

Thursday, 29th August, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

REPUBLIC OF KENYA

SIAYA COUNTY ASSEMBLY

THE HANSARD

Second County Assembly –Third session

SPECIAL SITTING

Thursday, 29th August, 2019

The House met at the County Assembly Chamber at 2.30 p.m.

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

PRAYER

COMMUNICATIONS FROM THE CHAIR

- 1) THE PUNGUZA MZIGO DRAFT BILL
- 2) COUNTY PUBLIC SERVICE BOARD

Hon. Speaker: Hon. Members, we welcome you to this Special Sitting of the House pursuant to our Standing Order No. 26 of the County Assembly of Siaya and following a request by the Majority Leader in consultation with the two Committees of Justice and Legal Affairs and Public Appointments.

The Siaya County Assembly informed the general public and Members of the House of a Special Sitting to be held today Thursday, 29th August, 2019 at the County Assembly Chamber vide gazette notice No. 8756 and matters for consideration include the consideration of the report of the Justice and Legal Affairs Committee on the matter of Constitutional amendment Bill 2019, popularly known as ‘The Punguza Mzigo Draft Bill’.

There is also the report of the Committee on Appointments on the vetting of nominees to the County Public Service Board. I thank you Members for creating time within your very busy schedules to cause this to happen.

PAPERS

- 1) COUNTY PUBLIC SERVICE BOARD
- 2) PUNGUZA MZIGO AMENDMENT BILL 2019

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Hon. Madialo: Mr. Speaker, Sir, I wish to lay on the Table of the House the report of the Committee on Appointments on the consideration of nominees on the positions of Chairperson and members of the Siaya County Public Service Board.

Hon. Otiato: Thank you, Mr. Speaker. Allow me to lay the Committee report on Punguza Mzigo Constitutional Amendment Bill.

NOTICE OF MOTION
COUNTY PUBLIC SERVICE BOARD

Hon. Madialo: Mr. Speaker, Sir, I wish to give Notice of my intention to move a Motion:

THAT this House adopts the report of the Committee on Appointments on the vetting of nominees to the Siaya County Public Service Board laid on the Table of this House today Thursday, 29th August, 2019 at 11.00 a.m.

MOTION
THE PUNGUZA MZIGO CONSTITUTIONAL AMENDMENT BILL 2019

(Second Reading)

Hon. Otiato: Thank you Mr. Speaker ---

(Hon. Oriaro on his feet)

Hon. Speaker: Yes, Hon. Oriaro!

Hon. Oriaro: Thank you, Mr. Speaker, Sir. Mine is a point of procedure that a matter of referendum as this requires not the conventional procedure; it is all about the adoption of the report because there is no room for amendments, additions or subtractions. If you go to the second reading, you will require the third reading and we will accordingly call for its amendments.

Hon. Speaker: Hon. Oriaro, you are right and that is why it has come as a Motion. If you look at your Order Paper, the Hon. Chair is moving a Motion and the question I will put is that the House do agree with the Committee on the said report. Chairman, will you proceed with the report!

Hon. Otiato: Thank you, Mr. Speaker. Allow me to move the Motion as follows; on behalf of this Committee I wish to express our gratitude to the offices of Siaya County Assembly Speaker and the Siaya County Assembly Clerk for the support received as it discharged its mandate of examining the Draft Punguza Mzigo (Constitutional Amendment) Bill 2019.

Further, I wish to express my appreciation to the Honorable Members of the Committee, members of the public, stakeholders and committee secretariat, who spared their time to

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participate in the activities of the Committee and whose dedication and fortitude saw the completion of this report. It is therefore my pleasant duty and privilege, on behalf of the Justice and Legal Affairs Committee, to table this report and recommend it to the Assembly for adoption.

On 22nd July, 2019, the County Assembly of Siaya received a correspondence from the Independent Electoral and Boundaries Commissions (IEBC) regarding the Punguza Mizigo (Constitutional Amendment) Bill, 2019. In the letter, the Chairman of the IEBC explained that the commission received a draft Bill to amend the Constitution by popular initiative dubbed 'Punguza Mizigo' pursuant to the Article 257 of the Constitution of Kenya, 2010, fronted by the Thirdway Alliance Kenya. Article 257 of the Constitution of Kenya 2010, which the initiative is premised, provides as follows;

257. Amendment by popular initiative

- (1) An amendment to this Constitution may be proposed by a popular initiative signed by at least one million registered voters.*
- (2) A popular initiative for an amendment to this Constitution may be in the form of a general suggestion or a formulated draft Bill.*
- (3) If a popular initiative is in the form of a general suggestion, the promoters of that popular initiative shall formulate it into a draft Bill.*
- (4) The promoters of a popular initiative shall deliver the draft Bill and the supporting signatures to the Independent Electoral and Boundaries Commission, which shall verify that the initiative is supported by at least one million registered voters.*
- (5) If the Independent Electoral and Boundaries Commission is satisfied that the initiative meets the requirements of this Article, the Commission shall submit the draft Bill to each county assembly for consideration within three months after the date it was submitted by the Commission.*
- (6) If a county assembly approves the draft Bill within three months after the date it was submitted by the Commission, the speaker of the county assembly shall deliver a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the county assembly has approved it.*

In line with the Article 257 (4), of the Constitution of Kenya, 2010, the commission undertook a verification exercise to confirm whether at least one million registered voters supported the initiative.

The initiative, as received by the Chairman of the commission, was supported by 1,222,541 registered voters and hence met the requisite legal threshold for a Constitutional Amendment.

Pursuant to Article 257 (5) of the Constitution of Kenya, 2010, the commission submitted a copy of the draft Punguza Mzigo (Constitutional Amendment) Bill 2019 to the County Assembly of Siaya amongst other County Assemblies, for consideration within three months. The Assembly would be required as per the provisions of Article 257 (6) of the Constitution of

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Kenya, 2010, to submit its decision on the draft bill, jointly to the Hon. Speakers of the National Assembly and the Senate.

On 24th July, 2019 the Hon. Speaker committed the draft Punguza Mzigo (Constitutional Amendment) Bill, 2019 to the Committee on Justice and Legal Affairs for consideration and reporting to this House within the legally defined timeframe of twenty-one days.

The Speaker further directed the committee to strictly adhere to the provisions of Article 196 (1) of the Constitution of Kenya, 2010, read together with Section 91 of the County Government Act, 2012 and Standing Order Number 129 (3) all of which stress on the importance of public participation in such processes.

In a bid to implement the latter directive, the committee through a newspaper advertisement on the Daily Nation dated 20th August, 2019, called on the members of the public to present their views on the draft Bill and to submit memorandum and petitions that had bearing on the Draft Bill if any.

KEY OUTLINE OF THE DRAFT BILL

1. The need to strengthen the Senate and the National Assembly, and to reduce the cost of running national parliament
2. Strengthening devolution and taking services to people's doorstep
3. Demystifying the Presidency and end a culture of electoral violence associated with power of incumbency
4. Reducing public wage bill and recurrent expenditure
5. Enforce integrity and end corruption and theft of public money
6. Reduce cost of running elections and registration of voters

PUBLIC VIEWS ON THE DRAFT BILL

As per the requirement of the Law, as envisaged in Article 196 (1) of the Constitution of Kenya, 2010, read together with Section 91 of the County Government Act, 2012 and Standing Order Number 129 (3), the committee undertook Public Participation of the draft Bill on Thursday, 22nd August 2019 at the Siaya Agricultural Training Center (ATC) and Friday, 23rd August 2019 at Bondo Constituency Hall where members of the public presented their views of the draft Bill as highlighted below;

SIAYA ATC

The main views of the residents were as follows:

1. Based on comparative statistical analysis, that captured the Socio Economic Audit Report on the Constitution of Kenya, 2010, Kenya is not overrepresented.
2. The allegations that the proponents of the Punguza Mizigo have been cherry-picked to dupe the electorate may not be very factual.
3. The essence of representation in Parliament and Senate was to ensure inclusivity of all Kenyans, tribes and regions in decisions making, and with the multiplicity of tribes in Kenya, it is prudent to have as many persons represented in Parliament.

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4. The biggest burden to the Kenyan people is Corruption, and even if we completely scrap off the National Assembly, the money saved from its running would still be lost through corruption
5. In light of other initiatives to amend the Constitution, such as the Building Bridges Initiative, it is important to amalgamate such efforts in a bid to save taxpayers money by running both initiatives.

BONDO CDF HALL

The main views of the residents were as follows:

1. The proposed amendment is good for the people as it strives to bring resources closer to the people, through the ward development fund, which is a nascent creation.
2. However, the proposed amendment should not be to remove the Constituency development Fund since the fund has done well in helping the constituencies realize a lot in terms of development, which was a mirage during the days when CDF was not there.
3. The Bill is also necessary as it reduces the burden on the taxpayers of running the National Assembly by sponsoring unnecessary trips made by Members of Parliament.
4. The proposal is in order as it increases budgetary allocation to counties, thereby guaranteeing counties more development.

COMMITTEE OBSERVATIONS AND FINDINGS

On the reconfiguration of Parliament, the Committee finds that:

1. Based on the Socio – Economic Audit of the Constitution of Kenya 2010 (2015), in terms of representation, the current Kenyan Parliament translates to an average of 120,000 constituents per MP and 100,500 including the Senate. This puts Kenya in the middle of the pack with her peer countries with populations of 40 to 50 million people.
2. Kenya, with its ratio of 120,000 constituents per MP is below the global average of 146,000 constituents per MP, however, according to data from the International Parliamentary Union (IPU), our parliament's combined membership of 416 is ranked 33rd largest legislature out of 233 legislatures worldwide and 37th in terms of population per MP. In this regard, it may not be very factual to conclude that Kenyan parliament is anomalous.
3. With the proposal of 94 elected and 6 nominated Members of Parliament, this significantly increases the ratio of population per MP to 500,000 constituents per MP which is way above the average, hence considerably diminishes desired contact between the constituents and the Member of Parliament representing them, and thereby curtailing democracy.
4. The Bill seeks to convert counties into constituencies and create three legislative positions, and further creates a powerful Senate with veto powers over the National Assembly without differentiating the voting constituency of the two.

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5. In addition, and more confusing, is that the Bill does not address Senate's limitation to only legislate on Bills that affect the counties, as such it is not clear how Senate would veto the National Assembly when its mandate is limited to counties.
6. In essence, the proposal to designate Senate as the Upper House is not accompanied by concomitant redefinition of the functions and powers of Senate and National Assembly. Without amendment to Article 95, the National Assembly will retain all the authority of enacting legislation while the Senate only participates (Art 96) in legislating.
7. All the functions of appropriation of funds, oversight of state organs and approval of declaration of war and extension of state of emergency remain intact with National Assembly under Article 95. It is therefore not enough to just state that the Senate shall be the upper house.
8. In addition, in its proposed Article 96(5), the Bill purports to give the Senate the powers to establish whether a Bill from the National Assembly contravenes the Constitution or goes against public interest. This is a clear usurpation of the powers of the High Court under Article 165(3) (d).
9. Having parliamentary representation at county level goes against the dictum of "No taxation without representation." This may see the return of long-standing grievances of domination by larger tribes and clans as seen in the past and which formed a key desire to review the constituencies in the year 2010.
10. Counties that are not mono-ethnic such as Migori will see a return to long forgotten tensions. Many small communities that currently have representation stand disenfranchised.

On wage Bill and reducing the Cost of running parliament the committee finds that:

1. According to the Socio – Economic Audit of the Constitution of Kenya 2010 (2015), the budget for Parliament is to the order of 2% of the national budget, in terms of cost per citizen; our parliament budget for 2014/15 translated to Kshs. 550 per person, against a global average of Kshs. 1,670 per person. This statistically portrays relatively good performance for Kenya.
2. Kenya's public wage bill as a ratio of GDP is 8.3% against a global average of 7.5%. Salaries, allowances and wages of legislators and parliamentary staff account for less than 30% of the Sh. 43.8 Billion allocated in the 2019/20 FY or Kshs. 13 Billion or 0.004% of the Budget. While it is important to manage the wage bill – including that for legislators – we need to tackle the problem holistically; the draft proposal deviates from this.
3. The Draft Bill fails to address the key areas of concern on public expenditure wastage such as foreign and domestic debts, corruption and uncollected revenue, which the Bill fails to propose strategies that can be implemented to mitigate them.
4. The biggest cause of burden to the Kenyan taxpayer is debt (domestic and foreign), which currently stands at Sh. 5.3 Trillion (68.9% of GDP). In the current 2019/20 FY, the

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country will spend Sh. 1.1 Trillion (61% of annual revenue) in servicing such debt. It would have been helpful to propose mechanisms to control runaway borrowing such as a requirement for parliamentary approval of all foreign borrowing.

5. The debt is followed by corruption where it is estimated that the country loses more than Kshs. 600 Billion annually (about 10% of the Annual Budget or 30% of annual revenue collected). An estimate of Sh. 200 Billion is lost due to uncollected revenue. These according to the committee, are the real areas of wastage and hence lay burden on the taxpayer.
6. On corruption, the Draft Bill proposes, the imposition of life sentence to persons found guilty of corruption and further reduces the time for trial of corruption suspects, but fails to propose any corruption prevention measure that are key in the war against corruption.
7. The proposal to try corruption suspects within 30 days may technically lead to setting corruption suspect free since corruption webs are normally so complex that concluding the trials within 30 days is no mean feat.

I am so interested in this because as a former investigator, for you to collect an evidence on maybe on this digital thefts, you require proper period and you cannot enclose services unless, we are not talking about an assault where somebody fights you.

Like now, Arror dam has taken all these ages but if you are told that you have to produce these people, investigate and complete within 30 days then automatically with a Constitution which we are saying that we give rights to individuals, we need justice everywhere, then it means we are setting a ground for these culprits to be going home on technical issues, especially poor investigations.

Factors beyond human control may result in delays for trials; this is not to mention the potential for mischief because all a suspect would need to do is to raise as many objections and adjournments as possible for the 30 days to elapse then call for mistrial.

8. The proposed Bill fails to address the following areas that have often been of concern to the citizens: Need to review Articles 225-227 on tightening control of public finances, outlaw conflict of interest where public servants do business with the State, permanently bar persons convicted of economic crimes from ever serving in public service or doing business with government agencies, strengthening public procurement and asset disposal laws, making annual declaration of wealth public, providing necessary independence for agencies charged with investigating and prosecuting economic crimes, rewarding integrity and protecting whistle-blowers
9. To crown it all, the country has several legislations in place like The Ethics and Anti-Corruption Act, 2011, Anti-corruption and Economic Crimes Act, 2003 amongst others that can be enhanced and amended to cure the vice without necessarily amending the Constitution.

On Gender Parity and women representation

1. The committee observes that the Bill seeks to delete Articles 100(a) and 177(b), which promote representation of women in Parliament and County Assemblies. It also seeks to abolish nominations to the Senate and County Assembly
2. While it seeks to address the same in the National Assembly by proposing one woman per county, there are no mechanisms to realize two-thirds gender rule in the County Assemblies and the Senate.
3. Going by the current socio – economic status between men and women in the country, these Houses would be almost 100% male dominated. This is a step backwards because from the current 97 women currently in parliament, under this proposed Draft Amendment Bill, the number drops to 50 yet it doesn't give a cure for the same.

In this, what we are saying is that in the two Houses, the National Assembly is taken care of but in the County Assembly and the Senate there is no provision of nomination.

Going by the traditions, the male dominance, we have got some communities that actually believe that a woman cannot lead them and they look at it as a taboo. So, we are saying, we are talking about the gender and so on but how are we taking care of this third rule in these two Houses? By passing this particular Bill then it means automatically we are contravening other Sections of the main Constitution which provides for representation at these levels.

On abolition of the position of Deputy Governor

1. The committee observes that proposed Bill seeks to abolish the position of Deputy Governor without a convincing justification in relation to reducing costs and burden to the people.
2. If it is on the account of costs, elevating one member of the CEC to perform the functions of principal assistant to the Governor, as the bill proposes would result in the same costs but with reduced accountability since the said CEC member would serve at the pleasure of the Governor.
3. It is paradoxical therefore that the Bill seeks to abolish the position of the Deputy Governor, but leaves that of Deputy President yet their establishments were premised on the same logic.
4. It is important to note that the Annual Budget of the Office of the Deputy President alone equals the total allocation of devolved funds to two counties, so that if one wanted to save costs, the Office of the Deputy President should have been the target.
5. It is also a fact that having a Deputy Governor, eliminates the need to hold costly by elections in the event of the vacation of office by a sitting Governor like it happened in Nyeri and Bomet. The smooth takeover saves taxpayers costs. What the Bill proposes would increase costs by necessitating costly by elections in such instances.

6. In addition, in light of the ruling by Justice Mumbi Ngugi, where there may be need for a governor to step aside when charged with cases of abuse of office, the position of the deputy governor comes in necessary as it prevents any constitutional crisis.

On Constitutional Commissions

The committee observes that the Bill proposes to delete Article 250(1) removing the mechanism for appointment of Members of independent Commissions without providing for an alternative. Yet this is the hallmark of checks and balances in such appointments envisaged by the constitution.

1. In addition the committee finds that the proposed deletion of Article 250(7), which makes remuneration of Commissioners a charge on the consolidated fund, takes away the independence of the commissions, because once the salaries of independent commissioners is left to the whims of the Executive there is potential for abuse.
2. Besides, it has been established that commissions that serve on a part-time basis are more costly than those serving permanently. Some known to schedule up to four meetings in a day, each meeting drawing sitting allowances.

AREAS OF CONCURRENCE

Despite the various areas highlighted above which the committee may not be in agreement with, there exists particular issues raised in the proposed Draft Punguza Mizigo (Constitutional Amendment) Bill, 2019, which the committee resonates with, as enumerated below:

1. The Bill proposes an **increase in the percentage of equitable allocation to the counties** from the current 15% to 35%. However, there is a need to go beyond the 35% based on comparison with other African countries.
2. By comparison, South African government disburses 52.5% of its Budget to provincial governments (like counties) and municipalities, and retains 47.8%. Nigeria's federal government takes 52.6% of the national expenditure and disburses the balance of 47.4% to the states and local governments. Based on this comparison, any allocation above 40% would be relevant for Kenya.
3. The committee also agrees with the **introduction of the ward development fund**, as a nascent idea heralded by the proposed Bill. The ward development fund is an important aspect of devolution as it enhances the movement of resources much closer to the people. It further enables the people to make their priorities at a closer jurisdiction hence enhancing the effects public participation.
4. However, the ward development fund proposal should come with clearly highlighted legal framework to ensure its implementation; supervision of projects, inclusion of local leaders and the general populace in order to safeguard against any potential abuse by the County Executive.

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5. The ward development fund will further ensure equity in county development, and in essence foster unity, since no part of the county will feel left out, or denied opportunities for development.
6. However, the ward development fund should not be used to replace the Constituency development Fund (CDF) as the Draft Bill is proposing, but should coexist with CDF as there is need for more resources in the Counties to achieve many pressing needs
7. The committee also agrees with the proposition of **7-year** non-renewable presidential term. Considering the political intricacies involved in the presidency, which may limit the president in performance of the function of their office, as well as the political upheaval and ethnic tension associated with running for the office of the president, the one term presidency will demystify the concept of winner takes it all and ease the attendant tension and upheaval.

We look at all these considerations. The key thing, the good part is that we totally agree with it, but there are some loopholes in certain areas. Of course we do not have any provisions for the amendment of this, we either accept it or reject it.

Based on the few issues that we have highlighted, in a nutshell, the Committee having reviewed the draft of the Punguza Mzigo Bill 2019, and taken views and representations from Members of the public, and aware that the Bill cannot be amended in the County Assembly irrespective of any contrary view, the Committee recommends as follows:

1. The County Assembly of Siaya rejects the Draft Punguza Mzigo (Constitutional Amendment) Bill 2019 since it proposes changes that may erode the democratic gains achieved so far and enshrined in the Constitution of Kenya 2010.
2. In light of other Constitutional amendment initiatives, that the Committee is aware of, particularly the Building Bridges Initiative (BBI) it is prudent that the Punguza Mzigo initiative amalgamates the agreeable aspects of it with the Building Bridges Initiative.
3. In Line with Article 257 (6) of the Constitution of Kenya, 2010, the Committee recommends that the Speaker submits the decision of this House on the draft Punguza Mzigo (Constitutional Amendment) Bill 2019 jointly to the Speakers of the National Assembly and the Senate.

I do call Hon. Oriaro to second.

Hon. Oriaro: Mr. Speaker, I am honored because I wanted to support the Motion outside the Box not within the Box. If Kenya would have gone for its own sons who mean well for the future especially the Nilotes, especially one of its sons, then I would say Ekuro Aukot deserves praises from everybody, but unfortunately what he has brought to the world is dead on arrival because of the last recommendations, whereby the geopolitics of this place doesn't favour. The Bill is perfect and as Oriaro I would have supported it.

Secondly, I say that I am supporting it outside the box but many questions have been raised. The hows and whys, but the report doesn't give us those answers. In terms of logic, the report wants us to be persuaded. The Constitution is a document of legal principles. It doesn't tell everything. We have entrenchment of it by way of statutes and that is why I am saying this

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document is good, but it will still fail based on the circumstances. On behalf of Central Alego, I am left with no choice.

On the public representation, do we just represent the people for the sake of it or we talk of quality representation? Saying that we are over represented is an understatement because areas which are cited to be over represented, you will learn that the Punguza Mzigo philosophy is anchored because their earnings are below that which we are fronting for; many seats, hefty packages, representation is minimal

Just as it happened in the case of Jesus under Pilate, it is the people who said that Jesus Christ be crucified and Barnabas the thief be exhilarated because he was stealing and sharing with everybody. Oriaro is left with no option but to merely support the rejection of the Ekuro Aukot thing not because it is good, but forces external are prevailing, because it has been mentioned that the Bill has to be incorporated in the BBI.

My direct warning to the Former Prime Minister Raila Amollo Odinga and President Uhuru Kenyatta is that they have spent billions of shillings in the introduction of BBI which we are yet to see. Ekuro Aukot never spent anything. We want a document that will be reflective of the aspirations, on the path of representation, oversight and Legislation; we want a document that shall stand the test of time. I support.

Hon. Odongo: Mr. Speaker I request on a point of Order, I would like the Hon. Member to withdraw the Statement of Warning the Prime Minister, Hon. Raila Amollo Odinga.

Hon. Speaker: Hon. Oriaro, is there a better way of putting your point across without the warning? People who are not in the Assembly cannot be mentioned by their names, but again I also appreciate the Political Leaders, they expect to be drawn into this discussion, but in a mild way. Will you do that?

Hon. Oriaro: Yea, Mr. Speaker, Sir, my language is crystal clear, warning is all about notice and if I may be misunderstood, I have no apologies in this world.

Hon. Speaker: We want to give you chance to participate, but can you do it within the confines of our Standing Orders. Tomorrow it will be you out there, and you would not want a Legislature here to take advantage of their positions in the House to talk bad of you.

Hon. Oriaro: Mr. Speaker, Sir, in the spirit of the recommendation that BBI incorporates the Ekuro Aukot gains; mine was to underscore that in a much more powerful way. If anybody didn't understand that, then I am sorry. I replace that word with I put them on Notice. If I withdraw that then my statement will be incomplete. Then I withdraw.

(Laughter)

(Question Proposed)

Hon. Oyuago: Thank you, Mr. Speaker, I want to support the Report fully and the most important part is the recommendations. The first one says that; The County Assembly of Siaya rejects in totality the Draft of the Punguza Mzigo Bill that is what I want to support.

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Right now the census is going on country wide and people are very happy with the exercise. What do we know about the census? People want to have their constituencies. I come from Yimbo and Yimbo is in Bondo Constituency. We have mobilized people to come out in numbers for the census for us to get a constituency. This Punguza Mzigo bill wants to reduce the number of constituencies. Whether it passes in the 24 constituencies as is required by the law, I am assuring you that this report will fall flat.

This report tabled here talks on the issues of 1/3rd Gender rule which is not clearly indicated in the Punguza Mzigo Bill. This is a platform where I am in as a Nominated MCA which will give me the platform to vie in the next coming election, and when this Bill wants to scrap that off, I will not allow.

On the same issue of 1/3rd Gender rule, the Bill does not address properly but it is captured here in the report, how the Bill is going to address the issue of the Gender rule in the Parliament or in the Assemblies. Let's take for example when the elections come in 2022, and all men are elected in the County Assembly, how will the Bill address the Gender rule?

It was said clearly by the mover of this Motion that we have no powers to amend this Bill and the only option that we are left with is to reject it. It has goodies in it that we need to support but some parts need to be rejected.

On the issue of terms for the leaders, for example the Governors' two terms, most of them are serving their last terms and they have got nothing to lose like our Governor. He can decide not to implement any project in any Ward because he will not come back to the people to look for any votes.

I don't support this Bill as indicated on the report based on that. There must be something that ties a Leader with the people. If it is one fixed term, the 7 years, then most of our elected Leaders will have nothing to lose after finishing their terms.

Hon. Madialo: thank you, Mr. Speaker. Allow me to start by supporting the Committee's report. What is being sought to be amended here is not an ordinary statute. The initiator of the Punguza Mzigo Constitutional Amendment Bill 2019 proposes to amend the Constitution. We have a Constitution. We have are not operating on a vacuum. The questions of the proposed amendments and the equivalence of suggesting that you can re write the Bible by introducing articles from the Quran in it.

One of the proposals that would qualify this for rejection is that on the basis of the cost alone, representation should be reduced. Around 210 scores ago, a very great leader attempted to define democracy. Of course we do not know the meaning of democracy but we can say it is good, and Democracy can be seen if you say it. That Democracy shall be a Government of the people, for the people and by the people.

This means that Democracy connotes Government run by the people themselves, but because the people cannot all come here, they elect representatives. The lesser the number of representatives, the minimal their participation in the Government. My suggestion is that on the basis of representation alone that the cost be reduced is notoriously misplaced. I do not want to pretend that I do not like the parts of the proposed amendments, this is a Constitutional

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Amendment and because it has been brought to us by way of Bill, as the Speaker had directed earlier, and we either accept it wholesome or do away with it wholesome.

I would have agreed with the initiator of this Bill and disagreed with the Committee on the issue of Constitutional Commissions. I want to give just one example. The Reports seek to suggest that making their remuneration a charge on the consolidated fund to make them dependent on the Executive, but are they independent even now?

I want to give an example of a Commission that is with due respect looking for a job on what to do. The Salaries and Remuneration Commission. Yes, there is a suggestion that it is independent, and yes it is given a budget line of its own, but this is a Commission which suggests that Members of the County Assembly cannot have House allowances, but the other Legislative body called Parliament is able to have their House allowance while it is sitting on its seat, and the Senate is unable to get their House allowances. That is a Commission that is there for the beautification of the Constitution.

This is a Commission that proposes that at the lower level of the Legislation you shall be responsible for oversight, legislation and representation. At the National Assembly the same duties. Then, after allowing you similar duties, it allows one party to be getting a car grant and then the other one it tells get a loan and buy cars.

I would have agreed with this amendment that some of those commissions be scrapped and if I were to be asked which one to propose first for scrapping I would have suggested the salaries and remuneration Commission.

The Constitution of Kenya starts with, '*Aware that God is Supreme,*' makes the people second to God, and so, when you want to amend the Constitution, it is good to go to the people because the Constitution is a contract between the ruled and the rulers. I heard my able brother Hon. Oriaro put BBI on notice. He owes me that; he didn't whisper to me that if they did not observe the notice what would be the penalty.

The BBI spent billions and it has gone to the public and we are aware that it is going to the public. These people did not spend anything and we heard about it in the newspaper and they brought this thing here. Who did they ask about this initiative? Who gave them this proposal? So that the voice of the people is retained as paramount in Governance, we should not be fearful of the cost of asking people about their views.

If we are going to spend so that the peoples' voice is incorporated in re writing our Constitution, let us spend, but obviously we cannot allow that somebody is able to tell us that it is cheaper without consulting the people.

Lastly there are Countries who are also in this globe more so in the Far East, that is South Korea, Philippines, Taiwan where the President is elected after 7 years and serves one term, but that has been their tradition since they gained independence. That is what they are used to, and that is what they hold themselves into account.

With the people of Kenya on the few occasions where we have taken arms or attempted to take arms, citizens against Citizens, because there is a Leader who was defending their positions, there are underlying historical injustices that has been moving up their heads every

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time there is an attempted transition. Whether the incumbent is transiting to a second term or a new Leader is coming in.

We cannot cure tribal conflicts or clan conflicts, because in North Eastern it is not tribal, they are all Somalis but they still fight. In Rift Valley, the Pokots and the Turkanas are still fighting, and people are really talking about peace between them. In North Eastern it is only one tribe which fights amongst themselves and they fight on the issues of grazing land for camels.

The Pokots and Marakwets vote in one basket. They voted mostly Jubilee, and then when Jubilee took over power, they started fighting over cows. We would be lying to ourselves, stating that the Constitution be changed because we want to resolve conflicts and pretend that the conflicts have been coming aboard because of the political contexts.

In my view, the conflicts come because of the political contests and in my view conflicts are deeper than political contests. I said earlier that some of the suggestions are good, and they are so good that Ekuro Aukot should have allowed our people to tell him that they are good. As long as our people have not told him that they are good, we do not know if they are good.

I want to walk hand in hand with Mheshimiwa Otiato that this Report be adopted and it is taken back to Aukot. He will go back to the books of History and try to amend our Constitution.

Hon. Opanga: Thank you, Mr. Speaker. I also want to support this Report, and just to pick from where Hon. Madialo has left it, the Bill of Aukot just as it was brought. Amending a Constitution is not a one man show. It needs a lot of industry players and the voice of the common Mwananchi, because the Constitution will govern the people living within that Society. Just like the Bible and the Quran which guides Muslims and the Christians.

This is a bill that someone sat in his office and drafted it according to his needs and suitability and decided that now let me present it to the people of Kenya. Even the issue of one million signatures had a lot of question marks. The amendment of a Constitution needs all players on Board. Even the 2010 Constitution where we came up with the Bomas draft had a lot of players that were brought on board and thus we got the current Constitution.

It is sad that the gains that we have achieved so far will be watered down by one man who believes that we want to elect two leaders, so that a person like me who comes all the way from Ugambi, that when I want to engage a leader, for example from Rarieda, I have to walk all the way to Rarieda in order to be served by that Leader from Ugambi. It is not logical.

The reason why I support this Report is because it lacks the common interest of the people of Kenya; secondly it has indicated that it is giving the Senate the Veto Power. It has not clearly indicated that when the Senate is given the Veto powers, it only deals with issues of the Counties whereas the National assembly deals with the issues of the National Government. It doesn't distinguish how these two Houses will be able to operate and conduct their Businesses. I support.

Hon. E. Odawa: Thank You, Mr. Speaker. I stand to request this House to reject this Report. Members of the Committee read Ekuro Aukot's Bill with a political eye and failed to read it as it is and what it really stands for. Members of this House have failed to think

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independently and are being cowed and intimidated. This is the time for us to stand for Kenya and let us stop looking at it with a political eye.

The Senate as it stands today is basically a House of retirees, flower girls doing a lot of nothing. The problem that we are having right now in the Country is that the County Governments have stalled because there is no clear cut. This Bill is trying to create relevance for the Senate. Sometimes it is good to look at the good of the Nation. I know I am a minority in my opinion but I stand by my opinions.

The Bill may not be perfect, but this Bill seeks to devolve funds down to the wards, this Bill seeks to give you powers so that you can come out of the intimidation by the Executive. Members of this House nowadays we are frustrated, when we place Budgets when it goes to the Executive, it is mutilated without respect to us.

So this Bill is seeking to give you powers to devolve the funds down there to the local person. This is what we have been fighting for all along. MPs get up to Kshs. 120 million per year. If you move around the Country to look at what the 120 million has done you can't see anything. In Siaya, the Kshs.30 million that come to our wards, sometimes 15 million and the 15 can be felt and seen. Members, what are you afraid of?

Time has come for us to say the truth. The only problems with this that may make it dead on its arrival are the political issues but otherwise it is a good thing. One term for presidency is a good thing, it is healthy. Imagine other Communities like the Elmolo, Ogieks, and the Pokots. When will they ever descend to the position of leadership? If we talk about Leadership, Presidency for 10 years.

We have 47 Communities, and you are talking about two hundred and something years before the seat goes round. We have to get rid of this the winner takes it all. If this Assembly doesn't pass it I pray for other Assemblies to pass it, because I will pass it. I request this Assembly to reject this Report. Thank you.

Hon. Adala: Thank you, Mr. Speaker. I want first to affirm that I have not been cowed by anybody and the submissions that I am going to make are my own and nobody has coerced me into taking the stand which I am going to take by supporting this Report and rejecting this Bill. I want to thank this Committee for doing their research well because as the Chair was reading this report I was following keenly to really see if there are parts that they had left out.

I realized that all the parts that I really had issues with are taken care of and are well captured. The mover of this Bill, Dr. Ekuro Aukot is saying that the basic reason why we cannot get good services in this Country is because of representation, and he moves ahead and says, he wants to cap the salaries for the MPs and the Head of State.

Fair enough, but we should know that when I am vying I am expecting this one which has been capped, but I find fault when he fails to mention this other part, whereby he leaves these other MCAs at the mercies of Salaries and Remuneration Commission (SRC).

What would happen if the SRC now decides to sit down and decide to say that now, the MCAs will earn 60 that have been capped here? I would have been happy if all the positions were capped.

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It is also a falsehood that has been said over and over again to the extent that when we talk about salaries, everybody is looking at the leadership. That while we want to have salaries capped, it is done across board, so that we are not only looking at the political leaders but we are also looking at Ambassadors and all other public servants of this Country.

Something else that have not augured well with me is that, and I have the luxury to report that since I got this Bill, I have had a total of 26 sessions in Siaya as a County and I have engaged people on their thoughts of this Bill.

The people of Siaya are telling me that they are not comfortable with having only two people representing them in Siaya County. If we went to Rarieda now for example and ask the people of Uyoma and Asembo if they wish to have 2 Reps they would tell you no.

Now Aukot is telling us that we will have only 2 Representatives in Siaya County and I say No, then he says that they should be a man and a lady. Then there are these other slots. Let me start by saying that I am at this Assembly because of the Nomination by ODM. The question that we should be asking ourselves is that are these positions helping our citizens or not before saying we should send away Women Reps and what not...

My answer is yes, the people have gained. As a Youth Representative of Siaya County, there are matters that we have been able to address that concern the youth of this County in matters of Governance. So if we are to remove the representations then I find it wrong.

Right now there is a stalemate between the Senate and the National assembly in regards to the funds that should be coming to the Counties. I expected also, while he is talking about 35% of the funds that would now come in, but again a stalemate has arisen, when you want to have a change, and then you must factor in those changes. Ekuro Aukot has failed to now really stipulate which of these two arms will be in charge of the revenue allocation.

The gap in law is what has led us to where we are this day, and when you look around, you will find hospitals with no drugs and things are at a stalemate.

As I finalize, marginalization is something that we have never wanted in our Country, the reason that we have constantly moved from Constituencies, one after another. If today the people of Usonga and Yimbo are among the marginalized in Siaya County, with all due respect, if we are saying that Siaya County will be having two people, then chances of a person in Usonga rising to be a Member of Parliament is not very easy. So I think we need to give people latitude to elect those that they want.

Finally, he also wants us to do away with the post of Deputy Governor and he says that H.E. the Governor will pick one among his staff. The reason as to why we are having election and we elect two is because we want this other fellow also to have immunity of office so that his senior can't just sit and say he feels bored and sacks him.

It is costly to have a by-election in the event of the death of a Governor as he is trying to tell us that we will save millions and millions. In fact, how I wish the next time we are looking at a serious Bill for this one is less serious; when the BBI shall come up with their Bill I would also want that in case of a death of a Governor we have a by-election because at this rate I can see so

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many of them being killed by their deputies. Last but not least I am in total support to the establishment of Ward development fund as has been stated in this Bill.

And this is where this gentleman called Ekuro Aukot used his wisdom and I gave it to him because he knew that once he inserts the Ward fund then MCAs will get excited and say we are supporting. We are saying that we are wiser than Ekuro Aukot thinks that you can only include one aspect of legislation that makes us happy and you think we shall support.

I believe that the BBI and I don't want to take the route of Hon. Oriaro; when the BBI comes here we will have Ward development fund and entrenched with also the laws that will make us understand how it will also operate. I conclude by saying that if your Mother in law doesn't know how to sit then you direct your eyes to look elsewhere. Dr. Aukot should look elsewhere because this Bill has been rejected, thank you.

Hon. Olasi: Thank you, Hon. Speaker, I stand to support the rejection of this Bill. Allow me to start from where Hon. Adalla has just left. No matter the angle we are looking at this thing whether political, what Ekuro Aukot did and what some of our Membership have stated here that this Bill is good for us, good for you as who?

Ekuro Aukot knows that this Bill is going to pass through 47 Assemblies and he is trying to put it that the MCAs are going to control the money that are devolved directly to the Wards to make the MCAs happy and that's why some Members are saying this thing is good for us.

He wants us to support this Bill because the MCAs will control, sic funds; no; even if it devolves to the MCAs tomorrow but the money is devolved in the correct manner not to suit our offices the better for Kenya. With the narrative of this is the time when it is good because you are an MCA and you are being told that the money will be devolved; I don't support. I am here to represent the people of West Uyoma; that's a fact.

Hon. Speaker, we shall tell you as a representative of the people I am here to make sure that their interests are articulated in the right way. Where in Siaya did the Punguza Mzigo team visit? Authoritatively, I will say in this House that I accompanied the Hon. Speaker, Hon. Siguru and Hon. Shirley when the BBI came to Siaya; that's a fact.

Where did these people consult? Whose opinion did they seek? They are saying they want to do away with Article 100 and Article 177; last Assembly consisted of 49 Members reason was only one female Member was directly elected and so the number of nominations was high. This time around we have more female elected Members thus occupying the line representation of women and therefore minimum number of nominated Members. If you are trying to tell us that we forget about nominations; forget about women as a factor.

We are proud to be associated with the likes of Hon. Adalla and Hon. Nancy because they represent the youths and somebody is telling us we do away with that. Hon. Omwende is here courtesy of the representation of the persons with disability and you want us to do away with that.

This is because you are told that you are going to control some monies; if you want to control monies go and do your business and you will control your money at that level. Who elected you to come and control some monies?

(Applause)

As the president of Whips in Kenya I have a meeting next week with all the Whips in Nairobi and I have indicated clearly that we should not be guided by ego; if not me then nobody else, No! Last but not least; Lamu as a County has got only two constituencies with a population of less than 200,000 while Nairobi as a County with all those constituencies and a population of over 4million.

You want to tell us here that Lamu is going to elect one lady and one man, Nairobi the same and also Siaya the same. Equity is not captured here, I support the rejection of this Punguza Mizigo Bill and I support the Motion, thank you.

Hon. Odongo: Thank you, Mr. Speaker, Sir; I support the work that has been done by the Committee that is rejecting the Bill. It is true that the essence of devolution is to promote equality and equity. We are not against that but reading and going through this Bill; at the back of the Bill, the author; Ekuro Aukot who is referred to us as a party leader. We also have our party leader and we are aware that as it has been mentioned by one of us that let us not look at this Bill with political mind.

A party leader who is Ekuro Aukot, the author of this Bill is also a political leader somewhere. We must look at this Bill with political mind; I want to remind Hon. Members that we must think and be reminded that he is here with political goodwill. Not Ekuro Aukot's goodwill but the goodwill of the party leader who is our pope the T.R.H Raila Amollo Odinga. Some time back in a funeral...

Hon. Akuno: Point of Order! Mr. Speaker, Sir; are we debating things involving political parties? Why is the Hon. Member involving party issues? Ekuro Aukot is just helping Kenyans, forget about party politics here.

Hon. E. Odawa: I am requesting Hon. Members to address the Report, not address my opinion, thank you.

Hon. Odongo: Thank you, Hon. Speaker, Sir; allow me to proceed. As I proceed I was reminding some Hon. Members but not Hon. E. Odawa. I don't know where Hon. E. Odawa is coming because I have never mentioned anyone's name.

I want to say that even the purported millions of signatures; the people who signed the Bill are still in question according to me. I have said this because sometime back when we were searching for signatures with Hon. Raila Amollo Odinga while working out the Okoa Kenya thing, we are aware that there isn't any famous party leader in this Country than Hon. Raila Amollo Odinga.

Hon. Raila Amollo couldn't manage to collect the number of signatures that have been mentioned here during Okoa Kenya campaign. This brings us to the question on the signatures. As we reject the Bill and support the Report I want to say that passing this Bill is like trusting Ekuro Aukot with devolution which is like believing that our catholic Pope is a Muslim. Can't work, thank you.

(Laughter)

Hon. Akuno: Thank you very much, Mr. Speaker, Sir; I used to hear that politicians are cursed and today I believe it. If you can read this Bill, Ekuro Aukot is an angel from God. If you see Article 73; *an accounting officer of state whose department is cited in the annual Auditor-General report having not accounted for public money or fails to prove value for money, shall be required to immediately vacate office.*

Everyday people are crying because of corruption; even us it was alleged that we are corrupt because it was said that we were paid and we never went to Uganda. Let's go to no. 4; *a person convicted and found guilty of corruption or theft of public resources or money shall serve a life sentence.*

In fact, I am one of them because they have also said that Hon. Ambrose is taking money for free. I wish I could be jailed for life; Ekuro is helping Kenya if you follow those proposed legislations. Article 89; (d) delete the word "constituency" in sub-article (5) and replace with the word "ward".

I have heard people saying that an MP from Alego...; Ekuro is saying that delete the word constituency and replace with ward that means that we can represent our people fully. If we want to know the value of devolved system, I believe through this our people will feel the value of the devolved system and that's why I support this Bill and reject that Report. There is another place here; this man Ekuro is very clever, Article---

Hon. Adalla: Thank you, Mr. Speaker, Sir; I am just referencing on what he has referred as to, Article 89 (e) but I have not seen a replacement of the word Ward. He is telling us that Ekuro Aukot is saying that replacing of our constituency shall be with Wards but I am reading it here and I can't see where that is inserted. I think he is misleading this House and he should be jailed as per his wishes.

Hon. Olasi: Hon. Speaker, I am on a Point of Order! Is it in Order for a Hon. Member to refer to the author of Punguza Mizigo at one time an angel from God, second time God. I believe the God that I serve as Hon. Olasi is beyond comparison to anyone and people like Ekuro Aukot and caliber cannot match my God. I don't know whose God this Hon. Member is referring to.

Hon. Speaker: His god is with a small 'g'. Let's proceed.

Hon. Akuno: Article 97; the Constitution in sub-article (1) by (a) deleting the words "two hundred and ninety Members appearing at the beginning of paragraph (a) and substituting therefore the words ninety-four Members consisting of one man and one woman from each of the 47 constituencies. Ekuro has not said that he is going to interfere with Counties but only the National Assembly to be equally served by one man and one woman. I have a problem in my Ward---

Hon. Otiato: Mr. Speaker, Sir; I think when Hon. Akuno was speaking I heard about one man one woman.

Hon. Akuno: That was slip of a tongue; I am angry because we are cursed and when I see cursed Hon. Member I get angry. Justification (c) it will end the perennial and conflictual

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competition between MPS and MCAs on management of Wards, as well as end duplication of development funds. This will encourage MPs to focus on their representation, legislative and oversight roles over government.

If you go to my Ward; sometimes they tell me that they elected me and I am doing nothing and that Otiende Amollo is the one working. Up to today they don't understand that as an MCA I don't have any fund.

In this case Ekuro wants to help us because we will get funds and people from my Ward will say that I am working and if we lose this opportunity what do we want next? I rest my case by rejecting this Report and I wish the Committee could have invited Ekuro Aukot to come and teach us about this Bill before we reject it.

Hon. Odongo: Mr. Speaker, Sir: Hon. Akuno to withdraw his sentiments that politicians are cursed. Is he not a politician?

Hon. Akuno: People usually say we are cursed and I believe we are cursed if we reject such a Report. I am among them.

Hon. Ochieng: Thank you, Mr. Speaker, Sir; let me start by thanking the Committee for having brought this elaborate Report. Having looked at the Bill I want to say that Mr. Ekuro Aukot wanted to confuse us; as you know I come from a fisher folk community. When you want to go catch fish you trick them so that they rush for the bait and get hooked.

How come Ekuro Aukot says that we replace the word Wards with the constituencies which means that automatically there will be no Wards and like I who represents Yimbo West Ward he wants to test me that if I want to be an MCA I must campaign in Bondo constituency just because I want to be an MCA. In Kenya we have got so many educated persons with no jobs. The position of MCA is one of the job opportunities that we the youth are getting from this Country.

Someone comes walking that he wants to cheat us by creating Ward development funds. We know the BBI should now address the Ward development fund. Even without the development fund there are projects in our Wards that are already implemented with this system that is working. He can't just come and fool us.

We always know and believe that the voice of many people are the voice of God and we know very well that Ekuro Aukot contested through his party in the last general elections. He failed to be elected as the president; even in the National parliament we don't have an MP that was elected on the Third-way Alliance, not even an MCA; this totally means that God is not with Ekuro Aukot. We can't just come and ---.

Hon. Akuno: Mr. Speaker, I want to rectify him. Independent party is not---.

Hon. Ochieng: At times when you listen to Hon. Akuno you wonder aloud; with the allegations in the corridors of power which I don't want to speak now here because they are in the public domain. Having seen the mood of the House why can't we call the mover to reply, thank you.

Hon. Odhiambo: I wish also to support the Report from Legal and Justice Committee; I want to say that Ekuro Aukot was a bit smart on his proposals but the Committee

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was smarter than him and that is why the Committee really scrutinized the Bill and came up with a rejection of the Bill and that is why we are here to support the Report from the Committee.

I want to start by saying when Ekuro Aukot talks about over representation by reducing the number of MPs from the current 416 to 147; we are even in need of village administrators or we need to create some other levels of representation going downwards because even at the Ward level we can see that even the Wards are becoming big that we can't even solve the problems of our people within the stipulated time.

When he is talking about over representation I think he is lying and that is one of the reasons the Committee saw into it that this Bill will not see the light of day. The Counties now becoming the current constituencies that is now getting leadership far away from the local people of which we had really left a long time ago.

When Ekuro Aukot says that Siaya and Bondo to be constituency while people staying around want Bondo constituency to be divided into two so that the job creation to be there. Ekuro could be addressing how revenue collected are being utilized in the correct way. Where I really concur with him is the ways or the charges those who are corrupt would be facing if they misuse public funds.

Ekuro didn't really come to Siaya, surely because when you come to my home the person who would be asked first is the father. We didn't see or hear if he came to Rasanga's home or office as the Governor of Siaya.

If he could have come to Siaya and get the views of this County I think, he could have been in a position to tell the rest of Kenyans that one of the duties of the deputy Governor is to take the position of the Governor when the Governor dies and again the Governor gets to send his deputy when they are busy.

If Ekuro Aukot saw that such duties are of less importance to him then the jobs will be added in the near future. Lastly, I want to say that this Report has not persuaded me to support the Punguza Mizigo Bill but through consultative meeting with the Committee Members we really saw into it that some part of the Bill was good but others not good for the people of this County.

We saw into it that there are some loop holes in this Punguza Mizigo Bill and therefore we really need to reject it and wait for the BBI; I know people are really working hard so that they get the views of the County. I support the Report of the Legal and Justice Committee and I would also request if not all let the $\frac{3}{4}$ of this House support it.

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

Hon. Otiato: Thank you, Mr. Speaker, Sir; once again I would like to take this opportunity to thank this Hon. House for having a very lively debate. There is one thing that I have realized that as much as I want to address these issues one by one; Hon. Oriaro, who was seconding has actually made it very clear.

He said that yes he is having interest in other areas but he supports this particular move whether the geo-political has influenced some of his decisions which is part of the social responses. As we cry about over representation, I was even proposing that in this Assembly as

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we have chances we will make it in our Standing Orders or any other way by way of even having a nurse or a doctor within us.

This is because sometimes I have realized when Hon. Akuno was contributing the pressure went so high until he was sweating seriously. We really need to have a doctor around us to attend to such situations. Issues have been raised; one of the key things is about who gave out this particular comment.

Like Hon. Madialo put it clearly that the man is second to God as placed in our Constitution and therefore we expected our people to be talked to. As we talk today; Hon. Akuno has asked why we didn't have an opportunity to invite Hon. Ekuro. I want to put it clear that the gazette Notice; we invited all Kenyans and Ekuro had an opportunity to appear before us and tell us his part of the story; at least give us the missing link in our proposed amendments.

Instead he found out that he was not interested in seeing anything coming from Siaya being maybe a politician he believed that he cannot get anything from us so he didn't find the need. Some of our Members have talked about representation and the discussion here has been about over representation.

We have got different areas that are defining their political population differently. The number of MPs is defined by a number of factors; Ekur is clever enough that when he is trying to amend Article 89 of the Constitution he is very crafty to be omitting some areas like part 5 of that Article 89 of the Constitution which talks about the factors that affect the number of MPs.

We can meet the quarter but in other cases where we don't meet the quarter we have got factors that need to be considered and one of it as stipulated in that Constitution which Ekuro Aukot is not looking to amend is the historical background of our Parliament system, the size and the County positions, geographical, the number of registered voters and even the interest of marginalized.

Look at Article 89 (5) he is very specific about some of the things and diversity that we have. We would be saying like one of the Hon. Members has said that down here we will be creating more Wards but there is an interest that is missing at the National level. The National level is tasked by some responsibility.

I would say that in Yimbo East Ward alone there is a section of Yimbo Ward composed of the Nubians. My Luo cultural practices and the social upbringing might make you overlook some issues. What the other community needs might be overlooked by a leader.

If as long as we can control corruption and be able to make money and create more positions so that at least the interest of even that one last person is felt so better be it. If that brings unity, it reduces the conflict because we have cited many issues that lead us into creation of the number of MPs or the number of MCAs; key to it is the diversity.

If we come together don't consider diversity because of cost, we are prone to conflicts. We have done a bit of good work today and while discussing this I want to say that yes the so called Aukot Bill is so good in some other areas but other areas are bad.

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These areas which are bad is what we are asking that they have given us an idea and even the BBI will be brought here; I still think by that time God willing that I will still be the Chair of Legal and Justice Committee when the BBI will be coming.

I know that possibly we have not had an opportunity to sit in this facility with BBI team so that they can hear us. Mr. Speaker, Sir; through the Report that we have and the letters that you are writing I know you are going to make a communication and our voice is going to be heard through this Report that is being forwarded. I know it's a public document and the BBI would be able to take a leaf and know what we actually want as Siaya. One of it is this money that is being brought to us as Ward development.

We are tired of begging for this money, we need this fund down there and we need to have a proper structure on how this money is being spent. Ekuro is a politician; he has done his politics well and divided this very well because he knows that we are having a problem at the National Assembly and in the Senate in terms of revenue allocation.

He creates something for the MCAs to get the majority votes of MCAs and he pleases the Senate by saying we are giving you the upper House but not giving you instruments to that Senate can carry out those pertaining to that particular office by avoiding to amend anything on those other structures but saying you are given veto power.

He is trying to play politics; I want to urge this particular House to maintain and be very sure that this particular move that we are taking is not because of any influence or any political interest but then unless you are reading and saying that you don't care whether your constituency is done away with.

You don't care whether we will be able to get the third gender rule in the next Assemblies both at this local level and the Senate. Once we are on this and we are reading on the same platform that at least there is one element which is not right then it is right for us here as a whole to say that one element that you can change makes us reject this and we give opportunity to BBI to do the other bit or any other initiative.

This is because possibly another initiative is up; BBI will be bringing their's we either reject or accept and the other third initiative to combine all of them and give us the best document and with all those many remarks I move that this House agrees with the Committee in the said Report.

Hon. Speaker: Hon. Members, we shall be voting on the Report not on the Bill, in other words the question I will be putting in relation to the Report which means if you agree with the Report you will say Aye which is the yes and it automatically kills the Bill. You don't have to get confused; if we agree with Report you say Aye, we won't put a question regarding the Bill.

(Question put and agreed to)

Pursuant to Article 57 (6) of the Constitution of Kenya 2010; if a County Assembly approves the draft Bill within three months after the date it was submitted by the Commission the Speaker of the County Assembly shall deliver a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament with a certificate that the County Assembly has approved it.

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In our case we will within fourteen days make communication to the two Houses and the two Speakers that the County Assembly of Siaya has rejected the Bill.

Hon. Madialo please, you don't have to read everything.

Hon. Madialo: Thank you, Mr. Speaker. I stand to undertake one of the most difficult procedures in this assembly, because it does involve one of the most tasking and most difficult decision making exercises in the assembly; the vetting and approval or failure to approve nominees of the executive to various positions that are conditioned to go through vetting before they are filled.

It falls in our hands and it falls in the hands of the committee of appointments of this House to once again consider nominations by the government. And specifically in this case, Mr. Speaker, it is nominations to the now vacant positions of members and chairperson of the Siaya County Public Service Board.

Mr speaker, the membership of that committee is listed in page three and was a creation of our Standing Orders and by dint of the provisions of our statutes, this committee is led by the Speaker himself. I read this report in my capacity as a member of that committee.

The governor forwarded to the assembly for consideration, vetting and approval or non-approval; Dr. Elijah Ochieng Adhoch eligible for chairperson of the public service board, Mr. Gondi Hezbon Olum for membership, Consolata Adhiambo Onguto Member, Joan Atieno Odawa member, Anne Akinyi Ludenyo and Dr Margret Akinnyi Oloo.

I wish to state from the onset that so far as integrity is concerned the persons whose names were forwarded for approval were up to date, there are no issues of integrity, but issues arose as to the procedures and modalities of arriving at the persons who were forwarded to the assembly and then forwarded to the committee for vetting

Mr Speaker, I am reading the unanimous decision of the appointments committee, one issue that arose that was considered a regional committee made deliberations on the road as a decision was whether competitiveness was given its true meaning.

Mr speaker, issues arose revelations came about that's the instance I am not going to concentrate on the names of the persons touched because these are deeds or misdeeds in quotes of the interviewing panel not the candidates themselves,

Competitiveness came into play and issues arose as to whether it was given its true meaning and then particular about this the constituents of Bondo sub county, a person who had come out in the interview as number four in that sub county for purposes of regional representation was nominated for appointment.

Mr. Speaker, the committee was of the view and held that it was incumbent upon the appointing authority in forwarding the name to explain why number four would be preferred over number one, number two, and number three.

There was an issue as to why our youth despite the fact that they are the majority in our population have been ignored. It was not explained to the committee. It was not explained in writing; it was not explained even after the committee requested the explanation cover why the youth were not part of the list. This holds also for people living with disability, Mr. Speaker, the

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committee did observe that there was an applicant who was 43 years old that is not strictly a youth, but is of an age we suppose is still sufficiently energetic to undertake some of this course. He scored 90% in the interview but was not considered for appointment.

Mr Speaker, instead a person who had 76% was nominated for appointment. meritocracy is paramount in the current disposition and where merit has been demonstrated and where there is a person who is above the other one in terms of merit Mr speaker, it is incumbent in the committee's view and opinion that failure to take number one on the basis of merit to be explained.

I want to take the case in Gem, Mr Speaker in Gem; there were five candidates who applied for the position. Of the five, the best candidate was a lady who scored 78% number two was also a lady who scored 76% the best woman the lady that scored 78% was not nominated but number two was.

This committee sought an explanation from the Executive, the appointing authority as to what was the consideration that informed number one being left out for number two Mr. speaker, I emphasize on this because in this case these were two women so that if an issue of gender balancing and consideration were to come into play, there was no complication, all of them are woman.

Mr. Speaker, very important to the committee and one of the main reasons why there was a reservation in accepting the list was that two persons were interviewed on 19th of July 2019 that is what is communicated from the executive to the committee. But when the committee was interacting with the candidates, the candidates said they were interviewed on 26th of July 2019.

I emphasize this Mr. speaker because there was an issue as to whether these two candidates who are in the short list in the first place those casts a shadow of doubt on the transparency of the process and Mr. Speaker, this informed the decision of the committee. The committee observed that there were petitions and complaints about general representation of the communities in the executive.

These did not inform, or this was not reason on its own for rejecting the nominee for chairmanship or accepting for that matter. But it was the person that was nominated for the version of chairman of the current public service part expected in the interview for the portion of member of the Board, we only made the best suitable candidate with a score of 95%.

But there is a perception that there is overrepresentation of Alego Usonga subcounty in the administration line of the Executive, Mr. speaker, he also emerged the best in membership of the board other than the position of chairmanship but an explanation was not given to the assembly as requested that an explanation be given why it was not nominated for the position of member instead of chairperson of the board.

There is a perception Mr. speaker and indeed a disconnect in the reports that were forwarded on the persons that went through the interviews and accuracy of information that was given to the committee is in doubt. In fact, the committee felt that some of the communications were not true. The committee is of the view that the process that arrived at the nomination of the

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members lacked integrity in meritocracy and competitiveness because competitiveness is a must, the process itself is not credible.

Mr. Speaker, may I emphasize again, from where I started. The committee is not saying that the persons are not qualified but observes that the process of arriving at the persons was hazy with doubt and comedy saying that the meritocracy, integrity and competitiveness did not inform the identification of the persons that were forwarded for vetting.

Therefore on that basis, the committee rejects the nominees, says the process of arriving at them lacked competitiveness and merit. The committee seeks a sitting for purposes of interrogation on the report of the interview, and invites the acting county Secretary and the panelists to give insight as to the credibility of the process.

The credibility of the process will mitigate against any actions that may be adverse against persons who undertook the exercise but above all, was a speaker. I wish to point to this House that the committee on appointments has not mentioned any of the persons that were forwarded as suitable in fact, for strictly those qualifications that were required of them, there were certainly the competence at work that they might have demonstrated in our view and such the interview level, the vetting level, well, it's not our business, we may have a view about it, but what he was supposed to look at, we looked at and we have not made a pronouncement on the suitability.

We have made a pronouncement on the suitability of the process that arrived at these persons. Mr speaker, I wish to make it simpler, that this committee is asking the house to ask the way this report that the executive looks into themselves inside the shutters and establish where the exercise might have missteps and if necessary, that is their own decision that is their own mandate as elected to undertake the process by following the correct procedure and adhering to the law to its letter.

(Hon Olasi seconded)

Hon Olasi Thank you, Mr. Speaker. We are not rejecting the nominees because they are not qualified in one way or the other. But as a committee, we're not convinced that the process that was used to reach for the chair and the membership also opaque in one way or the other. And through the report, we are requesting the Executive through the county Secretary because the letter we received last was from the Secretary to bring to detail how they reached at those people, for example, you get somebody of age 78 and as if is not a factor in the interview, he was not the best.

Why do you leave out the best and bringing someone who is again, very old? Again, we're seeing the youth in one way or the other at per say you would see that you had a youth because of 35 age gap. But the people who scored the best or the second best were left out so I support the rejection of this appointment.

(Question Proposed)

Hon. C. Andiego: Thank you again, Mr. Speakersir, I want to support this report by stating the following. I will reject the nominees to the position of chairman and membership on the basis of meritocracy. Mr. Speaker, sir, if you look at the interview reports of the said members or nominees for the chairperson and nominees for the members, Mr. Speaker, as a youth there was a youth in that interview process.

The youth is 43 years of age Mr. Speaker the youth was positioned two overly in terms of those who are interviewed and the youth had 90 out of 100% Mr. Speaker because the nominated chairperson contested for both chairperson and membership of the board, because he was already nominated for the chairperson was nominated for the position of chairperson, the number two who was the youth who got 90% during the interview report, Mr. Speaker was not the list presented to us, out of the membership, the person who got 90% and who is of 43 years of age isn't even listed as one of the people to be considered for this job.

Mr. Speaker, sir, as youth I would just like to request that this county has a big number of youth who are suffering while applying for these jobs, they are taken through processes of going to the KRA.to comply, they're taking again through the process of clearing with the anti-corruption body EACC then a certificate of good conduct then again the process of clearance with the respective professional bodies and the Higher Education Loans Board.

We also have accreditation from commission of University education for the youth who have foreign degrees. Youths also have to provide the evidence of the knowledge and career of not less than five years. After all these somebody scores 90% in the interview and that person becomes number two, number one is already nominated for the chairperson position, this youth who should even be nominated for the membership position isn't even enlisted. So Mr. Speaker, sir, I want to request, this is a House of rules. Mr. Speaker, sir, we are the ones who can help the youth of this county, they are applying for the jobs.

The executive always has a narrative that the youths don't apply for these positions, there is this one who applied, in terms of merit was number two, number one has already been taken let's consider number two. And now after going through those vigorous processes of acquiring the certificates and undergoing that process you will spend about Kshs. five to ten thousand then they are sent back home.

The youths of this county will be out there saying that those who should be helping them in securing these jobs are not doing so as the youth in this assembly must help youths to get opportunity. Mr. Speaker, sir, I would like to state here that honourable Members when we were discussing this report, Hon Ochieng stated that as a youth he is lucky that he was elected as an hon. Member.

I would also like to state that I am lucky to be elected as an hon. Member and because of that luck, I will not want to share it alone, but will like others also to come and help in serving in this good county of Siaya.

So Mr. speaker, with this process we are causing something we call the brain drain in this county, the youths who have gone to university, various institutions and who are knowledgeable in this field will not be coming to apply for these jobs because when they apply and qualify in

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terms of merit, they are left out people who become number 17 or number 40 are considered in list along with them in the in the particular interview or nominated to those positions and them they're not nominated to this position.

Those wonderful people who will be having those qualifications to be in certain position, will be running away to other counties to help them secure jobs because as the leaders we have failed to secure them jobs through proper legislation. Mr. Speaker, I support this report.

Hon Oriaro: My view would be in congruence with the letter and spirit of the report by the committee on Appointments. In the jurisdiction, governance is only good when it beats the threshold of law and of legitimacy. We know running a government is a complex entity of the ICJ operator. My advice to the governor is only one simple one.

He controls the county because it is political; he controls those who are helping him to appoint officers. If he needed so and so to be there the one who was number eight or the one who never applied all to do behind the scenes to compel them to apply then go through other processes and he is made number one.

Allowing him to appoint somebody who never even applied or someone who became number seven in the interview is unacceptable. If you want to help someone, he should just talk to the interviewing panel to make sure the one he wants makes it among the top persons to be presented to him for appointment.

He makes number one to be number one, and the House easily approves it. I want to tell the governor's team and himself that they have made it easy for the committee of Appointments and by extension the whole House; they have helped us to help him reject the names. I support.

Hon. E. Odawa: Thank you so much, Mr. Speaker. I will be brief because I have realized that Members are equally tired. Just as my brother Hon. Oriaro said, our good governor's habit of shooting himself on the hip is habitual; in Siaya, it seems as though it's a matter of technical know who at the expense of technical know-how which matters.

The issue of regional balance has not been observed; youth, women and people with disability as enshrined in the constitution were not observed either. No explanation has been given on why this has been left out. Age limit is a factor because we know that as at a certain age the productivity goes down.

We believe that the Public Service Board should not be constituted and led by a majority of very old people. To me that's an issue. We need to have people who are vibrant, at least 60 and below but when one reaches 70 it's time for one to go and watch the grandchildren for sure.

I think that we should not allow this to proceed; inclusion of people will, you know, participate in the process initially. And then I want to take offense with my friend in his statements earlier. He was literally lecturing the governor on the ways of rigging people in. I think that's not our way of doing things.

We should follow systems, we should not encourage the governor by giving links, ideas and how best he can rig in his cohorts into positions of leadership; the procedure of nomination is crucial. And I think just by that alone is enough for us to reject this list. If the government is

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constituted, there are procedures and if we cannot follow those procedures and systems, then we absolutely cannot have a government and that's what's ailing Siaya.

The issue of competitiveness, it's sad to know that several nominees like number four, as we know has been fixed as number one but we demand the best. This explains why Siaya is number 46 or number 47 and will maintain this all the time because we are going for the worst and not for the best of the best which is a bad trend, because the best people will start avoiding to apply for this job knowing that the worst will get the jobs and you end up with a banana county meritocracy, as you said, it's terrible because 88% is left out. It's only good if 72% is nominated, we can all agree on that.

The date of interview has no clarity which means there is something funny just happening. Someone was playing some monkey tricks here. And I think we should reject this thing, not only on basis of the process, but all procedure itself was shrouded in a lot of mystery and that itself, there is no transparency; absolutely.

To wrap it up, I think the Executive seems to be going rogue and if this House is not keen to clip her wings, we will send Siaya County to the dogs. I support, you should support this report.

Hon. Odongo: Thank you, Mr. Speaker, allow me to add on what Hon. Members have said to support and thank them for working tirelessly. Mr. Speaker, allow me to thank the governor's team for helping us realize that what was done was a bit uncouth. After reading the report Mr. Speaker, I would say that the Governor should realize that our Members' brains have been updated as a software and are scouring fast the websites where current issues are being posted whereby the alteration of the initial list that had been posted in the website was done.

Mr. Speaker, I support the committee on their findings and I realize that there's casting of doubt in the transparency, Mr. Speaker, whereby the person who was interviewed could not even remember the date for the day when he was interviewed, Mr. Speaker and that drove us the point that there was no transparency.

How I wish the report would have been taken to the governor, Mr. Speaker, and if I were the governor, I would have done some reshuffling again, according to how I know because, Mr. Speaker, I believe that after reading what has been brought to us in the committee report, further indicates that the nominee from Gem was interviewed and unfairly rigged out.

The person who scored the highest mark, Mr. Speaker, his name could not appear. Mr. Speaker, I support the rejection of the report.

Hon Adala: Thank you, Mr. Speaker. I shall be very brief. Mr. Speaker, I rise to support the committee and even as we reject this list, I just wanted to be on the record that there is a difference between being a youth and being youthful at heart so while at it, the law is very, very, explicit that our youth must be 35 years and below.

So whereas the wisdom of the committee is trying to find somebody 43 years as young as the said applicant fine that is the argument but then he's not. So if we are to really go by what the law says then we'll really explain that the person whose name appears here doesn't reflect a youth based on the age.

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That is where the law says other things we can just say the youths because - then the minimum maximum age must be observed. Two then there is the respect to Dr. Onguto Consolata Adhiambo. It's said that she's representing Gem and then at some stage again, she's representing Ugenya.

So then I would wish that when you engage the CS, he should also highlight on exactly where this nominee represents, because if she is a lady who hails from Ugenya, and right now is married in Gem, this is somebody who cannot be saying she's representing the interest of Ugenya, this is somebody that we can see is representing interest of Gem and that would leave us to ask therefore, then where the representative of Ugenya is.

Hon Otieno: I don't have much but then, like my main concern, Mr. Speaker, you realize that people with disability have been an issue with their recruitment into the public service in Siaya, and I am not surprised they're missing in this particular setup. Last time you heard when we were at a committee meeting of governance.

We had asked about the people with a disability, we were told that there is in the department of livestock, there is one person who is a stammerer and that is a person living with disability employed in the county. So actually, I want to thank the committee for doing this. Let's do what is right we have been taken for a ride for so long.

Other aspects that I have seen missing in our report is the action if it is proved that actually there is somebody who inserted other names and presented a falsified document to this House. Our wish is that we deal with this situation once and for all.

Mr. Speaker, allowing this backdoor entrance into the Public Service is what cost us as you will realize that we are still having matters pending in court where we made a decision as an assembly not going to court, the matters are out.

We were actually concerned about the process yet somebody somewhere runs to go to court in defence of a process that they floated and yet they are not the victims. Currently if you know very well that you are number five, and you are given a job and number two is left out it is clear that you love to serve at the mercy of the appointing authority.

That is why last time when we had a process of an advertisement, job was advertised and people applied. By the time the jobs were being advertised it means there was monetary allocation for those people to be hired. But because we made noise that the names were being exchanged at Namsagali, what followed? because then before the right people for the jobs got the letters, these things were being altered to benefit some people and we detected and the process was blocked.

Now we cannot be told a Budget came the other day but there was no mention of where the money which was being used for the recruitment of last people who are suspended where the money is. So we are dealing with a system that is totally rotten. This is the right step to ensure as a House that we get the right you made it very clear in another informal meeting that you are looking forward to actually meeting these people and you have a one on one talk on what we expect of them.

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Let that take place so that at least even me in Yimbo East I can get somebody being employed in Siaya County. The current regime knows that youths are angry that they can use Kshs. 5000 for somebody to go and make noise in the radio in a place where a project is on-going to ask why they cannot see anybody yet he is one of the workers on those projects, because they are very angry. They don't have anything. Let's get the right individuals that we can.

Hon. Abigael: Thank you, Mr. Speaker. I rise to reply on behalf of the mover. There are certain observations that I made in my own to support this report. Mr. Speaker, First, I would like to echo the committee on what they did and do so much on number eight, nine and 11. Mr. Speaker, the committee did not disqualify the competency of one Consolata Adhiambo Onguto. But then when the appointing authority overseas appointment of these nominees, Mr. Speaker, it's not like party nominations, whereby when you're not in good books, and you merit somebody can't run away with your ticket and give it to number five.

When we look at the women who are from Gem there was a number one before this Consolata. So we are asking, "What happened"? Was it that this number one was not in good books with the governor or the appointing authority or the interviewers?

Mr. Speaker, when you also look at the position of the chairperson of the Public Service Board, there was a professor from Gem and there is no time in History where you can compare a professor with the doctor. It never happens in the field of academia. And this professor came from Gem.

This happened because of two things in my own making or rather understanding the appointing authority. They had four people, independent from the Kenya School of Government to come and with the interviews and again another four from his office who are only serving his interests.

That's how I can put it. So the whole process was marred by irregularities, Mr. Speaker, and on basis of the youth, when we look at the list of the youth; I think we have a youth representative here.

I think when Hon. Andiego was talking about the youngest to apply, maybe the youth representatives, Hon. Adala and Nancy, you can go out there and drum up support for the youth so that they can apply.

They should not shy away from certain positions within the county; you may be a youth at heart so you are bringing the 43-year-old to be the youngest in the list who actually merited in this list of nominees. Mr. Speaker, going by the mood of this House, I would request Members to support this report and reject the list of nominees.

(Question put and agreed to)

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MOTION
ADJOURNMENT

Hon. Speaker: Hon members there being no other business would you be upstanding for adjournment.

There being no other business this House adjourns till 10th September, 2019 in the afternoon at 2.30 in the chamber.

The House rose at 6:15p.m.