

NATIONAL ASSEMBLY

OFFICIAL REPORT

Wednesday, 24th August, 2016

The House met at 2.30 p.m.

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

PRAYERS

(Loud consultations)

Hon. Member: Put the Question!

Hon. Deputy Speaker: Order, Members! We have a procedure that we normally follow. Can we follow our normal procedure? To what am I putting the Question? Hon. Members, let us follow the procedure.

PETITIONS

REVOCATION OF TITLE DEED FOR LR/NO.462/2 NAKURU MUNICIPALITY BLOCK 23/108

Hon. Gikaria: This is a public Petition by the residents of Nakuru Town East Constituency on revocation and cancellation of a title for land, LR/No.462/2, Nakuru Municipality, Block 23/108 that belongs to Naka Primary School.

I, the undersigned, on behalf of the residents of Biashara Ward, parents and pupils of Naka Primary School, Nakuru Town East Constituency, draw the attention of the House to the following:-

THAT, Nakuru Municipality Block No.23 is a piece of private agricultural land registered as L.R. No. 462/2 that is owned by Nakuru Development Company Limited;

THAT, around 1985, Nakuru Development Housing Company Ltd. sought consent from the then local municipality in a meeting held on 3rd October, 1985 to sub-divide the said block into individual residential plots with about 10 acres set aside for public utility;

THAT, this approval was granted on 6th November, 1985 in a meeting of the company, as all the requirements as outlined by law had been met, and the said decision was communicated to the Commissioner of Lands who approved the proposed plan and subsequently gave it a new registration as MNB23;

THAT, the approved plan was consequently surrendered to the then area local authority as a public utility for construction of a primary school;

THAT, on or around June, 1999, the then area local authority was served with an order restraining it from constructing the said school on the land alleging that it instead belonged to an individual or company called "Pyrethrum Board Cooperative Society Ltd.";

THAT, the Pyrethrum Board Cooperative Society Ltd. alleged that it bought the land from a company called “Hyrax Developers Ltd. which was not in existence as per the search conducted at the National Land Registry;

THAT, a further survey done on 13th August, 1999 indicated that the land in question was a public utility, and was held in trust for the residents of Nakuru Municipality, and the community needed to have been furnished with any changes or emerging issues, if any;

THAT, the agreement between Pyrethrum Board Cooperative Society Limited and Hyrax Developers Company Ltd. dated 2nd October, 1998 regarding the purported transfer of the Nakuru Municipality Block 23/108, is null and void as the said land is a public utility and, therefore, any title issued in respect of the said agreement has been fraudulently obtained and contravenes Cap. 300 of the Laws of Kenya;

THAT, the National Land Commission (NLC) issued a letter dated 8th October, 2016 to the effect that the land belongs to the school because it is was a public utility but two months later, rescinded its letter;

THAT, efforts to resolve the matter with the NLC and other Government departments have been futile; and,

THAT, the issues in respect of which this Petition is made are not pending before any court of law, constitutional or statutory body.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Lands investigates the entire land transaction at the Office of the Commissioner of Lands, especially where it only took one day to change the said title deed to the purported owners, establish the legality of the companies involved and recommends that guilty persons are brought to book.

And your petitioners will ever pray.

Hon. Deputy Speaker: Thank you. The next Petition is by Hon. Sabina Chege.

INVESTIGATION INTO CONDUCT OF FORMER
DIRECTORS OF NANGA KIHOTO LIMITED

Hon. (Ms.) S.W.Chege: Thank you, Hon. Deputy Speaker.

I, the undersigned, on behalf of shareholders of Nanga Kihoto Naivasha Limited draw the attention of the House on the following: -

THAT, Nanga Kihoto Naivasha Limited is a land buying company with a membership of 1,768 members;

THAT, the original shareholders were mostly from Gatanga Sub-county who acquired shareholdings through deductions from proceeds of coffee sold from their farms;

THAT, the company owns two parcels of land namely L.R No.10423/2, L.R No.17599/9, L.R No.5658/11 and LR No.18499/1 located in Naivasha Constituency.

THAT, the last annual general meeting was held in 2012 and efforts by the shareholders to hold annual general meetings in the subsequent years to deliberate on various matters including sub-division of the parcels of land have been futile;

THAT, in December, 2013, a former Director, Mr. Pharis Mburu Ngugi fraudulently and without authorisation from other directors and shareholders withdrew a sum of Kshs495,000 from the company's bank account at the Co-operative Bank, Thika Branch;

THAT, shareholders reported the matter at the Thika Police Station but no action was taken;

Further to that, the former director made an application of consent from the Naivasha Land Control Board without the knowledge and approval of the shareholders;

THAT, the shareholders reported the matter to Naivasha Police Station but the police failed to take action;

THAT, the alleged sale of the land has generated a lot of resentment among the shareholders which if not addressed may lead to fatal conflicts;

THAT, efforts to resolve this matter with the relevant authorities have been futile; and,

THAT, the matter presented in this Petition is not pending before any tribunal or court of law.

Therefore, your humble petitioners pray that the National Assembly, through the Departmental Committee on Lands: -

- (i) ensures that the Ministry of Land, Housing and Urban Development puts a caveat on the said parcels of land until an annual general meeting is held to resolve any outstanding issues;
- (ii) causes the shareholders and the Ministry of Land, Housing and Urban Development to ensure speedy sub-division of the land and issuance of title deeds to the shareholders to avoid further conflicts;
- (iii) causes investigation on the former directors of the said company and officers stationed at the Thika and Naivasha police stations for fraudulent withdrawal of the company's funds and failure to take necessary action respectively.
- (iv) ensures that the petitioners' plight is addressed; and,
- (v) makes any other order or direction that it deems fit to address the prayers contained

And your petitioners will ever pray. It is presented by *Maitu wa County*, directors and myself, Ms. Sabina Chege.

Hon. Deputy Speaker: Both petitions are committed to the Departmental Committee on Land, Housing and Urban Development. I will allow one or two comments on this.

Hon. Kimani Njuguna, is your comment on the same?

Hon. H.K. Njuguna: Hon. Deputy Speaker, I want to support the Petition by Hon. Sabina Chege concerning the Nanga Kihoto Land Buying Company in Naivasha. Most of the owners of the land buying company come from Gatanga which I represent. We have gone through other matters like the one of Kihui Mwiri Land Buying Company. If not well managed, the sufferings will continue.

In my constituency, more than 10 deaths have occurred because of issues related to land. This Petition is timely. Parliament should intervene and sort out the issues of Nanga Kihoto in Naivasha. Other issues are likely to come up if this matter is not sorted out well. I do not want to see my people being subjected to untold suffering like it happened in Kihui Mwiri.

I support that Petition.

Hon. Deputy Speaker: Thank you. I want to inform the House that we have members of Nanga Kihoto from Gatanga in the Speaker's Gallery. I think they came to support the Petition. I can see Hon. Florence Kajuju wants to speak. Is it on the same?

Hon. (Ms.) Kajuju: Hon. Deputy Speaker I rise to support *Maitu wa County ya Murang'a*.

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

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

Hon. A.B. Duale: On a point of order, Hon. Deputy Speaker. We should not turn the House into a county assembly or a village assembly. When Hon. Sabina was finishing she talked about *Maitu wa County*. The Member for Meru County has also talked about *Maitu wa County*. Is that parliamentary language? The two languages that the Standing Orders allow are Kiswahili and English. Is there a Member by the name “*Maitu*”? What is “*Maitu*”? This is not a village.

Hon. Deputy Speaker: That is okay, the Leader of the Majority Party. I think your point is made. I also do not know whether that is her name or title.

Hon. A.B. Duale: Hon. Deputy Speaker, the names of Members of Parliament are on the screen. This includes the screen where you are seated. I am sure there is no “*Maitu wa Murang’a County*”. As a leader I cannot allow that. My problem is we are turning this House into a village.

Hon. Deputy Speaker: Can you use the names that are registered with the National Assembly, Hon. Florence Kajuju?

Hon. (Ms.) Kajuju: Hon. Speaker, I am sure the Leader of the Majority Party does not know what has happened from 2013 until now. Hon. Sabina from Murang’a County has signed a deed poll with my legal office. She is now legally recognized as *Maitu wa County ya Murang’a*, just like we have *Kikali* in Meru County.

Back on track, I have looked at this Petition---

Hon. Deputy Speaker: Honestly, Members, we are digressing from the Petition. Remember we have a short time to comment on this Petition.

Hon. (Ms.) Kajuju: Hon. Deputy Speaker, I would have finished if it were not for the interruptions by the Leader of the Majority Party.

Hon. Deputy Speaker, I have seen the Petition and it has been signed by almost 2,000 members. They want to know how their funds have been used and how their land is being subdivided and sold.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, the consultations are too loud.

Hon. (Ms.) Kajuju: Hon. Deputy Speaker, such issues and conflicts about land have even led to deaths, especially in Murang’a County. So, I am praying that the Departmental Committee on Lands looks at these issues and arbitrate. This is because the owners of this land do not have money to seek judicial redress. This is the best place for them to get a remedy and I hope that the Petition can be expedited so that we do not have any issues that affect the shareholders.

Thank you, Hon. Deputy Speaker. I support.

Hon. Deputy Speaker: Hon. Eseli Simiyu, your comments will be the last one on this Petition.

Hon. (Dr.) Simiyu: Hon. Deputy Speaker, I rise on a point of order. “*Maitu*” in my mother tongue means, “one groundnut”. So, I was a bit confused. That was my point of order.

(Laughter)

Hon. Deputy Speaker: Since you have not made a contribution---

(Hon. Kipyegon stood in his place)

Hon. Kipyegon, can you wait until you are asked to rise up?

Hon. Deputy Speaker: Order, Members! There seems to be excitement in the air. Can we settle down?

Hon. Kipyegon: Thank you, Hon. Deputy Speaker for allowing me to make a minor contribution on this Petition. I support the Hon. Member's Petition vehemently. I support the signatories to the Petition who want their issues to be sorted out.

Land is a very emotive issue in this country and very many people have lost their lives as a result of land disputes. Other than trying to find the legitimate owners, we should call upon the National Land Commission (NLC) to look deeply into issues of land ownership in this country. It is not only in Naivasha, Nyeri, Kiambu or Nakuru where we have that problem. This is because we have problems where we come from.

As we speak today, there are people who are still fighting at the border between Kilgoris Constituency and Nyaribari Masaba Constituency. Two weeks ago, fighting broke out between the people of Trans Mara West and the people of Trans Mara East and the fighting is all about land. We need to have serious redress when it comes to land issues. Our people should not die over nothing. I support Hon. Sabina, *Maitu wa County ya Murang'a* on this Petition.

(Laughter)

Hon. Deputy Speaker: Order, Members! You can see now how the "Maitu" name is causing problems, and we do not know whether it is a county or your name. Hon. Sabina, register it properly so that we can know it is your registered name.

Hon. Members of the Departmental Committee on Land, you have a lot of work. You have also heard the concerns of your fellow colleagues that land is an extremely emotive subject and has caused deaths. You really need to work expeditiously to ensure this is done so that we can see what your recommendations are.

(Several Hon. Members entered the Chamber)

Can the Members at the door, please, settle down? I have a petition on behalf of some group. Hon. Members, walk in and settle down so that I can convey the Petition.

CONVEYANCE OF A PETITION ON REVIEW OF THE CONSTITUTION

Hon. Members, pursuant to Standing Order No. 225(2)(b), I wish to convey to the House that my office is in receipt of a Petition signed by one Mr. Rage Ismael Hussein, a resident of Eldoret Town, Uasin Gishu County. In accordance with Article 256(1) of the Constitution, the Petitioner is praying for the introduction of a Bill in the National Assembly to amend the Constitution.

Hon. Members, The Petitioner is proposing alteration of several Articles of the Constitution and legislation amongst them Articles 27(8), 97, 99, 131 and 260 with regard to definition of youth, gender representation in elective positions, constitution of the National Assembly, the minimum qualifications for elective positions, public holidays and the currency. He is also seeking amendments to various pieces of legislation.

Hon. Members, the Petitioner recommends the following amendments to the Constitution and the relevant legislations:-

- (i) Article 9 of the Constitution to declare 10th October as a national day which will be referred to as “Katiba Day”;
- (ii) Article 27(8) of the Constitution on gender to provide that the two-thirds rule only applies to appointive positions and not elective/competitive positions.

(Applause)

Order, Members we are not done yet!

- (iii) Article 97 of the Constitution on the membership of the National Assembly to reduce the number of constituencies and abolish the positions for County Women Representatives;
- (iv) Article 99 and the Political Parties Bill be amended to provide for no restrictions on age limit to the elective positions - the minimum qualifications to be, at least, Kenya Certificate of Primary Education (KCPE);

(Laughter)

- (v) Article 131 to provide that the President be above the law of the country and enact legislation to allow the presidency and/or deputy presidency to vie for other elective seat as Member of Parliament, and once elected as President or Vice-President, the State officer relinquishes the seat;
- (vi) Article 260 of the Constitution be amended, under the item on youth, to define the maximum age limit for youth as 45 years;

(Laughter)

- (vii) Notes and coins issued by the Central Bank of Kenya (CBK) to bear the portrait of the first President, His Excellency the late Mzee Jomo Kenyatta.

So, Members, you may wish to note that some of the prayers, among them the reduction of the number of constituencies and the images on the Kenyan currency, were sought by other petitioners.

This Petition, therefore, stands committed to the Constitutional Implementation Oversight Committee for consideration. The Committee is requested to consider the Petition and report its findings to the Petitioner and to the House in accordance with Standing Order No.227(2). The Committee should also undertake to hear the Petitioner.

Thank you.

PAPERS LAID

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

The Annual Reports and Financial Statements in respect of the South Eastern Kenya University and the Kenya Investment Authority for the year ended 30th June, 2015.

Hon. Deputy Speaker: Were those the only Papers to be laid on the Table of the House?

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Let us have a Member of the Mediation Committee on the Energy Bill. Is that a Member of the Mediation Committee in the House?

Hon. Njuki: Hon. Deputy Speaker, I beg to lay the following Papers on the Table:-
The Report of the Mediation Committee on the Energy Bill, National Assembly Bill No.50 of 2015.

The Report of the Mediation Committee on the Petroleum (Exploration, Development and Production) Bill, National Assembly Bill No.44 of 2015.

Thank you.

Hon. Deputy Speaker: Let us move on to the next Order.

Yes, Hon. Njuki.

NOTICES OF MOTIONS

APPROVAL OF THE MEDIATED VERSION OF THE ENERGY BILL

Hon. Njuki: Hon. Deputy Speaker, I beg to give notices of the following Motions:-

THAT, pursuant to the provision of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on its consideration of the Energy Bill, 2015, laid on the Table of the House today, Wednesday 24th August, 2016 and approves the Mediated Version of the Energy Bill 2015.

APPROVAL OF THE MEDIATED VERSION OF THE PETROLEUM (EXPLORATION, DEVELOPMENT AND PRODUCTION) BILL

THAT, pursuant to the provision of Article 113(2) of the Constitution and Standing Order No.150, this House adopts the Report of the Mediation Committee on its consideration of the Petroleum (Exploration, Development and Production) Bill 2015, laid on the Table of the House today, Wednesday 24th August, 2016 and approves the mediated version of the Petroleum (Exploration, Development and Production) Bill 2015.

Thank you.

Hon. Deputy Speaker: Before we get to the Statement on the status update by the Departmental Committee on Justice and Legal Affairs, I take this opportunity to recognise, in the Public Gallery, Kaptembwa Primary School, Kipkelion East, Kericho County; Kapsimotwa Primary School, Bomet Central Constituency, Bomet County; Kathiani Primary School, Makueni Constituency, Makueni County and Kabukuro Primary School, Igembe Central Constituency, Meru County. You are all welcome to the National Assembly.

Can we now have the status report from the Departmental Committee on Justice and Legal Affairs?

STATEMENT

BUSINESS PENDING BEFORE THE

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

Hon. Chepkong'a: Hon. Deputy Speaker, the Departmental Committee on Justice and Legal Affairs is considering a number of Bills together with a number of draft reports. This is the position as it stands currently.

The Committee is expected to report back to the House within two weeks on the following Bills that have already gone through the First Reading. They are:-

- (i) The Witness Protection (Amendment) Bill, 2016;
- (ii) The Penal Code (Amendment) Bill, 2016;
- (iii) The Public Benefits Organisations (Amendment) Bill, 2016;
- (iv) The Contempt of Court Bill, 2016;
- (v) The Sexual Offences (Amendment) Bill, 2016; and,
- (vi) The Office of the County Attorney Bill, 2014. This is a Senate Bill and we will be tabling the Report in due course.

The legislative proposals that are pending in the Committee are as follows:-

- (i) The Marriage (Amendment) Bill, 2016 by Hon. Malulu Injendi;
- (ii) The Public Participation Bill, 2016 by Hon. Chris Omulele;
- (iii) The Companies (Amendment) Bill, 2016 by Hon. Abdikadir O. Ahmed which we passed last year; and,
- (iv) The National Coroners Service Bill which we concluded yesterday. We will be forwarding the Report to the Speaker for approval.

The Committee is also processing the following report proposals:-

- (i) The Adjudicator Act (Amendment) Bill, 2016 by Hon. Irungu Kang'ata;
- (ii) The Constitution of Kenya (Amendment) Bill, 2016 by Hon. Ababu Namwamba which we have completed. We will be forwarding the Report to the Speaker for approval so that the Bill can be published.
- (iii) The Traditional Courts Bill by Hon. Abdikadir O. Ahmed. He has already appeared before us. We have approved the Bill and we will forward the Report to the Speaker so that he can approve it for publication.
- (iv) The Constitution of Kenya (Amendment) Bill, 2016 by Hon. Alice Wahome. We have also concluded that and the Report is on its way to the Speaker.
- (v) The Law of Succession (Amendment) Bill by Hon. Francis Njenga is still under consideration by the Committee.

Finally, the petitions that are pending before the Committee are as follows: We have the Petition by Hon. Chris Omulele on the Maseno Boundary Dispute. We have already conducted an inquiry into this complaint. We have held the first meeting and we intend to conduct another meeting for purposes of arriving at an amicable solution to this problem. We will be tabling our Report in due course.

The second Petition is by the Luseno family on the alleged murder of Gladys Ritho. We have requested for information from the Director of Public Prosecutions (DPP) as well as the Attorney-General and we are awaiting information from these two entities.

The other Petition that is pending before the Committee that we are considering, and we hope to report next week is on the removal of the Chairperson of the Ethics and Anti-Corruption Commission (EACC). This is on-going.

Finally, the Committee considered a Petition by Johnson Kobia and we found out that the Petition substantially contains issues that are under determination in a criminal court in Meru.

So, it offends our Standing Order No.89 on the principle of *sub judice*. So, we have declined to take up this Petition and we have sent it back to the Petitioner.

Hon. Deputy Speaker: Let us have the Departmental Committee on Finance, Planning and Trade giving its status.

PENDING BEFORE THE DEPARTMENTAL
COMMITTEE ON FINANCE, PLANNING AND TRADE

Hon. Gaichuhie: Thank you, Hon. Deputy Speaker. I beg to present before the House the status of pending business before the Departmental Committee on Finance, Planning and Trade. Among the pending business before the Committee is an investigation regarding the collapse of three banks namely, Chase Bank, Dubai Bank and Imperial Bank Ltd. In carrying out its investigations, the Committee concluded hearing---

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Members, there is enough space and room in this Chamber for you to consult silently.

Continue Hon. Gaichuhie.

Hon. Gaichuhie: The Committee conducted hearings with all the relevant institutions. The process was derailed by other legislative activities that have timelines such as the processing of the 2016/2017 Budget Estimates, vetting of nominees to the Privatisation Commission and Competition Authority and the Finance Bill, 2016, which is scheduled before the Committee of the whole House tomorrow. The Committee is yet to receive the forensic audit report from the Governor of the CBK, which is critical in making informed recommendations to this House. I wish to seek an additional 30 days to enable the Committee conclude its investigations.

The other pending Bill that we have before the Committee is the Finance Bill, 2016.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! There is too much excitement in the Chamber today.

Hon. Gaichuhie: Hon. Deputy Speaker, I will be very brief so that Hon. Members can start debate.

Hon. Deputy Speaker: Just try to summarise.

Hon. Gaichuhie: Hon. Deputy Speaker, let me summarise so that they can proceed to the main agenda of the day. The Finance Bill, 2016 is pending and we expect to do the Third Reading tomorrow. We also have the Proceeds of Crime and Anti-Money Laundering Bill, 2015. The Bill is in the Second Reading. The Committee will schedule a meeting with all the stakeholders to discuss the proposed amendments so that it is ready for the Third Reading.

The other Bill is the Kenya Uwezo Fund Bill, 2015. It is scheduled for Second Reading and we are currently considering the amendments. We will do this during the recess. The other business is the County Industrial Development Bill, Senate Bill No.7. The Committee intends to consider and finalise this Bill during the recess in September.

The other Bill is the Competition (Amendment) Bill, 2016. We shall also consider it during the long recess. We also have the Public Private Partnership (Amendment) Bill, 2016.

The Committee also intends to look at it during the recess. We also intend to do the same with the Insurance (Amendment) Bill and the Privatisation Bill.

The other pending legislative proposal is the Anti-Pyramid Scheme Bill, 2016 by Hon. Winnie K. Njuguna. The Committee intends to give a report by September as soon as we come back.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Why did we decide to have this exercise of Committees reporting on what is before them? It is for other Members to know what is before various Committees, otherwise, the Committee knows what is before it. It is for you Members to know what is before the Committee. What is the point of beginning an exercise but nobody is listening? Let us respect each other. Hon. Gaichuhie, please, try and summarise.

Hon. Gaichuhie: Hon. Deputy Speaker, I am doing that. I am skipping a lot so that I can summarise. We have the Industrial and Commercial Development Corporation (Amendment) Bill, 2016, which we intend to look at during the recess. We have scheduled meetings with the stakeholders.

We have 10 pending petitions. There is a petition to amend the Constitution to provide for the establishment of a constitutional commission on innovation and inventions by Hon. Joel Kiprono Rop. The Committee has invited the Petitioner but he has failed to appear.

Hon. Deputy Speaker, there is also a petition on the images on the notes and coins by Mithamo Muchiri. The Committee has a report which will be tabled either tomorrow or next week. There is also the amendment to the Accountants Act No.15 of 2008 by Mr. Wachira Kariuki. We have come up with a report and we will table it either tomorrow or next week.

There is also the payment of terminal dues to employees of Pan-Paper Company Ltd. by Hon. Patrick Wangamati. We have scheduled a meeting with the Ministry to conclude on the Petition and table the Report.

There is also a petition on waiver of VAT on textbooks, journals and periodicals by Mr. Njoroge Waweru. We met him and the proposals are in the Finance Bill, 2016. We shall conclude on the same tomorrow.

Hon. Deputy Speaker, we also have a petition on waiver of taxes levied on raw materials used for production of sanitary towels by Hon. Stephen Mutinda Mule. These proposals have come to our Committee and we shall be tabling a report on the Petition once the Finance Bill is passed by the House.

(Loud consultations)

Hon. Deputy Speaker: Order, Members! I will now resort to sending Members out. I cannot keep repeating the same thing. When someone is sent out of the Chamber, you will know that this is a serious exercise. Hon. Gaichuhie, you are taking too long.

Hon. Gaichuhie: Hon. Deputy Speaker, there is also a Petition on enactment of legislation to confine the National Treasury and county treasuries. The Committee has written to the National Treasury for comments. The Committee is scheduled to meet the National Treasury soon.

We also have a Petition to dismiss the Credit Reference Bureau (CRB), by Peter Rono. The Committee wrote to the relevant institutions for comments and we shall table a report once

we receive their report. There is also a Petition to create a Men's Fund for males aged 36 and above by Peter Rono. The Committee will write to the relevant institutions and table its report.

Hon. Deputy Speaker: Hon. Members, let us move on to the next Order. What is your point of order, Hon. Jakoyo Midiwo?

Hon. Midiwo: Hon. Deputy Speaker, I was listening very carefully to the Vice-Chair of the Departmental Committee on Finance, Planning and Trade give a report of what is before them. It is nearly one year since they took over my interest rates Bill. What is going on in this Committee? If you listen to their list, you will realise that it is endless. I would like him to tell me where my interest rates Bill is.

Hon. Deputy Speaker: Can you briefly respond to that, Vice-Chair?

Hon. Gaichuhie: Thank you, Hon. Deputy Speaker. We have a lot of pending business before the Committee and we are trying our level best. We are trying to deal with the Bills that have timelines. We have worked pretty hard. We meet every day and sit when the House is in session. We are very happy that you have granted us time.

On the Jakoyo Bill, we have a problem because we passed a similar Bill by Hon. Jude Njomo. We wish the President assents to that Bill so that it brings that matter to rest. Hon. Midiwo's Bill is similar to Hon. Jude Njomo's. That is why we did not report on it. If it is not assented to, then maybe, we will consider his and take it back to the President.

Hon. Deputy Speaker: Hon. Kang'ata, because of time, you can make your presentation tomorrow.

Let us move on to the next Order.

MOTIONS

APPROVAL OF THE MEDIATED VERSION OF THE FOREST CONSERVATION AND MANAGEMENT BILL

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on its consideration of the Forest Conservation and Management Bill (National Assembly Bill No.49 of 2015), laid on the Table of the House today, Tuesday, 23rd August, 2016, and approves the Mediated Version of the Forest Conservation and Management Bill, 2015.

(Hon. (Dr.) Ottichilo on 24.8.2016 – Morning Sitting)

(Debate concluded on 24.8.2016)

Hon. Deputy Speaker: This Motion had been sufficiently debated and completed. What remained was putting the Question.

(Question put and agreed to)

APPROVAL OF THE MEDIATED VERSION OF THE NATURAL RESOURCES (CLASSES OF TRANSACTIONS SUBJECT TO RATIFICATION) BILL

THAT, pursuant to the provisions of Article 113(2) of the Constitution and Standing Order 150, this House adopts the Report of the Mediation Committee on its consideration of the Natural Resources (Classes of Transactions Subject to Ratification) Bill (national Assembly Bill No.54 of 2015), laid on the Table of the House today, Tuesday, 23rd August, 2016, and approves the Mediated Version of the Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015.

(Hon. (Dr.) Ottichilo on 24.8.2016 -Morning Sitting)

(Debate concluded on 24.8.2016)

Hon. Deputy Speaker: Order, Members! The only thing remaining with regard to this Motion was putting the Question.

(Question put and agreed to)

Let us move on to the next Order.

BILL

Second Reading

THE UNIVERSITIES (AMENDMENT) BILL

Hon. Deputy Speaker: I now call upon the Mover to reply.

Hon. A. B. Duale: Hon. Deputy Speaker, I beg to reply.

(Question put and agreed to)

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

Hon. Deputy Speaker: Hon. Members, before we proceed, I would like to recognise, in the Speaker's Gallery, the presence of pupils from Nyabunwa Academy from Bonchari Constituency, Kisii County and St. Cecilia Primary School from Budalangi Constituency, Busia County.

We have Muthara Junior Academy from Tigania East Constituency, Meru County and Sotit Primary School from Konoin Constituency, Bomet County. You are all welcome to the National Assembly.

Let us move on to the next Order.

(Loud consultations)

SPECIAL MOTION

ADOPTION OF REPORT OF THE JOINT PARLIAMENTARY

SELECT COMMITTEE ON MATTERS RELATING TO
THE INDEPENDENT ELECTORAL AND BOUNDARIES COMMISSION

Hon. Deputy Speaker: Hon. Members, this is a debating and an orderly Chamber. We will proceed as we normally do. Let us now have the Mover.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, I beg to move the following Special Motion:-

THAT, pursuant to the resolution of the House of 6th July, 2016 regarding the establishment of a Joint Parliamentary Select Committee on matters relating to the Independent Electoral and Boundaries Commission (IEBC), and paragraphs 7 and 8 of the Houses of Parliament (Joint Sittings) Rules, this House:

(i) adopts the Report of the Committee laid on the Table of the House on Thursday, 18th August, 2016.

(ii) commits to the recommendations of the Committee regarding:

- a) allegations against Commissioners and the Secretariat of the Independent Electoral and Boundaries Commission, specifically on credibility, impartiality, integrity and independence;
- b) legal mechanisms for the vacation from office of the current Commissioners and the Secretariat of the Independent Electoral and Boundaries Commission in accordance with the Constitution.
- c) legal, policy and institutional reforms to strengthen the Independent Electoral and Boundaries Commission 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) legal, policy and institutional reforms to 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

(iii) resolves to establish a mechanism by which it shall oversee the implementation of the recommendations in the Report and the electoral processes until the 2017 General Elections.

Hon. Deputy Speaker, you will recall that on Tuesday, 5th July, 2016 and on Wednesday, 6th July, 2016, the Senate and the National Assembly, respectively, approved a Motion to establish a Parliamentary Select Committee on matters relating to the IEBC.

The Motion acknowledged the sovereign power of the people of Kenya and the role of Parliament in representation, oversight and legislation as set out in the Constitution of Kenya, 2010.

Further, the Motion recognises that through pronouncements, sections of society had raised issues on the credibility, impartiality, integrity and independence of the IEBC, electoral processes and laws.

The mandate of the Committee, as stated in the Motion, was as follows:-

- (i) Inquire into the allegations against the Independent Electoral and Boundaries Commission Commissioners and the Secretariat;

- (ii) 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 Secretariat in accordance with the Constitution;
- (iii) 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,
- (iv) On the basis of the findings and recommendations in (a), (b) and (c), prepare a Report and a draft Bill or draft Bills.

The Committee was further required to 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.

The House resolved that the membership of the Committee should be 14. They included the following:-

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

Hon. Deputy Speaker, following its establishment, the Joint Parliamentary Select Committee on Matters Relating to the Independent Electoral and Boundaries Commission held its first meeting on 12th July, 2016 and other preparatory meetings. It considered and adopted its rules of procedure and a work plan, identified stakeholders for engagement with the Committee and prepared a framework for public hearings.

In fulfillment of its mandate and pursuant to Article 118 of the Constitution and Standing Order Nos.127(3) and 130(4) of the National Assembly and the Senate respectively, the Clerks of the Houses of Parliament invited members of the public through a public advertisement to submit their views to the Committee.

As a general guide, members of the public and stakeholders were requested to submit their views along four thematic areas, namely:

1. Allegations against Commissioners and the Secretariat of the Independent Electoral and Boundaries Commission, specifically on—
 - (a) credibility;
 - (b) impartiality;
 - (c) integrity; and,

(d) independence.

2. Recommendations on legal mechanisms for the vacation from office of the current Commissioners and the Secretariat of the Independent Electoral and Boundaries Commission in accordance with the Constitution.

3. Recommendations on legal, policy and institutional reforms to strengthen the Independent Electoral and Boundaries Commission so as to ensure that the August, 2017 elections are free and fair---

Hon. Deputy Speaker: Order, Hon. Members! We are not even listening to the presentation of the Report. How will we decide on it without knowing what is contained in it?

(Loud consultations)

Order! Let the Member move the Report.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, Thematic Area No.3 concerned recommendations on legal, policy and institutional reforms to strengthen the Independent Electoral and Boundaries Commission 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.

The submissions were specifically required to address the following issues:-

- (i) Composition of the Independent Electoral and Boundaries Commission and the Secretariat; and,
- (ii) Appointment, term of office, terms of service and removal from office of the Commissioners and the Secretariat of the Independent Electoral and Boundaries Commission.

Thematic Area No.4 is on recommendations on legal, policy and institutional reforms to 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. This thematic area covered the following aspects:-

- a) Voter registration;
- b) Voter education;
- c) Nomination and registration of candidates;
- d) Campaign management;
- e) Publicity and media;
- f) Use of Information and Communication Technology in elections;
- g) Voting process;
- h) Transmission and declaration of election results;
- i) Allocation of special seats;
- j) Election observation, monitoring and evaluation; and,
- k) Dispute resolution (including nomination and petitions).

The Committee held public hearings from 18th July, 2016 to 3rd August, 2016 and it received 58 oral submissions and 113 written memoranda from members of the public and other stakeholders.

Thereafter, the Committee proceeded on a working retreat to consider the submissions of the public and stakeholders, and to further draft, consider and approve its Report and draft Bills. The Report of the Committee contains a number of recommendations made by consensus and based on the four thematic areas identified by the Committee.

The Report further includes two draft Bills namely, the Elections Laws (Amendment) Bill, 2016 and the Election Offences Bill, 2016. The Report and the draft Bills are proposed by the Committee for adoption by the Houses of Parliament.

With regard to Thematic Area No.1, the Committee received representations from the public varying from a lack of public confidence in the current commission to conduct free and fair elections to both general and specific allegations touching on the credibility, impartiality, independence and integrity of the commission, commissioners and members of the Secretariat of the Commission. These largely related to the conduct of the March, 2013 elections.

In its consideration of the allegations, the Committee took into account the following factors:-

- (a) the provisions of the Constitution and the law on the process for disposal of allegations against the Commissioners and the Secretariat; and,
- (b) the views received from the public and the stakeholders;

(Hon. Ng'ongo and Hon. Midiwo consulted loudly)

Hon. Deputy Speaker, the Chairman of the ODM is consulting too loudly.

Hon. Deputy Speaker: There is another *kamukunji* going on there and it is led by the Deputy Leader of the Minority Party. Please, can we reduce our voices so that the Hon. Member can be heard? I do not know. Maybe, you are the person seconding or is it Hon. Eseli?

Hon. Members: Let her summarise!

(Laughter)

Hon. Deputy Speaker: Hon. Shaban, you really need to summarise now.

Hon. (Dr.) Shaban: Unfortunately, it cannot be, Hon. Deputy Speaker. I wish this could be easy to summarise. It is important for everybody to understand what we have gone through.

We also considered:-

- (a) the time remaining to the August, 2017 General Elections;
- (b) the need to ensure stability, public confidence and an orderly transition in the commission; and,
- (c) The offer by the commissioners to vacate from office in the event of a negotiated settlement being reached.

In light of the above factors, the Committee made no finding on the allegations against members of the Commission and the Secretariat.

In reference to the Report, I would like to refer my colleagues to pages 24 to 35 on the issues of allegations and what we had to go through to come up with the conclusion. The Committee made no finding on the allegations because most of the accusations were on the Biometric Voter Registration (BVR) kits. That was a Government to Government procurement because it was done between the Government of Kenya and the Government of Canada.

On the Second Thematic Area, and drawing from its recommendation on the allegations against the Commissioners and Secretariat of the IEBC, the Committee explored the available legal mechanisms for the vacation from office of the current Commissioners and the Secretariat of the IEBC in accordance with the Constitution.

These mechanisms included:-

- (i) removal from office of the Commissioners under Article 251 of the Constitution;

- (ii) resignation from office;
- (iii) a negotiated settlement for the exit of the Commissioners; and,
- (iv) amendment of the Constitution and repeal or amendment of the Independent Electoral and Boundaries Commission Act, 2011.

Again, considering the fast approaching elections and the limitations of time and potential legal challenge to some of the other options, the Committee settled for and recommends that a dignified vacation from office of the current Commissioners of the IEBC be negotiated and agreed upon in accordance with the law within two weeks of the adoption of this Report of the Committee by Parliament.

Hon. Deputy Speaker, it will be noted that the Commissioners, out of their own volition, expressly stated on HANSARD as reflected on paragraph 81 through to paragraph 89 of the Report that they are open to such a negotiated settlement as long as it guarantees them a dignified exit.

The remarks of the Chairman of the IEBC, Mr. Ahmed Isaack Hassan, as concerns that issue, which were also echoed by all his colleagues said:-

“There are only eight Commissioners plus the Chairman. We are very few and the country is bigger than all of us. We are also Kenyans. We want to work and live here. We do not have a spare country to go to. If a political settlement is reached which requires what you have read from the stakeholders, I have said this before, and I can confirm again that the Commissioners will not be a stumbling block and stand on the way of the settlement.”

The Vice-Chairperson of the Commission, Ms. Lilian Mahiri-Zaja stated:-

“I fully subscribe to the words and sentiments of my Chairman. We took an oath of office. We uphold the principles in the Constitution. We have served the country with great honour and we appreciate the leadership this Committee has shown in the process.”

All the other commissioners, one by one, subscribed and agreed to what their Chairman had stated.

Hon. Deputy Speaker, it is the Committee’s further recommendation that the current commissioners leave office when the new commissioners are sworn-in, which should not be later than 30th September, 2016. The Commission will deal with any disciplinary matter relating to the Secretariat through internal policies and mechanisms so as not to adversely affect preparations for the August, 2017 elections.

Under Thematic Area No.3, this House had tasked the Committee to make recommendations on legal, policy and institutional reforms to strengthen the IEBC so as to ensure the August, 2017 elections are free and fair---

(Loud consultation)

Hon. Deputy Speaker: Order! Order, Members! I am sure the Hon. Member is almost through.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, under Thematic Area No.3, this House had tasked the Committee to make recommendations on legal, policy and institutional reforms to strengthen the IEBC so as to ensure the August, 2017 elections are administered in a very accountable and transparent manner.

On the structure of the Commission, it was the general view from submissions received by the Committee that the number of commissioners should be reviewed downwards to enhance efficiency within the Commission.

The majority of the stakeholders proposed a Commission comprising of five to seven members to reflect the diversity in the country and that the recruitment be done by a multi-stakeholder selection panel devoid of political players. This informed the recommendations of the Committee that the number of Commissioners be revised downwards to seven fulltime Commissioners and that the recruitment be done by a nine-member panel comprising of:-

- (i) four persons being two men and two women, nominated by the Parliamentary Service Commission;
- (ii) one person nominated by the Kenya Conference of Catholic Bishops (KCCB);
- (iii) one person nominated by the National Council of Churches of Kenya (NCCK);
- (iv) one person nominated by the Evangelical Alliance of Kenya;
- (v) one person nominated by the Supreme Council of Kenya Muslims (SUPKEM), the National Muslim Leaders Forum (NAMLEF) and the Kenya Council of Imams and Preachers of Kenya; and,
- (vi) one person nominated by the Hindu Council of Kenya.

The composition of the selection panel draws largely from the events that preceded the formation of the Joint Parliamentary Select Committee.

Hon. Deputy Speaker, you will recall the invaluable role played by the religious leaders in bringing both coalitions to the table to discuss this issue of the IEBC, which is of great importance to the people of Kenya.

As per the recommendations of the Committee, the panel comprising largely of religious leaders is to pave way for a more representative panel to be legislated by Parliament after the recruitment of the next Commissioners of the IEBC. It is a transitory panel meant to assist the country to navigate the process of replacing the Commissioners by 30th September, 2016 in light of the fast-approaching date of the next general elections. The Committee further proposed that in the future, the processes of recruitment of new Commissioners be commenced, at least, six months before the expiry of their term.

The Fourth Thematic Area considered by the Committee was on the legal, policy and institutional reforms. The Committee received various and varying views on how to treat the current register of voters and its appropriateness for the conduct of the next general election. As a compromise between establishing an entirely new register and a clean-up of the current register, the Committee recommends the following for purposes of the 2017 General Elections - the clean up to remove dead voters and also remove double registration. The Committee recommends:-

- (a) the IEBC engages a professional reputable firm to conduct an audit of the register of voters for the purpose of verifying the accuracy of the register, updating the register and recommending mechanisms to enhance the accuracy of the register;
- (b) the audit be completed not later than 30th November, 2016;
- (c) the Commission submits the Audit Report to Parliament within 14 days of receipt of the Report; and,
- (d) the Commission implements the recommendations of the audit and thereafter reports to the National Assembly and the Senate on such implementation within 30 days of receipt of the Audit Report.

With an eye to the future, the above recommendation is supplemented by a further recommendation that the Elections Act be amended to enable the Commission to conduct an audit of the register of voters to verify the accuracy of the register, update the register and recommend mechanisms to enhance the accuracy of the register.

Further, the National Registration Bureau, the Kenya Citizens and Foreign Nationals Management Service and all other relevant agencies and institutions that hold information on Kenyan citizens should avail the information to the IEBC electronically for cross-referencing and information sharing.

The nature of the elections contemplated under our Constitution is purely electronic. The drafters of the Constitution, in requiring the IEBC to conduct six elections on the same day and granting unlimited rights of voting to Kenyans in the Diaspora, coupled by the court decision on the registration as voters and the right of prisoners to vote, point squarely to the election being electronic in nature. With the use of ICT at the elections in mind, the Committee recommends that the verification of the register of voters---

Hon. Deputy Speaker: Hon. Naomi, you really must find a way of finishing. Hon. Members, I am sure most of you are here because of this Motion.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, I thought I have been given 20 minutes. I am just going through all the important points. People are looking at it as if it is something very light and yet it is not.

Hon. Deputy Speaker: What do we do? I wish you could find a way of summarising it because some Members are saying that they have already read the Report.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, the different thematic areas had recommendations at different levels. If people were listening, they would have got the gist of the matter.

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Members! Maybe we can just get your recommendations.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, as a counterbalance, given the use of the identity cards as a principal registration and identification document, and also considering the electronic electoral process, the Committee recommended the abolition of the use of the waiting cards largely owing to the fact that it has no security features.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, exercise some patience.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, in addition to the above recommendations on the Fourth Thematic Area, the Committee recommends various legal, policy and institutional reforms to improve the electoral system and processes. Key among them is:-

- (i) The Elections Act be amended to increase the period for verification of the register of voters and scrutiny and closing of the register before elections from the current 60 days to 90 days;
- (ii) the Commission ensures that the registration of prisoners as voters for presidential elections is implemented and that a progress report on this matter be included in the Commission's Annual Report to the President and Parliament;

- (iii) the Commission ensures that mechanisms and targets for the progressive realisation of registration of Kenyans abroad as voters are put in place---

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, please give her three minutes. You can see the red light is on. Give her three minutes to conclude. Hon. (Dr.) Shaban, your 20 minutes are over.

Hon. (Dr.) Shaban: The Commission ensures that there is a progress report of the registration of prisoners for presidential elections. There should also be a progress report on the progressive realisation of registration of Kenyans abroad. The use of waiting cards should also be disallowed in the registration of voters. The other recommendations are:-

- (i) with respect to the nomination and registration of candidates, imposition of various timelines to make the nomination process more transparent and democratic and further ensure that all party primaries are concluded, at least, 60 days before a general election;
- (ii) the mainstreaming of the needs of persons with disabilities in voter education and on voting day;
- (iii) that the Elections Act be amended to require the use of technology in the electoral process;
- (iv) with respect to the use of ICT in elections, except for the August 2017 General election, any new technology be introduced in the election process at least one year before an election;
- (v) for purposes of the 2017 General Election, the technology to be used be limited to the registration and identification of voters and results transmission (BVR, EVID and RTS);
- (vi) all procurement of ICT equipment for the 2017 General Election be concluded, at least, eight months before the election and the equipment be tested at least 60 days before the next General Election;
- (vii) the Commission, in consultation with all relevant stakeholders, including political parties and other relevant agencies and institutions, make regulations to govern the use of technology in the elections, and that the regulations be tabled in Parliament within 30 days from the date of enactment of the proposed Election Laws (Amendment) Bill, 2016;
- (viii) a structured and scheduled capacity building programme be put in place and implemented for the training of staff and other stakeholders on the technology to be used in the electoral process;
- (ix) the Elections Act be amended to limit the number of voters in each polling station to a maximum of 500;
- (x) the Elections Act be amended to provide for the electronic transmission of the tabulated results of an election for the President from a polling station to the constituency centres and to the national tallying centre;
- (xi) the Commission amends the regulations to require the publication of the party lists submitted by political parties under Article 90 of the Constitution before the General Election; and
- (xii) with respect to the presidential election, within 48 hours of the serving of a petition challenging the election of a President-elect, that the Commission

delivers documents supporting the presidential election results to the Supreme Court.

Hon. Deputy Speaker, if you can recall this was the main bone of contention and it is important that my colleagues note that within 48 hours after the serving of a petition challenging the election of a President elect, the documents will be delivered to the Supreme Court by the IEBC.

With regard to the electoral malpractices, we realise from---

(Loud consultations)

Hon. Deputy Speaker: Order, Members! There is a lot of restlessness. Hon. (Dr.) Shaban, have you finished?

Hon. (Dr.) Shaban: Not yet, Hon. Deputy Speaker.

Hon. Deputy Speaker: What do we do now? You can hear Members are saying that they have read the Report and so you table it.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, add me three more minutes.

Hon. Deputy Speaker: Order, Members! Hon. (Dr.) Shaban, I will give you just two minutes. Read whatever you have recommended in the conclusion because the position is that they have read the Report.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, we always say that but at the end of the day-- Anyway, considering what the DPP brought to us, there was confusion with the election offences being spread all over. So, we have decided to have a proposed Election Offences Bill of 2016 which sets the time limit within which the DPP---

Hon. Deputy Speaker: Order, Members! That is important. The recommendation is that we have two Bills. Just read that again.

Hon. (Dr.) Shaban: Hon. Deputy Speaker, it is very important. Since election offences are spread all over, we have come up with a proposed Election Offences Bill, 2016 and also set time limits within which the DPP may commence proceedings in relation to an election offence. I would like my colleagues to hear this. There has always been an offence of treating voters where---

(Loud consultations)

Please listen. Even if you called your voters to your house and gave them a cup of tea, you will be taken to court because you have caused--- Relax please. We have thought it is important for us to put all these and remove that particular offence of treating voters in the Election Offences Bill. We have removed it. So, it is important for you to understand why we put this in one document.

There is need for continuous oversight of the electoral process in Kenya to ensure that the above far-reaching recommendations made by the Joint Parliamentary Select Committee are fully implemented. In the circumstances, the Committee additionally recommends that Parliament establishes a mechanism by which it shall adequately oversee the implementation of the recommendations in this Report since we have only 349 days to the next election.

Hon. Deputy Speaker, the Committee wishes to thank the offices of the Speaker of the National Assembly and the Speaker of the Senate as well as the offices of the Clerk of the

National Assembly and the Clerk of the Senate for the support extended to the Committee in the execution of its mandate.

The Committee further extends its appreciation to the members of the public and the various institutions and organisations that appeared before it or submitted memoranda to the Committee for their well-researched and eloquent submissions in this matter.

The Committee also appreciates the technical support accorded by the Office of the Attorney-General, the Office of DPP, the Judiciary, the Kenya Law Reform Commission (KLRC), the IEBC and the Computer Society of Kenya (CSK).

The Committee also benefitted immensely from the Panel of Experts and the joint rapporteurs who worked with the Committee throughout the process. The Committee wishes to acknowledge all the members of the public who have continued to keenly follow the proceedings of the Committee and the media who ensured that the country remained updated at all times.

Hon. Deputy Speaker, I, therefore, beg to move that this House:-

(i) adopts the Report of the Committee laid on the Table of the House on Thursday, 18th August, 2016;

(ii) notes the recommendations of the Committee regarding:

(a) allegations against Commissioners and the Secretariat of the IEBC, specifically on credibility, impartiality, integrity and independence;

(b) legal mechanisms for the vacation from office of the current commissioners and the secretariat of the IEBC, in accordance with the Constitution;

(c) legal, policy and institutional reforms to strengthen the IEBC 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) legal, policy and institutional reforms to improve the electoral system and processes so as to ensure the August, 2017 elections are free, fair, accountable and transparent manner.

(iii) resolves to establish a mechanism by which it shall oversee the implementation of the recommendations of the Report and the electoral processes until the 2017 General Election.

Hon. Deputy Speaker, I beg to move.

As I sit down, I ask my colleague, Hon. (Dr.) David Eseli, to second this Special Motion.

(Hon. (Ms.) (Dr.) Shaban laid the document on the Table)

(Applause)

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

Hon. (Dr.) Simiyu: Thank you, Hon. Deputy Speaker. I wish to second the adoption of this Report. At the inception of this Committee, we went through a very long period of public participation, taking views from members of the public and specific organisations that have interest in elections.

The Parliamentary Service Commission (PSC) was able to support the Committee's work thoroughly in the sense that we were backed up with very experienced experts in various areas

some of them provided by the PSC and others hired by either the Jubilee or CORD. We had a very intense negotiation period. So, the Report we have tabled in the House is as a result of this negotiation.

Hon. Deputy Speaker, as you well know, when you go to a negotiation you do not go with a fixed position. So, there has been a lot of give and take on both sides so as to come up with this compromised document ensuring that we do not lose the mandate of the Committee as it had been spelt out in the Motion that set up the Committee.

One of the difficulties that we faced was the issue of amending the Constitution. Some of the recommendations given by various stakeholders hinged on amending the Constitution especially the Judiciary which has expressed its unhappiness with the Report the Committee has brought. However, what the Judiciary and several other stakeholders wanted would have involved amendment of the Constitution which we could not do. We did not have the time.

(Loud consultations)

Hon Deputy Speaker, it is very difficult to speak and---

Hon. Deputy Speaker: Order! Allow the Member to express himself.

Hon. (Dr.) Simiyu: Hon. Deputy Speaker, it was very difficult to go ahead and propose those amendments to the Constitution because some of them would have taken a very long time and we would not have made the deadline for the 2017 elections. It might appear that we disappointed some people especially the Judiciary who wanted the period of the presidential election petition prolonged to 30 days but our hands were tied because of the timelines involved in amending the Constitution given the period left to the life of this Parliament before we break for the next general elections.

We need to be alive to certain legal pitfalls that we, as the Joint Houses, face at the moment as we debate this Report and eventually the Bills that emanated from this Report in the sense that the Committee was equally balanced between the National Assembly and the Senate. So, if there is any disagreement between the two Houses as we debate these matters, we will need to set up another mediation team which will again have to involve both the Senate and the National Assembly. It is a legal pitfall but we will have to come up with mechanisms of circumventing it.

Hon. Deputy Speaker, on the issue of Commissioners, after listening to all the stakeholders and looking at the timelines involved, Article 251 of the Constitution and the Commissioners accepting that they were willing to step aside or leave office once a properly negotiated settlement was reached we came up with no findings on the allegations that were leveled against them. This was done so that we could move the process forward instead of being stuck at one place.

We also came up with a mechanism of appointing new Commissioners and reduced their number to seven. Many have questioned why we did not go by the majority stakeholders who had recommended that the Commissioners be part-time. What informed us to give them the full-time basis was because after the next elections, the next thing the Commission will have to do is boundary review which in the Constitution should start eight to 10 years from the last review.

It will be one of the jobs which the incoming Commissioners will perform. So, making them part-time would have defeated the whole purpose of them reviewing the boundaries. The compromise was that they should be full-time for purposes of reviewing boundaries of constituencies and wards before the 2022 elections.

We also looked at the role of Commissioners because it was clear that what transpired with the current Commission was that roles were not well delineated between the Secretariat and Commissioners; such that if anything went wrong, the Commissioners had passed it to the Secretariat and vice versa. We were not able to apportion blame on either the Secretariat nor Commissioners. This Committee endeavoured to ensure that we put something in place to make sure that the roles of the Commissioners and that of the Secretariat are well demarcated to avoid conflict in future because it leads to a dysfunctional Commission.

On the issue of the register, CORD's position was that the register should be done away with and fresh registration of voters carried out while Jubilee's position was that the current register is okay. After we negotiated in the Committee, we reached a compromise that the register be looked at a fresh by a reputable firm of auditors – these are people who have experience in auditing voter registers, and not just anybody auditing the voter register. In the process, the register will end up being clean and be as good as new. That was the compromise we reached.

Regarding the elections, one of the things we realized was that Article 181 of the Constitution anticipated an election that is based on electronics. That was not surprising. We drafted the new Constitution after the Kriegler Report. This was one of the recommendations which informed the Constitution. Therefore, the Constitution anticipated the mode of elections to be electronic based.

We are short of time and the least we can do is that we use the same electronics used in the last elections in the next general elections because we have experience in this. That is the BVR, the Electronic Voter Identification Device (EVID) and the electronic transmission of results. Those are the technologies we are familiar with.

Subsequently, after the elections we anticipate all this to be integrated into one and electronics will be much more involved in future so that we have proper elections as anticipated by the Constitution.

By this mode we expect to, at least, remove or minimise a problem which afflicts elections across Africa which is a disease called “ballot stuffing”. We hope that by the use of these gadgets and electronics we will accomplish that mission. The Jubilee team was very enthusiastic about the digital Government. We expect them to provide the funding to implement this without a problem.

Once this Report is adopted, we have very strict timelines and the Committee is pleading with both Houses of Parliament to put in place a mechanism to oversee the implementation of these recommendations. If they are not given oversight, and are left in the hands of other people who might not know the genesis of these negotiations, we might lose the whole purpose. Therefore, the Committee recommended that this House puts in a mechanism to ensure that there is oversight of the implementation of these recommendations.

At that time, the media as usual ran a funny story that the Committee wanted to perpetrate itself and continue working. This was further from the truth. We wanted the two Houses to ensure that they put a mechanism in place to ensure that this process is implemented properly and to the letter so, that we have free and fair elections.

On the issue of Presidential Elections under Article 138(2) of the Constitution, it is very clear that where there are more than two presidential candidates, an election shall be held in each constituency. Therefore, each constituency is the basis of the elections of the President hence our recommendation on how to transmit the results of the presidential election.

We went ahead and drafted Bills which emanated from the recommendations of this Committee. I am sure that with time, they will be published and brought to the House for debate and passage so that we can implement them.

I urge my colleagues to look carefully at those recommendations and see how effective they could be in improving the electoral system in this country. Kenya is doing well, but the only place we are failing is in elections. We need to clear that so that Kenya can take off to the community of the nations of the world.

With those few words, I beg to second.

(Loud consultations)

Hon. Deputy Speaker: Order, Members!

(Question proposed)

Order, Members! Hon. Ababu Namwamba is the first one on my list.

Hon. Gikaria: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Gikaria, what is your point of order?

Hon. Gikaria: Thank you, Hon. Deputy Speaker. I understand the importance of this Motion, not forgetting that this is a House of debate. At the same time, going by the importance of the debate, we would want so many Members to be able to contribute to the Motion.

I plead with you to allow us to reduce the time of debate from 10 minutes to five minutes for each Member speaking.

Hon. Aluoch: On a point of order, Hon. Deputy Speaker.

(Loud consultations)

Hon. Deputy Speaker: We will just put it to vote.

(Question put and agreed to)

Hon. Members, I have requests from 57 Members who want to speak to this Motion. It is, therefore, reasonable to expect that we can share the time. Hon. Ababu is first and then the Leader of the Majority Party will follow.

(Hon. Aluoch stood in his place)

What is happening? Have you donated your time?

Hon. Ababu: No, he is insisting on a point of order.

Hon. Deputy Speaker: I said Hon. Ababu is the first one on my list.

Hon. Ababu: I thought he was on a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: I do not understand. Are you not Hon. Ababu? Why are you giving your time to Hon. Olago?

Hon. Ababu: Hon. Deputy Speaker, I thought you had granted a point of order to Hon. Olago Aluoch.

Hon. Deputy Speaker: I do not get it. Can somebody explain it to me?

Hon. Ababu: I thought you had granted a point of order to Hon. Olago Aluoch. That is why I was a bit hesitant to stand up.

Hon. Deputy Speaker: No, I did not. I granted the point of order to Hon. Gikaria.

(Loud consultations)

Okay, can I hear the point of order by Hon. Olago?

Hon. Aluoch: Hon. Deputy Speaker, thank you very much for giving me this opportunity. I want to appreciate the amount of work that has gone into this Report. However, there is a matter that I thought you should guide the House on because this Report contains proposals to amend the Elections Act and the Political Parties Act, and to create the Election Offences Act. These amendments are so grave that I thought the Chair could give direction on how we should handle them. The proposer of the Motion did not touch on their legality, but Hon. Eseli, my Party Secretary-General, mentioned towards the end of his seconding of the Motion; that we will have to fast-track the Bills that will come to the House as a result of this Report, if passed.

Would it be in order for you to consider guiding debate on this Report in respect of the Bill of Rights, Chapter 4 of the Constitution?

(Applause)

I want to refer specifically to Chapter 4, Article 19(2) of the Constitution, which says that:-

“The purpose of recognising and protecting human rights and fundamental freedoms is to preserve the dignity of individuals and communities and to promote social justice and the realisation of the potential of all human beings.”

Following on that is Article 20(2) of the Constitution on the application of the Bill of Rights, which says:-

“Every person shall enjoy the rights and fundamental freedoms in the Bill of Rights to the greatest extent consistent with the nature of the right or fundamental freedom.”

(Applause)

I move to Article 36(1) of the Constitution, on freedom of association, which says:-

“Every person has the right to freedom of association, which includes the right to form, join or participate in the activities of an association of any kind.”

(Applause)

Hon. Deputy Speaker: Order!

Hon. Aluoch: Hon. Deputy Speaker, arising from the provisions that I have quoted, would it not be in order for you to guide the House in saying that, even if this Report is passed in the present form, it does not become law until it complies with the Constitution?

(Applause)

(Loud consultations)

Hon. Deputy Speaker: Order, Members! Order, Members! Hon. Members, Hon. Olago Aluoch has made his point. Some Members want to make a few comments on his point of order. I will start with Hon. Kajwang'. He had already indicated his intention. Hon. Mwangangi, are you also interested in commenting on the point of order that has been raised?

Hon. Kilonzo: --- *(Off-record)*

Hon. Deputy Speaker: Okay.

Hon. Kajwang': Hon. Temporary Deputy Speaker, there are many more reasons I would prefer Hon. Olago as my President. He speaks the truth and the law. I think what we need to understand is how this matter is going to go through the route of law-making. Today we have a Motion which basically is to find out if the Motion which we had approved earlier has been complied with and implemented. This Report in itself proposes draft Bills, but these are draft Bills which, in my view, must come in the regular manner. In other words, they would have to be published and go to the Departmental Committees. We will have to treat them in the normal manner of treating Bills.

The direction we probably need from you, as Chair of this session, is to let us know that what we have before us is a Motion for adoption of the recommendations of the Select Committee that we set up. We have draft Bills before us, which will go through the normal circuit of legislation-making. This will enable us to dissipate the excitement I see in the House. Hon. Members will then know that we have time to engage with these issues. I am one of those who will be on their feet to say that party hopping is a constitutional right of Kenyans.

(Applause)

It is a constitutional right of Kenyans, but the time at which this is necessary is at the time of making the law. It is important that you direct us that there is a legislation-making process that these Bills will go through.

I thank you.

Hon. Deputy Speaker: Hon. Njuguna.

Hon. H.K. Njuguna: Thank you. I support the observations by Hon. Aluoch. The issue before us touches on the core of the Constitution, the Bill of rights. How I wished Hon. Aluoch touched on Articles 37 and 38 of the Constitution on the right of Kenyans to make political choices. I am a product of party hopping.

(Applause)

These are serious issues. Hon. Aluoch observed, before we move forward, let us not engage in a futile exercise because we are talking about constitutionalism. Article 1 of the Constitution provides for the supremacy and ultimate authority of the Kenyan people; that the people can exercise their sovereignty directly or through their democratically elected representatives. Since the right of the people to free and fair elections is being interfered with, I support Hon. Aluoch. This matter should be determined right away, before we move forward.

Hon. Deputy Speaker: Hon. Members, let us not get excited. It looks like we have contention on only one recommendation.

Hon. Members: No! No!

Hon. Deputy Speaker: So far, that is what I have heard. Let us hear from a few more Members, starting with Hon. Ababu.

Hon. Ababu: Thank you, Hon. Deputy Speaker. I want to buttress the position taken by my honourable senior, Olago Aluoch. In doing so, I want to start my submission with the rules of this House because we are a House of rules, a House of record and a House of traditions. Standing Order No.47 partly states in paragraph (3), sub-paragraph (b); that if the Speaker is of the opinion that any proposed Motion is contrary to the Constitution or an Act of the Parliament, he may direct either that the Motion is inadmissible or notice of it cannot be given without such alterations as he may approve or that the Motion be referred to the relevant committee of the Assembly, pursuant to Article 114 of the Constitution.

Therefore, the issue we are raising is perfectly within the Standing Orders. This House can bring to the attention of the Chair the possibility that a Motion such as the one we are about to debate contains provisions or proposals that may amount to unconstitutionality. That is what we are doing. The issues that have been raised by Hon. Olago Aluoch raise the possibility that if we debate this Motion with some of the proposals contained therein, we may be considering matters that are ultimately unconstitutional.

For avoidance of doubt, and for the benefit of my honourable colleagues, I want to refer to pages 214, 213 and 215 of the Report that has just been moved for the record so that we know exactly what we are talking about. Without belabouring the point, I will draw the attention of my honourable colleagues to paragraph 659 of the Report, which runs from page 214. Specifically, on page 215, paragraph 659(7) reads as follows:

“After the names of candidates are forwarded to the Independent Electoral and Boundaries Commission, a candidate who changes their party shall not be eligible to contest in an election as a candidate of the new party or as an independent candidate”.

(Loud consultations)

Hon. Deputy Speaker, that particular paragraph of this Report flies in the face of a number of constitutional provisions. That provision violates Article 36 of the Constitution. Even if this House, for whatever reason, were to pass this Report with this paragraph, we can go to court tomorrow and this Report will be struck out for unconstitutionality.

Let me conclude by strengthening the argument on the immutability of Article 36 of the Constitution by referring to the immutability of Article 4(2) of the same Constitution. That Article is succinct, clear and unambiguous. It states as follows:

“The Republic of Kenya shall be a multi-party democratic state founded on the national values and principles of governance referred to in Article 10”.

We are a pluralist, democratic, constitutional democracy founded on the tenets of this Constitution. Among the values that Article 4 refers to in Article 10 are the national values and principles of governance, which include democracy and participation of the people. The moment you pass a clause such as this, you infringe on the very heart of the democratic principles and you limit the level of participation of the people in the democratic process. If the Member for Gatanga did not have the liberty to switch party midstream, he would not have allowed the people of Gatanga to exercise the right of participation as enshrined in the principles and values in Article 10 of the Constitution.

(Applause)

Hon. Deputy Speaker, seated behind me are the following: the Member for Muhoroni, the Member for Kisumu West, and the Member for Kajiado Central. You look around this House, and you see honourable colleagues who if it were not for the constitutional liberty that allows honourable political leaders in this House to exercise the freedom and liberty in Article 36 and Article 38 of the Constitution to hop, skip and jump as is necessary---

(Applause)

Let me conclude by citing Article 19(3) of the Constitution, which speaks to the immutability of the Bill of Rights. It states as follows:-

“The rights and fundamental freedoms in the Bill of Rights belong to each individual and are not granted by the state”.

These rights and freedoms, honourable colleagues, are not given to you by the state, or by the government or by a political party or a political coalition or a select committee of this House. The Constitution is absolutely clear that the rights belong to each individual and are not granted by anybody; they are God-given. In an environment where political parties have not matured to a level where they can assure you 100 per cent of the remaining faithful, paying the highest fidelity to the tenets of democracy and to live by their own internal rules, we cannot subject ourselves to the tyranny of political parties.

Hon. Deputy Speaker, we have no choice based on nothing other than constitutional provisions to edit this Report and remove the offensive portion of paragraph 659(7). It is offensive, unconstitutional, untenable and unacceptable. It must be removed *in toto*.

I submit, Hon. Deputy Speaker.

Hon. Members: Put the Question!

Hon. Deputy Speaker: Hon. Members, that has been well prosecuted. Let us agree on a middle ground. I will propose a middle ground because I have 63 Members who want to speak. We have already been told of the offensive paragraphs. Could we have an agreement to allow Members to ventilate on the other issues that we all feel are offensive?

(Loud consultations)

Order, hon. Members! Order, Hon. Alfred Keter! Hon. Richard, I am on my feet. I am proposing that you allow other hon. Members to debate this Report. We are not going to put any question today. We are going to allow hon. Members to talk about the Report.

Hon. Deputy Speaker: Hon. Sarah Korere is the next on my list.

Hon. Members: Guide us!

Hon. Deputy Speaker: I have already guided the House. We are debating the Motion.

Hon. Onyonka: Please guide us.

Hon. Deputy Speaker: Order, Hon. Onyonka! I have given the Floor to Hon. Sara Korere. You are not on the Floor. It is Sarah Korere who is on the Floor.

Hon. (Ms.) Korere: Nashukuru Mhe. Naibu wa Spika kwa nafasi hii. Nataka kuwarai Wabunge wenzangu kwamba hili ni Bunge la sheria na utaratibu. Kwa hivyo tufuate utaratibu na sheria ambazo zinaliongoza Bunge hili.

Natoa pongezi zangu za dhati kwa Kamati Teule ambayo iliwasilisha Ripoti hii.

(Loud consultations)

Nitasema manaake ni lazima niseme ninayotaka kusema. Kamati Teule ambayo imewasilisha Ripoti hii iliongozwa na Wabunge ambao tunawaheshimu sana. Wamesifika sana, haswa kwa masuala ya kisheria. Kuhusu makamishna ambao wanatarajiwa kuondoka kutoka ofisi za Tume Huru ya Uchaguzi na Mipaka, ninaiunga mkono Ripoti hii.

(Loud consultations)

Mhe. Naibu wa Spika, naomba unilinde dhidi ya hawa mabwenyenye.

Hon. Deputy Speaker: Order, hon. Members!

Continue, Hon. Korere.

Hon. (Ms.) Korere: Mhe. Naibu wa Spika, naomba unilinde tafadhali.

Hon. Deputy Speaker: Order, hon. Members!

Hon. (Ms.) Korere: Mhe. Naibu wa Spika, nataka kuwafahamisha Wabunge wenzangu kwamba nimezoea kelele hata nilikotoka lakini mimi husema ninayotaka kusema.

(Loud consultations)

Nasikitika kwa sababu leo nimeketi upande mbaya wa Jumba hili, lakini nitaendelea.

Hon. Members: Keti chini!

Hon. (Ms.) Korere: Siwezi kuketi chini! Kwendeni huko!

(Loud consultations)

Hon. Members: Sheria hii ni ya kesho. Leo si wewe!

Hon. (Ms.) Korere: Itashika huyu kwanza.

(Loud consultations)

Hon. Deputy Speaker: Hon. Langat, proceed. Hon. Members, we will not proceed in the manner we are doing. We have listened to your sentiments. As you very well know, this is a politically decided Report.

Hon. Members: No!

Hon. Deputy Speaker: Listen, hon. Members. It is now before us. Let us listen to each other. We are not going to proceed in this manner. I have asked Hon. Langat to proceed.

Hon. Langat: Hon. Deputy Speaker, having listened to the constitutional matters that have been advanced by Hon. Aluoch, Hon. Ababu and the other Members who have contributed, I think it is better that we sleep over this issue. Let us go and check whether there will be need for amendments to remove the offensive clauses.

I move under Standing Order No.96 that debate on this Motion be now adjourned so that we can sleep over it.

Hon. Deputy Speaker: Order, hon. Members! Do you have a seconder, Hon. Langat?

Hon. Langat: Yes, Hon. Gikaria.

Hon. Gikaria seconded.

(Question put and agreed to)

Hon. Members: Division! Division!

Deputy Speaker: Okay, I order the Division Bell to be rung.

(The Division Bell was rung)

Hon. Deputy Speaker: Order, hon. Members! Hon. Members, please, settle down!

Hon. Deputy Speaker: Hon. Members, please settle down. We are ready for the Division. Could all the doors be closed and the Bar drawn?

(The doors were closed and the Bar drawn)

Hon. Members the Question is on the screens is as follows:-

“THAT, the debate to consider the Independent Electoral and Boundaries Commission (IEBC) Report be adjourned.”

(Loud consultations)

Order, Hon. Members! Please, do not shout. You have your weapons.

Hon. Members, log out now. You have 60 seconds to log in. Please, check the screens so that you can know when the 60 seconds are over. Those who do not have their electronic cards should come to the Dispatch Box and vote manually.

Hon. Members, start voting now.

(Loud consultations)

DIVISION

(Question negated by 107 votes to 22)

AYES: Dr. Simiyu, Messrs. A.B. Duale, Gikaria, Bunyasi, Ndiege, Chepkong’ a; Dr. Nyikal, Messrs. Eric Keter, Ng’ongo, Wambugu, Onyura, Langat, Cheptumo; Eng. Mahamud, Messrs. Kajwang’, Nassir; Ms. Ghati; Dr. Shaban; Ms. Nyamunga, Ms. Shebesh, Ms. Kajuju and Ms. F.M. Mutua.

NOES: Messrs. Mwamkale, Lempurkel, ole Kenta, Baiya, Oyoo, Aden, Oyugi, Alfred Keter, Sambu, Dido, Kimaru, Angatia, Momanyi, Andayi, Kitungi, Otsiula, Gimose, Nakuleu, Kubai Iringo, Anyango, Nanok, Bowen, Karithi, Lagat, J.k. Chege, Ngare, F.K. Wanyonyi, Kilonzo, G.W. Omondi, Kombe, Abass, Mwaura, Kiptanui, Rop, J.K. Bett, Murgor, Mutambu, Onyancha, Kipyegon, Serut, J.M. Nyaga, Naicca, J.K. Nyaga, Kemei, Mirenga, Okoth; H.K. (Dr.) Njuguna; Messrs. Barchilei, Bitok, Muluvi, Lomunokol, Robi, Memusi, Mohamed Abdi, Injendi, Aburi, Munuve, Ngikor; Eng. Gumbo; Messrs. Barua, Ngunjiri, ole Ntutu, Gitau, Akujah, Letimalo, Otaalo, Bedzimba, Makenga, Dr. Pukose; Messrs. Tonui, Mwaita, Tiren, Ramadhani; Dr. Munyaka, Messrs. Kisang, Mtengo, Cheruiyot, Anami, Arama, Kaluma,

Keynan; Dr. Oginga; Dr. Ottichilo; Messrs. Wekesa, K.K. Kinyanjui, Kamanda, Sudi, B.K. Bett, Kasuti, Kariuki Ndegwa; Ms. Chae, Ms. B.N. Nyaga, Ms. Ombaka, Ms. Chepkwony; Prof. Sambili, Ms. Teiyah, Ms. Korere, Ms. Mbugua, Ms. Seneta, Odhiambo-Mabona, Ms. Tobiko, Ms. Changorok, Ms. Sunjeev, Ms. Chebet, Ms. T.G. Ali, Ms. Mathenge and Ms. Machira.

ABSTENTION: Ms. F.I. Ali and Mr. Kang'ata.

Hon. Deputy Speaker: Hon. Members, before we open the entries to the House, I want to give you the results of the Division on the Motion that debate on the Independent Electoral and Boundaries Commission (IEBC) be adjourned. Electronically, the "Ayes" are 19, the "Noes" are 92 and Abstentions are 2.

Manually, the "Ayes" are 3, the "Noes" are 15 and Abstentions is 0.

The total for the "Ayes" is 22, the "Noes" 107 and Abstentions are 2.

Therefore, the "Noes" have it.

(Applause)

Hon. Members: Put the Question!

Hon. Deputy Speaker: Therefore, the result is that debate resumes. Let us have the doors opened and get back to business.

(Resumption of Debate)

Hon. Olago Aluoch, proceed.

(Loud consultation)

The problem is the screens. Just come here. It takes a while for the screens to resume normal function.

Hon. Aluoch: Hon. Deputy Speaker, thank you very much for listening to my point of order and to the points of order from the other Members arising from the same issue. I can now say exactly what I wanted to say but did not say it that time.

What I find offensive, which is the basis on which I raised an objection, is on page 215 of this Report. I would really hate to see this House throwing away the baby with the bath water. This Report is good except for what I raised. I would want this Report passed without the offensive idea found on page 215 under "Nomination and Registration of Candidates". That is paragraph number 659(7), which says as follows:-

"That after the names of candidates are forwarded to the Independent Electoral and Boundaries Commission, a candidate who changes their party shall not be eligible to contest in an election as a candidate of the new party or as an independent candidate."

Hon. Deputy Speaker, this is the only offensive provision I found in this Report. There are many others but this is the one I want to focus on. To cure this, I am proposing an amendment to this Report by deleting paragraph 659(7) at Page 215 of the Report.

(Loud consultation)

Hon. Deputy Speaker: Hon. Members, it is his amendment. Can you let him prosecute it?

Hon. Aluoch: This is the one I have given serious consideration. I know Members have issues with Sub-Paragraph No.11 as well but my amendment is on Sub-Paragraph No.7.

I wish to ask Hon. Joe Mutambu, the Member for Mwingi Central, to second the amendment.

Hon. Mutambu: I second.

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

Hon. Members: Put the Question!

Hon. Deputy Speaker: Leader of the Majority Party and Leader of the Minority Party, do you have anything?

(Hon. A.B. Duale and Hon. Nyenze nodded in the negative)

Hon. Deputy Speaker: Order, Hon. Members! On this amendment, it is Hon. Nyikal's whose hand I saw first.

Hon. Member: It is me.

Hon. Deputy Speaker: No, it was not. It was Hon. Nyikal.

Hon. (Dr.) Nyikal: Thank you, Hon. Deputy Speaker. I rise to support the amendment by Hon. Olago.

(Applause)

As a country, there is a time when we have to see how to save our country. We have a partisan approach. In the last few months, we have moved from a situation where we had a lot of acrimony in the country. There was so much disagreement and street fighting that led to some deaths. Subsequently, we put in place a political process that we all believed would solve the problem. To a larger extent, that process has borne some fruits. We have agreed that there is an extremely offensive part to that Report. My colleagues, why would we throw away the effort that we all contributed to by sitting in different places and agreeing to initiate a process to resolve the issues that prevailed then, because of a single line?

Hon. Members, I put the question that we amend this Report as proposed by Hon. Olago. I support.

(Loud consultation)

Hon. Deputy Speaker: Hon. Kangogo, I have given the microphone to you.

Hon. Bowen: Thank you, Hon. Deputy Speaker.

As we consider the amendment by Hon. Olago Aluoch, we should not sacrifice the independence of Parliament because of a political experience. This Report is before Parliament. As Members of Parliament, we have a right to amend the Report, and debate and reject or accept it. We cannot rubberstamp this Report. It is not only the amendment by Hon. Olago Aluoch. If you look at the recommendations on Thematic Area 1, there is nothing in law called "dignified

vacation of office.” If one has committed a crime, he should be prosecuted and taken to jail or remain in office to discharge duties. The Report is talking about paying the IEBC Commissioners in order for them to leave office. Under what law are we going to pay them? There is no such provision in the Public Finance Management Act. The law only provides for people to be paid for hours worked while in office. This Report is bad for this country. It is worse for Parliament. As we propose amendments to this Report, we should look at it in its entirety to ensure that the independence of Parliament is not compromised.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Injendi.

Hon. Injendi: Thank you, Hon. Deputy Speaker. I am in agreement with Hon. Olago’s proposal to delete Paragraph 659 (7). However, as we delete Paragraph 659 (7), we still have other offensive paragraphs on Page 214. Even as we say that one can “hop” from one party to another, there is a challenge in Paragraph 659 (1), which provides that the list of party members should be submitted to the Commission at least 90 days before the date of the general election.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, Hon. Olago Aluoch has brought his amendment. You are at liberty to bring yours but you cannot do so before you indicate that you want to bring an amendment. If you are proposing an amendment, bring it forth.

Hon. Injendi: Hon. Deputy Speaker, this Report has so many mistakes.

Hon. Deputy Speaker: Hon. Mbadi.

Hon. Ng’ongo: Thank you, Hon. Deputy Speaker. You have said exactly what I wanted to say. We have procedures that guide this House. The amendment before us is by Hon. Olago Aluoch. We need to restrict ourselves to discussing that amendment and dispose of it before going to another amendment proposed by any other member. However, we cannot use the amendment by Hon. Olago Aluoch to discuss the entire Report. That is not procedural. We need to come back to order. There is nothing unique about this Motion. We need to transact it like any other Motion. The Motion before us is an amendment by Hon. Olago Aluoch. Let us dispose of it and then if there is any other Member who has another amendment, he or she could propose it.

Hon. Deputy Speaker: Hon. Millie Odhiambo, do you have something on the amendment?

Hon. (Ms.) Odhiambo-Mabona: Thank you, Hon. Deputy Speaker, for giving me this opportunity. I want to say that the elephant in the room is the issue of party hopping. We have just come from a very difficult situation, as a country. Only the other day, people demonstrated on the streets and several of them were killed. We have been given the responsibility, as Parliament, to push this country forward. Most of us, especially from the CORD coalition side, had agreed to support the Report without amendment of even a comma or a full stop. However, we have read the mood of the House, which is that people want party hopping because of the issue of lack of maturity of most of our political parties. Because of that, in order to enable this country to move forward, let us support the amendment by Hon. Olago Aluoch to allow members to party-hop as our parties grow and mature. Because other Members have also suggested that there are further amendments that should be introduced in the Report, as soon as we finish with the amendment by Hon. Olago, let the other Members move the subsequent amendments they may want to attach to the elephant in the room, which is party hopping. I plead with my fellow Members. I know that when we come here, sometimes there is excitement to do

some sort of mob justice to a Report, but the country is looking at us. As Hon. Millie Odhiambo, I do not want us to go through the process of getting on the streets and getting people killed again. Please, let us give the country direction. Let us not throw away the baby with the bath water.

I support Hon. Olago Aluoch's amendments.

Hon. Deputy Speaker: Hon. Serut, please, address us on the amendments by Hon. Olago Aluoch.

Hon. Serut: Thank you, Hon. Deputy Speaker. I agree with what my colleagues have said, especially Hon. Millie Odhiambo, on that particular amendment. There is a problem on the procedure of prosecuting amendments. Hon. Members have not read this Report. They are not able to come up with amendments. The procedure should be followed. I think Members should be given ample time to go through the Report, make up their minds and see whether there are amendments to be brought or not.

Hon. Deputy Speaker: Hon. Serut, this Report was tabled last week. All the hon. Members are expected to have read it, so that they can make any necessary changes they want.

Hon. Kimaru: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order?

Hon. Kimaru: Hon. Deputy Speaker, I beseech thee, as begged by other Members, to let us follow the procedures of the House. Given that Hon. Olago's amendment has been tabled and we have discussed it fairly well, it is time you put the Question.

Hon. Deputy Speaker: That is the procedure we are following. You are saying that we have followed it fairly well. I wanted a number of Members to contribute on it before I put the Question.

Hon. Kimaru: Hon. Deputy Speaker, I am saying this because people are now delving into other issues instead of sticking to Hon. Olago's matter. It will be important to first dispose of Hon. Olago's amendment.

Hon. Deputy Speaker: Hon. Savula, speak on Hon. Olago Aluoch's amendment, and not on something else.

Hon. Angatia: Thank you, Hon. Deputy Speaker. I beg to support Hon. Olago Aluoch's amendment and indicate that the Select Committee went out of their terms of reference with regard to what the House voted for. They were supposed to inquire into the affairs of the IEBC and recommend on how the Commissioners will vacate office and how to reform the Commission. They were not supposed to include unconstitutional matters in the Report. Therefore, I will move a further amendment once we vote on Hon. Olago Aluoch's amendment.

Hon. Nyamweya: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Nyamweya, what is your point of order?

Hon. Nyamweya: Thank you, Hon. Deputy Speaker, for giving me a chance to contribute to this Report.

The point I want to raise is that this Report has been negotiated by both sides of the House. It involved the leadership of the House, including the Leader of the Majority Party and the Leader of the Minority Party. Let us remember where we are coming from. This Report has been produced following demonstrations which resulted in deaths of some people who wanted the IEBC to leave office. If people want to propose amendments, they can do so after we pass this Motion. We have one year to the general elections. It is upon Members to either take back the country to where it was a several weeks ago or bring the country together and have national unity. The purpose of this Report is not to target Members of Parliament. It is very important to

know where we are coming from, as a country. What is important is for us to pass this Report the way it is and bring the amendments later. We have one year to the general elections.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, can I now put the Question to Hon. Olago Aluoch's amendment?

*(Question, that the words to be left out be left out,
put and agreed to)*

(Paragraph 7 as amended agreed to)

Hon. Deputy Speaker: As some hon. Members prepare to move further amendments, others can contribute to the Motion as amended.

(Debate on the Motion as amended resumed)

Hon. Richard Onyonka, you are next on my list.

Hon. Onyonka: Hon. Deputy Speaker. I am trying to make a recommendation on an amendment.

Hon. Deputy Speaker: While you sort yourself out, can we have Hon. Irungu Kang'ata contributing?

Hon. Kang'ata: Hon. Deputy Speaker, I rise to support the Report after---

Hon. Deputy Speaker: As amended. Members, we will continue debating. When you bring your amendment we will include it, please. Is yours a further amendment?

Hon. Onyonka: Yes, Hon. Deputy Speaker.

Hon. Deputy Speaker: You will, first of all, bring it for the Clerks-At-the Table to see it. Is it a further amendment? Are you contributing or making a further amendment?

Hon. Onyonka: I am making a further amendment, Hon. Deputy Speaker.

Hon. Deputy Speaker: Can you, first of all, have it looked at by the Clerks-At-the Table? In the meantime, Hon. Kang'ata can continue.

Hon. Kang'ata: Thank you, Hon. Deputy Speaker. I support the Report now that it has been amended. I strongly believe in this Report now that the elephant in the room has been kicked out.

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members! We are now in agreement. We have removed the offensive wordings. Can we now debate in an orderly manner?

Hon. Kang'ata: Hon. Deputy Speaker, first, we have managed to kick out the IEBC commissioners.

(Hon. Onyonka crossed the Floor)

Hon. Deputy Speaker: Hon. Onyonka, this House is in session. I have just seen you. Can you please go round through the back? The House is in session.

Hon. Kang'ata: Hon. Deputy Speaker, the first issue that was very important for Kenyans was to remove the IEBC commissioners. I have heard a Member say that we do not have a procedure for kicking out the commissioners. It is clearly denoted that any person can voluntarily vacate office. We all know that there have been public pronouncements. The IEBC commissioners have said that they are going to relinquish their seats, subject to receiving some payments. To that extent, we have made progress.

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members. Please, find a quieter place to consult.

Hon. Kang'ata: Hon. Deputy Speaker, secondly, I have looked at the articles relating to nominations and noted that we shall have nominations at least 60 days before the next general elections. That means on or about 8th June, 2017 the names of the people who are going to be nominated will have been published. To me that is fair. That means we need to have nominations in the month of May. That is a progressive idea as opposed to the current situation, where we do party nominations a month to the general elections day. This will give ample time to the nominees to campaign. Those who will want to party-hop will also have time to identify other parties to go to. Now that we have allowed party-hopping, people will have chance to do so.

Hon. Deputy Speaker: Order, Hon. Millie Odhiambo, you are holding another *Kamukunji* there. Can you please stop?

Hon. Kang'ata: Hon. Deputy Speaker, I support the Report because it has taken into account other matters that have been affecting the fairness of elections. Party registers will be cleaned up. According to this Report, an international reputable firm will be looking at the registers to ensure that dead voters are struck out. This means names of persons who are not supposed to be in the register will be removed. To that extent, we have made progress.

I also support this Report because it was obtained through a consensus process.

(Loud consultations)

Hon. Deputy Speaker: Hon. Members, the consultations are loud.

Hon. Kang'ata: Hon. Deputy Speaker, the Joint Parliamentary Select Committee had representatives of the Jubilee and the CORD Coalitions. In order for us to move this country, I urge hon. Members to support this Report so that we can have the general elections next as scheduled. If we reject it, we will have to start the process afresh.

Finally, this is just a Report. In order for it to be implemented, it needs Bills – which will be brought to the House. We have the right to amend the Bills and incorporate new proposals. Therefore, this is not something that should force us to oppose the Report. We will eventually have an opportunity to amend the Bills once they are brought to this House.

With that, I support the Report.

Hon. Deputy Speaker: Hon. Abdikadir Omar.

Hon. Aden: Thank you, Hon. Deputy Speaker, for giving me the opportunity to speak to this Report as amended. I want to thank Hon. Olago Aluoch for saving this Report because the people of Kenya, who have---

Hon. Deputy Speaker: Hon. Abdikadir, just hold on. Let us hear the Hon. Leader of the Majority Party.

Hon. A.B. Duale: Hon. Deputy Speaker, you need to make a ruling before we move to the next step. This is a matter of procedure. As much as we want to protect the legitimacy and legislative powers of each hon. Member, this is a House of procedure, rules, precedents and practice. First, before I tell you what you need to rule on---

(Hon. Onyonka waved his hand)

Hon. Onyonka, if you could allow me, I am not at a Kisii Town rally.

The Speaker, in his own words, ruled that the Motion could not be amended. Hon. Deputy Speaker, you need to use Standing Order No.1 to order a closure of this debate. If the mother Motion was not subject to amendment, can the product of that Motion be amended? From there, we can move on.

Secondly, we asked for an amendment from Hon. Olago Aluoch. We are leaders who represent the people, and we are supposed to legislate. I agree with the concerns of hon. Members, some of whom are products of party-hopping. Before, this House moves on, you must rule even if it means adjourning the House. If the Speaker did not allow the mother Motion that established the Joint Parliamentary Select Committee to be amended, how do we amend its family and product? The Speaker must rule on that because this is a House of procedure.

Hon. Mbadi and Hon. Jakoyo, you should listen.

Thirdly, the Question on the Motion for adoption of this Report will eventually be put and the vote will go either way. I want it to go on the HANSARD that the procedure through which amendments are being floated left, right and centre this afternoon is not proper. It is not in tandem with the Standing Orders. I have to go on record on that bit because we have turned the House into a market place where everybody can propose amendments. If there are amendments, they must be filed. The Speaker must approve them so that each Member seated here can be given copies to digest the substance of each amendment. If the mother Motion that established the Joint Parliamentary Select Committee could not be amended following the Speaker's directive, how come its product is being amended? You must tell us that before we move on.

I beg to rest my case.

Hon. Deputy Speaker: Order, Members! Let us hear Hon. Neto.

Hon. Oyugi: Thank you, Hon. Deputy Speaker. I would like to agree with what Hon. Duale is canvassing. Before we agree with him, part of your ruling ought to take into consideration---

(Loud consultations)

Hon. Deputy Speaker: Order, Members!

Hon. Oyugi: Hon. Deputy Speaker, I agree with Hon. Duale to the extent that you need to inquire as to whether we can amend the product of the mother Motion that established the Select Committee. We need to consider what the mandate of that Motion was. In my understanding, part of the reason as to why hon. Members are having issues with the Report is that the Select Committee might have gone outside the mandate given to them by the initial Motion. That perhaps is one of the things you need to consider.

Hon. Chepkonga: Point of order.

Hon. Deputy Speaker: Hon. Chepkong'a.

Hon. Chepkong'a: On a point of order, Hon. Deputy Speaker. The Leader of the Majority Party has raised a very fundamental question. If the mother Motion that created this particular Select Committee could not be amended then the product cannot be amended. The Speaker himself ruled, unless we overrule him. We are being told that this Committee exceeded its mandate, which is not correct. Thematic Area 4 is very wide. It states as follows:-

“Recommendation on legal policy and institutional reforms to 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.”

Hon. Deputy Speaker, it is still within the mandate of the Committee to recommend on those areas, including what Hon. Aluoch is amending. The other House has unfortunately passed the Report as it is.

Hon. Members: Yes, unfortunately!

Hon. Chepkong'a: Hon. Deputy Speaker, I said “unfortunately” because the Senate’s resolution did not take into account the amendment by Hon. Aluoch, who is a Senior Counsel I respect. His amendment has not been carried by the Senate because the Senate passed the Report as it is.

Hon. Deputy Speaker, some members seated behind me are shouting. They think this is a *baraza*. It is a serious House. You cannot be elected and then people shout at you. That cannot happen. They can only shout at you when you are at a public *baraza*. This is a House of rules. I can hear another Member shouting “point of order!” yet he knows that I am on a point of order.

Hon. Deputy Speaker: Order, hon. Members! Hon. Chepkong'a is on a point of order.

Hon. Chepkong'a, do not lecture your fellow hon. Members. Just prosecute what you need to.

Hon. Chepkong'a: Hon. Deputy Speaker, the only thing is that we come from the same region with those who are shouting at me. Otherwise, I would have taken them up. They are forgiven.

I was saying that the Senate has already passed the mediated version of this Report. We must have a lot of respect for both Houses of Parliament. When the Bills come here, they will go through the due process. We are not passing the Bills but adopting the Report, so that we can consider the Bills that will come thereafter. People need to understand the legislative processes. I am saying this as a lawyer. Even if we pass this Report as it is, we will not have passed the Bills. The Bills will still undergo the due process of this House. We are passing the Report to allow the Bills that contain provisions on party-hopping to be considered. Whether they will be accepted by the Members or rejected, it will be dependent on this House. The Report does not carry party-hopping provisions.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Leader of the Minority Party.

Hon. Nyenze: Thank you, Hon. Deputy Speaker. I want to contribute to this very important debate.

The Committee did a good job but their Report has some Clauses which hon. Members feel that if we adopt them, there will be no time to change them. Regarding the issue of party-hopping, the amendments that have been brought to this House by Hon. Aluoch Olago resonate very well with hon. Members here because there was fear that people’s rights are being curtailed.

Hon. Deputy Speaker, I want you to use Standing Orders No.1 because there is need for consultation. You also have to consult the Speaker because he said there would be no amendment on the mother Motion. We also need to consult each other and re-look this matter. The most unfortunate thing that can happen in this country is for us to throw out this Report. It will be six months before we reconstitute another Committee. The elections are less than one year away.

Both the Jubilee and the CORD coalitions went to negotiations and it is like we have agreed on everything else apart from those very bad Clauses, which seek to discourage Members from hopping from one party to another. The mood of the House is that the amendment by Hon. Aluoch Olago is acceptable, and that certain recommendations contained in the Report also need to be amended. The wisest thing to do is for you to adjourn debate on this very important Motion, so that we can seek consensus on these matters. When we meet again, we will pass the Report with amendments.

Hon. Deputy Speaker, that is my advice. Let us not betray Kenyans. The consequences of our failure to adopt this Report would be street demonstrations that might lead to loss of lives. Kenyans will judge this House very harshly if that happens again. In order for us to come out with very well thought out amendments, we need time to sleep on this Report and consult. When we reconvene, we will come up with a better solution.

Thank you.

(Loud consultations)

Hon. Deputy Speaker: Order, hon. Members!

Hon. Bii: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order, Hon. Bii?

Hon. Bii: Hon. Deputy Speaker, I thank you very much for this opportunity. With a lot of respect, I hear of procedure, rules and what have you. Is the Leader of the Minority Party in order to discuss something that has already been passed by the House?

(Loud consultations)

Secondly, what is the history of this document? There were demonstrations all over the country. What was the major concern? The matter of the IEBC even came to our Departmental Committee on Justice and Legal Affairs. We know that the matter was only about the IEBC. Therefore, even before we go further, it is not legitimate for this Report to be in this House. That is according to my judgment. Can we first be guided? Is the Leader of the Minority Party in order to discuss a matter which has already been discussed and resolved?

Hon. Ng'ongo: On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Mbadi.

Hon. Ng'ongo: Thank you, Hon. Deputy Speaker. The matter before us is the issue that was raised by the Leader of the Majority Party, and which has been canvassed by many of us. The Leader of the Majority Party was questioning the procedure of passing the amendments. I think he was asking if you could either stop this debate or rule as to whether or not the amendments are admissible. Remember that an amendment has already been passed. Unless we are saying that the House voted in vain, the Leader of the Majority Party delayed in raising the issue. The matter has been disposed of. What could probably be raised now is whether we should

allow further amendments. That makes a lot of sense in terms of procedure. Going back to a matter that has been decided upon would be violating the same procedures that the Leader of the Majority Party was asking us not to violate.

Hon. Deputy Speaker, I want you rule whether we still need to move further amendments or we go back to the Motion as amended and continue debating it. We cannot go back on the amendment by Hon. Olago Aluoch because we have already disposed of it.

Hon. Deputy Speaker: Hon. Manje, are you going to debate the matter that has been raised by the Leader of the Majority Party?

Hon. Manje: Yes, Hon. Deputy Speaker. I think we are likely to mutilate this Report such that it will have a very different focus.

(Applause)

This was a negotiated document. We had seven members from the Minority Party and seven members from the Majority Party. Accepting amendments from the other side would imply that their negotiating team has increased to eight members while ours remains seven members. My take would be that we either throw the whole Report out or we adopt it without amendments.

Hon. Deputy Speaker: Hon. Midiwo.

Hon. Midiwo: Hon. Deputy Speaker, just bear with us. We know it has been a long afternoon. The Leader of the Majority Party has raised a very fundamental point. I think it behoves us to listen---

Hon. Mirenga: --- *(Off-record)*

Hon. Midiwo: Hon. Obura, please, this is no child play. Stop that nonsense. Stop intimidating us.

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

Hon. Midiwo: Hon. Deputy Speaker, I want what Hon. Manje has said to be taken into account. I have been here for a long time. I know that the way he is saying it is the right way. There is need for consultation. I want to plead with all of us. I know where the worry is. The worry is that people may be thinking that the mood of this country and this House was not read by our leaders and that Committee. They never read our mood. You have done the right thing by allowing us to amend the Report.

Some Members are saying that the substantive Speaker had ruled – correctly – that this Report is not amendable. So, how do we get out of it? Let me give a way forward. I plead with you to use Standing Order 1 to adjourn this debate, so that we go and consult on how to do this thing the right way because it is a first one for us. There has never been a Report here between us and the Senate in that sense. We need to think out of the box.

Looking at this Report and how that Committee was created, the mandate of the Joint Parliamentary Select Committee was as follows:-

- (a) Inquire into the allegations against the Independent Electoral and Boundaries Commission (IEBC) 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 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 that 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) and (c) prepare a report and a draft Bill or draft Bills.

This is the crux of the matter. This is all that we sent that Committee to go and do. We never sent them to go and do other things. So, that is the window that we must use so that we arrive at what Hon. Olago has done but we also save the Report. That is how it is done. You cannot send somebody for milk and they bring you sugar on top and you only gave them money for milk and they expect you to take the sugar. This is where the problem is. So, use Standing Order 1 to adjourn this debate, so that we go and look at this Report and take out the *ultra vires* issues which the Committee may have delved into but which we never sent them to consider. What we sent them for is in this Report. Some of the other political issues they delved into are, in my own view, unconstitutional.

We can come back here using your orders. Let us look at this Report till tomorrow morning and come and pass it. The country is waiting for us. I want to plead with you; Standing Order No.1 allows you to do all this. Nothing has been done wrong that we cannot correct.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Johanna Ngeno.

Hon. Kipyegon: Thank you for giving me this chance, Hon. Deputy Speaker.

As Members of Parliament, we are vested with the authority of making laws in this country. Nobody can run away with that responsibility.

Secondly, I also agree that the reason we came up with this document is because of a negotiated agreement after so many bad things happened in this country. However, there is something that people must understand. As much as some people had so many problems with the IEBC, others did not. We have agreed that they should go. They must also understand that there are Members of this House and others who are not within this House, who are not happy with some of the recommendations that have been included in Report, especially the one on party-hopping. You cannot simply tell us that because your interest in the IEBC issue has been secured, other Members' interests cannot be secured. If this document will not be amended, we will throw it out. Since the Senate has passed it, we will go to mediation and the problems that we have with this document will be sorted out there.

You cannot tell us to consult. Who are we going to consult? Are we going to consult the oracles? This Report has been tabled in the House. Therefore, we should either throw it out or we amend and pass it. It is not an issue of one personality who has a problem with the IEBC whose interests must be secured. The interests of the members of the public must also be secured. They are the same. No one is above the law. All of us are equal before the law. Let us not talk about consultations. Let us agree on whether or not we will amend this document. I wonder whether it is not amendable. This is not the Bible. It is not cast in stone. I wonder why people tell us that it is not amendable. Why are we in this House? Why are we debating this Report in the first place if we cannot amend it? The Constitution, under Articles 94 and 95, states that Members of Parliament have the power to amend the Constitution. This is not the Constitution. These are just bound pieces of paper. You cannot tell us that we cannot amend this Report. Let us talk sense.

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Members! Hon. Members, we have ventilated. Order, Hon. Ng'eno! You have just been given a chance to speak. Hon. Members, we have ventilated on this matter. Very pertinent and important issues have been raised, which we must address. You all know the circumstances in which we allowed the amendment that we made. We were in the process of throwing out the baby with the bath water. It was at that point that we consulted with the owners of the Report, namely, the Mover and the Secunder. We have also heard what has happened in the Senate.

In all fairness, I will use Standing Order No.1 to defer debate on this Motion to tomorrow afternoon. Let us use the time that is there between now and tomorrow afternoon to consult whoever we need to consult. More importantly, let us consult each other so that we can look at the issues that have been raised and determine whether or not the amendment that we made is in order and whether or not we can include more amendments.

Let us leave this matter to rest until tomorrow.

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, we have come to the end of today's sitting. Therefore, the House stands adjourned until tomorrow, Thursday 25th August, 2016 at 9.30 am.

The House rose at 5.50 pm