(1) of the Constitution. I would like to read it out for the benefit of Hon. Members:-

“124(1) Each House of Parliament may establish committees, and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.”

Article 124(1) empowers the House to make Standing Orders for the orderly conduct of its proceedings either in the plenary and/or in the committees. In light of the reported court order, what is the fate of our powers to make Standing Orders?

On the first, our Standing Orders say that the National Assembly, in exercise of the powers conferred by Article 124 of the Constitution of the Republic of Kenya, by a resolution passed on 9th January, 2013, adopted these Standing Orders and the House of Parliament Joint Sittings Rules. I happened to be in the 10th Parliament. Does the court order suspend the Standing Order? We need to know. In light of the reported court order, what is the fate of our power to make Standing Orders?

Secondly, how far can we provide for the orderly conduct of the proceedings? What is envisaged by the use of the words “orderly conduct” in the Constitution?

Thirdly, I want to bring your attention to Article 117(2) of the Constitution. This Article empowers Parliament, for purposes of orderly and effective discharge of its business. It provides for the powers, privileges and immunities of Parliament, its committees, the Leader of the Majority Party, the Leader of the Minority Party, Chairpersons of Committees and Members of Parliament generally. This is the Article that our privileges are anchored in for the orderly and effective discharge of business.

Hon. Speaker, pursuant to the provisions of Article 117, the National Assembly Powers and Privilege Act, Chapter 6 (11) provides that the proceedings of the House shall not be questioned in a court of law. I am not the one saying this; it is in the Powers and Privileges Act. In light of the reported court order, what is the fate of the privileges conferred on this House by virtue of Article 117(2) of the Constitution and the National Assembly Powers and Privileges Act? That a court can order for the arrest of Hon. Duale from the Chamber. That is what this court order means. There are Members of this House who were discharged from their committees by either side of the political divide. Those Members have a constitutional right of representation, oversight and legislation. They have the courage to go to a court of law and be reinstated to the committees. The Members include Hon. Munuve, Hon. Regina, Hon. Mungaro, Hon. Idi and Hon. Chidzuga.

The judge said that the constituents represented by the particular Member feel aggrieved by the action provided under Standing Order No.111, which you applied. What if a member stabs another member or commits crime? What if another member comes with an object and hits the Speaker?

Hon. Speaker, everywhere in the world, there is the principle of objects and elements of separation of powers among the three arms of government. This is anchored on a certain principle that one person in one arm of government should not form another arm of government. They cannot be in the Judiciary and at the same time be in the Legislature. One organ of government should not exercise the function of another. The powers must be separate and they must act independently. That principle of separation of powers has the objective of preventing the concentration of power and provide for checks and balances among the three arms of the

Government. Outside the Standing Orders that guide the proceedings of Parliament both in the plenary and in committees, parliaments and legislatures across the world are run on precedents and practices. The Communications from the Chair are very fundamental. The practice of the previous Parliaments is anchored; it becomes part and parcel of how the House is run.

The Constitution has given this Parliament some very unique functions to do. There is the function to impeach the President and the Deputy President; the function to pass the Budget of the nation and the function to vet State officers. Judge Odunga should tell us whether he wants to suspend the Standing Orders and take the function of the Legislature. Judge Odunga has the luxury. He can leave the Judiciary and become the Speaker or a Cabinet Secretary. He cannot have his cake and eat it. He cannot have one leg in the Legislature, one leg in the Judiciary and another leg in the Executive. That is if he has three legs.

The House must debate this. It must give guidance. Ultimately, we must make it very clear whether this House is an appendix of the Judiciary. Standing Order No.111 says:-

“If any Member shall refuse to withdraw when required to do so, by or under these Standing Orders, the Speaker or the Chairperson of Committee as the case may be, having called the attention of the House or Committee to the fact that recourse to force is necessary in order to compel such Member to withdraw, shall order such Member to be removed and such Member shall thereupon without question put be suspended from the service of the House during the remainder of the Session and shall during such suspension, forfeit the right of access to the precincts of Parliament and the Serjeant-at-Arms shall take necessary action to enforce the order.”

Judge Odunga should have declared this Standing Order No.111 unconstitutional. If he had done that, I would have no problem but he never did that. That should have been the right route for Justice Odunga, if he had declared Article 124 unconstitutional. Over 67 per cent of the people of Kenya voted for this Article. It is the people of Kenya who voted that Article to be part of our Constitution. If he declared Article 124 that anchors the usage of Standing Orders in the Constitution was unconstitutional, I would understand. Returning a Member temporarily is what I could not understand. We must call a spade a spade. We must protect the integrity and independence of this House.

Hon. Speaker, this happened last time with our Constituencies Development Fund (CDF). The Judiciary one time said it is unconstitutional, that we do what we are supposed to do under the law and create the national Government CDF. Yesterday, another one said we can have Kshs25 billion not Kshs35 billion. The 11th Parliament is under obligation when the matter concerns one of us. All of us must defend the institution of Parliament. Parliament does not select who sits in the Judiciary and to some extent does not select who sits in the Executive. The Judiciary or the Executive does not tell us how we should run our business. That is very clear. The framers of the Constitution world over decided to create three arms of government which are independent but can work together. If this matter is not addressed adequately, then there is no need of having a Speaker and the Speaker's Panel. Judge Odunga and the rest can come, sit on the Speaker's chair or pick anyone of us. They can punish anyone of us. They can run Parliament from the Judiciary.

We want you to give a direction on how this matter will be handled. I have raised fundamental questions based on those three articles. You should neither be intimidated nor intimidated. We are in this House courtesy of the people of Kenya through fair and free elections.

None of us came here through the Judiciary. This is because no Judiciary voted for the 347 Members who are here.

In my opinion and I am sure in the opinion of the whole House, the Judge suspended these Standing Orders. Standing Orders are here for two fundamental things. They are written rules under which Parliament conducts its business. If Justice Odunga does not know, I want to enlighten him that these are written rules under which Parliament conducts its business. They regulate the way Members behave, the way Bills are presented and processed and how debates are organised.

The House has powers to suspend, repeal and change the Standing Orders either in one section or in totality. These Standing Orders give a detailed description of how the Legislature should run and a judge cannot stand and say that he has suspended certain provisions of the Standing Orders. He cannot say Standing Order No.111 is unconstitutional or Article 124 is unconstitutional. Based on the question that I have raised, I want you to address yourself to this matter that touches on the integrity and the independence of the House.

To finalise, I am a very worried man because I thought when I come to Parliament I enjoy the privileges as provided for under the Powers and Privileges Act, Cap. 6; that for whatever I say or do within the precincts of Parliament, I am protected. From what we are seeing being said by Judge Odunga, the Judiciary has become a squatter in the Legislature. It is infringing on the rights.

Hon. Midiwo: On a point of order, Hon. Speaker.

Hon. A.B. Duale: Hon. Jakoyo, you need to relax. I am the one who rose on a point of order. I can speak for another 20 minutes with the permission of the Speaker. This is a very serious matter. Let us not trivialise it. Let us not put it in a context. The best Hon. Wandayi could have done was to appeal to the Powers and Privileges Committee which you chair. I am sure if he appealed to that Committee and the Members came from both sides and convinced you, Hon. Wandayi would have been back in this House long time ago. Hon. Wandayi cannot be brought back by a court of law through the suspension of Standing Orders. That is illegal. History will judge those of us who are in the 11th Parliament.

You know what we went through in the last two weeks about the CDF. We are going through a period where a judge suspends--- What happens if two Members of Parliament kill each other or commit a crime? It does not matter. Your voters did not send you to this House to misbehave. They did not send you to this House to commit crime. Our voters did not send us to this House so that we abuse the privilege given to us. That is why Standing Order No.111 gives you that power to apply it in an exceptional case. This is the House that is supposed to be a role model.

What is going to happen is that all the Members who were de-whipped from committees will go to court against the wish of their political party and the Standing Orders. When the whips de-whipped Members, Members agreed because they follow and respect Standing Orders. You cannot have the cake and eat it. You cannot de-whip Members and say you are following Standing Orders but you go to court and ask a judge who has a history---

I can bring a substantive Motion to discuss Judge Odunga. We have no problem with the Judiciary but we have a serious problem with Judge Odunga. Nothing can stop any one of us from bringing a substantive Motion to discuss judges in the Judiciary who want to become squatters in the other arms of Government which they do not belong.

I do not know where Judge Odunga comes from. I am sure he can vie for a seat in 2017. He can even apply to be the Speaker of the National Assembly. These are fundamental issues. I

have nothing against Hon. Wandayi. The route is very clear. He can appeal to the Powers and Privileges Committee which you chair. The independence and sovereignty of the Legislature is at risk. It has been threatened following this court ruling. I need your guidance on that before any other action is taken on whether to admit the said Member or not.

Hon. Speaker: You have raised a number of fairly weighty issues. Let me hear other views. Let us have the Member for Kisumu Town West.

Hon. Aluoch: Hon. Speaker, it is “Kisumu West” and not “Kisumu Town West”.

Hon. Speaker: It is a city; it is “Kisumu City West”. It used to be a town when you were first elected.

(Laughter)

Hon. Aluoch: Hon. Speaker, from the outset, I want to make it clear that I am a firm believer in the principle of separation of powers and supremacy of Parliament as representing the people of Kenya. Before I say anything else, there are two serious issues that I want to draw to the attention of the House that the Leader of the Majority Party has got wrong.

One, he appears to me to be referring to a matter that is fairly weighty but appears to be relying on some media reports. That on its own is not the right procedure.

Two, you could be privy to what the Leader of the Majority Party is talking about but many of us are not. I have heard him make references to a judge of the High Court. Whatever he and I or anybody in this House thinks about the judge, I do not believe it is right to talk about him so derogatorily. If you want to be respected, you must respect others as well. Assuming that the Leader of the Majority Party was talking about the matter of Hon. Wandayi’s removal from the House, we need to look at the matter very objectively.

First of all, members should be having a copy of the ruling that he is referring to. You and I being lawyers know that without that copy that is certified for us to refer to, we would be talking in the air. I believe that the matter is weighty.

May I refer to an incident in the 10th Parliament where Mr. Samwel Kivuitu, the then Chairman of the Electoral Commission of Kenya (ECK), went to court and obtained order of injunction to stop the National Assembly from discussing their removal. I took issue with that. When I was served with another injunction and I presented it as a matter of law in the House--- I was able to table a copy of the Order that was served on the Speaker and members were able to ventilate. But how do we ventilate properly without that Order?

Hon. Speaker, I would kindly ask you that this matter, being so weighty, requires our serious attention looking at whether the issue of separation of powers and constitutionality comes in or not because as a lawyer I know that Standing Orders are subject and subordinate to the Constitution. Any Kenyan including a Member of Parliament can go to court and say that what we have done is unconstitutional. For us to look at this we need to see the pleadings and if the Speaker has been served with an Order or not.

I humbly request that in view of the weightiness of this issue, we suspend the debate and look at the ruling which should be made available to members. After that we can ventilate properly. If that is not the case we will be ventilating with the air and that is not proper.

Thank you, Hon. Speaker.

Hon. Speaker: The Member for Kikuyu, you have the Floor.

Hon. Ichung’wah: Thank you, Hon. Speaker. I have heard what Hon. Olago has said and I strongly object to the insinuation that we should not even discuss this matter which is weighty

as he has said. Article 124 of our Constitution is very clear that each House of Parliament may establish committees and shall make Standing Orders for the orderly conduct of its proceedings.

The core of this matter is “orderly conduct of business”. Do we as a House want to conduct business in an orderly way? If we do, we should appreciate that we want to conduct business in an orderly way. Because courts have their way of conducting business within the chambers, no Member of this House can ever interfere with the conduct of orderly business in court. That is why when I got to court to listen to cases, I do not sit on the bench where other learned counsel like Hon. Olago sit or on the magistrate’s bench.

The issue that has been brought to you by the Leader of the Majority Party is so weighty and I tend to agree with what has been said. You would rather vacate your sit and allow a judge to come and sit there and tell us how to conduct business in this House. I remember in my high school, every single day in the morning we prayed that we may grow up to be men who are strong in body, mind and character. When I came to this House and learnt that there were Standing Orders that guide the orderly conduct of business, I knew that we were coming here as men and women of character who would have certain rules and procedures that would guide how we conduct our business.

Therefore, without any fear of contradiction, I agree with those who say we have an option of bringing a substantive Motion to the Floor of the House to discuss particular judicial officers who have a history of walking all over this country interfering with the independence of other arms of Government.

A lot has been said about the orderly conduct of business within Parliament and particularly the establishment of committees of this House. We have a committee established under the Standing Orders, the Committee on Powers and Privileges and nothing stops any Member of this House including Hon. Wandayi. I must be quick to say that, indeed, Hon. Wandayi has the option, just like any other Member of this House, to appeal the decision that you made from the Chair through the Committee on Powers and Privileges. That Committee deliberates and listens to all other members including any other Kenyan who would like to give information or be a witness before that Committee.

That is the right thing to do and that is where we should be heading once that Committee makes a determination and tables a report here. Hon. Wandayi or even I can appeal to that Committee to reconsider the decision that you took while on the Chair. I think precedent has been set because in the last Session, I was a Member of this Committee. At times you were magnanimous enough on a matter or decision you made while on the Chair. You stepped aside from chairing that Committee and allowed other Members to chair.

I remember during the last Session, on a matter concerning Hon. Milly Odhiambo, you excused yourself from chairing sittings and even brought other members to assist the Committee. I remember Hon. Wario and Hon. Elmi were enjoined in the Committee on Powers and Privileges and we determined the matter objectively and tabled a Report before this House.

I, therefore, beseech you, Hon. Speaker, to be firm on this one and not allow the Judiciary to trample on our privileges as Members of Parliament. We cannot and shall not have our cake and eat it. Nothing will stop a judge tomorrow from ordering the police to walk into this Chamber and arrest me for something that I have said on the Floor. Therefore, we cannot pretend that we will have our cake and eat it; that we will choose what powers and privileges to enjoy under our Standing Orders and which ones we will rubbish in the Judiciary.

Therefore, we must be firm because this matter goes to the core of our independence as a House. I, therefore, beseech you, Hon. Speaker, to be very firm on these orders as *Mhe*. Olago

has said. It is unfortunate because he has said that we have not seen the ruling and are depending on media reports. There were members in this House who went to question the authority of the Speaker outside the court room with the media. At the right time, we should bring this matter to the attention of the Committee on Powers and Privileges

If we want to be respected, we must respect others and the very institution that we sit in. We must respect and honour the authority of the Chair. Otherwise, we may as well ask you to excuse yourself and get Justice Odunga, Justice Mumbi Ngugi and others to come and sit there and conduct the business of this House.

Thank you, Hon. Speaker.

Hon. Speaker: The Member for Ruaraka, you have the Floor.

Hon. Kajwang': On a point of order, Hon. Speaker. I do not want to repeat what my elder brother, Hon. Olago Aluoch, has said but issues that have been raised by the Leader of the Majority Party are weighty. They are things which we need to reflect upon, discuss and debate freely in an environment that will enable us to add value.

As a matter of procedure, the Leader of the Majority Party has referred to newspaper reports. It could or could not be the issue that Members have engrossed in their minds. This is a House of procedure, and for us to understand the content and context within which the Judge referred to by the Leader of the Majority Party made his discussions---

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

Hon. Kajwang': I am on a point of order. I have said twice that I am on a point of order. The Hon. Leader of the Majority Party knows that when I am on a point of order, he will allow me to finish my point of order before he can rise on his feet.

Hon. Speaker, we listened to the Hon. Leader of the Majority Party without raising an eye, even though we had preliminary issues that we wanted to raise with his address. This is simply that he is referring to technical issues over how a judge approached interpretation of the Constitution, reasons that the judge gave, decisions that the judge made and how it impacts both on the Legislature and the Judiciary. To be honest, Members would have looked at the ruling and understood it, and then we could come before the House to debate these issues freely.

So, I do not want to get into the substance of the issue. I feel a little gagged that without the ruling, I am unable to fairly discuss the issues that have been raised by the Hon. Leader of the Majority Party. Hon. Speaker, is it in order that we continue to discuss a matter for which we have not seen the papers that are relied upon which have not been tabled, so that we are able to discuss properly?

Thank you.

Hon. Speaker: Well, the points raised by both Hon. Tom Kajwang' and Hon. Olago Aluoch relating to the issues raised by Hon. Leader of the Majority Party are key to a fair debate and understanding of the issues at hand. If, indeed, there are any such orders, and I hope I am being heard by everybody, let them be presented here in the Chamber. This is not a matter purely about the orders being made against Hon. Speaker. If, indeed, those orders are the way it has been alleged, it is a matter that the House should debate and make a fair determination.

I, therefore, agree with Hon. Olago Aluoch and Hon. Tom. Kajwang' notwithstanding the very forceful arguments that have been advanced by the Hon. Leader of the Majority Party and the Hon. Member for Kikuyu. However, until such time as we have the Order here as Hon. Olago Aluoch said, we will be discussing in vain. It is immaterial that some of you may have been present because your presence does not mean anything. It is not the Order neither is it the ruling. You are just one of the spectators. So, your presence in a court room does not mean

anything since you are not in attendance like you are here now. This is different. That is why there is a record showing that you were here today.

However, there is no record showing that anybody attended some court room as a Member of Parliament, a spectator or somebody interested. It is immaterial. You cannot say that from where you are seated you attended in whatever capacity. Unless we have somebody who claims they attended as counsel either assisting, *amicus* or as a defence witness to the extent there is no Order. Hon. Kaluma, you cannot replace yourself as the Order. You are just an image in court. You will bring the records and proceedings that will show that Hon. Kaluma, the Member for Homa Bay Town appeared as an advocate or in whatever other capacity.

So, let us wait for the Order. Once it is transmitted and if at all it will be debated on the Floor of this House, I will waive certain provisions just in case Members may wish to bring substantive Motions. This is not a matter about the Hon. Speaker of the National Assembly and it must not be viewed as such. So, Hon. Members until such time as an Order or ruling is transmitted to me - I will direct that it be placed on the Table here for Members to express themselves without doubt and in knowledge and information - I will disallow further debate on this matter and proceed with the business.

Hon. John Mbadi, you cannot just start making gestures. I have disallowed further debate in agreement with the points raised by Hon. John Olago Aluoch and Hon. Tom. Kajwang' that until we have the orders, here we will not debate.

As we proceed, allow me to recognise the following students and pupils in the Speaker's Gallery:- Students from Ndagani Girls High School from Chuka/Igambang'ombe Constituency, Chief Mbogori High School from Tharaka Nithi, Archbishop Gitari High School from Kirinyaga County, All Saints Kamoiywo Preparatory School from Nandi County, Mbuthani Secondary School from Makueni County and Kivani Primary School from Kibwezi Constituency, Makueni County.

They are all welcome to observe proceedings in the National Assembly this afternoon.

Let us move on to the next Order

Hon. Chepkong'a: On a point of order.

Hon. Speaker: Yes, Hon. Chepkong'a. What is your point of order?

Hon. Chepkong'a: Thank you, Hon. Speaker, I thought I had an understanding when I came to your office and had approval---

Hon. Speaker: Yes, Hon. Chepkong'a. I think we took too long on the other matter. I know you have a solemn matter which you want to give a statement on.

Hon. Chepkong'a: Yes. I thank you Hon. Speaker but before I do so, I hope it will be now the precedent of this House that unless someone produces documentation on the matters that they wish to raise, whether it is about cattle rustling, they will bring the cattle rustlers here.

(Laughter)

Hon. Speaker: Hon. Chepkong'a, I cannot hear you. Today you have sat very far away.

Hon. Chepkong'a: Yes, Hon. Speaker. I was just saying that Hon. T.J Kajwang' and Hon. Olago Aluoch claim that you must bring the subject matter to the House.

I am saying that when students go on riot at the universities, you will not allow a Motion for Adjournment unless the rioting students are brought here as exhibit so that we can discuss, otherwise we will not believe that it happened. We cannot discuss abstract things in future.

Hon. Speaker, I like your ruling but I hope we will be faithful to that ruling, and you will overrule anyone who will purport to bring discussion on riots by university students and killing of demonstrators if they have not brought the demonstrators into the House. It is in light of that that I thought since they are lawyers who were speaking and you agreed with them, this is a very serious precedent and we will go by it.

At a meeting that we held this morning of the Departmental Committee on Justice and Legal Affairs, we noted with a lot of sadness the things that happened last week. This is the Committee that oversees the Judiciary and the Director of Public Prosecutions (DPP) who are concerned with the prosecution of criminals and adjudication.

The following statement was unanimously approved by the Committee.

MURDER OF WILLIE KIMANI/JOSEPH MWENDA/JOSEPH MUCHIRI

The Departmental Committee on Justice and Legal Affairs learnt with great shock the disappearance and subsequent brutal murder of the late Willie Kimani, an advocate of the High Court of Kenya; his client, the late Mr. Mwenda, and their driver, the late Mr. Muchiri. It is evident that our learned friend, Mr. Kimani was brutally murdered because of his professional duty as a lawyer in the service of members of a society in quest for justice in the face of impunity perpetrated by people who are supposed to protect him.

Mr. Kimani was simply fulfilling his professional call as an advocate to defend and protect the constitutional rights of his clients and Kenyans at large. Lawyers shall forever remain essential pillars in so far as administration of justice and the rule of law are concerned. This is, therefore, not a surprise that atavistic forces of impunity within our police force are determined to scare members of the profession from pursuing matters they perceive are injurious to their characters.

Systemic problems persist in the investigation, prosecution and punishment of perpetrators of heinous crimes. The failure of the police force to effectively address past violations of people's rights by its officers has led to the rise of rogue officers and extra-judicial killings of innocent Kenyans.

We call upon the Inspector-General of Police (IG), the Director of Criminal Investigations, the DPP and all the relevant offices to ensure prompt, impartial and effective investigation is undertaken into the murder of Willie Kimani, his client and the taxi driver. In a system where even lawyers end up being killed by the police, what hope can ordinary defendants have?

As Members of the Departmental Committee on Justice and Legal Affairs and Parliament at large, we would like to denounce in the strongest terms possible the heinous killing of three innocent Kenyans. As representatives of the people, we demand that conclusive investigations leading to the successful prosecutions of the culprits and their accomplices be expedited.

Thank you, Hon. Speaker.

Hon. Speaker: The Member for Homa Bay Town appears fairly agitated. Is it about the same matter?

Hon. Kaluma: Yes, Hon. Speaker. Thank you, Hon. Speaker for permitting me to add my voice to this matter. It is unimaginable what happened to this budding lawyer in our country. From the information we have, Mr. Mwenda, the client of this lawyer was shot somewhere. I am not sure whether he was shot by the same accused officers. The same police officer, upon Mwenda complaining to the Independent Policing Oversight Authority (IPOA), trumps up traffic

charges against him. The traffic charges were drug-related. I am speaking to something that I have seen. As much we are investigating this matter, we must question why the office of the DPP noting the abuses of the powers of prosecution to take people to court, sustained and went ahead to prosecute Mwenda with those obviously trumped up charges. How does an Administration Police (AP) arrest a person he has shot?

In the charge sheet before the court, the name of the AP is listed as the first witness. The same officer goes ahead to bring drug-related charges. What is not sufficient for the DPP to be seized of those cases in court?

Article 157(2) of the Constitution vests powers in the DPP to avoid abuse of the criminal justice process, proceed and prosecute. What happened is very scary. People are asking why we have not been protesting as other lawyers. This is what happened. A lawyer going before a court of law to seek justice for a client is picked from court. What security and freedom do the people of Kenya have when they are told they have the right to access justice? They did not just go for the party but they also killed a lawyer and a mere taxi driver. This matter should be thoroughly investigated. This also speaks to something we have been taking for granted; the history of disappearances of people. Hon. Ichung'wah spoke to it last week. Once people disappear, we raise our emotions but after a short while we forget. We must treat this matter to the extent that it touches on very many people who have not committed any wrong.

We must reform the National Police Service particularly the AP.

(Hon. A.B. Duale laughed)

We have had a history with the AP. The Leader of the Majority Party is laughing but it is not about the teargas. The manner in which the AP is operating is like Articles 238, 239 and 243 of the Constitution say nothing. Those provisions state that the police shall be impartial and shall not further the political interest or cause of an individual, any side or prejudice any other. We are seeing an AP force whose command we do not understand where it is coming from. We must take up this matter to see additional reforms we should undertake in our National Police Service and not the National Police Force as it was.

A short while ago, I proposed a legislation to stop police vetting. It was, however, defeated. The repeated one was, of course, rejected and I think rightly so because it had been previously defeated. When you remove over 300 people serving in the police service at once in the manner we did through vetting; when you remove people who have trained on the use of firearms and whose livelihoods have been feeding on the job and take them outside, you are building a parallel dark force to the regular police apparatus. We are sending out there people who have been trained on how police officers deal with crime, how they react, the length of time they take and the strategies they apply.

Hon. Speaker, I may be wrong, but this nation will soon agree with me. We are developing a dark police force. It will not be possible for our people to control it. I will be happy if we stop vetting police officers and their matters dealt with internally through the existing disciplinary procedure within the police. This is the manner they were dealt with before.

Thank you.

Hon. Speaker: Hon. Members, unfortunately, I will not allow further comments on the Statement. That was a Statement from the Departmental Committee on Justice and Legal Affairs. Granted that there are processes which have commenced in court, it may be a bit unwise for us to allow further ventilation, because we do not know who is going to say what, and what it could

compromise. We do not want either the defence or the prosecution side to feel that certain things said on the Floor of the House could compromise their side of the case. Please, bear with me.

Hon. Members: *(Off-record)*

Hon. Speaker: It does not matter. I do not know what you are likely to say. Prosecution has just commenced. If you want to deal with that matter, and particularly the general areas which Hon. Kaluma has addressed, there is a mechanism for going about it. This is not an opportunity for Members to send messages of condolences.

Remember, it is a Statement from the Departmental Committee on Justice and Legal Affairs. It was well coached and fairly guarded. I have listened to what Hon. Kaluma has said. Allowing any further comments on this statement will interfere with the mandate of the Judiciary. We cannot be saying that we do not want others to interfere with what we do here while at the same time we are seen to be veering into their realms. Let us remain the sober side.

Next Order!

BILL

Second Reading

THE KENYA ROADS BILL

(Hon. A.B. Duale on 14.6.2016)

(Resumption of Debate interrupted on 30.6.2016)

(Hon. (Ms.) Nyasuna walked in the Chamber while the Speaker was on his feet)

Hon. Speaker: Order, Hon. Wangari! Remain upstanding. You cannot start dashing like that while I am on my feet.

Hon. Members, debate on this Bill was concluded. What remains is putting the Question.

(Question put and agreed to)

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

Next Order!

MOTION

ESTABLISHMENT OF JOINT PARLIAMENTARY SELECT COMMITTEE ON IEBC MATTERS

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

THAT, acknowledging that the sovereign power of the people of Kenya may be exercised directly or indirectly through their democratically elected

representatives and that the people's sovereign power shall be exercised only in accordance with the Constitution; recognising that through pronouncements, sections of the Kenyan society have raised issues on the credibility, impartiality, integrity and independence of the Independent Electoral and Boundaries Commission (IEBC), the electoral processes and the electoral law; appreciating the need to have the August, 2017 general elections conducted by a body enjoying the broad confidence of most Kenyans; now therefore in accordance with the provisions of Article 1(1) and (2) of the Constitution of Kenya and Rule 9 of the Houses of Parliament (Joint Sittings) Rules, the National Assembly resolves that:-

(i) The two Houses of Parliament establish a joint select committee consisting of fourteen (14) members, seven (7) each from the two Coalitions in Parliament.

(ii) The mandate of the said Joint Select Committee shall be to:

- (a) Inquire into the allegations against the Independent Electoral and Boundaries Commission Commissioners and the Secretariat;
- (b) On the findings of (a) above may recommend legal mechanisms for the vacation from office of the current Commissioners of the Independent Electoral and Boundaries Commission and the Secretariat in accordance with the Constitution;
- (c) Recommend legal, policy and institutional reforms to strengthen the Independent Electoral and Boundaries Commission and improve the electoral system and processes so as to ensure the August, 2017 elections are free and fair and are administered in an impartial, efficient, simple, accurate, verifiable, secure, accountable and transparent manner; and
- (d) On the basis of the findings and recommendations in (a), (b) & (c), prepare a report and a draft Bill or Bills.

THE NATIONAL ASSEMBLY FURTHER RESOLVES THAT:-

(iii) The Joint Select Committee shall report to Parliament within 30 days;

(iv) The leaders of the two coalitions will agree to issue statements separately to support the final report and Draft Bill or Bills;

(v) The Majority and Minority leaders in Parliament will signify the approval of the final report and draft Bill or Bills by affixing their signatures thereon prior to presentation to Parliament;

(vi) The Joint Select Committee shall have two co-chairs each appointed by the respective Coalitions;

(vii) The Coalitions shall provide joint rapporteurs to the Joint Select Committee, but the official record will be the parliamentary HANSARD;

(viii) The Joint Select Committee and each coalition may engage experts, professionals and such other technical resource persons as they may deem necessary;

(ix) The parliamentary Clerk's Office shall provide secretarial services in accordance with the Standing Orders;

(x) The Committee shall receive views from experts, members of the public, the business community, civil society, religious groups, political parties, county governments and any other persons on matters relating to the Independent Electoral and Boundaries Commission and the electoral process;

(xi) Each member of the Joint Select Committee shall have one vote. Decisions in the Select Committee shall be made by two-thirds majority vote;

(xii) The Committee shall formulate its own rules of procedure; and,

(xiii) The Joint Select Committee shall comprise of the following members drawn from the two Coalitions in Parliament:-

1. Hon. (Dr.) Naomi Shaban
2. Hon. (Eng.) Mohamud Mohamed Maalim
3. Hon. Jimmy Angwenyi
4. Hon. Moses Kuria
5. Hon. David Eseli Simiyu
6. Hon. Junet Mohammed
7. Hon. Mishi Mboko
8. Sen. Kiraitu Murungi (Co-chair)
9. Sen. James Orengo (Co-chair)
10. Sen. Kipchumba Murkomen
11. Sen. Beatrice Elachi
12. Sen. Johnson Muthama
13. Sen. Mutula Kilonzo Jnr
14. Sen. (Dr.) Boni Khalwale

Hon. Speaker, the Coalitions as represented in both Houses have agreed both in spirit and the context of that Motion.

The IEBC is created under Article 88 of the Constitution with many functions, including conducting elections and referenda, and the delimitation of boundaries. The IEBC is also a creation of the Constitution of Kenya, 2010. During the referendum that was followed by the promulgation of the Constitution of Kenya 2010, the people of Kenya decided to anchor the IEBC in the Constitution in order to insulate it from political players. Therefore, the IEBC must be independent and impartial of the teams which will be playing in during general elections. The IEBC like any other commission is also provided for under Article 248 and Article 251 of Chapter 15 of the Constitution.

Hon. Speaker, in carrying out its crucial constitutional mandate, the IEBC is under obligation to register voters and conduct elections. I am sure under the new dispensation, the first General Elections they did was that of 2013. In contrast to the aftermath of the 2007 elections and the post elections violence, the 2013 General Elections were very peaceful, civil, and the right channels and court system which were designed under the new Constitution were followed. Where the election results were invalidated by the courts, the IEBC has proceeded to conduct a number of by-elections as required by the Constitution of Kenya, 2010, and by the IEBC Act, 2011

Despite shouldering that constitutional mandate to a degree of competence, issues have been raised. These are issues to do with capability, impartiality, integrity and---

(Loud consultations)

Hon. Speaker: Order, Members! The consultations are too loud. It may well be that you fully understand this Motion. Nevertheless it is important that we all hear. You can consult but in lower tones.

Hon. A.B. Duale: Hon. Speaker, I want to share with Hon. Fatuma that today is the last day of Ramadhan. I assure her that tomorrow will be *Idd* and I wish her *Idd Mubarak*.

Despite the IEBC fulfilling its constitutional mandate to a degree of competence, issues have been raised with regard to credibility, impartiality, integrity and independence of the IEBC. For a number of weeks, Kenyans have been treated to a number of incidents of protest over the removal of the IEBC Commissioners, their stay in office and the conduct of the general elections. Innocent Kenyans lost their lives and property when businesses were looted and vandalised. It is the mandate of this House to offer leadership in times such as this in order to safeguard the supremacy of the Constitution and the rule of law.

Some of us have been very consistent from day one that it is the people's representatives who rise to the occasion when the country is faced with certain challenges. I am happy to report that the various coalitions have agreed that the route to follow is that of a Parliamentary Select Committee under Articles 93, 94, 95 and 96 where the leadership of both Houses draw their mandate from.

The 2017 General Election is upon us and it is, therefore, prudent to interrogate any issue or matter that may affect the holding of the election at the earliest opportunity in order to assure all Kenyans the integrity of the electoral process and also inspire their confidence in the persons mandated to conduct and supervise the 2017 General Election.

Issues have also been raised on the suitability of the current electoral laws and their processes, whether they can adequately address the proper conduct of the next elections. I inform the House that currently, before the Departmental Committee on Justice and Legal Affairs, there are a number of pieces of legislations that will deal with electoral laws. I am sure the Select Committee will borrow a leaf from these Bills which are before the House. They include the Political Parties Act which we have just amended, the Election Act, 2011 and the Independent Electoral and Boundaries Commission Act, 2011. All these, I am sure, are under investigation legislatively in order to prepare the country for free, fair, transparent and peaceful general elections.

It is imperative for any attempts to reconstitute the IEBC and review the law to be done in the confines and under the supervision of Parliament. We are all under obligation to uphold, protect and defend the Constitution and any other mechanism adapted that would attain on our record as the representatives of the will of the people.

To address the foregoing issues of concern to the people, the two coalitions have, therefore, met and agreed to a bipartisan and bicameral approach to ensure the ownership of the final product is the people of Kenya. We have agreed the recommendations that will be made and adopted by the Select Committee will ultimately come to the House and I urge my colleagues that we all come together united in the interest of the people of Kenya to support those reports and that Bill or Bills.

The proposed exercise affects the existing constitutional order and will form a precedent for all successive governments. The Inter Parties Parliamentary Group (IPPG) was not anchored in law. It was a gentleman's agreement but what we are doing now that touches on a constitutional order will form part of a precedent for future successive parliaments. Any recommendation proposed shall, therefore, attract the application of the constitutional two-thirds majority for adoption prior to presentation to the two Houses.

The 14 men and women we have selected are better in terms of education, character and the way they see or better in taking care the interests of the people. Just like any other Committee, the 14 Members are representatives of both Houses. I am sure issues of gender and regional balance were raised at some quarters but at the end of the day what is important is how we get a solution that will give the people of Kenya a free, fair, transparent and peaceful general elections and the people to man it have the confidence of Kenyans.

Abraham Lincoln said that elections belong to the people and if they decide to turn their back on the fire and burn their behinds then they would have just to sit on their blisters. I am sure that at the end of the day, the people who will matter in any general elections are the voters and the electioneering.

The 14 colleagues that we have selected have an uphill task; a monumental task. They need to deliver to the people of Kenya. I am sure the 40 million Kenyans and friends we have out there look up to their challenge. Harry Truman, one of the US Presidents said; "it is amazing what you can accomplish if you do not care who gets the credit." The credit will not belong to the 14 Members but it will belong to the 40 million Kenyans - the two Houses of Parliament; that is the National Assembly and the Senate. It will belong to all who cherish free and fair and transparent and peaceful general elections.

Before I conclude, I want to go on record as having said that Kenyans must choose a leader who invests in building bridges and not wars; a leader who does not disenfranchise our country along regional, political and along tribal lines. Kenyans must also choose a leader who invests in morality and not corruption; Kenyans must choose a leader who invests in stability and not fear and terror. Kenyans must invest in a leader who preaches peace not chaos; love not hate and unity not segregation. They should invest in a leader who preaches tolerance and justice not lawlessness. As politicians, a time comes when our interests are not as important as the interests of a nation of 40 million people.

The 30 days given to this Committee are borne out of the tight electoral timelines given in the IEBC Act, the Constitution and all the other relevant laws. They must work within 30 days. The 14 Members we have chosen are under obligation to forego their constituencies, families and luxury so as to sit for long hours day and night to make sure they submit a report and a Bill within 30 days. This is so that by the beginning of October, we have the necessary electoral infrastructure that will enable Kenya to hold peaceful elections.

This is a bipartisan Motion. I am sure both sides of the divide will support it and we will not have issues that will divide us. What is before us is for the best interests of the people of Kenya. We will walk slowly but we will never walk backward. There are many of us here who participated in the demonstrations, which was within their constitutional rights. Never again shall we, as leaders, use the streets and other forms of engagement to solve the many challenges facing the people of Kenya.

The 2010 Constitution is robust. It has solutions and roadmaps on how we should solve our own internal and external problems. For example, the Kadhi's Court in the Constitution offers solutions and roadmaps for marital disputes amongst Muslims. It gives Muslims the roadmap on how to divide inheritance. I do not need to go to the streets when I have a dispute with my wife. I just pull out the Constitution, go to the section on Kadhi's Court, read it and tell my wife that this is how we should resolve our issue.

It is not fair that the leadership of this country wants Kenyans to die just because of mere political competition. It is not fair that we want property to be destroyed just because of mere political leadership. It is not fair that you balkanise the nation just because one wants to ascend to

power. Without fear of contradiction, leadership comes from God. You must be anointed by the Almighty Allah for you to become a Member of Parliament, Senator, governor or President. If that anointment has not been done by the Almighty God, you will not see State House.

With those many remarks, I beg to move and ask the Leader of the Minority Party, the Member for Kitui West and a former Minister in the KANU Government, who participated in the IPPG, has a lot of historical memory and at one stage I used to sing for him when I was in school, to second the all-important Select Committee Motion.

Hon. Speaker: Let us have the Member for Kitui West and Leader of the Minority Party.

Hon. Nyenze: Thank you, Hon. Speaker. Thank you, Leader of the Majority Party for those very good platitudes. I am happy you still remember that you used to sing for me when I was a Cabinet Minister during those good days.

I rise to second this Motion. It is a very important Motion because we all need electoral reforms. We need the laws to be relooked. We need a very clean and transparent electoral register. We also need issuance of identification cards (IDs). This Select Committee should look at all issues that refer to elections.

One issue that has stood out very clearly is the issuance of IDs, especially in border areas and communities. People of Somali origin have had difficulties. Their representatives in the National Assembly have always complained that it is a very tall order for people who have attained the age of 18 to get IDs. This is true not only for the people of North Eastern Kenya but also in other areas of this country. The IDs should be issued throughout and should be made very easy to obtain. They should be issued to all people who are eligible to vote - that is people over the age of 18.

If an electoral process is not efficient, transparent, accurate and acceptable, there are bound to be conflicts. We saw what happened in Kenya. We have seen and read about it in Sub-Saharan Africa. There have been a lot of conflicts. These conflicts come as a result of disputed elections. If we want this country to prosper and attain a growth of 10 per cent and above, we should reform the electoral process. I am happy about the 14 Members who have been selected. I thought we would select most of the lawyers because they have knowledge of the law but these people represent interest groups from both sides of the political divide.

When the three principals of the CORD coalition plus His Excellency the President and his Deputy, Ruto saw the need to form this Select Committee, we were very happy because this country was on the brink of war. We had reached a cliff. For new Members who have come to this House, ethnic tensions cause conflict. When riots start, property is destroyed, the economy stagnates and before you realise it, people are killed in one corner then revenge missions start in the other corner. By the time you realise it, war has broken out. To stop it is not very easy. To start is very easy. This happens because of careless utterances from careless leaders who will not consider people's lives because they will only be interested in gaining power. Doubts have been raised about the suitability of the IEBC, as it stands today, to referee the 2017 elections.

I am happy that both sides of the political divide have realised that the IEBC, as constituted today, cannot deliver a fair result. As a result, we have established this Select Committee which will come up with recommendations on the disbandment and selection of fresh members, who will steer this country to a successful election. The results of an election will never be accepted by all sides all the time. If it is widely accepted and majority of the citizens see fairness, they will accept the result. However, in a situation where most of the Biometric Voter Registration (BVR) kits fail, it is unfair. There are corruption allegations like the Chicken Gate scandal and many things attendant to that. Therefore, IEBC should be disbanded.

Some IEBC commissioners have volunteered to resign. I urge the Members of this House and the Select Committee to accept the resignation of those commissioners. Let us support that position and give them the packages they deserve, so that they can show the way out.

Hon. Speaker, when two teams go for a match, the referee has to be impartial. If one of the teams is not happy, the match cannot take place. I am happy that is now water under the bridge. I must thank the three CORD Principals, namely, Hon. Kalonzo Musyoka, Hon. Raila Odinga and Hon. Wetangula, as well as His Excellency President Uhuru Kenyatta and the Deputy President, Hon. William Ruto, for seeing the light and showing the way by allowing the formation of this Select Committee, to avoid further loss of lives and property. The step they took will unite the country. I appeal to legislators not to throw spanners into this work. We have started on a good footing. We have agreed on the 14 Members. Let us give them a chance. I appeal to the Office of the Clerk to provide the best members of staff who are well informed, impartial and who will be supportive to this Select Committee to enable the Members to come up with good recommendations.

Hon. Speaker, we were all in KANU and I believe you are still in KANU. I moved on and now I am in CORD.

(Laughter)

Hon. Speaker: Hon. Nyenze!

Hon. Nyenze: Yes, Sir.

Hon. Speaker: How can you make such a wild allegation? I do not belong to any political party.

Hon. Nyenze: Oh! Sorry, Hon. Speaker.

Hon. Speaker: You must withdraw that from the records.

Hon. Nyenze: I withdraw and apologise, Hon. Speaker.

Hon. Speaker: Now that you have withdrawn, proceed.

Hon. Nyenze: I was not aware that the Speaker had moved from KANU like me. It is a party that gave birth to nearly all of us. We loved the party and we learned politics in it, but I am now in CORD.

Hon. Speaker: Hon. Nyenze, are you informing the House that you are the one who removed me from that party?

(Laughter)

Hon. Nyenze: Hon. Speaker, I thought you forgave me. I thought that is water under the bridge. I apologised by saying sorry for removing you from KANU.

Those were those days. When you go to church, confess your sins, get saved and start walking in light, the following Sunday the pastor does not remind you that you used to steal chicken. For that reason, leave it at that because I am now reformed. I am in CORD. KANU collapsed when it introduced the *mlolongo* system. The shorter lines were declared the winner. The former President, Hon. Mwai Kibaki, formed the Democratic Party (DP). People like Masinde Muliro, Shikuku and Jaramogi formed the Forum for Restoration of Democracy (FORD) while others formed other parties.

The future of this country is dependent on coalitions. We have CORD, The National Alliance (TNA), the United Republican Party and other smaller parties. In future, this country

will be ruled through coalition parties. This Select Committee should also look at those issues. Let political parties be funded adequately, so that they can articulate their issues. Democracy will spread to all corners of the country as parties educate their members on the best way to do politics and maintain peace.

There was an article in the newspaper today by Dr. David Ndi which stated that Kenya is in a cruel marriage and that it was time to divorce. Listen to the substance of the matter. The Committee should be wise enough, so that commissioners who are appointed to the IEBC after this IEBC are impartial and people who can unite Kenyans by being fair, transparent and not rigging elections in favour of one side. They should be people who can stand the test of time.

Kenya is a great country. I hope the Members have realised the number of presidents and important dignitaries who have visited Kenya. Even today, the Prime Minister of Israel is in the country. Unless we spoil it, this is a country which is very important in the world economy. I am appealing to politicians and legislators to see that the biggest problem in this country, which has caused conflicts, has been leaders who use their mouths to spit venom and talk ill of others. In the process, they cause conflict. Kenyans should never at any other time elect such leaders. It does not matter whether one is your tribesman or kinsman or is from your region, the best thing is to elect leaders who can unite Kenyans and speak peace. These should be leaders who will unite and not divide our people for selfish gain. The Kenya's minerals, sunshine, brilliant minds and very established private sector should be safe. As leaders, let us make sure that we do not spoil this country. Let us make it better by appointing a good electoral team that will not favour one side. If we are defeated, we will accept and if the other side is defeated, they should accept.

With those few remarks, I second.

(Question proposed)

Hon. Speaker: The Member for Mogotio.

Hon. (Prof.) Sambili: Thank you, Hon. Speaker, for giving me this opportunity to support this Motion. I am glad my name is not in this list. I thank you for honouring my letter requesting that my name be removed from the list provided by CORD. It must have been a mistake or a case of mistaken identity because I have never been in CORD. I am in KANU which signed to be in the Jubilee Coalition. We signed at 3.00 p.m. on a particular day whose date I do not remember. I am so glad that my name is not included here. Somebody was trying to rig me in one year before the elections.

(Laughter)

Secondly, I congratulate the Members of the Select Committee and I wish them success in the onerous task before them. They should do what they should do to make sure that we have a credible electoral body, rules and processes from which we can all expect fairness. We should expect that what the people of Kenya decide in electing their representatives in whichever capacity, whether as Members of Parliament, governors, MCAs, the President and the Deputy President, will be respected.

I stand here to say I am truly glad. I was away in Korea and got to know my name was in the original list. I want it to be known by the detractors in my constituency that I was in Korea. I am here to represent the people of Mogotio in the way they have told me to and I am in the Jubilee Coalition.

(Applause)

Hon. Speaker: Order, Members! Just before we proceed as per the request list here, I want to make this point clear. Article 93 of the Constitution establishes the Parliament of Kenya, which shall consist of the National Assembly and the Senate. The people who serve in Parliament are, therefore, Members of Parliament. Senators are Members of Parliament. So, feel free to refer to them as your colleagues in the other House of Parliament. This thing of feeling like it is different, there is nothing. They are just colleagues. You are quite in order, Hon. (Prof.) Sambili, to recognise them as such.

Further, I had approved a proposal for a minor amendment by Hon. Washiali. Since this is a Motion that has bipartisan support, I think it is better I give him an opportunity to move the proposed amendment.

Hon. Wakhungu: No.

Hon. Speaker: Hon. Chris Wamalwa, when I am speaking, you cannot shout “no”. You have no such capacity. Let us allow Hon. Washiali to move the proposed amendment. Both sides will see whether it makes sense, so that either you debate the Motion as amended or in its original form. There are just a few words that Hon. Washiali proposes to amend. Like I have said, this is a Motion that has bipartisan support.

Hon. Washiali.

Hon. Washiali: Thank you, Hon. Speaker. From the outset, I want to admit that I am finally very happy that this is a parliamentary process the way we had wanted it to be from the beginning. I am aware that the Motion before this House has been negotiated between both parties. However, a Motion coming before this House must be free from any contradiction to the Constitution and it should also not conflict with the doctrine of separation of powers. That is why under the Standing Orders No.54(1), I have come up with minor amendments. In the second line of the first paragraph, they have cited the Constitution in Article 1(2) that the people of Kenya may exercise their sovereign power either directly or through elected leaders.

Hon. Speaker: Hon. Washiali, move your amendment. You cannot begin contributing. Move your amendment so that the Motion is either debated as amended or in its original form.

Hon. Washiali: Hon. Speaker, I intend to move an amendment to the Motion.

Hon. Speaker: Not an intention, just move the amendment.

Hon. Washiali: Hon. Speaker, I beg to move:-

“THAT the Motion be amended by deleting the word, ‘indirectly’ appearing after the words ‘may be exercised directly or’ in the second line. That is my first amendment.”

Hon. Speaker, you may have to give direction on whether I should move one amendment and then the other or both at the same time.

Hon. Speaker: Hon. Members, for you to follow what Hon. Washiali is saying, the Motion begins as follows:-

THAT, acknowledging that the sovereign power of the People of Kenya may be exercised directly or indirectly---

He proposes to delete the word ‘indirectly’. That is what he is saying.

Hon. Washiali: Yes, that is the position. Unfortunately, most Members have not carried their Constitution. The Constitution states directly or through elected leaders. It is not directly or indirectly. We need to be consistent when we are on the Floor.

Hon. Speaker: Hon. Members, let me just read for you Article 1(2) of the Constitution, so that you can understand what the Member is proposing. It states:-

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

He is removing the word ‘indirectly’, so that it is in consonance with this particular provision in the Constitution. That is what the Member is doing.

Hon. Washiali: Thank you, Hon. Speaker. I do not know whether I will need to be seconded before I move the second amendment because they are different.

Hon. Speaker: Very well, who can second you?

Hon. Washiali: In which case I had talked to Hon. Njagagua. I want to ask Hon. Chris Wamalwa to second.

Hon. Speaker: Yes, Hon. Wamalwa.

Hon. Wakhungu: Thank you, Hon. Speaker. I rise to second the amendment by Hon. Washiali. It is just semantics and it is true it is direct from the Constitution. This is not something we should waste a lot of time on. We just accept it and move on.

I second.

Hon. Speaker: Hon. Members, can I propose the Question on this one?

Hon. Members: Yes.

Hon. Speaker: Hon. Members, he has two proposed amendments and you need a chance to express yourselves.

(Question, that the words to be left out be left out, proposed)

Hon. Speaker: Hon. Midiwo.

Hon. Midiwo: Thank you, Hon. Speaker. I understand the wordings in Article 1(2) of the Constitution. This Motion has borrowed from the Constitution in Article 1(2) where it says:-

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

Hon. Speaker, I have just lost my track of thought. What I am requesting Hon. Washiali to explain to me and I think it is good to carry everybody along, is when we delete the word ‘indirectly’, in my mind, it takes away the power to consult. I am just asking for an explanation. Can I just get the semantics, so that I am clear before we debate this one?

Hon. Speaker: If you read Article 1(2) of the Constitution, the Member is right that sovereign power may be exercised either directly or through democratically elected representatives. By deleting the word ‘indirectly’, the Motion will read:-

THAT, acknowledging that the sovereign power of the people of Kenya may be exercised directly or through their democratically elected representatives--
_”

That is how it will read. Yes, Hon. Kajwang’.

Hon. Kajwang: Thank you, Hon. Speaker. Please, may the Member for Kericho give me time to speak my mind? These can be small things, but they have taken the blood of people. People died to have this negotiated thing come before us. I want to invite you to the emotion as it is and read with you the Constitution in Article 1(2) that my senior, Hon. Midiwo, has read. It states:-

“The People may exercise their sovereign power either directly or through their democratically elected representatives.”

You come to the Motion as it appears on the Order Paper and it says the word ‘indirectly’. My point is that the phrase which goes through their democratic elected representatives is an indirect representation. So, when the Motion says ‘indirectly’ it is only semantically affirming the fact that there is a direct and an indirect representation which is through their democratically elected representatives.

The substance of this Motion is not going to change the Constitution. We are not amending the Constitution. Whatever Motion will come out of this will never ever amend any Constitution. It will be an expression. So, even if it is expressed in terms which are not in the Constitution, but to the extent that it affirms the principles in the Constitution, that principle needs to be entailed. The second thing, as I sit down, is that we must know that this is a negotiated document and it is bipartisan. There is a principle that it has been negotiated elsewhere and has been brought, so that we are able to implement it.

Even an attempt to remove a comma or full stop negates that principle of negotiation which we have embedded in this system. If there are other leaders who think that this thing has come because we sat eating bread and butter, then they might as well know that it come because blood was shed to bring it to where it is. If it has problems, let us take it to where it was negotiated and it will be negotiated afresh. Even those people know how to remove the word “indirect.”

I beg to oppose. I oppose.

Hon. Speaker: Hon. Members, you may split hairs over nothing. Let us be fair. It is utterly wrong to say that this House has no power even to put in a comma. If it is so, then there is no need of debating. This being a document that has a bipartisan support, I thought it is the kind of Motion that should not be eliciting so much emotion. If you read Article 1(3) and 4(a) and (b), they state that:-

- ‘1(3) Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution-
- (a) Parliament and the legislative assemblies in the county governments;
 - (b) the national executive and the executive structures in the county governments; and
 - (c) the Judiciary and independent tribunals.
- (4) The sovereign power of the people is exercised at—
- (a) the national level; and
 - (b) the county level.”

So, you are exercising that sovereign power which you have been given directly, that sovereign power of the sovereignty that brought you here directly. When you exercise that sovereignty on behalf of that sovereign, you are exercising the power which is delegated to you indirectly.

So, Hon. Members, I plead with you to agree. This is a matter which you should not split hairs on. You can have the word “indirectly” still remain there or agree to remove it.

Hon. Members: On a point of order.

Hon. Speaker: There is nothing out of order. If you want to speak just indicate that, it is not a point of order. They want to speak to the Motion. Hon. Nyamweya, what is it you want to say? Just contribute to that.

Hon. Nyamweya: Thank you, Hon. Speaker. I wish to contribute to the Motion. This Motion is also being discussed at the Senate. If we start carrying out amendments now, we will remove the trust level which has been created. I request the Leader of the Majority Party that this

issue has been like this all the time. It was discussed and brought to the House for debate. The challenge is that if we start amending it now and the Senate is discussing it, we will reach a point where we are not communicating to each other. So, let us pass the Motion as it is. We have formed a Committee which will discuss it. These issues which are likely to bring conflict early enough will be resolved by the Committee. If we start amending it here as Members of National Assembly, the Senate will also start amending it. What are we building? Are we building unity or disunity?

With those few remarks, I oppose the Motion. It should be the way it is for consistency, so that we do not play around. Any amendment we do here will cause a delay by the Senate. We do not know what they are doing. It was agreed that this House should move this Motion.

I oppose the amendment.

Hon. Speaker: I will overrule all of you and make this direction:- That for the reasons given by the Member for South Mugirango, any amendments including the proposed ones by Hon. Ben Washiali will have to be agreed on by the two coalitions. That is the best way to carry this forward.

(Applause)

There is no point of having this unnecessary debate. For any proposed amendments, debate and discuss it and then present it to the leadership of the coalitions. Let them debate, agree and bring the amendments. Let us proceed on that basis.

Hon. Washiali, discuss your proposed amendments with the leadership. It is not injurious. Even the existence of the word “indirect” is not injurious to the Motion. So, Hon. Washiali, my ruling is that there will be no amendments except those that will be sanctioned by the leadership just like the Motion seems to suggest. Indeed, it suggests that the final product will be signed by the two of them. So, any proposed amendments must be signed by the two of them. I, therefore, withdraw my authority in approving your amendments.

Hon. Washiali, relax. It is only fair that it should be that way. I am not clarifying anything. Just like the Motion says, the final product from this process will come here after it has been signed by the leadership of the two coalitions. Please, from both sides of the House, anybody wishing to propose amendments, please, see the leadership of your coalition. That is the ruling for the time being. It is not going to be otherwise, I, therefore, withdraw my approval of the proposed amendment by the Hon. Member for Mumias East. Hon. Washiali, I am very sorry about this. In order to go ahead, this is the way it is going to be.

(Proposed amendment by Hon. Washiali dropped)

Hon. Members, let us now debate the Motion. Hon. Wamalwa.

Hon. Wakhungu: Thank you, Hon. Speaker, for that ruling that we should not allow any amendments. I did it out of duress.

I support this Motion. The matter of the IEBC is an extraordinary disease that needs an extraordinary prescription. I thank the leadership of CORD and the Jubilee Government for accepting to have his Motion on the Floor of the House. Matters of elections are very serious that we must pay attention to. This Motion did not come easily. As Members have mentioned, lives were lost and blood was shed. My humble request to this House is that we support the Motion the way it has been drafted. It has a bipartisan approach and we must support it.

(Loud consultations)

Hon. Speaker, the consultations are very high. Hon. Mbadi and the Leader of the Majority Party are making noise. Can you order them to sit down?

My humble request to the 14 Members who have been selected is that they debate this matter with sober minds. I can see Hon. Kuria is paying a lot of attention and he is one of the Members of the Committee. I assume he is going to do good work. I have no doubt that this Committee, with the blessings from the church, has what it takes. All the 42 million Kenyans are looking at these Members. Within a timeframe of 30 days, we must have a clear framework on what we are going to do.

We have many electoral laws like the Elections Act, the Political Parties Act and the IEBC Act. I wish Hon. Midiwo could listen. I know the Elections Laws (Amendment) Bill is being discussed. My humble request is that we suspend debate on the Election Laws (Amendment) Bill until we finalise debate on these reforms. We should incorporate the findings of the Joint Committee in the Bill. So, it is important for the House Business Committee to suspend debate on the Election Laws (Amendment) Bill to wait for the resolutions of this Committee.

Hon. Speaker, matters of elections cut across many aspects. The Elections Act stipulates that if you have a waiting card, you should be allowed to register as a voter. This is the law, but the IEBC does not allow people to register with waiting cards as voters. The Joint Select Committee should put that in place, so that it is implemented and all Kenyans with waiting cards are allowed to vote.

It is not only CORD that has taken up this matter, but the church has also been on the frontline. I want to thank the civil society for being on the frontline to call for electoral reforms. For us to have free and fair elections, it should not only be about commissioners leaving office, but we need wider reforms in the electoral process. We should also look at the IEBC Secretariat because we are told rigging is done through Information and Communication Technology (ICT). As we move to remove the commissioners from office, we must look at the entire structure of the electoral process. As we embark on this process, it is important for the election date, which is August, to remain as stipulated in the Constitution. That should be one of the clear terms of reference that this Committee must adhere to.

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

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

The father of the civil society in America, Martin Luther King Junior, a priest and a humanitarian, once said that “our lives begin to end the day we become silent about things that matter”. I want to thank all those people who never remained silent because matters of elections are important in any democratic society. He also said that “the ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands in times of challenge and controversy”. We cannot walk this journey alone. All Kenyans are looking at this. We must remove sideshows, be honest and trust each other. We do not want to bring in some funny amendments that will have different implications like the one brought by Hon. Washiali. It

is important to note that this was a negotiated matter. We do not know the interests that were there. We should conclude this matter within 30 days. We should not entertain sideshows. We should focus on the critical objective of this Motion.

We have heard cases of many registers at the IEBC, the green and the black books. The Joint Select Committee should ensure that we only have one register. We will not accept two or three registers because this is the source of rigging. If we do not have a clear register, then we rather disqualify everything we have and register Kenyans afresh. We do not want rigging. The 2013 election was chaos. We do not want Kenyans to lose lives. We must have a clear winner who is accepted by everybody.

The ICT comes with its own challenges. During manual voting, we did not have systems crashing. We now do not know whether the system crashes or it is crashed intentionally. As the youth, we have embraced ICT, but we must be careful that Kenyans are watching. Their lives are precious. Any mess in elections can take this country to the dogs. We do not have any other country. Matters of elections can be very tricky.

I would like to talk about the Electronic Voter Identification Devices (EVIDs) and BVR gadgets. Before you vote, they are supposed to check electronic verification kits. This is the time they verify whether you are registered or not. We are telling the IEBC that we will not entertain any mistakes. If you go to vote, the EVID must verify whether you are registered or not.

The commissioners who are willing to step aside should do so, so that we do not waste Kenyans' time. I know Kenyans are willing to pay these commissioners if the issue is money. We must have an objective process of selecting new commissioners who must exercise objectivity. We do not want nepotism and tribalism.

The Joint Select Committee should look at the Supreme Court laws. Presidential petitions can only be done through the Supreme Court. We should increase the time of filing a petition from 14 to 21 or 30 days, so that we do not have anarchy when people have evidence to bring on board and they are told there is no time. The Committee should not just concentrate on the IEBC Act, but must look at the Registration of Persons Act, the Elections Act and the Political Parties Act. We are ready to amend all the laws that touch on the electoral process.

Hon. Deputy Speaker: Hon. Waiganjo.

Hon. Waiganjo: Thank you, Hon. Deputy Speaker for giving me an opportunity to add my voice on the establishment of a Joint Select Committee on matters relating to the IEBC. This is a very strange Motion because I have noticed that the mandate given to the Joint Select Committee is exhausted and already with a Departmental Committee. When we form a Select Committee where a Departmental Committee is in existence, then we know that we have lost the way. The 11th Parliament has completely lost its independence. This afternoon, we expressed ourselves at length at how this House should get back its independence. Such a Motion is a manifestation of a House that has completely no say in the affairs they run.

Looking at the background that brings this Motion on the Table, you will realise that it is a forced Motion. It did not come from this House. The mandate given to the Joint Select Committee is properly within the Departmental Committee on Justice and Legal Affairs which is already considering a Petition for removal of IEBC Commissioners. In the Order Paper, the next Order is the Election Laws (Amendment) Bill, which has already been debated by both Houses. This House has already passed into law the Political Parties Bill. This House continues to do all that is necessary for electoral reforms to happen. When you see a coalition pulling out Members from Departmental Committees, as CORD has done, and then claiming to want to form a Select Committee of others, then you know that something is amiss. When you see Members of

Parliament losing their conscience and character, and some of them whistling their way out of the prestigious Speaker's Panel, as Hon. T.J. Kajwang' did, then, you know that is a person who is fighting for his nomination next year. When you see Members of Parliament rolling over the tarmac, crying and whistling, and refusing to bring debate to the comfort of the plenary, that is air controlled.

Hon. Deputy Speaker: Order, Hon. Waiganjo! Can Hon. Tom Kajwang' have a right of response?

Hon. Kajwang': Hon. Deputy Speaker, I want us to have enough time for this Motion. So, I do not want to drive Members to side shows. My learned friend, who is my junior, knows very well that you cannot mention a Member in an adverse way without bringing a substantive Motion. If my whistling is adverse or it displeases him, he is entitled to bring a Motion and discuss me. I have my mouth and I have pressed a button. I have my whistle too. So, allow me to speak and whistle my way. Do not tell me when to whistle and when not to do so. Bring a Motion and discuss me.

Hon. Deputy Speaker: Members, we do not want an altercation between the two of you. His point is made. Make your contribution, Hon. Waiganjo, without referring to a specific Member. You know the rules of the House.

Hon. Waiganjo: Hon. Deputy Speaker, this is the time this House must stand up and fight for its independence. The powers that are driving the process in this House are people who are strangers to this House. The truth must be said. I have looked at the mandate which is given to this Joint Select Committee. When it is formed, it should not attempt or imagine that it is dealing with the removal of the IEBC. I advise the commissioners not to appear before this Joint Select Committee because that will amount to a double jeopardy. In law, we know that you cannot subject people to different legal processes. If we allow them to appear before all Select Committees, soon the *Wakorinos* will say that they want the IEBC to appear before them because they want to know one or two things about them.

The other thing I want to say is that if this Joint Select Committee must be formed, they should discuss things like the National Cohesion and Integration Commission (NCIC), and how we can give it more prosecutorial powers. They can debate things like how we can improve our penitential institutions and police cells. Looking through the membership of this Joint Select Committee, I notice, at least, five of them have cases in courts. This list looks like the one I am familiar with at the Chief Magistrate's Criminal Division, where you move and find that a certain member has a matter in Court 3. For example, my good friend and brother, Hon. Moses Kuria and other Members are going to other criminal courts and Hon. Junet and Hon. Muthama--- The latter did a homecoming. I have never seen a homecoming for a criminal suspect, but this is Kenya. Anything can happen!

(Laughter)

This panel has only three women out of a possible 14 Members, which is already a contravention of the Constitution. This Joint Select Committee must be given very clear terms of reference. They must know what they will do. For example, they will not deal with the IEBC issue because that is already with the Departmental Committee on Justice and Legal Affairs. They should be given sufficient time, particularly our brothers and sisters who have matters in court, to concentrate on their defence. They have been given 30 days to table a report in Parliament. I do not know whether it is 30 sitting days or 30 days in all. They have two or three

mentions in court and upcoming hearing and then they are given a difficult task to deal with electoral matters. This leaves a Departmental Committee idle. Where are we leading to?

This is not a Joint Select Committee, but a forced group of people who will sit and negotiate. I am not sure what they will negotiate about. I am sure whatever they say and do must ultimately come before the Departmental Committee on Justice and Legal Affairs. The Motion proposes that the coalition leaders must sign to support this initiative. How can you anticipate what will come out of whatever this Joint Select Committee will do? In any case, they are 14, and can tie. Each of them has a vote and two-thirds forms its decision. So, I am not sure they will come up with anything concrete which will help this country move forward. This is a manifestation of a House which has been robbed of its mandate. This is a Motion which has not been brought in good faith. It has come because CORD has arm-twisted the Executive. It has forced the Executive and the Opposition to cross ranks, lock this House of Parliament and bring frivolous dialogue to hoodwink the Kenyan public.

I decline and abstain to give my vote to such a frivolous and useless Committee. Thank you, Hon. Deputy Speaker.

(Laughter)

Hon. Deputy Speaker: Order, Hon. Members! Hon. Waiganjo, can you withdraw the last bit? You were doing very well. We had given you time to speak because this is a debating Chamber, and you are allowed to make your comments. However, the last bit was not necessary. Hon. Waiganjo, please, withdraw the last bit of your remarks.

Hon. Waiganjo: Hon. Deputy Speaker, I am unable to withdraw that remark because I believe this Committee will not do any good to the 42 million Kenyans.

Hon. Deputy Speaker: Hon. Waiganjo, I believe you want to remain in the Chamber and listen to contributions from other Members. You are not being asked to do a difficult thing. I have told you to withdraw the statement that the Motion is useless. I am not saying you withdraw your comments. Those are your comments. How can you say that the document before us is useless and yet it has been negotiated and put on the Order Paper?

Hon. Waiganjo: Hon. Deputy Speaker, I withdraw the word “useless” and replace it with the word “perfunctory”.

(Laughter)

Hon. Deputy Speaker: You have withdrawn the statement. Hon. Jakoyo!

Hon. Midiwo: Thank you, Hon. Deputy Speaker. This is a very important moment for our country. To repeat the words of Hon. Kajwang⁷, as a country, we have come from very far. It is unfortunate that very often people have to shed blood for Kenya to go to the next level. The speaker before me forgets that this is work in progress. The issue of the IEBC and elections in this country are not small matters. It is hardly 10 years since Kenyans butchered one another and destroyed property, which is an act we have not recovered from. This is a serious thing. To attempt to mitigate election issues and the IEBC is not honourable for this country. A month ago, the two coalitions, especially Jubilee, said they cannot talk to each other. However, they saw sense in talking to each other. We thank common sense for prevailing. The membership of this Select Committee must not disappoint us. It must, at least, give this country hope.

(Applause)

The populace does not have any more hope. We do not have hope because so many things are wrong. We passed a Constitution which has posed several challenges to our people.

Today, things are not working for us economically. I saw in the *Business Daily* that we are Kshs28 billion short of foreign exchange. I wondered if that is something that can make a country happy though questions as to where the Euro Bond dollars went to would be asked. It is not even a year since we brought US\$2.8 billion and today, we are Kshs28 billion in the red. It means that it did not come.

I support the 30 days the Select Committee has been granted taking into account that the next elections will be held exactly in 13 months' time on Friday this week. There are issues to be addressed. A Member has said that a Committee is addressing a petition, but a petition had already been given to that Committee yet it never dealt with it. It is the same Committee which is now purporting to be dealing with another petition. It did not deal with Mr. Wafula Buke's petition. The issues are the same. So, this House cannot attempt to do everything away from the provisions of the Constitution. I have been in this House for nearly 15 years and I have seen many Select Committees. This is to give us a window and we have our brothers in the Senate. As Parliament, we must deal with the IEBC issue. I know the blood of Kenyans has been spilt. May be Parliament is now composed of many young people who were not there over the years when people kept dying. If you remember how we have got here, it has always been punctuated by the blood of our people. It should never be again. Never again should we have a country which is in danger of spilling blood when politicians want to, especially when it is to do with elections.

The IPPG simplified elections in this country. This bipartisan way must simplify it further and close the windows. If the result of the Governor of Moyale can be announced in Moyale and it is, period. It should be the same for presidential contenders. If Peter Kenneth's votes are announced in Moyale, let them remain there. Anybody who wants to change them should go to court. This voting by SMS or voter transmission of results by phones is a window that will make this country to be no more, one day. Let us vote, count our votes, announce them and let everybody see them including the chair of the IEBC. Why is the chair of the IEBC so pricy? He is pricy because he has powers to doctor election results. I have had a chance to look into the figures of the last election's votes. The votes cast for all the other six seats except for the President average 10 million, but the one of the President averages 12 million. How can someone imagine that two million people walked into a booth and only voted for the President? It is not possible. Some shenanigan games were played. That is why we are saying that we should talk. We have to keep improving our society's trust. We cannot live in a society where people do not trust systems. It is the duty and mandate of this House to do it.

Let me talk to Members about an issue that the IEBC is busy doing without asking this House how to do it. This is the issue of the diaspora voting. A few years ago, we used to say there are about 300,000 eligible registered voters in the diaspora. The figure went up to three million and now you hear politicians saying that they are five million. The Constitution says that all you need to vote is a passport and/or an identity card. This is an anomaly in the Constitution and it is dangerous. Kenya has been peaceful since Independence. We have not had a reason to run away from our country, but since Independence, Ugandans have had to flee through Kenya using Kenyan Passports. Somalia is a current case. South Sudan, Rwanda, Burundi and Congo have people living in the diaspora with Kenyan passports.

When you talk about people in the diaspora, it means the people who are eligible to vote. This is a serious thing. I want to give an example of Boston. I want to address my friend, a former mayor, Hon. Gikaria and tell him that if people from Central Kenya in Boston are in tens of thousands and they do not want him, the people of Nakuru will vote and the votes will be counted. As we await the announcement of the diaspora votes, somebody who was number ten will be announced the winner because they would have more votes than him. That is the effect of the so called diaspora voting. We must talk about these things. It will happen. I have spoken to an IEBC commissioner who tells me that even that voting will require them to have, at least, 1,350 ballot boxes in every polling centre internationally. It is not doable. There are issues. Let us agree that we can improve the system. Let us agree that those loopholes have been misused in the past. You cannot scoop spilt milk but, at least, let us do something that does not force Kenyans to live in fear.

Many people know that the talk of Members is about 2022. When you talk to a politician and I have spoken to Senator Njoroge, they say that these people are lying to the Deputy President. They ask what will happen to the people knowing that they will not vote in the Rift Valley. Let us seal these loopholes where people feel bad things can happen to them after elections. We must have stricter laws.

Hon. Deputy Speaker: Thank you. Hon. David Gikaria.

Hon. Gikaria: Thank you, Hon. Deputy Speaker, for giving me this opportunity. First and foremost, as we discuss the IEBC and in recognition of the two coalitions coming together and trying to agree on the aspect, there are some fundamental issues that we need to look into as Hon. Waiganjo has said. Looking at the mandate given to the Select Committee and the possible outcome, presumably, there will be some lacuna. I am a Member of the Constitutional Implementation Oversight Committee and recently, I had opportunity to listen to the Petitioner regarding the removal of the IEBC. He made it very clear that irrespective of the decision that we make and not following the Constitution, they will move to court. It is unfortunate that the talk of the IEBC is coming at the tail end to the electioneering period. It is also unfortunate assuming by whatever means there is no consensus. The Leader of the Majority Party and the Leader of the Minority Party will approve the final report yet they are not members of the said Committee. Rules are rules. It is important for those rules to be followed. If the Committee needed the approval of the two, then they ought to be members, so that they can append their signatures.

That notwithstanding, it is important for us to look at the composition of the Committee. There are only three women out of the 14 Members of the Committee. That is a slap in the face of the women leadership in this country. There are so many other people who could have ceded their position just like Madam Sambili did by withdrawing her name because she comes from a different coalition. Had her name been mentioned as part of the Jubilee Coalition, she would have happily stayed in the Committee and shared her contribution. As Hon. Waiganjo said, everybody is trying to get space for re-election. We should go beyond that.

Even the Jubilee Coalition is not happy with the current composition of the IEBC. I was not a Member of the 10th Parliament and, therefore, I am not privy to its proceedings, but it has been said that most of the current Members of the IEBC were from CORD. We would be happy to have these IEBC commissioners removed and have a more neutral commission that is not CORD-leaning. We hear that even the chairman himself was imposed by people in this Parliament. CORD has already agitated its position regarding the IEBC and the electoral process.

I do not know what will be used to determine a person's neutrality. The process of picking commissioners is enshrined in the Constitution. It is in our laws and we have to follow

the due process. I agree with Hon. Duale that if we go back to the direction of the IPPG, what happened in 2007 may just be a rehearsal of what will happen in 2017. We have to agree in this House that irrespective of whether the IEBC commissioners will be removed or not, the process of picking new commissioners must follow the due process of the law.

One of the mandates of the Select Committee in (b) states that “on the finding of (a) above, may recommend legal mechanisms for the vacation from office of the current Commissioners of the IEBC and Secretariat in accordance with the Constitution”. Article 251 of the Constitution stipulates very clearly how to remove a commissioner from office. Any commissioner who is unduly removed from office might end up going to court. We are privy to information that came out of court yesterday. Any commissioner moving to court and claiming that they should not be removed because the process was not followed will continue pushing the existence of the Commission.

Hon. Wamalwa indicated that we cannot accept pronouncement of presidential election results to be done at the polling station. I agree with what Hon. Moses Kuria said recently. If you pronounce presidential election results at a polling station, what will happen in an area where 10 polling stations have pronounced that so and so has won? As Hon. Moses Kuria put it, tallying of presidential election results should not be done at a polling station. Otherwise, we are going to create chaos by the pronouncement of presidential election results. As much as the President is elected at the ward level or polling station level, it would be disastrous for us to openly say that so and so has won. It is going to bring a lot of chaos in this country.

We might want to give the Committee an opportunity to deliberate on reforms at the IEBC. I had a problem when I was elected to the Political Parties Tribunal. Immediately after the election, I was taken to court by my challengers. Were it not for the party, the ruling was given in favour of my opponents. Just because of a mistake by a political party, after winning in a free and fair election, it was declared that there was no winner yet the same party gave me a nomination certificate. You can imagine what the situation would have been if I had not got a certificate from TNA. I want to thank my party for being democratic and accepting the results to mean that the people have spoken. Otherwise, it would have been disastrous where a judgement is passed today and you only have a day to submit your nomination papers. In case I never got the certificate from TNA, what would have happened? I would have been denied an opportunity to represent the great people of Nakuru Town East Constituency.

The mandate given to this Committee is a bit questionable. We are just hopeful that there will be consensus in the first place. I am not a person who follows the crowd in terms of voting. I wish consensus will be reached instead of resorting to voting. If there will be voting, the coalitions in Parliament will be replicated in the Committee. I wish and hope the Select Committee will reach a consensus and not tell us that they voted or someone raised an objection on whether they supported the report. I plead with the Members who have been selected.

Hon. Deputy Speaker: Let us have Hon. Daniel Maanzo.

Hon. Maanzo: Thank you, Hon. Deputy Speaker, for giving me an opportunity to support this very important Motion.

I disagree with Hon. Waiganjo on several issues. The main spirit of the Constitution is to build a united Kenya. Consensus has been built by the leadership of Parliament and by that of the country, so that by the time we got this Motion, it had been negotiated through intermediaries who wish Kenya well. The election issue is very emotive. Free and fair elections are key. That is one of the mandates under (c) which states that:-

“Recommend legal, policy and institutional reforms to strengthen the IEBC and improve the electoral system and processes so as to ensure that the August, 2017 elections are free and fair and are administered in an impartial, efficient, simple, accurate, verifiable, secure, accountable and transparent manner.”

That is the thrust of this and it is fair for both coalitions, so that everybody feels happy.

The main idea of the two coalitions or the two sides of the House in the Constitution is so that everybody is carried on board. It is so that there are no serious divisions as there used to be in the previous elections under the old Constitution.

Hon. Deputy Speaker, if the new Constitution was not here by 2013, Kenya would probably have been worse off. Those are the things we are trying to avoid. Since political parties are whipped by their leaderships, it would be good for both sides of the House to agree with what has been whipped. This document says the two leaders in the House will sing to show that every party has been served right. Consensus building is important. As much as we pass those names, we need to go further when the Select Committee sits. That is so that it polishes any pending issues being raised through this debate. It is true there are pending matters that need clarification.

Electoral reforms have been mentioned. Some of them will emanate here. This does not negate the purpose of the Departmental Committee on Justice and Legal Affairs currently dealing with IEBC. Its mandate is not negated at all. The law has not been broken. In fact, this is based on Article 1 of the Constitution. The people of Kenya can speak for themselves or through their elected leaders. They have already spoken for themselves. They have made proposals to the House of elected leaders and the elected leaders have digested those proposals. They have come with this Motion. It will be debated and most probably passed. When the Select Committee sits, it will find the best way to execute the mandate it has been given by the people through this House. This is based on the Constitution. It will be ridiculous to rubbish it. It has the force of the law and the people, through their leaders and the coalitions.

It goes on to be supported by our Standing Orders. It has two co-chairs. They are Hon. Senator Kiraitu Murungi and Hon. Senator James Orengo who are very senior politicians and lawyers in this country. I believe that a process driven by those two will serve this country better. That is so that there are no selfish interests and people do not go back to their tribal cocoons. As much as there could be varying opinions, everybody is allowed by law to share their opinions and express what they feel. This negotiated Motion is for the better of the country. It should be given the best support so that the country is served better and the people of Kenya are better.

There is nothing perfect in the world; something which can be the perfect model. That is especially if it originates from fellow human beings like this deed. I saw the leadership of Jubilee appoint those people, support them and modify them as requested. I saw the leadership of CORD supporting this. I was part of the team which helped to select the team. I saw people withdraw. That right was given. I also saw a lot of sharing going on. The leaderships of Jubilee and have agreed. Houses are whipped in very many ways.. A little bit of obedience and reasonableness is good for the country. There is a common saying that a reasonable person in Kenya is a normal Kenyan seated in a Kenya Bus by-passing Kariokor. That is the normal Kenyan, one who is reasonable and well intended. That is what we want to do in this Motion, so that there is a draft Bill, Bills or Reports which the House will agree on.

By the reason that this Motion has been brought to the House, it can pass or fail. If it fails, what is the fate? What happens to the country and the whole process? Already, some members of the Independent Electoral and Boundaries Commission have shown good will. They

have said they are willing to resign. Probably, they will be given other jobs. Some of them have been ambassadors. Maybe, they will get similar postings.

If we are through with this Report and there is a proposal that a tribunal be set to investigate the few who will be left, somebody will probably quit their job without any payment. As honourable as what we are doing is, members of the IEBC need to do their soul-searching. Those who think they are guilty in any way should not be selfish. They should honourably resign. This country will honour them forever because it will be for the betterment of the country. If they honourably do things like that, nobody will pursue them.

I wish to remind the House that IEBC is being investigated by the Ethics and Anti-Corruption Commission (EACC). There are pending investigations. As a lawyer, I will tell them. One way of dealing with that is by honourable resignation and owning up to part of what is being investigated. That way, they may get lesser penalties and move on with their lives. The whole idea is to build a strong and united Kenya where there is fairness.

Kenya is leading in many things in Africa. I believe many Members of Parliament are widely travelled. There is a lot of poverty in some of our neighbours. Kenya is ahead because of the good leadership that has been there over many years. As much as it was criticised, some of the countries were worse. We do not want to follow those bad examples of failed states or intending-to-fail states.

The leadership of Parliament and each person elected should continue consulting our bosses who are the constituents to know exactly what they want in this matter, as we debate this Motion. That is what we should do. Going by what has been happening and for us to get to where we are on this Motion, there has been serious consultations. Hard positions have been vacated. I have seen the Head of State and his Deputy change their mind in many things. I have seen his Deputy quote sections of the Bible which talk of peacemakers who will be called children of God. That should be the way.

I urge Members of this House to support this Motion so that Kenya can move forward.

Thank you, Hon. Deputy Speaker. I support.

Hon. Deputy Speaker: Hon. ole Metito.

Hon. Katoo: Thank you very much, Hon. Deputy Speaker, for giving me the opportunity to make my comments in support of this Motion. Before I make those comments, let me say something on the preliminaries that have been said earlier.

Members have been talking of this Motion not meeting the two-thirds gender threshold. That is neither here nor there because the Committee we will form will be a Committee of this House. We do not have a single Committee that has met that gender rule. It is because this House does not meet the two-thirds gender rule. That should not be an issue.

Two, I also heard Members talking about some members of this Committee who are facing cases in court. I do not think that is an issue because those Members are members of other Parliamentary Committees of this House. If you really want them out of this Committee, start by removing them from the other Parliamentary Committees.

We have had people going to court to challenge the membership of this Select Committee just because some Members in it are facing court cases. I do not think that is an issue. If you are casting aspersions on the integrity of a certain member of the Committee and say he has no integrity to sit in it, this Committee is just a creation of this House. It is not more special than this House. That is like saying those Members should not be in this House. Therefore, I think we should debate the Motion on its merits and stop the sideshows that are meant to derail what this country yearns for; that is, a reformed IEBC. The Motion talks of the need for an impartial IEBC.

I think it is good we give our views because the first term of reference for the Committee is to inquire into the allegations against IEBC. In the inquiry, some of the documents the Committee is going to use will be the HANSARD Reports of both Houses. Therefore, what Members who get a chance to contribute will say will be one of the sources of information that the Committee will refer to when they are inquiring into how Members and Kenyans in general feel about IEBC. We need to urge those in the Committee that when they write their report, to remove partiality in IEBC. The Commission should not be politically appointed. We should have a process of appointing IEBC commissioners who have no political inclination. That is when we will have an impartial IEBC.

The other issue is efficiency. We need an efficient IEBC. Right now, IEBC has nine commissioners. You remember we formed those commissions in the 10th Parliament when we had the Grand Coalition Government. The minimum number of commissioners was to be three and the maximum number was to be nine. But because of vested interests, we put all commissions to a maximum of nine commissioners. I think that is becoming very costly to the country and it is not serving any purpose with regard to efficiency. We should just have three commissioners, maybe, on full-time basis, or a maximum of five who will be on a part-time basis. The bottom line is that we should have a lean commission with part-time commissioners. Currently, we have a very bloated secretariat in the IEBC. If you ask the Departmental Committee on Justice and Legal Affairs to give us a list of all those in the secretariat, you will be surprised. Just like in any other commission, the secretariat of the Commission is too large. We need a lean secretariat with skills and technical expertise that is required to do that job.

The other mandate is to have an accurate, secure, verifiable, accountable and transparent IEBC. The IEBC is about voting. Therefore, the process before, during and after voting should be very accurate, secure, verifiable, accountable and transparent. We need to make the announcement of results at the polling stations final. We should stop having what we call provisional results. The presiding officer at the polling station should be the final referee with respect to all ballots. For instance, why is the presiding officer the final referee with respect to all the other ballots, except the presidential election? He or she should be the final referee for all ballots, from the member of the county assembly (MCA), member of parliament, governor, senator and the president. What is announced at the polling station should be final for everyone. That is where you have agents who certify the results. Those are the views we want this Committee to take into account.

We should also make the Biometric Voter Registration (BVR) a reality. It should really work from day one when you are registering to the day of voting and when you are counting. It should not function when you are registering and voting, but fail to function when you are counting. I think we should be serious on this. For us to achieve the objective of this Select Committee, that has to be done.

As we talk of IEBC, we should be able to amalgamate all the electoral laws. This is the chance to correct the anomalies in the Constitution with respect to electoral laws. For instance, the date of elections is contradictory. The Constitution says the national Parliament shall be elected on the second Tuesday of August in the fifth year. When does the fifth year start? When you go the next page, the county elections are after five years. In the next page, the Constitution says both the national and county elections have to be done on the same day. There are a lot of contradictions. Therefore, this Committee should go beyond its mandate and look at how we can harmonise those provisions. Right now, some MCAs have gone to court saying they will not vacate their offices until March 2018 because that is when their term is ending. This Committee

should seize this opportunity and bipartisan atmosphere and correct all those loopholes in the electoral laws.

There are some other issues to do with elections that are very serious and we have always been doing them in a very haphazard way. The issue of party lists with respect to nominations has to be done in a very transparent way. We should know when to do it and who qualifies. It should not be done on the basis of who knows who. This Committee is all about elections.

The issue of party primaries must be streamlined. Look at what has just happened in the United States of America. When the Republicans were doing their nominations, the Democrats were not interfering with it and *vice-versa*. When we do party nominations in this country, it is a free-for-all exercise. When CORD or Jubilee is doing their nominations in a certain constituency, every person in that constituency will vote. There is no difference between the nominations and the general elections. I think this Committee should come up with suggestions on how to streamline nominations.

Finally, because I can see my time is ending, on the issue of transition, I have always held the view that the term of the current IEBC ends in November next year. Elections are in August next year. Suppose there will be a run-off, it will be done in October. Suppose somebody goes to court and the court orders for a repeat of presidential election, it will be repeated in December. There will be no IEBC then. Therefore, we should not have waited for this hue and cry to see far. We should have said: For transitional purposes, let us find a way of ensuring that should there be a run-off or petition to the Supreme Court and the presidential election is repeated, let us prepare and have IEBC in good time.

Hon. Kajwang’: Add him five minutes.

Hon. Deputy Speaker: Hon. Christine Ombaka.

(Loud consultations)

Hon. (Ms.) Ombaka: Thank you, Hon. Deputy Speaker, for giving me this opportunity. I can say hope at last because we are beginning to see a process being put in place to address the challenges that we face.

(Hon. Mati consulted with the Deputy Speaker)

Hon. Deputy Speaker: Hon. Munuve was dropped from the queue and I remember that.

Hon. Kaluma: *(Inaudible)*

Hon. Deputy Speaker: No! Hon. Ken Obura is before you. Members, do you want me to read the list so that you know when you will speak? I gave Hon. Metito an opportunity because he is part of the House leadership and Hon. Christine because we have not heard a member of the fairer gender.

Hon. (Ms.) Ombaka: I was even here much earlier.

Hon. Deputy Speaker: Members, for the avoidance of doubt and in fairness, Hon. William Cheptumo is next followed by Hon. Ken Obura, Hon. Johanna Kipyegon and Hon. James Nyikal. Can we leave it at that for now? Hon. M’eruaki is after Hon. James Nyikal.

Hon. Kaluma: *(Inaudible)*

Hon. Deputy Speaker: You will be next after that. That is the order. You have been dropped, but I know where you were. You were below those people I have named.

Hon. (Ms.) Ombaka: Thank you, Hon. Deputy Speaker, for giving me this opportunity that I call hope at last because the issue of IEBC has been a huge challenge to this country. It has been accused of many things, including corruption and unfairness in managing the last elections in 2013. This is a solution. At least, we are beginning to see light at the end of the tunnel. The 14 Members who are selected here will be the representatives of this House and the public.

It is part of that dialogue that has been an issue, which is beginning to yield fruits and take place. The two parties will be sitting together; with seven Members from this side and another seven from the other side. It is a process that is highly recommended. The fact is that we are tired of arguing over whether IEBC should go on till 2017 or not. We want to get the truth out of this and ensure that 2017 elections are done properly and that there will be fairness in the elections and management of the whole process.

Even though we have noticed the 14 Members are not gender balanced - in other words the two-third gender rule was not followed here - I still believe the three women will do. But we still have room for one more. I do not understand why Hon. (Prof.) Sambili did not take up the position she was given. Her party is a member of the Jubilee Coalition and she should have just been there as part of Jubilee. Somehow, I cannot understand her reasoning because that was an opportunity for another party within Jubilee to be represented, and also an opportunity for one extra woman. I fail to understand her argument.

The other part I like is the fact that there are co-chairs - two people chairing this process. That means there is going to be some kind of balance in terms of managing the Committee that is going to decide on the report which will come to the House for debate. The responsibilities that are given are quite many but what is most attractive in my view is No.10 on the second page, where they are going to consult the civil society, churches and other people. That means it is not Members of Parliament who are going to make decision on what to do with IEBC. It is going to embrace the feelings and ideas of Kenyans so that when the report is written, it will reflect ideas which other people hold.

I want to hope and believe that this Committee is credible enough to come up with a report that is going to reflect all that. It will put an end to all the challenges that we face in elections and for anybody not to accept this Select Committee and feel that this is not necessary - as I have heard many members suggesting - that person does not realise how much sacrifice has been put. Those who have died during this process, we cannot allow that to happen again.

We are only hoping that the Committee is going to come with new rules and regulations that will ensure that 2017 is peaceful and the elections and announcement of winners and losers is fair. When one loses, he or she should go home satisfied that they have actually lost. When one wins, he or she should believe that they have done a good job. I am very happy that the process of dialogue has taken place and that everybody in this country is going to have an opportunity to express themselves on what is to be done with IEBC. All I know is that IEBC must go because too many sins have been committed. Therefore, the Committee should document for us those sins so that we can improve in the next general elections.

Thank you, Hon. Deputy Speaker. I support.

Hon. Deputy Speaker: I had said Hon. William Cheptumo. Is that not the first person I mentioned? No! Let us follow what I had said. If William is not there, then it is Hon. Kipyegon. Hon. Munuve, had I named you in the list I had given? Okay. You will be next.

Hon. Kipyegon: Thank you, Hon. Deputy Speaker. I also wish to voice my support and concerns on this particular issue we are talking about. Just like so many Members have said, you cannot over-emphasise the importance of an election, electoral body or process. The election

process in this country has been the epitome of all the bad things this country has been known for.

The electoral process in this country has failed to address the fundamental matter, which is free and fair elections. Looking at other countries, I do not understand because, maybe, Kenyan politics are very competitive and people die to get them. The only thing which should be the least controversial in any democracy is an electoral process.

We can all remember 2007, where we saw what happened both in the national and constitutional level, yet among the recommendations to the electoral body and process is the Biometric Voter Registration (BVR) machines which were meant to cure the worries which many Kenyans had. I sit in the tender committee. It is absurd. We were told that in the last elections, some machines were never opened and nobody ever fed the information which was supposed to appear at the polling stations. We were even told that people knew that those machines were not going to work for two hours. They still imported them and duped Kenyans that they were going to work.

We were sponsored by IEBC to visit South Africa and observe their elections. Their process is so simple. They have a machine like the ones used in supermarkets where you swipe your card. If you do not appear, you do not vote. Once you swipe, you vote once. Those are machines which can stay for more than three to four days without being recharged. It is the same commission which sponsored us to go and observe and yet, they cannot bring such machines to this country.

It is because the people who vie for the positions do not want to have a transparent election in this country. Otherwise, we are killing those commissioners for nothing. It is the Executive, the Opposition and especially those big people, who do not want to have a transparent election. Otherwise, why would you purchase equipment which you know will not even last for two hours? We have a system in this country which is meant to look at how those machines work.

I support the Select Committee because I am a Kenyan who does not want to see this country deteriorate into a civil war; see people die and the country burning. But, to be honest, if you were to read the Constitution, Article 251(2), it will tell you the exact procedure that is supposed to be followed on removal of any independent office holder or commissioner. There are no two ways about it, it is only one way - a petition to Parliament.

Just like my brother has said, I am also expecting this Select Committee not to do a public relations exercise but, at the end of the day, bring a petition to this House on the removal of IEBC Commissioners because there are no two ways about it.

Hon. Deputy Speaker, unless this Committee is intending to bring a Motion or an amendment to the Constitution, Article 251 (2) states:-

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

There is also another method of removing the Commissioners

Hon. Deputy Speaker, the reason why I am supporting this Committee is not because of that, since even the Departmental Committee on Justice and Legal Affairs is already seized of that matter - and you cannot suspend it. We will hear it; forward our findings to this House and the whole procedure of appointing the tribunal for the removal of the Commissioners will have to proceed regardless of this Committee.

I support this Committee for the electoral reforms. That is the only reason why I am happy with this Committee because I know even our Committee cannot deal with that. This Joint Committee will look into how we can reform the electoral process in this country. What is supposed to be the composition of the members who sit in that particular Commission? How are we going to conduct our elections? How are Members going to be voted in either in parliamentary, county or national levels? So, the major reason why I am supporting this Committee is because I know they are going to look into the details on how we are going to have a good electoral process in this country.

The only funny thing that I find in this Committee is its selection. It is very weird, misunderstood and unreasonable. When you talk about CORD and Jubilee, the minority and the majority, you are also failing to understand that the commissioners who are going to be running this election in this country will not be running an election where Hon. Raila Amolo Odinga will be running against Hon. Uhuru Kenyatta. It will be running an election where everybody, including Members of County Assemblies (MCAs), governors, Senators and County Women Representatives (CWRs) from all parties, including independent Members who will be part of it.

So, when people just put themselves in a room somewhere and purport to appoint Committee members who are from CORD and Jubilee and yet there are some Members in this House who neither belong to either coalition and also, there are Members who will be vying in this country and they do not belong to either coalition in 2017, you are making this country look like the issue of elections is between CORD and Jubilee. This country is bigger than CORD and Jubilee coalitions.

The problem we are having in this country is the position the President takes with his deputy, and the position the CORD leader takes with his brigade. That is what is making this country look terrible. The rest of Kenyans would want to see an election which is free and fair. Also, there are some Members who are on neither side, who would want to be seen as being good so that they can play the roles they are supposed to. However, a sober Kenyan will tell you that we want an electoral process that does not care whether Hon. Uhuru Kenyatta, Hon. William Ruto, Hon. Raila Odinga or Hon. Wetangula is running. They want a process where even if a small person down there in the village wants to vie for presidency, he or she will find a process that will allow him or her to be voted for without any malice.

Hon. Deputy Speaker, we will wait for the results and we will be here to look into them. It is an absurd situation that whenever we want to change anything in this country, a Kenyan must die. Whenever we want to remove anybody from any position or whenever we want to amend the Constitution or any law in this House, a Kenyan must die. When will Kenyans learn to resign when all is not well? When will they learn to step aside when all is not well? Why must Kenyans die so that you know that you have done wrong? I wish we come to that Kenya where people are so patriotic and human that they will understand that this is what people do not want and go home. You will not die if you go home.

Hon. Deputy Speaker: Let us have Hon. Ken Obura. Hon. Munuve let him speak and then you will be next. Who is an expert?

Hon. Member: *(Inaudible)*

Hon. Deputy Speaker: He is an expert on reforms? Excellent! So, we will share his knowledge.

Hon. Mirenga: Thank you, Hon. Deputy Speaker. I support this Motion.

Thank you, Hon. Deputy Speaker for protecting me. I rise to support this Motion. The Motion on the Floor today is very significant, not just because it is going to give Kenyans a

chance to correct the ills in the electoral management in Kenya, but because this process is going to avert what was obviously an impending national catastrophe.

We all witnessed the emotive debates on matters IEBC. We all watched the polarizing political rallies across the country. We all witnessed mass action resulting in the loss of innocent lives of Kenyans, some of who had very young families. This affected my constituency and my heart bleeds for them. We also watched the destruction of property and looting of businesses of innocent hardworking Kenyans. Those people have not recovered and they may never recover from those losses.

So, this Motion is extremely important for me and requires political maturity from us. As a House and as the country's representative body, we must come together from the two coalitions and ensure that we face this serious matter of national importance because if we ignore it, the consequences are too grave.

I want to also urge my colleagues in this House and in the Senate, the governors and MCAs that, at all times, we should always put the interest of this country before the interest of our individual parties and those of our party leaders in order for us to advance the public good. I say this because I have watched my colleagues go to tyrannical extremes in the name of defending their parties and their political party leaders when the truth is that they are merely scrambling for automatic party nomination certificates, come next year.

I do not have to support the obvious. Why should I support the obvious when we know how some people have been behaving because next year we have elections and everybody is positioning themselves for those party nomination certificates? So, I support the formation of this Select Committee knowing very well that the lifeline of any democracy lies in a functional electoral management body and system that can guarantee fairness or, at least, conditions that would spell fairness in the next polls.

Before I conclude, I would like to tell Kenyans that leaders of CORD and Jubilee are not enemies. They have no reason to be enemies. Just the other day, we saw Hon. Moses Kuria having lunch with my party leader, Hon. Raila Odinga. They were chatting and happy with each other, but on the ground, people are fighting. Kenyans must understand that political leaders are friends and most times, they differ on their political parties' interests and a few times, on ideologies. As we get to the next elections, those who will be seeking elective positions and those who will be helping their political parties and party leaders to look for votes, should not go beyond borders to incite Kenyans. Kenyans are peace loving, law abiding and there is no need to incite them when we know that we are great friends amongst ourselves.

Next year, we should not elect leaders based on where they come from, but we should look at their policies and programmes. We should elect leaders on a platform of ideas and policies rather than electing tribesmen or clansmen.

(Hon. A.B. Duale consulted loudly)

I do not understand what is exciting the Leader of the Majority Party, but I can guess. Looking at the composition of the list, there are few adjustments I would make, but I will wait for the time when I will be a party leader in the next 20 years. Our time is coming. When that time comes, we will ensure that leaders are elected on a platform of ideas and not where they come from. We will ensure that we have a country where a Kenyan can marry for love and not necessarily marrying your tribesmen. Hon. Deputy Speaker, you are a living testimony to the fact that you can actually marry for love.

Hon. A.B. Duale: Withdraw that statement.

Hon. Mirenga: Hon. A.B. Duale, I cannot withdraw the obvious. The Deputy Speaker has not complained. As I conclude, I wish the Joint Select Committee the best. They must understand that they have the hopes of Kenyans. They must ensure that they give us a document and recommendations that will ensure that we have a peaceful, free and fair election next year.

Hon. Deputy Speaker: I will reserve my comment on Hon. Ken Obura's statement. Hon. Munuve.

Hon. Mati: Thank you, Hon. Speaker. I stand to reluctantly support this Motion. I want to notify this House that elections are not won or lost on the voting day. There are people who are progressively losing the next election. An election victory or loss is a process that starts from campaigning, registration, mobilisation of equipment and voting. There are now people who are obsessed with the removal of IEBC commissioners. I would like to remind the nation that those commissioners are not from Mozambique or Benin but from Kenya. I wish we could start off by looking and analysing what went wrong, so that we do not pass collective punishment and condemnation of our sisters and brothers who find themselves in those places. I am saying this because for about 15 years of my life, I dealt with elections, both in Africa and elsewhere. I know that we have had a serious problem in Africa, and especially in Kenya, where elections can only be free and fair if someone wins. If he does not win an election, then they must have been rigged. I remember one time when somebody got 200 votes and he claimed that they had been robbed, while the winner had 40,000 votes. We have to be sober in dealing with this matter. If we do not deal with it exhaustively, we will not get commissioners who will stand up to the scale. The elections which are coming will still be declared rigged as long as some people lose. The history of this country is that every election year, people create a crisis.

(Loud consultations)

Hon. Deputy Speaker, there is something wrong in this House. It is turning out to be a market place.

Hon. Deputy Speaker: Order, Members! Consultations are high.

Hon. Mati: Hon. Kaluma is very busy trying to distract me and yet, he is supposed to be my friend. He knows that I am an expert in matters of elections.

Hon. Deputy Speaker: You are finishing your time, Hon. Munuve.

Hon. Mati: Hon. Deputy Speaker, in 1997, I watched as 14 young people were killed at Uhuru Park so that we could have the Inter-Parties Parliamentary Group (IPPG) initiative. This was because some people wanted to be there. In 2007, we saw a lot of blood bath, including some people going through windows to be near power. This time, we saw people who have never been known to have participated in any demonstration other than Christian unions, sitting on tarmac road in the name of demonstrating to remove the IEBC commissioners from office. This country has gone to a level where everybody does something and makes it their business. What will stop the commissioners from going to court? If a judge can decide to take over the budget process from Parliament, decide to reschedule disbursement of funds and say that you can only get this amount of money at this time, then everybody is making the budget-making process their business. Let us get out of the attitude that elections are only free and fair if I win, and that if I lose, they have been rigged.

I have looked very carefully at the terms of reference of this group. I have also looked and analysed some of the Members. Let me commend the two Co-chairs. They are people I have

worked with. I have a lot of respect for Hon. Kiraitu Murungi and Hon. James Orengo. However, some of the Members cannot meet the requirements of Chapter 6 of the Constitution. They are people who at one time left this House naked because of doing indecent things. They are people who have not one case but 10 cases pending in court. We have to lead by example. This House has to come up with better people. If you look at the credentials, some people are not known to have gone to any secondary school classroom - not even Form One. We are ashaming this Republic. I do not know what electoral processes and design a person can design for this Republic. I bless this Joint Select Committee, but some of the members cannot pass the litmus test of integrity and honesty. In terms of academic qualifications, as I have said, there are some who cannot produce their Standard Eight certificates. Those are the kind of people we have, but we have to accept them.

I also wish to say, especially to the Leader of the Majority Party, that there are people who were de-whipped by CORD. They are independent in this House. Who is representing them here? For example, Hon. Musimba and the Member for Mt. Elgon, do not belong to any party. You read a very long list of people who were de-whipped by CORD. Those people are not represented here, and they do not have a voice. Since you do not have a voice, you will not be represented. All that we can do is to watch and wait for a report that has been written by Standard Four graduates. This is a shame! It is very embarrassing for this country at this day and age.

To finish off, I looked at the last process very carefully.

Hon. Deputy Speaker: We have a point of order from Hon. Mbadi.

Hon. Ng'ongo: Thank you, Hon. Deputy Speaker. I really do not want to interrupt my friend. I know the frustrations he is going through and so, I do not want to concentrate on him because I understand him even from the way he talks. He is my friend.

I stand on a point of order. This is a very important matter and, actually, in the process of transacting business, we have given this Committee as early as tomorrow. Listening to Members, we are basically in agreement that the Committee should be passed. I rise under Standing Order No.95 on closure of debate that the Mover be called upon to reply, so that we can close this debate and vote for it the first thing tomorrow in the morning. That way, we will have these 14 Kenyans embark on this serious exercise of helping us come up with a method of reforming the IEBC.

Thank you, Hon. Deputy Speaker. That is my prayer.

(Loud consultations)

Hon. Deputy Speaker: Who is your Secunder?

Hon. Ng'ongo: Hon. Arati, can second. There are many other seconders, including the Leader of the Majority Party.

Hon. Deputy Speaker: The Leader of the Majority Party, in this situation, when we are closing debate, you cannot donate time. The House has to make up its mind on whether it wants to stop debate or to continue with it.

Hon. Members: Let us vote.

Hon. Wakhungu: Let us close debate.

Hon. Deputy Speaker: Hon. Wamalwa, you have walked in. You have already had your 10 minutes and you are saying we close the debate and yet, others have not had a chance.

(Loud consultations)

Order, Members! Let Hon. Munuve finish his one minute. He was talking passionately.

Hon. Mati: Thank you very much, Hon. Deputy Speaker. Before I was rudely interrupted, I was talking about--- I am not frustrated. I am a liberated person, as I said the other day. I do not have to answer to Standard Four graduates and I do not have to answer to criminals who are known to have 10 cases in courts.

Going back to the issue of elections, let us treat our people fairly. The current IEBC can go to court and demand to go through the due process which requires that we have a tribunal. Wish-washing things here will not save us. I see a situation where some people have lost an election and are looking for an excuse to have an election which has not been held declared null and void. I am saying this with a heavy heart because this has been very consistent. In 1997, there was the Inter-Parties Parliamentary Group (IPPG) and in 2007, some people even went through the window to join the ruling party then because that was their way. Others went to fight.

Let us agree on one thing: we have a country that we must all live in. It belongs to all of us and none of us should be bigger than anybody else. In any case, all of us are here as products of an electoral process that was midwived by the current electoral process. I did not see any Member of Parliament declare that because that election was stolen, he would decline his seat. Is there any? There is none. We have not seen that. So, let us be sober. I know Hon. Kaluma to be of great credentials but, I have not seen him walk out and say he is going back to Homa Bay to seek another mandate because his election was a product of a stolen elections process.

With those few remarks, there is grandstanding here---

Hon. Deputy Speaker: Thank you. Hon. Mbadi, just give me two minutes I give one or two Members before I put your Question. Let us have Hon. M'uruaki and then Hon. Kaluma. From there, we will put the Question of Hon. Mbadi.

Hon. M'uthari: Thank you, Hon. Deputy Speaker, for giving me this opportunity. I take this opportunity to support this Motion, although it has established a mechanism or a process that is not right. We have used the wrong process to arrive at the right thing. Anyway, it is high time this team that has been put in place looks at the whole electoral process and corrects what is not right. Making it right requires the goodwill of all because whoever is appointed as a commissioner must come from a particular community and have a particular name. At the end of the day, whether you like it or not, you will not get anybody who does not have a political orientation. Whatever the case, we must arrive at a level as leaders in this country, especially those in the Opposition, to accept leadership that is principle-centred.

There are values enshrined in our Constitution. Those values are never followed or accepted so they are just in the Constitution. As this team goes round listening to the views of the people, it is my hope that what comes up will be accepted. As it has been put clearly by a number of people, in our country, when people lose elections, they never accept that the elections were free and fair. That is why I believe that those Commissioners, to a certain extent, are victims of circumstances. All the people in this House and all the Members of this Committee were pronounced as winners by the Electoral Commission. However, for the greater good of this country, those Commissioners should just resign and avoid being scandalised because their goose is already cooked. They have no opportunity of remaining in the Commission because, unfortunately, they have already been condemned even before being heard. There is no way they can get over this. The best thing for them to do, if they care about their integrity, is to go home.

We need a team that is acceptable to all Kenyans so that the elections can be credible and acceptable. Kenyans need God so that they can accept the reality.

Hon. Deputy Speaker: Let us have Hon. Kaluma.

Hon. Kaluma: Thank you so much, Hon. Deputy Speaker. A good election is good for everybody in the country, whether you are part of CORD, the Jubilee Coalition or an independent candidate. The lessons we have learnt as a country about bad elections affect everybody. We have a long history, including the 2007/2008 post-election violence.

A very good team of leaders who are, first, representatives of the people but also, serving as Members of Parliament have been assembled to do this work. Let me congratulate them. I may be casting aspersions, but I do not believe that there could be any better team than this. As I congratulate them, let me tell them that they are carrying the burden of the whole country. Never again shall we move to the edge of a precipice because of elections. We want an election in the country in which the loser acknowledges the winner and they walk as brothers and sisters as we move forward.

I am happy with the terms of reference of this body. Initially, the thinking was that we are only dealing with Commissioners. We are now talking about a total and complete overhaul of our electoral systems, laws and process. This team should go forth remembering that we should not have gone to the levels that we went. It was not necessary. For once, let me thank His Excellency the President for deeming it fit, as the Head of State, to realise that this is a matter that requires bipartisan engagement and equality of voice. That is what we ought to have done early to avoid the situation we saw where a child taking milk in his mother's house suffers a one-inch bullet in his body not knowing what the nation is agitating for.

We have gone through a history of electoral reforms. This team should move forward and come up with a template. It is not the time to be a Luo, Somali or Kikuyu supremacist. The time for Kenyan extremists is not now. Let us talk of how we can conduct good elections to give us the best leaders in this country without the challenges we have been talking about.

Due to scarcity of time, I support the Motion.

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

Hon. Deputy Speaker: Let us have the Mover.

Hon. A.B. Duale: Thank you, Hon. Deputy Speaker. I want to thank all the hon. Members who have contributed to this very important Motion. For those who did not get a chance to speak on it, I am sure that the outcome of the Select Committee work will be reports and Bills. They will have an opportunity to contribute to those very important resolutions of the Committee.

Hon. Deputy Speaker, it is said that politicians are people who, when they see that there is light at the end of the tunnel, go ahead and buy more tunnels because they do not want to see light at the end of the tunnel. This was said by one of the top philosophers. I hope that there are no politicians in this House and outside this House who will go ahead and buy more tunnels when they see light at the end of the tunnel because of the work of the 14 legislators of the Select Committee, so that the light can become invisible.

We have had a serious issue. I am an ardent football fan. For the last few weeks, I have been watching Euro 2016. I saw a very small underdog team called "Iceland" do so well in that

tournament. It is God who knows how they managed to play their way through to the quarter finals of the league. They went home barely bruised.

Hon. Deputy Speaker, I am sure that if we put our heads together and put the nation first, build bridges, fight ethnic politics and cement the gains of the new Constitution; if, as leaders, we come together and realise that Kenya is bigger than us, and that anyone of us can ascend to any position in the leadership of this country; if we appreciate that political competition does not mean enmity, and that God has put the fate of all of us together in one country called “Kenya”; and if we realise that Kenya is big enough for all of us, the Select Committee will ultimately bring the desired results of free, fair, transparent and peaceful elections.

It is also said that successful leaders see opportunity in every difficulty rather than difficulty in every opportunity. In all the demonstrations that led to loss of lives and destruction of property, and the talking to each other across the aisle, that difficulty should create an opportunity for us so that the difficulty becomes an opportunity for our nation.

Hon. Deputy Speaker, I do not want to say much. I thank all the people who participated in bringing the political coalitions together, namely; religious leaders, our friends, the diplomats and the civil society. I also want to thank the leaderships of the various political parties and, more so, those of us who exchanged e-mails and this Motion from time to time, proposing changes here and there. I remember that at one point in time, the bone of contention was whether we should use the word “may” or “shall”. One group kept on saying that we should use “may”, while the other said that we should use “shall”. Ultimately, we agreed that the best avenue is through Parliament.

I am sure that the Justice and Legal Affairs Committee, and the Select Committee that we have just endorsed, will each have a complementary role to play in this process. They will enrich each other. I am sure that Parliament, under the leadership of the Speakers and the Clerks of the two Houses, will be up to the task. Hon. Members have asked for one of the best resourced clerks to head the secretariat of the Select Committee.

With those many remarks, I beg to move.

With those many remarks, Hon. Deputy Speaker, I am sure those of us who are not here are with us in spirit. I hope that we get more bipartisan Motions and Bills as we go to the next general elections for the benefit of Kenya.

I beg to move.

Hon. Deputy Speaker: We will put the Question when we next have the Motion on the Order Paper.

ADJOURNMENT

Hon. Members, the time being 6.26 p.m., this House now stands adjourned until tomorrow Wednesday, 6th July 2016 at 9.30 a.m.

The House rose at 6.26 p.m.