

NATIONAL ASSEMBLY

OFFICIAL REPORT

SPECIAL SITTING

Tuesday, 18th December 2018

The House met at 2.30 p.m.

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

PRAYERS

Hon. Deputy Speaker: I confirm that we have the required quorum. Therefore, business will begin. Members who are making their way in, kindly, do so quickly because I have a Communication to make. Take seats nearest to where you are. Order, Hon. Members!

COMMUNICATION FROM THE CHAIR

INVITATION OF MEMBERS TO THE LAUNCH OF STRATEGIC PLAN

Hon. Deputy Speaker: Hon. Members, the State Department for the Development of Arid and Semi-Arid Lands (SDDA) was established vide an Executive Order No.1 of June 2018 (Now revised). It is responsible for co-ordination, planning and development of policies and programs in ASAL areas to reduce inequalities and vulnerabilities and ensure accelerated and sustained socio-economic development of ASAL areas.

Hon. Members, the State Department has developed a five-year strategic plan for the period 2018/2019 to 2022/2023 to be officially launched by Hon. Eugene Wamalwa, EGH, Cabinet Secretary for Devolution and ASALs. The launch will take place on Thursday 20th December 2018 at the Kenya School of Government (KSG) Nairobi from 10.00 a.m. to 12.30 p.m. In this regard, the Cabinet Secretary requested the Speaker of the National Assembly to invite all the Members of Parliament, particularly those from ASAL areas, to the launch.

Hon. Members wishing to attend the function may confirm by registering with the Office of the Clerk of the National Assembly by 1.00 p.m. tomorrow, Wednesday, 19th December, 2018. Thank you. Next Order

MOTION

RATIFICATION OF BILATERAL AIR SERVICES AGREEMENTS AND PROTOCOL

THAT, this House adopts the Report of the Departmental Committee on Transport, Public Works and Housing on the Ratification of the Bilateral Air Services Agreements between Kenya and Jordan, Kenya and Jamaica; Kenya

and Bahamas; and the Protocol Amending Air Services Agreement between Kenya and Turkey, laid on the Table of the House on Wednesday, 5th December 2018, and pursuant to the provisions of Section 8 of the Treaty Making and Ratification Act, 2012, approves the ratification of the Bilateral Air Services Agreement between the Republic of Kenya and the Kingdom of Jordan; the Republic of Kenya and Jamaica and the Republic of Kenya and the Commonwealth of The Bahamas; and the protocol amending Air Services Agreement between the Republic of Kenya and the Republic of Turkey.

Hon. Deputy Speaker: For this particular one, it is indicated that it was Question to be put as the matter had already been transacted. I also confirm that we have the required quorum for the Question to be put. So, I proceed to put the Question.

(Question put and agreed to)

Hon. Deputy Speaker: Next Order.

SPECIAL MOTION

APPROVAL OF NOMINEE FOR APPOINTMENT AS SECRETARY/CEO OF EACC

Hon. William Cheptumo (Baringo North, JP): Hon. Deputy Speaker, I beg to move the following Special Motion:

THAT, taking into consideration the findings of the Departmental Committee on Justice and Legal Affairs in their Report on the vetting of the nominee for appointment as Secretary and Chief Executive Officer of the Ethics and Anti-Corruption Commission, laid on the Table of the House on Tuesday, 18th December 2018, and pursuant to the provisions of Section 16(1) of the Ethics and Anti-Corruption Commission Act, 2012 and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, 2011, this House approves the appointment of Maj. (Rtd) Twalib Abdallah Mbarak as the Secretary and Chief Executive Officer of the Ethics and Anti-Corruption Commission (EACC).

Hon. Deputy Speaker, pursuant to the provisions of Section 16(1) of the Ethics and Anti-Corruption Commission Act, 2012 and Sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act, 2011, the Chairman of the EACC on 30th November, 2018, forwarded the name of Maj. (Rtd) Twalib Abdallah Mbarak as a nominee for appointment to the position of Secretary and Chief Executive Officer of the EACC for approval by this House. In accordance with the provisions of Standing Order 45(i), the Speaker, on 4th December, 2018, conveyed to the House the Message and committed the nominee to the Departmental Committee on Justice and Legal Affairs for vetting. Article 118(b) of the Constitution and Section 6(ix) of the Public Appointments (Parliamentary Approval) Act, 2011 makes it mandatory for the National Assembly to facilitate public participation and involvement in the vetting process of the nominee. In complying with this provision of the Constitution and other legal requirements, the Clerk of the National Assembly, on 5th December 2018, through an advert in the daily newspapers, invited the public to submit memoranda by way of written statements on oath on the suitability of the nominee.

It is a requirement under Chapter 10 of the Constitution to establish the status of the nominee with regard to their integrity, tax compliance, criminal record, education loan repayment and political party affiliation. This necessitated the Clerk of the National Assembly, through a letter dated on 6th December 2018, to request for information from the EACC, the Kenya Revenue Authority (KRA), the Directorate of Criminal Investigations (DCI), the Higher Education Loans Board (HELB) and the Office of the Registrar of Political Parties. I want to inform the House and the country that those agencies did not have any outstanding issues with the nominee. That is evidenced by the letters from the said agencies as Annex (VI) of the Report.

The nominee, having been notified of the date, venue and time for the approval hearings as required by Section 6(iii) of the of Public Appointments (Parliamentary Approval) Act, 2011 and the Standing Order No.45(3), the nominee appeared before the Committee for approval hearings on 14th December 2018. As we undertook the approval hearings, we dealt with three aspects as required by law. One, the procedure used to arrive at the nominee, two, the statutory requirement relating to the office in question and three, whether the nominee's abilities, experience and qualities met the requirements of the office to which the nominee was meant for. These are the three fundamental requirements that formed the basis of the vetting process for this nominee.

I will deal with the three items briefly for Members to appreciate the findings and the outcome of the vetting process. On the procedure used to arrive at the nominee, the law is clear. Section 16(1)(2) of the Ethics and Anti-Corruption Commission Act, 2012 requires that the recruitment process of the Chief Executive Officer to the Commission be undertaken in an open, transparent and competitive recruitment process, with the approval of the National Assembly. For a person to be qualified for appointment as Secretary to the Commission, the person must be a citizen of Kenya, possesses a postgraduate degree from a university recognised in Kenya, has had, at least, ten years proven experience at management level and has experience in any of the following fields; namely, ethics and governance, law, public administration, leadership, economics, social studies, audit and accounting, just to mention a few.

The position of CEO was advertised through the daily newspapers on 9th October 2018. It is important for Members to understand that the total number of applicants for the position was 71, out of which 14 were shortlisted. That is in Annex (VI) of the Report. The 14 shortlisted candidates were from different counties. They all appeared before the recruitment panel for the interview. The panel comprised of prominent and respected Kenyans. Its membership had the Chairperson of the EACC, all the commissioners of EACC, Mr. Kennedy Ogeto who is the Solicitor-General and Mr. Stephen Kirogo, the Chairperson of the Public Service Commission. Therefore, the membership of the recruitment composed of prominent Kenyans who took time to interview the nominee.

During the interview, Maj. (Rtd) Twalib Abdallah Mbarak from Kilifi County emerged the best candidate with the highest score of 86.38 per cent. He was the best in the interview. On this particular issue, the Committee was satisfied that the procedure used to arrive at the nominee was open, transparent and competitive. The nominee possessed the requisite qualifications and experience as required under Section 16(1)(2) of the EACC Act.

The second item is on the constitutional and statutory requirements relating to the office in question and the qualifications for appointment under the EACC Act of 2011. I am trying to summarize because the Report is long and my colleagues have had time to go through it. Therefore, I will summarise so that Members can have time to contribute to this special Motion. So, upon examining the nominee's Curriculum Vitae (CV), certificates and testimonials during

the approval hearings, the Committee was satisfied that the nominee met all the requirements of Section 16(2) of the EACC Act.

Leadership and integrity are critical components because the nominee is going to oversee the EACC, which primarily deals with matters of ethics, leadership and integrity. Therefore, it was very important for us, as a Committee, to satisfy ourselves that the nominee, indeed, qualifies in this respect. While determining the suitability of the nominee to be appointed, the law requires the Committee to take into account the requirements of leadership and integrity under Chapter Six of the Constitution. In this regard, the Committee took into account the following areas.

I will be brief on this. The Committee looked at Article 73(2) of the Constitution, which provides for principles of leadership and integrity and Articles 75(1), 75(3), 77 and 78 of the Constitution. All these articles of the Constitution deal with matters of integrity and it was the business of my Committee to satisfy itself that, indeed, the nominee qualifies in this respect. Upon doing a background check with the relevant Government agencies, hearing from the nominee and examining his CV, certificates and testimonials, the Committee was satisfied that the nominee passed the leadership and integrity test.

The fourth item is the nominee suitability to be appointed to the office. Upon hearing the nominee and examining his certificates, the nominee possesses the academic credentials, professional training and experience. He meets the requirements of Section 16(2) of the EACC Act. The nominee has not...

(Loud consultations)

Hon. Deputy Speaker: Order, Hon. Members! Order! Let us listen to the Chair of Justice and Legal Affairs Committee in silence. I know you have been off for some time, but the decibels are a bit too high. In fact, there is laughter I have just heard from one certain corner that is un-parliamentary. However, proceed.

Hon. William Cheptumo (Baringo North, JP): Thank you, Hon. Deputy Speaker. The Committee was also satisfied in this respect that the nominee is suitable to be appointed to the office. When we invited the public to present their memoranda, no memorandum was received from the public contesting the suitability of the nominee to be appointed to the office. However, we received written memoranda in support. In the vetting process, what is important is not the memoranda in support. We are looking at the memoranda that are contesting the suitability of the nominee. However, it is important also for this House to note that Kenyans came forth and gave some positive memoranda in support of the nominee. That is from one George Sona, a senior lecturer at the University of Nairobi, the Association of Corporate and Industrial Security Management Professionals, Lt. (Col) Njuki Mwaniki and many other Kenyans. There are about seven Kenyans who came forward to support the nomination of the nominee.

During the approval hearing – and this is also very important - the Committee took time to listen in the process of interviewing the nominee. We looked at the following areas, namely, his academic qualifications, employment record, professional affiliations, potential conflict of interest and all the requirements as set out in the Constitution. It is important for Members to note this because we are going to discuss the nomination of a very important nominee for a very important Commission. On his academic qualifications, the nominee holds a Diploma in Private Investigations from Pennsylvania University in USA, a Diploma in Armed Conflict from the University of Nairobi, Bachelor of Arts Degree in Political Science and Sociology from the

University of Nairobi and, finally, a Masters of Arts Degree in Armed Conflict and Peace Studies from the University of Nairobi.

It is also important for the House to know the work experience of the nominee. Briefly, I wish to inform the House that the nominee has served in the Public Service for over 34 years in various institutions and capacities. He has served in the Kenya Armed Forces and rose to the rank of a Major when he left that institution. He also worked in the National Security Intelligence Service (NSIS) as a Senior Analyst in tactical and strategic intelligence for seven years. This is a new term that I have come to learn during the interview of the nominee. He was a Senior Analyst in Tactical and Strategic Intelligence. This is a very important position in military language which, I think, is going to be very useful even as he gets a chance to serve at the EACC. Again, he worked in the Kenya Anti-Corruption Commission (KACC) for six years where he set up the Intelligence and Undercover Unit of the Commission. Up to today, that particular unit is helping the Commission to fight corruption. He has also worked at KenGen until this time when he came for the interview as a Security and Integrity Manager for eight years. He is a member of the American Society for Industrial Security, the International Management Security Institute and the Association of Corporate and Industrial Security Management Professionals.

Again, it is very important for my colleagues to understand some of these areas. He spearheaded and implemented the Corporate Governance and Integrity Strategy Plan for KenGen. He spearheaded the formation of a full-fledged intelligence production division with information of undercover investigation unit while at the EACC, and played a key role in the team that transformed NSIS. Another critical point I wanted to mention to the House as I almost conclude this presentation is that when the nominee appeared before us, we found out that he understood the role and functions of EACC. He has a clear understanding of the functions of the Commission. He also understood the challenges that face the Commission in fighting corruption and some of the areas which require legislative intervention to strengthen the Commission in fighting corruption. He came up with some information regarding the need to have cordial working relationship among all the relevant agencies.

We have cases in this country where there is some aspect of perception and a feeling that the Director of Criminal Investigations (DCI), the Office of the Director of Public Prosecutions (DPP) and the EACC do not work together. The nominee was so clear that he was going to ensure that he works very closely with those agencies so that they can put their efforts together as they fight corruption. I also wish to confirm to the House that the nominee acknowledged that the job was a high risk one and he submitted that he applied because he believed he can do it. We asked him why he had to apply again. He had worked at the EACC for four years and we asked him why he had to go there again. He told the Committee that he had enough skills now and competence to deliver if appointed. This is based on his first experience in military and intelligence services during which he successfully undertook high risk engagements.

Hon. Deputy Speaker, I wish to confirm to the House that we asked the nominee what strategy he has...

Hon. Deputy Speaker: I cannot seem to get Hon. Cheptumo anywhere. I still want to give you some time. You must summarise. There is a lot of interest. You have seen the nominee. Other Members want to contribute to this debate.

Hon. William Cheptumo (Baringo North, JP): Hon. Deputy Speaker, I respect your authority.

In conclusion, upon conducting the background check with relevant agencies, hearing the nominee and examining his credentials, the Committee made the following observations:

First, the nominee's academic credentials, professional training and experience met the requirements of Section 16(2). He is a Kenyan citizen born in Kilifi. He possesses a Bachelor's Degree as required. He has over 10 years' experience at management level in companies, agencies and institutions that he has worked in.

He meets the requirements of Chapter 6 of the Constitution having been cleared by the DCI, KRA, Office of the Registrar of Political Parties (ORPP), HELB, and EACC. He is not a member of any political party. He is not a Member of Parliament or a member of county assembly (MCA).

He has not been declared bankrupt or removed from office for contravening the provisions of the Constitution. There was no memorandum received from the public contesting his suitability. He has never been charged with a criminal offence in a court of law. He has never been dismissed from office under Article 75 of the Constitution and Article 77 on restriction of State officers. He demonstrated knowledge and understanding of the mandate and other pertinent issues relating to EACC.

Therefore, in view of this, the Committee recommends that pursuant to the provisions of Section 16(1) of the EACC Act of 2011, this House approves the nomination of Major. (Rtd) Twalib Abdallah Mbarak for appointment as Secretary and Chief Executive Officer of the EACC by the appointing authority.

I thank the Office of the Speaker, the Office of the Clerk and my colleagues, Members of this Committee, who spent three days vetting the nominee and retreated for two days to come up with this Report. I sincerely thank my colleagues for availing themselves to deal with this very important matter and for availing themselves again today so that we can go on record as the institution that vetted the next CEO of EACC.

This House has pronounced that we should fight corruption by all means. With political will, enabling legislation and the new CEO, there is no reason why we cannot fight corruption as a country and bring it to an end so that Kenyans can access resources for their benefit.

With those remarks, I beg to move and request Hon. Duale, the Leader of the Majority Party, to second the Motion.

Hon. Deputy Speaker: Hon. Duale, the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Thank you, Hon. Deputy Speaker. I support the Motion, which is asking this House to approve the appointment of Mr. Mbarak as the next Secretary and CEO of EACC. This is the second CEO under the new Constitution. I am sure Hon. Olago Aluoch, Hon. Cheptumo, Hon. Mbadi, and many others, had an opportunity in the 10th Parliament to approve the outgoing CEO, Mr. Halakhe Waqo.

At the outset, I would like to thank the Departmental Committee on Justice and Legal Affairs and the entire Membership of the House that has come back from their busy holiday to perform this national duty. It shows that when the National Assembly Members are called to duty, they promptly comply. I thank them.

The EACC has a long history in our country. In 1997, under the leadership of President Moi, the Kenya Anti-Corruption Authority (KACA) was established after the amendment of the Prevention of Corruption Act (Cap 65) of the Laws of Kenya by the 7th Parliament. That was before that Parliament was dissolved. Again, in April 2003, during the term of the 9th Parliament, KACA was replaced by the Kenya Anti-Corruption Commission (KACC). In 2011, under the Constitution of Kenya, 2010, and during the term of the 10th Parliament, KACC was

subsequently replaced by EACC, whose basis is found in Article 79 of the Constitution. Thereafter, in the same year, on 29th August 2011, the 11th Parliament enacted the EACC Act that gives effect to Article 79 of the Constitution by providing the statutory framework of the EACC. Presently, the EACC is a statutory body established under the EACC Act of 2011 and pursuant to Article 79 of the Constitution.

What is the mandate of this Commission? The mandate includes law enforcement, war against corruption, combat and prevention of corruption and economic crimes in Kenya through law enforcement and preventive measures by doing public education and through promotion of standards and practices of integrity. Furthermore, the mandate of the EACC is derived from Chapter 6 of the Constitution, the Leadership and Integrity Act (No.19 of 2012) and the Anti-Corruption and Economic Crimes Act of 2003.

It is not news today when Kenyans are thought to be synonymous with corruption. There are people who feel that Kenya is synonymous with corruption. It is reported that a section of our youth cannot find jobs because of corruption. A section of our youth does not mind engaging in corruption instead of hard work. They feel that there is an easy way of getting money. That has led to the war against corruption by His Excellency the President and the entire leadership of our country.

The EACC duly submits quarterly reports to Parliament and annual reports. This morning, I tabled the EACC Annual Report of 2017/2018. These reports are not discussed by the respective committees. I ask the Chair of the Departmental Committee on Justice and Legal Affairs to scrutinise both the quarterly and annual reports of the EACC and the many other commissions that submit reports to this House, so that we can analyse and create a performance-based appraisal on the men and women who work in those institutions.

I am sure it is this annual Report and the many others that are brought to this House that will give a scorecard of the men and women who work at EACC. Do we really accord these reports the priority they deserve or they are taken to the shelves? We must understand and analyse them. We must call the CEOs of the commissions to come and defend their reports. That will help us to enrich the legislative discourse of this House.

Hon. Deputy Speaker, I look forward to guidance from your Procedure and Rules Committee on how we ought to handle such reports. In the meantime, I suggest that we allocate specific time in allotted afternoons to debate reports from commissions. The war on graft has seen distinguished individuals at the helm working for the respective bodies. Allow me to mention them quickly. There was Hon. Harun Mwau, Retired Judge Justice Ringera, Mr. P.L. O Lumumba, Mr. Mumo Matemu and his two deputies, Mrs. Keino, and others over the time. When this House was debating the nomination of Mr. P. L.O Lumumba in the 10th Parliament, he was praised by all the Members. We were only three of us who opposed the nomination of Mr. P.L.O Lumumba. The HANSARD will bear me witness. I said that the war against corruption cannot be based on how eloquent you are and how you can choose good words. Barely three years later in the same 11th Parliament, I was vindicated when Hon. James Orengo and many others who were in praise of P.L.O Lumumba turned against him. I am sure the Members will have a scorecard for Mr. Halakhe Waqo, who was approved in this House around midnight when most of us were very tired. I am sure the Members will praise Mr. Mbarak Twalib, but be very careful because the HANSARD is a living record. Barely two or three months later, you might have a different version on the Floor of the House.

Based on the Report of the Committee, he has met all the criteria. I hope he will not let down the people of Kenya. I would like to bring to the attention of the House the content of this

Report, which I looked at this afternoon. I laid it on the Table of the House today morning titled: *The EACC Annual Report for the Financial Year 2017/2018*. I also wish to mention the good work done by the outgoing CEO, Mr. Halakhe Waqo, based on the Report that was presented to Parliament this morning. In this Report of the Financial Years 2017/2018 and 2018/2019, the Commission handled over 6,000 reports and 2,800 reports were taken for investigation. About 46 per cent of the cases presented were relevant to the Commission's mandate. About 5,000 cases which are about 80.3 per cent, were from the headquarters and regional offices. The assets they are investigating in this Report are worth over Kshs43 billion and the investigation is for the Financial Year 2017/2018. This is equivalent to the total resources given to Kiambu County, Kilifi County, Mandera County and Turkana County in the period reported. Four county resources were taken to personal accounts and that is what the EACC is investigating.

Hon. Deputy Speaker: The Leader of the Majority Party, are you seconding as the Leader of the Majority Party or in your personal capacity as the Member for Garissa Township?

Hon. Aden Duale (Garissa Township, JP): I am a Member of Parliament and, at the same time, the Leader of the Majority Party. The line is too thin.

Hon. Deputy Speaker: That is why I am asking because there are consequences.

(Hon. John Mbadi spoke off record)

Hon. Deputy Speaker: Order, Leader of the Minority Party. I am asking a question to the Leader of the Majority Party and he is the one who will answer. Nobody else will answer on his behalf. I have asked him whether he is seconding the Motion as the Leader of the Majority Party or the Member for Garissa Township. That is a question which I want you to answer and then I will make a decision. It is a straightforward one. Let me choose for you, so that it becomes easier. If you are seconding the Motion as the Member for Garissa Township, then you have 10 minutes, which are now over. If you are doing it as the Leader of the Majority Party, you have 15 minutes and, therefore, a balance of five minutes. Choose one of them.

(Laughter)

Hon. Aden Duale (Garissa Township, JP): I am the Leader of the Majority Party and I am seconding in that capacity.

Hon. Deputy Speaker: Then you have five more minutes.

Hon. Aden Duale (Garissa Township, JP): Plus the ones that I lost. So, I have 10 minutes.

Hon. Deputy Speaker: You did not lose any minute. When I was asking you the question, you had just finished your 10 minutes. I have given you five minutes more because you are the Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Following various investigations, the EACC has forwarded to the Office of the DPP a total of 183 cases as per the Report. Why was this House recalled? It was recalled because of a very important constitutional obligation. The story out there is that the war on corruption can never be won if institutions that fight corruption are corrupt. In the Constitution of Kenya, 2010, Kenyans, in their wisdom, decided to establish independent commissions and offices which are only answerable to Parliament, to deal with matters of corruption and ethics. We are talking about the Office of the Auditor-General, Controller of Budget, the EACC, the DCI and the DPP. When the hunter becomes corrupt, then

we are taking the country in circles. Mr. Mbarak, the DPP and the Auditor-General must clean their offices.

When the Auditor-General's officers are sent to audit accounts of far fledged counties, they are told there is an element of insecurity like the *Al Shabaab*. They do not go, but the truth of the matter is that they go to bed with the governors. It is good because we are dealing with the Kenya Pipeline Company, the Kenya Power and Lighting Company and all national Government institutions which are corrupt. Why are we not dealing with huge amount of resources which are wasted in county governments? There is a lot of wastage.

(Applause)

There is a lot of corruption in our county governments. In the event that we amend the Constitution, I will give my opinion before 1st January 2019. That is because the presidential system of Government is a winner takes it all. The solution to that is to adopt a parliamentary system with a ceremonial President and create a federal system of Government in Kenya. We must have federalism in Kenya like in Ethiopia where 80 per cent of the national revenue goes to the *majimbo*s and we remain with only 20 per cent in the national Government. The function of the national Government will be foreign affairs, defence and the National Treasury. That should be the route. If we want a win-win situation, let us have 47 regional presidents, so that the people of the north, their oil and mining...

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): On a point of order, Hon. Deputy Speaker.

(Applause)

Hon. Deputy Speaker: What is your point of order? Just a minute, the Leader of the Majority Party. You still have time. Hon. Members, even as you applaud, she is on a point of order.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Hon. Deputy Speaker, I do not see how federalism is part of fighting corruption. I thought we were discussing the approval of the nominee today.

Hon. Deputy Speaker: I actually do not see what is out of order in that. Leader of the Majority Party, proceed.

Hon Aden Duale (Garissa Township, JP): Hon. Deputy Speaker, let me explain to Hon. Shamalla. There is too much corruption at the centre. If we have to fight corruption, and if we want to make sure that each and every part of Kenya gets and eats the cake, then we should emulate what is happening in Ethiopia. Let us have 47 States with federal governments. We must speak. If we want to kill the presidential system of winner take it all, let us go the federal system way. Let us have a parliamentary system where the contest will be in constituencies where there will be no corruption. The presidential system of government is enticing and entangled with corruption. The President wants to take money, there is corruption at Independent Electoral and Boundaries Commission (IEBC) and there is corruption in transmission of results. This discussion must go ahead.

(Loud consultations)

I agree.

(Loud consultations)

I am making this statement so that, as we go for the Christmas and New Year break, we have something for discussion. In January, if we agree on a referendum, the only one I will support is that of federalism and a parliamentary system of government. After being the Leader of the Majority Party, the other job I will look for is to become the federal regional president of Garissa State. That is what I want.

(Laughter)

In conclusion, I challenge Major Rtd. Twalib to lead the Commission and to sincerely partner with other players. He must have a working relationship with the Office of the Director of Public Prosecutions, the Office of Directorate of Criminal Investigations (DCI) and the Office of Inspector General of Police. There must be a good working relationship between him and the Judiciary. The war on corruption cannot be won by alienating the Judiciary. The Judiciary, under the leadership of Chief Justice Maraga, is critical. He should work with the leadership of Parliament also. He must guide the Commission to the truth.

Major Rtd. Twalib Mbarak has what it takes. He has an intelligence background in security and has worked in the military. He has the discipline and I do not think he will let down the people of Kenya. He was nominated pursuant to Section 16(1) of the Ethics and Anti-Corruption Commission Act of 2011 and Section 5(1) of the Public Appointments (Parliamentary Approval) Act.

As a leader, Hon. Deputy Speaker, if you allow me, the story in town is that the presidential system is winner takes it all.

Hon. Deputy Speaker: Do not go that way.

Hon Aden Duale (Garissa Township, JP): Let us take it everywhere. I beg to second.

Hon. Deputy Speaker: Hon. Members, before I move to the next step, let me recognise, in the Speaker's Gallery, officers from the Parliament of Uganda. They are:

1. Mr. Geoffrey Beinomugisha - Principal Policy Analyst; and,
2. Mr. David Ivan Masajjage - Principal Administrative Officer.

They should feel welcome in the National Assembly.

Hon. Daniel Maanzo (Makueni, WDM-K): On a point of order, Hon. Deputy Speaker.

Hon. Deputy Speaker: I see many Members have pressed interventions. I see Hon. Washiali, Hon. Wahome and Hon. Maanzo Kitonga. Let me start with Hon. Maanzo.

Hon. Daniel Maanzo (Makueni, WDM-K): Hon. Deputy Speaker, pursuant to Standing Order No. 97(4), could we limit the time for each Member's contribution to five minutes?

Hon. Deputy Speaker: I hear you. Do not be distracted. Prosecute your case.

Hon. Daniel Maanzo (Makueni, WDM-K): If we can kindly reduce it. It is ten minutes from the notice. Could we kindly reduce it to five minutes per Member?

Hon. Deputy Speaker: I have no power to do that. It is for the Members to decide.

Hon. Washiali Jomo, do you have anything different?

Hon. Benjamin Washiali (Mumias East, JP): Hon. Deputy Speaker, Hon. Maanzo picked my brains. I just want to add onto what he has said. As a Whip of the Majority Party, I thank the Hon. Members for coming for the two Sittings, that is, in the morning and this afternoon. As a Whip of the Majority Party...

Hon. Deputy Speaker: You are on a point of order.

Hon. Benjamin Washiali (Mumias East, JP): Hon. Junet, yourself, other leaders and myself, asked Members to come for a Special Sitting. They have sacrificed a lot to have come for the Sittings. It is in order to give as many Members as possible a chance to contribute and make a decision on whether to approve or reject this nominee.

Hon. Deputy Speaker: So, you are supporting Hon. Maanzo's position.

Hon. Benjamin Washiali (Mumias East, JP): I agree with Hon. Maanzo that we reduce the time for a Member to contribute to five minutes.

Hon. Deputy Speaker: Let me give information that you may not have. Before I put the Question on that, I want Members to be sufficiently informed. We have a balance of two hours and there are 53 requests and two interventions. That will be the decision you need to make. Did you say five minutes?

(Loud consultations)

(Several Hon. Members raised their hands)

Do not just put your hand up. If you have anything, let me know. Hon. Lentoimaga, what is it?

Hon. Alois Lentoimaga (Samburu North, JP): Hon. Deputy Speaker, I recommend that we give three minutes to each Member to make their contribution instead of five.

Hon. Deputy Speaker: We will proceed to have you make that decision. You have done it properly under Standing Order No.97 and you have done it at the correct time. There are two Questions here, one for five minutes and one for three minutes. It will be easy for me.

(Question proposed)

(Question that debating time be limited to five minutes, put and negatived)

(Loud consultations)

So that I am sure that the ones saying nay have an issue with the five minutes or have interest in three minutes, I will put the following Question.

(Question that debating time be limited to three minutes, put and agreed to)

Contributing time for each Member is going to be three minutes. It is reasonable considering that we have limited time. Members will speak for three minutes each. You have made that decision.

We will start with Hon. Murugara Gitonga.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Deputy Speaker.

(Hon. John Mbadi spoke off record)

Hon. Deputy Speaker: Is the Leader of the Majority Party interested in speaking? I will give you a chance, Leader of the Minority Party. I will also be considerate of your position. So, three minutes, Hon. Murugara.

Hon. George Gitonga (Tharaka, DP): Thank you, Hon. Deputy Speaker. I rise to support the Special Motion that this House approves the appointment of Maj. (Rtd) Twalib Abdallah Mbarak as the Chief Executive Officer of the Ethics and Anti-Corruption Commission (EACC). I sit in the Committee that came up with this Report. We deliberated over it for a long time. I agree with our findings that Mr. Twalib is, indeed, qualified to be the CEO of EACC. We had our reservations because in our view, the candidate was overly militarised and we felt that he may not have any qualifications regarding matters anti-corruption. Possibly, we were driven by prejudices and other factors including not always trusting what comes from the system and especially because the Commission has been headed by big names like Harun Mwau, Justice Aaron Ringera, PLO Lumumba and others. However, upon concluding the interview, we were satisfied that Mr. Twalib is qualified to sit as the Head of the Commission.

We took him to international levels where again he confirmed he has knowledge on these matters and the assurance he gave to us as we summed up was that he is prepared for the task. The big fish must prepare themselves because this country is faced with endemic cases of corruption. We need a CEO who is going to deal with this to the fullest.

Our only request to him is that he has to cooperate with other agencies, including the Directorate of Criminal Investigations (DCI) and the Office of the Director of Public Prosecutions (ODPP), so that everybody who engages in corruption in this country can face the music.

I, therefore, support and urge the House to adopt the Report.

Thank you.

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

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Deputy Speaker. Allow me 30 seconds to condemn the killings that took place in Kwanza Constituency by police officers. It is something that we did not expect to happen in this era when we have tried to reform the Police Service.

I want to make my contribution to the proposal to approve the nomination of Twalib Abdallah Mbarak as the Head of Secretariat of EACC. First, while I support the appointment of

this great Kenyan, I am a bit disappointed that the Commission did not follow strictly the requirement of Section 16 of the EACC Act which provides that the Commission shall, through an open, transparent and competitive recruitment process, and with the approval of National Assembly, appoint the suitably qualified person. I say so because we expected the Commission to interview the people who were interested in this position publicly, so that Kenyans could be able to verify for themselves that the person who is being recommended for appointment is qualified for the position.

This appointment is coming at a time when this country is engaged in a serious fight against corruption. The reason why the President has engaged the Office of the DCI is because there was a feeling that EACC was not doing us justice as per the requirements of Article 252 of the Constitution. This is the body that has a direct mandate in the Constitution to recommend to the DPP the prosecution of any acts of corruption, bribery or economic crimes, or any violation of codes of ethics or other matters that are linked to corruption. This body has been criticised previously. Expect more renewed vigour as we get a new broom to head this institution. We expect, as the Leader of the Majority Party put it, that this fight is devolved. We agree that you can hold to account the national Government institutions, but a lot of resources - especially development resources - have been devolved to the counties. The amount of money that we waste in counties is just too much through corruption. It is something that worries many of us. We do not see as many county officials being taken to court as it should be. This is purely because many officers who are given the responsibilities to go and investigate corruption in the counties get entangled with corruption. They get bribed and they look the other way instead of helping the fight against corruption.

Something else that I also wanted to mention is that much as we hail and appreciate this renewed fight against corruption, we should not start celebrating too early. I say so because the DCI needs to be serious. In many institutions, there is a lot of corruption but some of the cases that we see being taken to court, in my view, look like there is not enough evidence to lead to conviction. I am wondering whether we are not being taken for a ride. We are seeing high profile cases being taken to court but the willingness and determination to prosecute them is lacking. Whenever you hear that documents are missing, those documents are the ones that are supposed to be used to prosecute suspects. It is evident that someone is trying to interfere with that evidence. It is my hope that the institutions that we have - DCI, EACC and DPP are going to show serious commitment. Not to hoodwink the country that they are prosecuting high profile cases and then we go to sleep only to realise that those cases do not lead to conviction. We do not expect cases with weak evidence to be taken to court. We want to see clear cases of strong evidence being taken to courts which would lead to prosecution. This is where I disagree with the President when he blames the Judiciary. It is not the Judiciary. It is the evidence that is presented to the court. Mr. President must know that if weak cases are presented to court, the judges have no option but to set those people free.

What we expect from DCI and EACC is proper investigations and DPP to institute clearly well documented evidence to lead to convictions. This office has not been a very easy office. I know that with the change in law, now the secretariat is separated from the Commission. Initially, we used to have the head of the institution doing both secretarial and the Commission work. I expect Mr. Twalib to go into this office and make a difference.

I want to agree with Hon. Duale that we need constitutional amendment in this. In fact, it was music to my ears when I heard the Leader of the Majority Party today saying that he supports the referendum. Where I disagree with him is to have 47 presidents in this country. He

should agree with us that we need to have a more consolidated system where we have, say, 14 regions with presidents so that if I am a president of a region, then it is the real government. It is not these mini-governments of 47 counties. It will not help us. I am happy that now we are becoming cohesive as a country and in agreement that in 2019, we are going to have constitutional referendum which is going to usher in a more accountable system of government, possibly a parliamentary system with clear checks and balances.

Thank you. I support.

Hon. Deputy Speaker: Okay. Very good. Let us have Hon. Garane Hire, Member for Lagdera.

Hon. Mohamed Hire (Lagdera, KANU): Thank you, Hon. Deputy Speaker. I also support the appointment of Mbarak Twalib as the Secretary and CEO of EACC.

Corruption is a very serious issue in this country. It is the reason we have so much unemployment in this country; it is the reason we have an ailing economy; it is the reason we have a very dilapidated road network in this country. Mbarak has a lot of experience in this field. He has been in the military. He has been in the NIS. He has massive experience to tackle this problem. Mbarak is a Muslim. The religion of Islam abhors corruption. It is strongly against taking and giving bribes, or advocating corruption. Mbarak is a man we believe can steer the leadership of the EACC to the next level. So many Kenyans are desperate to see corruption gone from this country. Corruption in this country has made us lag behind in every other sector.

There is so much wastage and pilferage in this country due to corruption. There is lack of accountability by the people given the responsibility to steer offices.

With those few remarks, I support the appointment of Mbarak Twalib Abdallah as the Secretary and CEO of EACC.

Hon. Deputy Speaker: Hon. Kamene Joyce, Member for Machakos.

Hon. (Ms.) Joyce Kamene (Machakos CWR, WDM-K): Thank you, Hon. Deputy Speaker.

I applaud the Departmental Committee on Justice and Legal Affairs – the panel that has qualified and reputable persons. The nominee has an immense wealth of working experience in different Government institutions. He managed to attain the clearance requirements by the panel. What is most fascinating is the great ideas he has on how to curb the corruption menace. One of these is his strategy of laying emphasis on the preventative measures. Truly, prevention is always better than cure.

The root cause of corruption is the mindset or mentality of get-rich-soon that has driven our country to the kind of state we are in now, and it must be fought. That is why we want to support this nominee to make sure heads start rolling and we see action. It is because we believe actions will always speak louder than words.

With those few remarks, I support the nominee.

Hon. Deputy Speaker: Very well. Hon. Olago Aluoch.

Hon. Olago Aluoch (Kisumu West, FORD-K): Thank you, Hon. Deputy Speaker.

First, I will spend a quarter of a minute to applaud the Leader of the Majority Party, St. Paul Duale, for his change of attitude.

(Applause)

Two, I condemn what happened in Kolongolo in Kwanza Constituency. Indeed, the MP for Kwanza, Hon. Ferdinand Wanyonyi, who is here, would not be alive. He could have been shot. He was present when all this was going on.

I have the privilege of sitting in JLAC with other distinguished Members. I support this Report. When the nominee was asked, he gave a twelve-point strategy of fighting corruption. One of them was that he would ensure continuous vetting of EACC staff. My view is that he has to urgently carry out a fair and thorough audit of staff based on performance and integrity. That is if the Commission is to redeem its name. Two, he said he will strengthen asset retracing and recovery. What I will say about this is that there is a regulation that anchors asset tracking and recovery. But there is no legal regulation for what to do with the assets once they are recovered. What has happened in the recent past is that assets that were recovered from New Jersey were sent back to the National Treasury. The National Treasury used the same, at their own discretion, to buy ambulances. That is not the right way to go. In my view, if we do not set up regulations that govern how assets recovered will be used or utilised; we are setting the foundation for another very big scandal. Money is recovered to go to the National Treasury, but is not budgeted for. It will just disappear there. Like in other jurisdictions, we need to have regulations by this House on how assets recovered should be utilised.

Lastly, I notice that there is a problem with regard to the pace of proceedings. The tiff between His Excellency the President and the Chief Justice and the Chief Justice and the Director of Public Prosecution (DPP) is not helpful for this country. Any criminal trial lawyer here will tell you that many factors go into adjourning cases and that each case must be looked at on its own merits. I think it is time we do not condemn the Judiciary wholesomely, but look at each case individually and find out if the decisions of the courts were correct or wrong.

Thank you, Hon. Deputy Speaker. I support.

Hon. Deputy Speaker: Member for Gilgil.

Hon. (Ms.) Martha Wangari (Gilgil, JP): Thank you, Hon. Temporary Deputy Speaker. I also want to join in supporting this nomination. It is quite a timely one. In fact, I was discussing with Hon. Rasso here and we were saying, maybe, the Committee members would have even signed the Report. It looks hurriedly done. It does not have signatures of the people who supported so that we can tell exactly who did what.

Anyway, the credentials and adherence to the law look okay. But, I will not go to that because they interrogated it. I will go to what is likely to face Mbarak when and if he is appointed. The cancer in the EACC is not outside. He must, first of all, deal with it from inside. I hope he has the courage because this is one institution over which we have looked outside for divine intervention. We have even put a retired Archbishop to be the Chairman. I hope he will have the courage to interrogate from inside and root out what exactly makes EACC not to move. More importantly, even as we liaise with the DPP, the major source of information and whoever is supposed to be witness number one should be the EACC. We must look at how we do our things and how EACC does its things. Why do I say that? It is not just about raiding and carrying cameras to be seen when you have raided an institution, a house, a member or a private member. It is about getting the evidence. I hope this man, because he has done a lot in private investigation, will be an asset to, first of all, gather enough evidence so that we can have watertight cases that can be prosecuted. That is so that we are able to get convictions. Otherwise, it will just be a show and we will end up gracing the newspapers and that will be it.

On another issue, we have had the outgoing CEO, Halakhe Waqo. We need to look at the output. How much has the EACC, together with the Assets Recovery Agency, been able to

recover? We are talking of billions of dollars stashed in safe havens in New Jersey and elsewhere outside this country. We have even signed, as a Government, the plan to repatriate that money. He needs to know that we need to see the output if and when he is approved.

I support.

Hon. Deputy Speaker: Hon. Members, I kindly urge you to be patient in two areas. Firstly, many of you will speak because we are giving three minutes to each. Secondly, be around the House because we will need to put the Question and if we do not do it at the right time, then it will be pointless for us to be here. Let us have Hon. Godfrey Osotsi.

Hon. Godfrey Osotsi (Nominated, ANC): Thank you, Hon. Deputy Speaker for giving me the opportunity to contribute to this Motion. At the outset, I rise to support the Motion on the appointment of Maj. (Rtd) Twalib Abdallah Mbarak as the Chief Executive Officer of the Ethics and Anti-Corruption Commission (EACC). EACC is a very important institution in the fight against corruption but, lately, we have observed that EACC operational framework is receding at an alarming rate. In fact, the Directorate of Criminal Investigation (DCI) and Mr. Haji are doing a better job than EACC. We, therefore, hope that with this appointment, we are going to see a lot of vigor and action by EACC in the fight against corruption.

Secondly, we want the new CEO to deal with cartels that have held EACC captive for a long time. Those cartels are there. That is why we have had changes in the EACC all the time because the cartels have been involved in ensuring that EACC is not functional. We hope that Mr. Twalib will help us in dealing with the inefficiencies at EACC. Most importantly, the fight against corruption should not be sentimental because we know that in 2012, during the Grand Coalition Government, the then Attorney-General, Prof. Githu Muigai, wrote a letter to the World Bank requesting them to provide a list of the beneficiaries of the Kshs72 billion which are stuck in Swiss Banks. We are told that the list was given but, up to date, the Government has not published it. If the Government is serious about the fight against corruption, it should start by publishing the list of all individuals who are holding accounts in Swiss Banks. We should know the banks that are holding the Kshs72 billion. Then we will know that, indeed, this Government is serious in fighting corruption. Otherwise, we support the Report but I think the Committee should have done much better by telling us a lot more about what made the nominee to leave EACC in 2004. It was important for this Parliament to know the reasons why he left EACC.

Hon. Deputy Speaker: Your time is over. Hon. Tuwei Kipkirui of Mosop.

Hon. Vincent Tuwei (Mosop, JP): Thank you, Hon. Deputy Speaker for giving me this opportunity to contribute to this Special Motion. Major Gen. (Rtd) Twalib Abdallah Mbarak as per the Report is an experienced officer who is ready and determined in wiping out or reducing corruption in this country. May I personally take this opportunity to thank the Committee for having done a good job in vetting the said candidate. I only have three things to say. One, the major corruption that we are seeing in this country is done at the center of power, that is, the Executive. One wonders what happens when one is given a job, within a short time, he forgets about the job and goes engaging him/herself in corruption. As said by the Leader of the Majority Party here, county governments are having a lot of money, but we do not find the said resources on the ground. It is high time that we ask Maj. (Rtd) Twalib Abdallah Mbarak to go deep down in investigating this matter. I am also very happy to note that we have the Report of the Public Accounts Committee (PAC) which indicates that there are serious issues of public funds when it comes to ministries, State departments, parastatals and commissions. It is high time that, as Members of Parliament, as we start our budget cycle, we look at the index. Those ministries, parastatals and commissions that participate in corruption, we must significantly reduce their

budget. We give ministries a lot of money and they give projects to places where the cabinet secretaries, principal secretaries or heads of departments come from and leave the rest of the country bare. It is high time we pass a rule as Members of Parliament that any corrupt institution should get budgetary cuts.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Wakhungu Wamalwa.

Hon. (Dr.) Chris Wamalwa (Kimini, FORD-K): Thank you, Hon. Deputy Speaker. I rise to support this Motion. I also want to take this opportunity to condemn the killings that occurred in Kolongolo, Kwanza Constituency. We thank God that Hon. Wanyonyi is here. We are requesting the security team to know their leaders. The rate at which they are clobbering leaders in Kenya is alarming. I wish quick recovery to those who were injured, including the Speaker of the County Assembly of Trans- Nzoia, Hon. Werunga, who is admitted in Eldoret.

On this Motion, EACC has not done much. Research has shown that 30 per cent of the national revenue of this country goes into wastage through corruption. We are seeing a newcomer, Maj. (Rtd) Twalib Abdallah Mbarak coming on board. The trend is changing. People with background in military are taking over. We have seen Mr. Noordin Haji who has done so well, so far. We have also seen the Director-General of National Intelligence Service (NIS), Major General Kameru. Soon, we should have a President from the military and Kenya will move in the right direction. From the current trend, it seems that people from security background respect the law. We are requesting the Major who is coming in to follow what Mr. Noordin is doing. During the Jamhuri Day celebrations, I was a beneficiary because I won the CBS together with Mr. Noordin.

(Applause)

This shows the good work we have done. It shows that we should congratulate people with military background.

I was looking at the mandates of EACC. One is to raise public awareness on ethical issues. This is something they have not been doing. As the new CEO comes on board, he should focus heavily on raising public awareness on ethical issues and the secretariat must be vetted. I remember last time I brought an amendment on the EACC Bill that was here. The rot is in the secretariat. They should be vetted so that we can have new Members who have a positive attitude when it comes to the fight against corruption. I thank you. I support.

Hon. Deputy Speaker: Very well. Hon. Kimunya.

Hon. Amos Kimunya (Kipipiri, JP): Thank you, Hon. Deputy Speaker, I rise to support the appointment partly because we have to do it and also because we have not found anything wrong with the candidate. I wish to congratulate him in advance. As I do that, I want to draw the attention of the House to the fact that we started the EACC because of the systemic failures in the actions of the Attorney-General who was also the Director of Prosecutions then, and could not tackle corruption.

The Kenya Anti-Corruption Commission (KACC) became the Ethics and Anti-Corruption Commission (EACC) which was started as a catalyst. So, because we have not seen much in the last few days or years despite the investment, I would like to see this new CEO perhaps refocusing on what the EACC should be doing. Should it be fighting with the Director of Criminal Investigations (DCI) and the Director of Public Prosecutions (DPP) in terms of who

arrests who or who claims most credit for the arrest, or should it be concentrating on achieving the values that are contained in Chapter Six of our Constitution?

If he can do that, then we can start inculcating the culture of integrity in people, believing in our national values right from the time our children get to school. By the time he gets to finish his term, he will say: "I have changed a critical mass of Kenyans to believe that corruption is not good for them." The recent surveys that were done revealed that all the youth believed that it is cool to be corrupt. Unless we change that mind-set, it does not matter how many people we put there; it does not matter the resources put there; Kenya will still continue suffering from corruption. However, I would like to put that challenge to him that, perhaps, it is time to shift the gears from where it was started because of failure by the DPP and the DCI, then recognise that DCI and DPP are working; support them, but shift towards the wider picture of eliminating the culture of graft at source.

Thank you.

Hon. Deputy Speaker: We shall have Hon. Owino Walter, Hon. Jeremiah Kioni and Hon. Otiende Amollo, so that we save time. I do not have to mention their names. Proceed.

(Loud consultations)

Order, Members. Every Member of this House is a Member of Parliament (MP). Log in and you will get your opportunity. Proceed.

Hon. John Owino (Awendo, ODM): Thank you, Hon. Deputy Speaker. I will donate one minute to Hon. Elisha Odhiambo, when I am done, because I will take about two minutes.

I rise to support the appointment of Major Twalib Mbarak who, according to his biography, has all the qualifications and experience to help eradicate corruption in this country. He comes from a very humble background and has been well trained; rising through the ranks in different Government security agencies, including the former KACC; to be where he is today without a godfather. I understand the Major resigned from KACC when he realised that the then leadership at KACC did not have the zeal to fight corruption. Major Twalib who is coming from a minority tribe will fight corruption without political interferences which is normally a big hindrance in our country. I have personally worked with Major Twalib Mbarak in a private security industry and I have known him as a person of high integrity. I request Hon. Members and Kenyans at large to give him a chance to help eradicate corruption.

Thank you very much.

Hon. Jeremiah Kioni (Ndaragwa, JP): Thank you, Hon. Deputy Speaker for giving me the opportunity to support this Report. If the new Major is to fight this war on corruption, he must win the support of Kenyans. We will wait to see how he will do that. He must work with all the other agencies. There are a couple of things which have been done by the Committee in the Report. They have even shown us the questions they asked. Many of them include how he is going to vet the staff already in office. One of the major things that we will be expecting to see from this Commission is what Hon. Kimunya has alluded to.

We would want to see the EACC enforcing Chapter Six of the Constitution. That is one of their major mandates and it will be useful for this country. He says he would want some new laws to be enacted. I do not think he should spend any amount of time looking for new legislation. He should use the existing ones. We have enough legislation that can help him fight corruption. I think it is also important that he makes use of the alternative dispute resolutions as

outlined in the Report, strengthen the asset recovery mechanisms and also ensure that members of staff are vetted from time to time.

Hon. Deputy Speaker, as we support the Report, it is also crucial that we as MPs desist from threatening to disband those commissions because in so doing, we kill the support that they have from the public. Also, it does not help when you are working and you are feeling threatened. However, we also hope that the Committee has done their work. We hope that the retired Major will not be arrested shortly thereafter. We have had other reports in this House, approved names only for them to be arrested when they report to the office for crimes that were pending. I do not think Ethiopia is a good example for us, but we will go either direction.

Thank you and I support.

Hon. Deputy Speaker: Let us have Hon. (Dr.) Otiende Amollo. I will be a little more sensitive to the other gender because I am told so. Otherwise, they are much lower in the ranking here. Proceed.

Hon. (Dr.) Otiende Amollo (Rarieda, ODM): Hon. Deputy Speaker, I join my colleagues in condemning the killings in Bungoma and the wanton harassment of *boda boda* operators in various parts of the country, including in my constituency.

On the instant Motion, I believe the procedure adopted so far was fair and lawful. On suitability, I find that Major Twalib Mbarak is singularly qualified. I can confirm that when I served as Ombudsman, I interacted a lot with KenGen when he was the integrity manager and for all that time, there were no integrity questions.

I believe that there are issues in terms of the dangers of securitisation of State agencies, but while some might think that, that is generally a good thing, I do not share in that except that in this case, Mr. Mbarak was no longer in the security agencies as at the time of vetting in any event. I think everybody must be looked at on their own background and not in terms of their area of study.

Hon. Deputy Speaker, we are also required to look at the constitutional and statutory requirements, and that is where I have two comments. On Section 16 of the Ethics and Anti-Corruption Act, I urge the Committee in its own time to re-look at that section in two ways. First, it introduces the Secretary to the EACC as a State officer and therefore, is essentially amending Article 260 that outlines who State officers are. I do not think an Act of Parliament can do that.

Secondly, we are now here because of that section. The EACC is the only commission where the Secretary to the Commission is now required to be approved by Parliament in Section 16 and yet in terms of removal in Section 17, Parliament has no role. There is no other Commission. I believe that, as with all other commissions, we should approve commissioners and chairpersons. But the Secretary to the Commission should be the work of the Commission itself rather than be brought here.

I support.

Hon. Deputy Speaker: I will now look out for the other gender and fifth in my list here is Hon. Jaldesa Dida. I had to ensure that you know the number so that next time you log in, there is no issue with gender.

Hon. (Ms.) Rehema Jaldesa (Isiolo CWR, JP): Thank you, Hon. Deputy Speaker. I support the nominee. I thank the Committee for doing a thorough job. I had the opportunity to view the nomination process live on television and I can confirm that they did a good job.

Secondly, I congratulate the nominee. What came out from him is that he is a very experienced person. He did a very exceptional presentation during the interview process. What

struck me is how he articulated the challenges facing the EACC at the moment and how he is willing to take responsibility as a CEO, if given the opportunity. That is what we need. It is said that everything rises and falls with leadership. Therefore, if we will have a leader who is committed as Maj. (Rtd) Twalib Abdallah Mbarak, we will see real changes in the EACC.

The other positive attribute that he will bring is an investigative background. He is from the National Security Intelligence Service (NSIS). That is what we need in the EACC. He has an impressive academic background although that is not a parameter to determine success. But generally when you look at him, he comes out as a secretive man without any scandal. He said that he does not run any business; therefore, he is not greedy. That is what we need. We want to see serious prosecutions going forward on the war against corruption. We do not want politics in the fight against corruption.

I support the Motion.

Hon. Deputy Speaker: Hon Junet.

Hon. Junet Nuh (Suna East, ODM): Thank you, Hon. Deputy Speaker. I stand to support the Motion on the appointment of Maj. (Rtd) Twalib Abdallah Mbarak.

Hon. Ali Rasso (Saku, JP): On a point of order, hon. Deputy Speaker.

Hon. Deputy Speaker: What is your point of order Hon. Rasso? I want to discourage you from doing anything now. You are the next one in the line. So, you might go down by commenting. You are better of keeping quiet and keeping your peace.

Proceed, Hon. Junet.

Hon. Junet Nuh (Suna East, ODM): Hon. Deputy Speaker, I hope my minutes are not over?

Hon. Deputy Speaker: What is not working?

Hon. Junet Nuh (Suna East, ODM): I hope my minutes are not over, Hon. Deputy Speaker. I support the appointment of Maj. (Rtd) Twalib Abdallah Mbarak. One of the most difficult jobs to be given is the job of fighting corruption. It requires a lot of zeal and energy. For that reason, I would like to congratulate the outgoing CEO. Having stayed there for six years was not a mean feat. He tried his best. That is one of the most difficult jobs somebody can be given to do. I see people now asking for court convictions. We are from a period where we never used to see corruption suspects, but now we see them. Maybe, the next thing that will come will be the court convictions. We are from a background where we never used to see any suspects taken to court. At least now the EACC and the DCI are taking people to court. Conviction can only be got by presenting evidence before a court of law. You cannot just get it because you have taken somebody to court.

When I read the Committee's Report, it was clear that the nominee is qualified to get the job. It does not matter where one comes from; you can be from the Police, the Army or the City Council, but as long as you have the right qualification to do this job, then you should be given the job because you are qualified for it. That is what, as Parliament, we are looking at. In the Report of the Departmental Committee on Justice and Legal Affairs (JLAC), it is clear that Maj. (Rtd) Twalib Abdallah Mbarak has the right qualifications to do this Job. If we were to stick to that kind of interrogation when we are looking at qualifications for jobs, many of our institutions would have worked. The EACC has been in existence. We have their Annual Report in which they say that Kshs43 billion is what they have recovered as assets. That is an amount equivalent to the amount disbursed to eight counties in every financial year. With the coming referendum - it is obvious that it is going to come - we will need to strengthen certain institutions so that they are given teeth to bite and make sure that this country is run properly.

With those few remarks, I support.

Hon. Deputy Speaker: Hon Rasso, you have the floor.

Hon. Ali Rasso (Saku, JP): Thank you, Hon. Deputy Speaker. I rise to support the Report of JLAC. At the onset, I want to congratulate the immediate former Secretary and CEO of EACC, Halakhe Waqo. He may be succeeded by Maj. (Rtd) Twalib Abdallah Mbarak who is also from a minority group. For the first time, we are seeing the minority groups succeeding each other. However, sometimes, the leadership in institutions headed by people from majority groups is succeeded by people from the majority groups. We have seen the contribution of the minorities to this nation in a big way. Maj. (Rtd) Twalib Abdallah Mbarak brings along experience, hard work, loyalty and professionalism. I believe he will also bring leadership. We celebrate individuals, but what is interesting is that we do not celebrate institutions. This country must move forward. Other than looking at individuals, we must look at institutions, so that we build them.

For several weeks now, there have been serious fights between communities in my constituency. What we are seeing is the absence of the administration wing of the Office of the President (OP) - that is lack of enough police on the ground. So, it makes leaders to be frustrated. In the fight against corruption, when Maj. (Rtd) Twalib Abdallah Mbarak was asked on television if the current existing structures are adequate to address corruption, he correctly answered that they are not adequate. If we want to fight corruption, we must build that institution and give the CEO the necessary tools to carry out that task.

Finally, as a minority, Maj. (Rtd) Twalib Abdallah Mbarak should be given the necessary support so that others do not use him and dump him.

With those few remarks, I beg to support.

Hon. Deputy Speaker: Again, hon. Members, allow me to pick a Member from the other gender who is eighth on the line here, and the only one in the top ten. Hon Paulata Korere. She is absent. We will, therefore, go back to our list. Hon Atandi Onunga.

Hon. Samuel Atandi (Alego-Usonga, ODM): Thank you, Hon. Deputy Speaker for giving me this opportunity. I want to...

Hon. Deputy Speaker: Hon. Shamalla, I can see you are complaining. I want you to come and see the number you are in.

(Hon. (Ms.) Shamalla spoke off record)

Okay, that makes sense. Let us proceed

Hon. Samuel Atandi (Alego-Usonga, ODM): Hon. Deputy Speaker, you will add me one minute for that moment that has been wasted.

I stand to support this appointment. Initially, I was opposed to the nomination of Maj. (Rtd) Twalib Abdallah Mbarak to this position. However, after listening to the Committee's Report, I have been sold out to this man. I am aware that fighting corruption is not an easy job neither is it a mechanical or spiritual function. It is a job that requires tact. The background of Maj. (Rtd) Twalib Abdallah Mbarak as having worked for NSIS, in my view, will be critical for him to deliver in this position.

However, I want to caution him that fighting corruption is not only going to be about investigation, but also political goodwill. As we know, the Head of State is genuine in fighting corruption. So, Maj. (Rtd) Twalib Abdallah Mbarak is assured of political goodwill in the war against corruption. We expect him to move with speed and ensure that corruption is fought.

There is a connection between the war against corruption and our oversight function as Parliament. If you look at the last Public Accounts Committee (PAC) Reports, all of them are asking EACC to investigate various instances of corruption in various Ministries. For the last four financial years, there is nothing that has happened in the area of investigating those Reports. Therefore we are asking this nominee that immediately he moves into office, let him begin by investigating these reports.

The other issue is that the EACC does not have the capacity, as we talk, to investigate corruption that is happening in this country. So, I am requesting him to convince this House to fund EACC in a bigger way so that instances of corruption here and in the counties can be addressed.

Thank you. I support.

Hon. Deputy Speaker: Hon. Seroney Kipkorir.

Hon. Sammy Seroney (Nominated, WDM-K): Thank you, Hon. Deputy Speaker, for giving me this opportunity so that I may also give my small input to this Motion. First of all, I really congratulate the Departmental Committee on Justice and Legal Affairs for a job well done. When I was watching the proceedings on television, I was so impressed because they were able to interrogate the nominee. On top of that, I also congratulate Major Mbarak for this nomination. I hope he will be able to deliver on Kenyans' expectations.

This is a beautiful and rich country, but it is very unfortunate that there are two elements that are ruining it. They are corruption and tribalism. I urge Major Mbarak to deal with every individual and institution without fear or favour. When one is arrested, you hear people saying: "Leave that thief of ours." That is why I am saying that corruption and tribalism are ruining this country. When one is arrested, he is not the community. He is an individual. He must be dealt with properly. I know there is a lot of wastage, misuse and looting in government institutions. It is very unfortunate that such activities are taking place after 55 years of independence, in a country where we could have prospered like other countries which came behind us and are now doing very well. I think Major Mbarak deserves good support from all walks of life. We need to give him support and also empower him. He should tell us whether it is the law that is bad or the people who are being appointed there. That is because sometimes we appoint people who are very good and when they get there, they become part and parcel of that problem of corruption.

I do support and I really want to say that...

Hon. Deputy Speaker: Your time is over. Let us have Hon. Lentoimaga and then I will look out for the gender.

Hon. Alois Lentoimaga (Samburu North, JP): Thank you, Hon. Deputy Speaker, for giving me this opportunity. I rise to support the appointment of Major Twalib Abdallah Mbarak. Just as I realised in the Committee, his academic records are good. His employment records and integrity are also good. Generally, he meets the necessary qualifications. My question is contrary to what my colleagues have said. There is a trend in this country now to appoint members in senior positions from the military. I do not know whether we do not have other people who can be filling those positions and yet, we have a civilian Government that is in place. Besides that point, I request the President to consider other persons that are qualified and not necessarily those from the military or NIS.

There is a serious issue about the EACC. It is very important that we assist that Commission. We need to support the nominee, if he is confirmed, to work hard. I want to say that he has a big task to do. If you listen to the radio, read newspapers and listen to the talk in town, there is serious and rampant robbing of Kenya's resources in the ministries, departments

and county governments. We need to stop this stealing so that we can rescue our country from going down the drain. If that candidate is confirmed, he needs to get advice so that he does not rush. Let him get watertight evidence against any persons that are being arrested. The manner in which people are being arrested through past experience is sometimes malicious. Sometimes, peoples' names are spoilt. The drama which has been witnessed in the arrests sometimes leaves a lot to be desired. Therefore, he needs to ensure that when a person is arrested, there is serious evidence that he will face in court. There are also cartels and people who are misusing the name of the Commission to threaten others. I think he needs to look at that and make sure that the Commission is clean and can...

Hon. Deputy Speaker: Next is Hon. Shamalla.

Hon. (Ms.) Shamalla Jennifer (Nominated, JP): Thank you, Hon. Deputy Speaker. I rise to support the Motion that this House approves the nomination of Major (Rtd) Twalib Abdallah Mbarak. I noted that there was a discussion of concern about the military background of that particular nominee. It was something that was discussed at the committee stage. One of the observations that we made is that, perhaps, many of those military people actually go through the highest vetting required in this country.

However, I want to dwell more on the personal aspects of this particular nominee. A lot has been said about his experience. I specifically noted that in his opening statement, he stated that his children represent the generation of Kenyans whose future we must safeguard. He spoke into the future and he spoke about a generation which, if we do not deal with this malice of corruption, will suffer immensely. He also talked about the connection between terrorism and corruption. Indeed, he said that there was, probably, a lack of patriotism in this country because in certain jurisdictions, it would not matter how much money you were to give somebody. You could not bribe them. In fact, with regards to the bombing of the American Embassy and the Westgate Mall, it was clear that money had, indeed, changed hands.

He spoke passionately about his mother. I want to mention her here. He said that she instilled in him the values of hard work and spirituality and these are so closely linked also to the soul of Kenya which he discussed and brought out in his interview. The soul of Kenya is the collective soul of this entire country. The book of Proverbs says hope deferred makes the heart sick. We must believe that, indeed, there is hope in this fight against corruption.

With those few remarks, I wish to support the Motion for the approval of the nominee.

Hon. Deputy Speaker: Next is Hon. Mwamkale Kamoti.

Hon. William Mwamkale (Rabai, ODM): Thank you, Hon. Deputy Speaker. I rise to support this Motion. Being a member of this Committee, I urge the House first to have faith in this Committee because it is the same Committee which vetted the Director of Public Prosecutions (DPP), who is now doing a good job for Kenyans. I assure Members that we did all that we could. It was live on television and those who watched the vetting could see the demeanour of the nominee. This is a guy who is passionate about fighting corruption. He showed it in his body language and everything that he said.

There has been concern from Members that he never stated why he left the Ethics and Anti-Corruption Commission (EACC). As a Committee, we went into that and he told us that he was only seconded by the National Intelligence Service (NIS) for four years and he left because his contract had expired. There has also been concern that the Report is not signed. I assure Members that all those of us who attended that vetting unanimously agreed and approved this nominee. Whether there were signatures or not, it is on record in the HANSARD that all the Members who attended approved the nominee. This man is transparent and was at ease when he

was told to tell the country his net value. He enumerated all the things that he owned and how his net value had risen to Kshs152 million. We are dealing with a guy who is very transparent and is ready to partner with the Directorate of Public Prosecutions (DPP) to take Kenya in the path that it needs in the fight against corruption.

With those few remarks, I support the Motion.

Hon. Deputy Speaker: Let us have Hon. Eseli Simiyu.

Hon. (Dr.) Eseli Simiyu (Tongaren, FORD – K): Thank you, Hon. Deputy Speaker. At the outset, I support the nomination of Maj. (Rtd) Mbarak. This is a fine officer from the military intelligence corps who formed NIS at the beginning. They are very refined people and I am sure he is up to the task. However, he needs to be very aware that Kenya is one large criminal enterprise where people steal money, land, votes, exams and even degrees. We have thrown him in the deep end and he had better be ready to act.

The problem with Kenya is the national psyche. We have never grown up from what we were at colonial time. At the colonial time, we were justified to sabotage the colonialists by stealing things from them because it was part of the war effort to win Independence. After Independence, we never graduated from that mindset to realise that this is now our property and it comes from our taxes. We need massive education of the *wananchi* to know that the money being stolen comes from their taxes. Many of them do not seem to relate to the two. They do not realise that everybody now pays VAT in direct taxes. The Value Added Tax has been charged on a nail on the coffin of a person being buried today. *Wananchi* have not yet realised this. They glorify people who steal wealth. They glorify and worship them to the extent that when you get an influential office, they expect you to bring goodies home way above the salary that you earn. We need a thorough education of our people so that they can get away from that mentality.

For example, people offer bribes to be appointed as chiefs. To be recruited into the Police Service, people sell their land to offer bribes. That is the reason we had Kolongolo in Trans Nzoia. If a policeman bought his position, he is not interested in serving the people. That is why this fellow was stealing somebody's wife. When that person protests and beats his wife, you want to arrest the person on a market day. *Wananchi* protested and that was the cause of all those problems.

If Major Mbarak goes to the EACC and finds that it cannot be reformed, he should bite the bullet and present a petition here to wind it up. The reason for the formation of the EACC then known as the Kenya Anti-Corruption Authority (KACA) by retired President Moi was all wrong. It was supposed to sort of hoodwink the development partners who were saying that corruption was too much. It was to show them that he was doing something about it. The intention was not to do something about it. If Major Mbarak gets there and finds that EACC is irreformable, he should present a petition, we wind it up and it becomes a department under the Directorate of Criminal Investigations (DCI). That is the only way we can fight corruption.

Hon. Deputy Speaker: Let us have Hon. Thuku Kwenya, Member for Kinangop. There is a problem with your microphone. It is okay now.

Hon. Zachary Thuku (Kinangop, JP): Thank you, Hon. Deputy Speaker, for giving me this opportunity to contribute to this Motion on the appointment of the incoming EACC CEO. I thank the Departmental Committee on Justice and Legal Affairs for a job well done.

Having said that, I support the Report, I also want to mention a few things though my colleagues have mentioned them. This country seems to have a high affinity towards appointing ex-military men to positions of investigations and prosecution. That begs some questions. Is it that civilians cannot be trusted with investigative powers in the fight against corruption because

they are the most corrupt? It could be true or not. Having said that, if for sure we are so into appointing ex-military people into these positions, we should go back to the basics and have our young men after they have gone through O-level education, go through some military training so that we bring up people of integrity who will be corrupt-free and make it easy for the arms that are entrusted with the fight against corruption. We are breeding so many young men through a corrupt system and assume that a body like the EACC will root out that culture. That defeats the very purpose of forming that body.

We are supposed to be dealing with a small population of corrupt individuals but now, corruption seems to be so entrenched even in our voters down there in our villages. You can tell that the people we ask for votes from are so corrupt because they want you to give them handouts for them to vote for you.

As much as we want to believe that appointing Major Twalib to this position will be the end of corruption, that could be far from the truth! However, we must first appoint him, but we must also continue with this debate. What is it that we need to do so that we root out corruption completely from this country?

Finally, I congratulate this gentleman because he is a great patriot. From the Report, I can tell that the Committee found him to be a man of integrity and that is the kind of generation that we want to breed.

I support this Motion.

Hon. Deputy Speaker: Let us have Hon. Ferdinand Wanyonyi.

Hon. Ferdinand Wanyonyi (Kwanza, FORD-K): Thank you, Hon. Deputy Speaker for giving me the opportunity. I support Maj. (Rtd.) Mbarak for this position.

First and foremost, I take this opportunity to thank Members of Parliament who have condemned what happened in my constituency. I can tell this House that I am lucky to be alive because the police are so corrupt that even when I went to my constituency as a leader to quell the people who were irritated by what was happening, after killing two people on the spot, they could not listen to me. We need to do something. The corruption in the Police Force must be addressed to the letter.

I saw this gentleman being interviewed by my colleagues. He has a strong character. He has courage and passion for the job. He told the people who were interviewing him that, if anybody approached him to change his course, he would resign. That is the only reason I support the candidature of Major Mbarak.

I would not be alive today because of corrupt policemen. We should do something about that force because it is corrupt. As mentioned by Hon. Eseli, most of them get the job because their parents or brothers have sold pieces of land to get them into the Police Force. We have a clique that has no respect for a Member of Parliament. I begged them not to shoot. I had to be rescued by my bodyguard who is a former General Service Unit (GSU). I had to go to a church because live bullets were being fired left and right and centre. I spoke to the Inspector-General and I told him about the incident. You have read what he said today. He supports the policemen who are corrupt. Something should be done about corruption in this country. You go out there and you are ashamed to be a Kenyan because our country is bleeding because of corruption. I want to support this gentleman. I hope something will change the nation because we are getting a very bad name out there.

I support the special Motion. I want to thank the Members who have condemned what happened in my constituency. It may be you next time because of the Police Force.

Thank you, Hon. Deputy Speaker.

Hon. Deputy Speaker: Hon. Angwenyi.

Hon. Jimmy Angwenyi (Kitutu Chache North, JP): Thank you, Hon. Deputy Speaker for giving me a chance to contribute to this important discussion. This is a patriot who has offered services in this country, including giving up his own life to protect us. I am shocked when we challenge the Head of State for appointing people with military background. Those are Kenyans who have offered themselves to protect us. How many people from the military have been appointed to senior positions in this country? They are not even five out of so many appointments. I urge my colleagues to please respect those people who offer their lives, so that we can live long. They fight *Al Shabaab* and others so that we are peaceful and secure.

This gentleman has really served this country well. When he joins hands with Mr. Kinoti, the Director of Criminal Investigations (DCI), and Mr. Noordin Haji and then they get support of the Executive, Parliament and Judiciary, I am sure they will reduce, if not, eradicate corruption in this country.

I have done a study of those countries which moved from third world countries to first world countries like Singapore, Malaysia, South Korea and China. All of them have one major element. They first tackled corruption. In China, President Xi Jinping started by dealing with the most corrupt senior people in the country, including the Mayor of Shanghai, who was a brother to the Prime Minister. He took them to a sea shore and sprayed bullets on them. Corruption went from the sky to the ground. We should support these people whom I have just mentioned. When they take a case to the Judiciary, they should dispose of it quickly, if there is evidence. If the Executive supports them and gives them the necessary resources, I am sure we will eradicate corruption in this country.

With those few remarks, I support the Motion.

Hon. Deputy Speaker: Hon. Lodepe Nakara.

Hon. Lodepe Nakara (Turkana Central, ODM): Thank you, Hon. Deputy Speaker. I would like to seek your intelligence over this issue. We came purposely for this agenda. Whenever a Member speaks, he gets out. We may remain with few Members and we may not pass this Special Motion.

Hon. Deputy Speaker: Be clear on what you want Hon. Nakara.

Hon. Lodepe Nakara (Turkana Central, ODM): I was asking if you can allow us to approve this Special Motion because the Members are getting out after they contribute, and they will be very few to approve it.

Hon. Deputy Speaker: Are you suggesting that you want the Mover to reply?

Hon. Lodepe Nakara (Turkana Central, ODM): Yes.

Hon. Deputy Speaker: Once that is done, I will have no choice but to put the Question.

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

Hon. Deputy Speaker: Mover.

Hon. William Cheptumo (Baringo North, JP): Hon. Deputy Speaker, I will be very brief. Let me give the Majority Whip one minute only.

Hon. Deputy Speaker: What is it the Majority Whip?

(Hon. Benjamin Washiali spoke off record)

Hon. Deputy Speaker: That is not allowed as per our Standing Orders. When a debate is cut short, the Mover is supposed to reply but not donate any minute. Please, Hon. Cheptumo reply.

Hon. William Cheptumo (Baringo North, JP): Hon. Deputy Speaker, I want to thank the Members for contributing to this Special Motion. I reply.

(Loud consultations)

Hon. Deputy Speaker: Order, Members. I can confirm that there is requisite number of Members to put the Question. Order, Members who are standing.

(Question put and agreed to)

ADJOURNMENT

Hon. Deputy Speaker: Hon. Members, the time being 4.16 p.m, this House stands adjourned until Tuesday, 12th February 2019, at 2.30 p.m.

Merry Christmas and a Happy New Year. Thank you.

The House rose at 4.16 p.m.