



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (SECOND SESSION)

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, AUGUST 07, 2018 AT 2.30 P.M

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker
4. **MESSAGES**

On nomination of Chairperson and Members of the Independent Policing Oversight Authority and the Salaries and Remuneration Commission

Honourable Members, Pursuant to the provisions of Standing Order No. 42, I wish to convey the following two Messages from His Excellency The President relating to nomination of the Chairperson and Members of the Independent Policing Oversight Authority; and Chairperson and Members of the Salaries and Remuneration Commission.

In the First Message, H.E. The President conveys that, in exercise of powers conferred by Article 250(2)(b) of the Constitution and section 11(5) of the Independent Policing Oversight Authority Act (No.35 of 2011), as read together with sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, he nominates-

1. Ms. Anne Makori as the Chairperson of the Independent Policing Oversight Authority; and
2. the following as Members of the Independent Policing Oversight Authority
 - a) Ms. Doreen Nkatha Muthaura,
 - b) Ms. Fatuma Mohamud Mohamed,
 - c) Dr. Walter Owen Ogony,
 - d) Mr. Jonathan Lodompu Ltipalei,
 - e) Hon. Waiganjo John Muriithi,
 - f) Ms. Praxedes Chepkoech Tororey; and
 - g) Dr. Jimmy Mutuku Mwithi.

In the Second Message, H.E. The President conveys that, in exercise of powers conferred by Article 250(2)(b) of the Constitution and section 7(10) of the Salaries and Remuneration Commission Act, 2011, as read together with sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011, he nominates-

1. Ms. Lyn Cherop Mengich as the Chairperson of the Salaries and Remuneration Commission; and
2. the following to represent various institutions-
 - a) Ms. Halima Abdille Mohammed nominated by the Parliamentary Service Commission;
 - b) Hon. Dalmas Otieno Anyango nominated by the Public Service Commission;
 - c) Dr. Leah Mumbua Munyao nominated by the Teachers Service Commission;
 - d) Mr. John Kennedy Monyoncho nominated by the Defence Council;
 - e) Ms. Margaret Sawe nominated by the Senate on behalf of the County Governments;
 - f) Ms. Nelly Peris Ashubwe nominated by the umbrella body representing Trade Unions;
 - g) Dr. Amani Yuda Komora nominated by the umbrella body representing Employers; and
 - h) CPA Sophie Moturi nominated by a Joint forum of professional Bodies.

H.E. The President therefore seeks the approval of this House on the nominees for appointment to the aforementioned positions.

Honourable Members, Standing Order 45 requires that, upon receipt of notification of nomination for appointments, such nomination shall stand committed to the relevant Departmental Committee of the House for consideration. Pursuant to the provisions of the said Standing Order therefore, and paragraph (3) of Standing Order 42 (Messages from the President), I hereby refer the Messages from His Excellency the President on Independent Policing Oversight Authority and Salaries and Remuneration Commission to the Departmental Committees on Administration and National Security; and Finance and National Planning, respectively to undertake the necessary approval hearings.

Honourable Members, Section 11(6) of the Independent Policing Oversight Authority Act, 2011 and Section 7(11) of the Salaries and Remuneration Commission Act, 2011, requires the National Assembly to either approve or reject the nominees to the respective positions within Twenty one (21) and Fourteen (14) days respectively. In this regard, I wish to guide the Committees and the House as follows, THAT:-

- (i) the Committees should notify the nominees and the general public of the time and place for holding the approval hearings, in good time. The notification should therefore be made on Wednesday, August 8, 2018; and,

- (ii) the Committee may thereafter commence the necessary approval hearings from-
- a) 14th August 2018 in respect of the nominee to the Salaries and Remuneration Commission and on 16th August 2018 for the nominees to the Independent Policing Oversight Authority; and
- b) Submit their reports to this House on or before 21st August 2018 in respect of the nominee to the Salaries and Remuneration Commission and 28th August, 2018 in respect of the nominee to the Independent Policing Oversight Authority. I thank you!

5. PETITIONS

The following two (2) Petitions were presented by:

- (a) The Speaker -

Regarding a proposal to amend the Constitution of Kenya to establish an elected jury and end the exercise of sovereign power of the people by judicial officers in contravention of Article 1(2) of the Constitution

Honourable Members, Pursuant to the provisions of Standing Order 225 (2) (b), I wish to convey to the House that my office is in receipt of a petition from one Mr. Geoffrey Otieno Ogola of P. O. Box 94-40300, Homa Bay on behalf of Homa Bay Citizens Association regarding a proposal to amend the Constitution to establish an elected Jury to end the exercise of sovereign power of the people by the Judicial Officers.

Honourable Members, The Petitioner submits that clause 2 of Article 1 of the Constitution clearly and unequivocally provides that only representatives democratically elected by the people are authorized to exercise sovereign power of the people on behalf of the people. He also contends that Judges and Judicial Officers of subordinate courts have not subjected to democratic elections as provided for under clause 2 of Article 1 of the Constitution and are therefore exercising the sovereign power of the people illegally.

Honourable Members, The Petitioner contends that the new Constitution radically changed the legal landscape and in the case of the judicial system, Article 1(2) invalidated the previous constitutional order that empowered judicial officers to exercise judicial power solely by the virtue of delegation or vesting of sovereign power in the institution of Judiciary.

They also believe that, the spirit of Chapter 1, Clause 3 of Article 1 of the Constitution, is to establish the three organs of the State and dividing sovereign power among them for purposes of creating a system of checks and balances and not empowering them in the exercise of sovereign power of the people.

Honourable Members, The Petitioners are praying that the National Assembly proposes amendments to the Constitution to establish an elected jury system to take over the role of rendering verdicts and setting penalties from judges and judicial officials of subordinate courts in order to fulfil the requirements of Article 1(2) of the Constitution and makes such other amendments as it may deem fit to ensure that aspirations of the people of Kenya as enshrined in the Constitution prevail within the institution of the Judiciary.

Honourable Members, Pursuant to the provisions of Standing Order 227, this Petition therefore, stands committed to the Departmental Committee on Justice and Legal Affairs for consideration. I urge the Committee to engage the Petitioners, address the Petitioners' prayers and report its findings to the House in accordance with Standing Order 227(2). I Thank You!

- (b) The Hon. Capt. (Rtd) Didmus Barasa, MP regarding the fate of former students of Kamukuywa campus of the East African University.

Petition referred to the Departmental Committee on Education and Research pursuant to Standing Order 227(2).

6. PAPERS LAID

The following papers were laid on the table of the House-

- (a) The Judiciary Fund Regulations, 2018
- (b) The Reports of the Auditor-General and Financial Statements in respect of the following Institutions for the year ended 30th June, 2017 and the certificates therein: -
- i) The National Treasury;
 - ii) National Council for Population and Development;
 - iii) National Youth Council;
 - iv) Agriculture and Food Authority; and
 - v) Pyrethrum Processing Company of Kenya.
- (c) The Reports of the Auditor-General and Financial Statements in respect of the following Constituencies for the year ended 30th June, 2017 and the certificates therein: -
- i) Buuri Constituency;
 - ii) Chuka Igamba Ngómbe Constituency;
 - iii) Mwingi West Constituency;
 - iv) Wajir North Constituency; and
 - v) Kitui East Constituency.

(The Leader of the Majority Party)

- (d) Report of the Departmental Committee on Transport, Public Works and Housing on the vetting of the nominee for appointment as the Principal Secretary for the State Department of Transport
(Chairperson, Departmental Committee on Transport, Public Works and Housing)
- (e) Report of the Departmental Committee on Defence and Foreign Relations on the vetting of the nominees for appointment Ambassadors/high commissioners
(Chairperson, Departmental committee on Defence and Foreign Relations)
- (f) Report of the Departmental Committee on Labour and Social Welfare on the vetting of the nominee for appointment as the Principal Secretary for the State Department of Youth, Ministry of Public Service, Youth and Gender; and
- (g) Report on the vetting of Nominees for appointment to the Office of the Chairperson and Members of the National Gender and Equality Commission.
(Chairperson, Departmental committee on Labour and Social welfare)

7. NOTICE OF MOTION

The following Notices of Motion were given by –

- (a) *Chairperson, Departmental Committee on Transport, Public Works and Housing* - The Hon. David Pkosing, MP

THAT, taking into consideration the recommendations of the Departmental Committee on Transport, Public Works & Housing in their Report on the *Vetting of the Nominee for approval as the Principal Secretary for the State Department of Transport*, laid on the Table of the House on Tuesday, August 7, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House approves the appointment of Ms. Esther Koimett as the Principal Secretary for the State Department of Transport.

- (b) *Chairperson, Departmental Committee on Defence and Foreign Relations* - The Hon. Katoo Ole Metito, EGH, MGH, M.P

THAT, taking into consideration the recommendations of the Departmental Committee on Defence and Foreign Relations in their Report on the *Vetting of the Nominees for approval as Ambassadors/ High Commissioners*, laid on the Table of the House on Tuesday, August 7, 2018, and pursuant to the provisions of Article 132(2) (e) of the Constitution, this House **approves** the appointment of the following persons as Ambassadors/ High Commissioners:-

- (i) **Ms. Sarah Serem**- Ambassador to China;
(ii) **Lt. Gen. Samuel Thuita**- Ambassador to Israel;
(iii) **Mr. Francis Ndegwa Muhoro**- High Commissioner to Malaysia;

- (iv) **Mr. Manoah Esipisu** - High Commissioner to the United Kingdom;
 - (v) **Hon. Patrick Cornel Odero Ahenda**- Ambassador to Qatar;
 - (vi) **Amb. Peter Nicholas Oginga Ogego**- Ambassador to Saudi Arabia;
 - (vii) **Lt. Gen. Johnson Kimani Ondieki**- Ambassador to Turkey;
 - (viii) **Mr. Chris Karumba Mburu**- Ambassador to South Sudan; and
 - (ix) **Hon. Benjamin Langat** -Ambassador to Namibia.
- (c) The Hon. Ali Wario, MP (*Chairperson, Departmental committee on Labour and Social welfare*)

THAT, taking into consideration the recommendations of the Departmental Committee on Labour and Social Welfare in their Report on the *Vetting of the Nominee for approval as the Principal Secretary for the State Department of Youth*, laid on the Table of the House on Tuesday, August 7, 2018, and pursuant to the provisions of Article 155(3)(b) of the Constitution, this House **approves** the appointment of **Dr. Francis Otieno Owino** as the Principal Secretary for the State Department of Youth.

8. MOTION - REPORT ON THE INQUIRY INTO FOREST RESOURCES MANAGEMENT AND LOGGING ACTIVITIES IN KENYA

Motion made and question proposed;

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on the Inquiry into Forest Resources Management and Logging Activities in Kenya, laid on the Table of the House on Thursday, May 3, 2018.

(The Chairperson, Departmental Committee on Environment & Natural Resources)

Debate interrupted on Thursday, August 2, 2018 resumed

Mover replied;

Question put and agreed to.

9. COMMITTEE OF THE WHOLE HOUSE

IN THE COMMITTEE

(Second Chairperson of committees – in the Chair)

The Land Value Index Laws (Amendment) Bill (National Assembly Bill No. 3 of 2018)

Clauses 3 and 4 - agreed to.

Clause 5 - amendment proposed;

THAT, clause 5 of the Bill be amended by deleting the words “establish the” appearing in paragraph (b) and substituting therefor the words “establish that the acquiring body has identified the”

(Member, Departmental Committee on Lands)

Question of the amendment proposed,

Debate arising;

Question put and agreed to;

Clause 5 - as amended **agreed to.**

Clause 6 - amendment proposed;

THAT, clause 6 of the Bill be amended—

(a) by deleting the words “jointly by the national government and county government” appearing in the proposed new section 107(A)(1) and substituting therefor the words “by the national government in consultation with the county government”;

(b) by inserting the words “the market value of the land and” immediately after the words “calculating the land value index” appearing in the proposed new section 107(A)(3); and

(c) by deleting the words “jointly by the national government and county government” appearing in the proposed new section 107(B)(2)(a) and substituting therefor the words “by the national government in consultation with the county government”.

(Member, Departmental Committee on Lands)

Question of the amendment proposed;

Debate arising;

Amendment withdrawn

Clause 6 - **agreed to.**

Clauses 7, 8, 9 and 10 - agreed to;

Clause 11 - amendment proposed;

THAT, clause 11 of the Bill be deleted

(Member, Departmental Committee on Lands)

Question of the amendment proposed,

Debate arising;

Question put and agreed to;

Clause 11 - as amended **agreed to.**

Clause 12 - agreed to;

Clause 13 - amendment proposed;

THAT, clause 13 of the Bill be amended by deleting paragraph (a)
(Member, Departmental Committee on Lands)

Question of the amendment proposed,

Debate arising;

Question put and negatived;

Clause 13 - **agreed to.**

Clause 14 - amendment proposed;

THAT, clause 14(b) of the Bill be amended by deleting the proposed new sub-section (3A) and substituting therefor the following new sub-section —
“(3A) upon the formal taking of possession of land by the Commission, no order stopping any development in the land may be issued by any court, if public funds have already been committed.
Provided that due process has been followed in the compulsory acquisition of the land.

(Member, Departmental Committee on Lands)

Question of the amendment proposed,

Debate arising;

Question put and agreed to;

Clause 14 - as amended **agreed to.**

Clause 15 - agreed to.

Clause 16 - amendment proposed;

THAT, clause 16 of the Bill be amended by deleting the words “after paying the first offer of compensation” and substituting therefor the words “after paying full compensation”.

(Member, Departmental Committee on Lands)

Question of the amendment proposed,

Debate arising;

Question put and agreed to;

Clause 16 - as amended **agreed to.**

Clause 17 - agreed to;

Clause 18 - amendment proposed;

THAT, clause 18 of the Bill be amended—
(a) in the proposed new section 133A—

(i) by deleting sub-section (1) and substituting therefor the following new sub-section—

“(1) There is established a Tribunal to be known as the Land Acquisition Tribunal which shall consist of five persons appointed by the Cabinet Secretary through a notice in the Gazette.”

(ii) by inserting the following new sub-section immediately after sub-section (1)—

“(1A) The members of the Tribunal shall consist of —

(a) one person appointed from among three persons nominated by the Judicial Service Commission, who shall serve as the Chairperson;

(b) two persons appointed from among five persons nominated by the Valuers Registration Board;

(c) one person appointed from among three persons nominated by the Surveyors Registration Board; and

(d) one person appointed from among two persons nominated by the Attorney-General.”

(b) in the proposed new section 133C by deleting the words “ninety days” appearing in sub-section (3) and substituting therefor the words “sixty days”.

(Member, Departmental Committee on Lands)

Question of the amendment proposed,

Debate arising;

Question put and agreed to;

Clause 18 - as amended **agreed to.**

Clauses 19,20,21 and 22 - agreed to.

Clause 2 - agreed to.

Title - agreed to.

Clause 1 - agreed to.

Bill to be reported with amendments.

10. HOUSE RESUMED - the Third Chairperson of Committees in the Chair

The Land Value Index Laws (Amendment) Bill (National Assembly Bill No.3 of 2018)

Bill reported with amendments

Motion made and Question proposed;

THAT, the House doth agree with the Committee of the Whole House in the said report;
(Leader of the Majority Party)

Question deferred to the following day.

11. THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL (NATIONAL ASSEMBLY BILL NO. 12 OF 2018)

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No. 12 of 2018) be now read a Second Time

(The Leader of the Majority Party)

Debate arising;

[Change of chair from Third to Fourth Chairperson of Committees]

[Change of chair from Fourth to Third Chairperson of Committees]

Mover replied

Question deferred;

12. ZERO HOUR

Zero Hour Statement made with regard to Safety of School Children pursuant to Standing Order 43:-

"Honourable Speaker,
Pursuant to standing Order 43, I wish to make a statement concerning the transportation safety of our children while in school.

Honourable Speaker,
First before I make my statement, I wish on my own behalf and People of West Mugirango Constituency, convey heartfelt condolences to the families and people of Mwingi North Constituency following the untimely death of 10 Pupils from St Gabriel Primary School in Mwingi North who perished following an accident involving the school bus they were traveling in from Mombasa where they had gone for a study tour. The school bus was involved in a head-on collision with a

lorry at Kanginga bridge about 1 Km from Mwingi town on the Thika-Garissa Road at night.

Honourable Speaker, It is worrying that there have been a big number of accidents incidents reported on our roads countrywide involving school buses, whereby we have lost many young promising lives. On June 14, 2018, a bus belonging to the Starshine Blue School that was involved in an accident at Karai on the Naivasha-Nakuru highway. Four staff members and several students were injured. On Friday 23rd February this year one student from Rapogi mixed secondary school died while 19 others sustained injures in a road accident along Bondo- Kisumu road at Kombewa, just to mention but a few.

Honourable Speaker, it is unfortunate that these incidences are happening after even after this house has put inplace the necessary laws to govern such situations and also the government banning night travel by students. I therefore call upon all stakeholders and the government to undertake proper investigations to this accident, and a report made public to assist other schools to avoiding such an accident.

Honourable Speaker, It is upon all stakeholders, including the relevant ministry to ensure that school buses are serviced, designed and properly fitted with safety equipments to ensure fit to transport school children."

(Hon. Vincent Kemosi Mogaka)

Statement merged with that of Hon. Mulyungi Mutemi, MP.

Statement debated.

Statement by Hon. Peris Tobiko stood down on account of the Member's absence.

And the time being Seven O'clock the Third Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

13. HOUSE ROSE -

at Seven O'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, August 8, 2018 at 9.30 a.m