

# NATIONAL ASSEMBLY

## OFFICIAL REPORT

Friday, 26<sup>th</sup> August, 2011

The House met at 2.30 p.m.

*[Mr. Deputy Speaker in the Chair]*

PRAYERS

### COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[Mr. Deputy Speaker left the Chair]*

### IN THE COMMITTEE

*[The Temporary Deputy Chairman  
(Mr. Ethuro) took the Chair]*

THE ELECTIONS BILL

*(Resumption of consideration interrupted  
in Committee today)*

*(Applause)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! The Chair definitely appreciates such applause! In that spirit, we will get into business. It is the Committee of the whole House. We will proceed from where we left under The Elections Bill, Bill No.34 of 2011.

*Clause 14*

We were at Clause 14 and we had disposed of the amendment by Mr. Abdikadir. There are still two more amendments from Dr. Nuh and Mr. Mungatana.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT Clause 14 of the Bill be amended-

- (a) in Subclause (1) by deleting the words “three months” appearing after the words “at least” and substituting therefor the words “two weeks”.

However, I am not so sure whether my amendments are now time-barred because my proposal was that nomination of candidates by political parties--- The duration should not be pegged on an election or a general election. My perception was that it could best

be pegged on the nomination day, a day which is gazetted by the Commission as the day when members seeking different elective positions will present their papers. My proposal was that we peg it to two weeks before the nomination day; that political parties should submit and conclude their nominations. But since the Chairman has proposed 45 days before elections, I would like to withdraw my amendment.

*(Dr. Nuh's proposed amendment to subclause (1) withdrawn)*

However, the next amendment to part (b) still stands and I beg to move:-

THAT Clause 14 of the Bill be amended-

- (a) in the proviso to Subclause (2) by inserting the words "after notifying the candidate that the party seeks to substitute, where applicable," after the words "the political party may".

That has to do with a situation where a political party might wish to substitute a candidate because of, maybe, contravening some electoral code or some other regulations. I am just trying to insert a clause here which says that the party shall notify the candidate that the party seeks to substitute where applicable. The reasons for saying this is that a political party may just decide to substitute your name when you very well know that yours has been submitted to the Commission. You have not been notified and, maybe, it is because of malice. That is what this amendment wishes to cure.

*(Question of the further amendment proposed)*

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

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT Clause 14 of the Bill be amended by inserting the following new Subclause after Subclauses (3)-

"(4) Notwithstanding the provisions of this section and of this Act, a candidate nominated for election to the position of President or Deputy President may be nominated for election to one other elective position under this Act".

The reason for this, just to explain a bit to the House, is that many hon. Members of this House and, maybe, many other people outside, may wish to contest for the post of President or Deputy President and, at the same time, they may wish to defend their Parliamentary seats, Senate seats or whatever other seats. I think we need to open this law to give a clear provision for that.

*(Question of the further amendment proposed)*

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I am opposing my soul mate for this reason: That if a candidate---

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Dr. Khalwale! You cannot oppose your soul mate! You can only oppose the amendment he has proposed.

**Dr. Khalwale:** Mr. Temporary Deputy Chairman, Sir, I am sorry. I want to rephrase my statement. I am opposing his proposed amendment! If a candidate has sufficiently searched his soul and he is convinced that he wants to be the President of Kenya, a governor of a county or whatever, this man or woman must do an honourable thing and demonstrate that he is a serious candidate by sticking to that position and knowing that he is not the only person in the country!

*(Applause)*

He should leave the lower positions to be competed for by other members. I know that other people have argued, especially my elder brother, Mr. Wetangula, that this is a nursery that nurses people who want to grow and become presidents. If you do not believe that you have sufficiently matured to stand, then do not try it. Wait the way some of us are waiting and we shall try it when we think we shall have matured.

With those few remarks, I beg to oppose.

*(Applause)*

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I also stand to oppose this amendment, with all due respect to my friend and colleague, Mr. Mungatana, I think it is high time people made decisions and stood by those decisions in this country. If you want to go for presidency, go for presidency! If you want to be in Parliament, do it, instead of going for presidency while you also want to contest other seats. I think this amendment should not be carried and so I oppose!

**Mr. Bahari:** Mr. Temporary Deputy Chairman, Sir, I beg to support the amendment. I support the amendment basically because, if this amendment is not brought on board, it will kill democracy. That is because Members who decide to run for presidency and do not make it, if they are not in this House, hardly will they have a forum from where they can articulate their policies and the issues that they want to go there and articulate. We have a very classic example in our neighbours here. You see a fellow runs for the presidency and the next time, he will not even be able to run for a parliamentary seat!

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, I wish to support this amendment. I am supporting it in the sense that we have had precedent before - like the election of a Speaker. First of all, we elected Mr. Marende to be a Member of Parliament and then, when he was elected as the Speaker of this Parliament, he resigned. You can only have one seat at a time.

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Chairman, Sir. With all due respect, is it in order for the hon. Member to contribute without reading what the amendment is all about? It is talking about the President or Deputy President! It is not talking about the Speaker!

**Mr. Keter:** I am giving an example! I think you should understand me!

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Mbadi! He was just giving an example. Proceed, hon. Keter!

**Mr. Keter:** Mr. Temporary Deputy Chairman, Sir, I was just giving an example. The Constitution is very clear; that you can only hold one position at a time. So if you run

for the Senate and the Presidency, if you are elected as the President, then you relinquish the seat of a Senator. Likewise, if you are running for a governor, you relinquish the one for a governor. You choose whichever you want.

With those few remarks, I beg to support.

**Mr. Njuguna:** Mr. Temporary Deputy Chairman, Sir, very briefly, I support.

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, I rise to oppose the amendment. I understand the fear of hon. Members. I think at some point in this country, we will have to wake up to the fact that we have adopted a pure presidential system. We have to do this fundamentally. I thought the best way to do this would be to have those people who are running for Presidency on party lists, so that we can say that, despite running for Presidency, you will still stay in your party list. If you do not make it, you still find your way to the Senate. After all, you shall have elevated yourself. So, fundamentally, we will be making a good law as a country.

**Mr. Bahari:** On a point of information, Mr. Temporary Deputy Chairman, Sir.

**Mr. Midiwo:** I accept it!

**Mr. Bahari:** Mr. Temporary Deputy Chairman, Sir, there is nothing exciting about a presidential system or otherwise. The current thinking in academic circles is that there is nothing exciting about either of the systems.

**Hon. Members:** What is the information?

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members!

**Mr. Bahari:** Mr. Temporary Deputy Chairman, Sir, I am still informing him! I do not know what we are excited about!

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Bahari!

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, just to conclude, the point I was trying to make is that, even as we make this law, the Constitution was on the basis that we wanted a fundamental change. I thought that particular fear should not make us make a bad law. We have gone the pure presidential system and there is a leeway. There is a list which the sponsoring party shall submit. You can put yourself as a presidential candidate on the list.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Midiwo! Let us have the last one from Mr. Duale!

**Mr. Duale:** Mr. Temporary Deputy Chairman, Sir, I strongly stand to support this amendment. Politics is a process and some of these leaders who are going for the big position of the Presidency and Deputy Presidency are leaders of political parties in their respective ways. If you read the history of political development and presidency, most Presidents in Africa became Presidents after trying several times. Why do we want to send Kenyans who want to become President in 2012 back to the village? We must allow them back here as Members of Parliament so that they continue in the development and evolution of their own political parties.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I had a sub-amendment but I have withdrawn it. Just to be a bit clear, I do not know why someone has allowed that a Presidential candidate be within the party list, with the realization that after all, you cannot elect five, seven or ten Presidents! You will only have to elect one and the rest will have to go by the floods! When they come to Parliament, there is the position of the Minority Leader. A Minority Leader would be a leader of a party with the second largest

number of Members of Parliament. But how would such a person be a Minority Leader if he is outside Parliament after he has contested but failed to capture the seat of President?

**Mr. Midiwo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. With all due respect to Dr. Nuh, it is true and clear that a Presidential candidate in a democratic party can be anybody! It does not have to be the party leader!

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, that is a point of argument! You will understand that even in the party that Mr. Midiwo comes from, the Presidential candidate happens to be the party leader. That is the fact!

Mr. Temporary Deputy Chairman, Sir, if we have already allowed the proposition that such Members be within the party list, it is with the realization that some of these Members might not make it to Presidency. After all, they should find their careers within this House as party leaders in some different way; whether as a Minority Leader or a Majority Leader.

If you observe the presidential elections in United States of America (USA)---

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Dr. Nuh!

This is not Second Reading! This is Committee Stage! Conclude!

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I just want to finish. I just want to show Mr. Midiwo that in the Presidential system that he is saying we are going to, the election in the USA is standard in such a way that someone is still a Senator or Member of the Congress when they contest. That is what President Obama did! He contested when he was still a Senator. He then relinquished his Senate seat.

**The Temporary Deputy Chairman** (Mr. Ethuro): Time is up, Dr. Nuh!

*(Question, that the words to be inserted  
be inserted, put and negatived)*

*(Clause 14 as amended agreed to)*

*Clause 15*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I propose amendment to Clause 14 as in the Order Paper.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Abdikadir! The Clause is 15 and not 14! We have already disposed of Clause 14.

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I think you misheard me; I said Clause 14. However let me repeat; I propose amendment to Clause 14 as carried in the Order Paper. Sorry, Clause 15!

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Abdikadir! You owe an apology to the Chair! I heard you nicely and you repeated the same! Now we are on Clause 15!

**Mr. Abdikadir:** My apologies, Mr. Temporary Deputy Chairman, Sir.

I beg to move:-

THAT, Clause 15 of the Bill be amended in Subclause (1)-

(a) by deleting the words "at least two newspapers" appearing after the words "in the Gazette and in" and substituting therefor the words "electronic and print media"; and

(b) by inserting the following new paragraph after paragraph (a)-  
“(b) in the case of an election under Article 138(5) of the Constitution, at least twenty-one days before the date of the election;”

*(Question of the amendment proposed)*

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, the people who prepare these Bills; and I hope our good friend the Minister is listening, this business of saying, “in two newspapers” at this era of technology is getting outdated.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): But I accept!

**Mr. C. Kilonzo:** I know you do! However, we really plead with you so that we do not have to be amending all the Bills that come to Parliament. We expect your good office to be so advanced in as far as matters of technology are concerned.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. C. Kilonzo! You have made your point and it is general. We are dealing with specific proposals on this Bill.

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 15 as amended agreed to)*

#### *Clause 16*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 16 of the Bill be amended by inserting the following proviso after Subclause (1)-

“Provided that in the event of death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may substitute its candidate before the date of presentation of nomination papers to the Commission”.

*(Question of the amendment proposed)*

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

*(Question 16 as amended agreed to)*

Clause 17

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT, Clause 17 of the Bill be amended-

(a) in Subclause (1) by deleting the words “at least two newspapers” appearing after the words “in the Gazette and in” and substituting therefor the words “electronic and print media”; and

(b) by deleting Subclause (2) and substituting therefor the following new Subclause-

“(2) The notice referred to under sub-section (1) shall be in the prescribed form and shall specify-

(a) The day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;

(b) the day for the nomination of candidates for the parliamentary election;  
and,

(c) the day or days on which the poll shall be taken for the election, which shall not be less than twenty-one days after the day specified for the nomination under paragraph (b)”.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 17 as amended agreed to)*

Clause 18

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 18 of the Bill be amended-

(a) In Subclause (1) by deleting the words “at least two newspapers” appearing after the words “in the Gazette and in” and substituting therefor the words “electronic and print media”; and

(b) by deleting paragraph (a) of Subclause (2) and substituting therefor the following-

“(a) the day for the nomination of candidates for the county governor election”.

*(Question of the amendment proposed)*

**Ms. Karua:** Mr. Temporary Deputy Chairman, Sir, I wish to propose a further amendment to the amendment. You will notice that Clause 18 is talking of “county

governor” but we have not made any provisions for mayors; where mayors will be elected!

**Hon. Members:** There are no mayors! There are no mayors!

**Ms. Karua:** I wish to propose:-

THAT, after the word “governor” add the words, “and mayor where applicable”.

**Hon. Members:** There are no mayors!

**Ms. Karua:** I have proposed the amendment!

*(Question of the further amendment proposed)*

*(Question of the further amendmenet, that the words to be inserted be inserted, put and negatived)*

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

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 18 as amended agreed to)*

#### *Clause 19*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 19 of the Bill be amended by inserting the following -

“Provided that in the event of death, resignation or incapacity of the nominated candidate or of the violation of the electoral code of conduct by the nominated candidate, the political party may substitute its candidate before the date of presentation of nomination papers to the Commission”.

*(Question of the amendment proposed)*

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

*(Clause 19 as amended agreed to)*

#### *Clause 20*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 20 of the Bill be amended-



(a) in Subclause (1) by deleting the words “at least two newspapers” appearing after the words “in the Gazette and in” and substituting therefor the words “electronic and print media”; and

(b) by deleting Subclause (2) and substituting therefor the following new Subclause-

“(2) The notice referred to under Subsection (1) shall be in the prescribed form and shall specify-

(a) the day upon which political parties shall submit a party list in accordance with Article 90 of the Constitution;

(b) the day for the nomination of candidates for the county elections; and the day or days on which the poll shall be taken for the county election, which shall not be less than twenty-one days after the day specified for the nomination under paragraph (b)”.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 20 as amended agreed to)*

#### *Clause 21*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 21 of the Bill be amended by deleting the words “other media” appearing after the words “in the electronic and” and substituting therefor the words “print media of national circulation”.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

*(Clause 21 as amended agreed to)*

#### *Clause 22*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 22 of the Bill be amended by inserting the following new subclauses after Subclause (2)-

“(2A) The Deputy Speaker of a county assembly shall be elected from among persons who are members of that county assembly.

(2B) The First Schedule shall, with necessary modifications, apply to the election of the deputy speaker after the first election under the Constitution”.

Mr. Temporary Deputy Chairman, Sir, the amendment proposed here tries to provide for the position of a Deputy Speaker in the county assembly because that provision had not been made within the Bill. They should be elected from the members of the county assembly in order that the county assembly does not incur extra expense of hiring a different person from outside the county. He will be a serving member.

*(Question of the amendment proposed)*

**Mr. Duale:** Mr. Temporary Deputy Chairman, Sir, I support. Coming from a community where people pray five times a day, we can go for prayers and, therefore, we need a deputy to take over.

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

**Mr. Abdikadir** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 22 of the Bill be amended in Subclause (3) by inserting the following new paragraphs after paragraph (d)-

- (e) where the office holder seriously violates the Constitution;
- (f) in the case of gross misconduct on the part of the office holder;
- (g) where the office holder is incapable, owing to physical or mental infirmity, to perform the functions of the office;
- (h) where the office holder is bankrupt; and
- (i) where the office holder is sentenced to a term of imprisonment of six months or more”.

*(Question of the amendment proposed)*

**The Minister for Lands** (Mr. Orenge): Mr. Temporary Deputy Chairman, Sir, I just needed a clarification from the Chair of the Committee on the amendment which reads, “where the office holder seriously violates the Constitution”. I do not know what that means. “Seriously” is not a term within the Constitution.

**Mr. Abdikadir:** Temporary Deputy Chairman, Sir, there is “gross violation”. However, when it comes to the Constitution, I agree with the Minister that violation of the Constitution is a violation of the Constitution. So, I probably, request that, that be corrected to read “violation of the Constitution. So, we drop the word “seriously”.

**The Temporary Deputy Chairman** (Mr. Ethuro): Mr. Temporary Deputy Chairman, Sir, it does not work that way! Just propose an amendment to delete that word!

**Mr. Abdikadir:** That is okay, Mr. Temporary Deputy Chairman.

I beg to move:-

THAT, Clause 22 be further amended by deleting the word “seriously” appearing before the word “violates”.

*(Question of the further amendment proposed)*

*(Question of the further amendment, that the word to be left out be left out, put and agreed to)*

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 22 of the Bill be amended in Subclause (3) by inserting a new paragraph immediately after paragraph (d) as follows-

(e) if the office holder dies.

It is simple really! It was omitted because it looks obvious. However, I am only trying to say that if the office holder of the Speaker dies, then the office becomes vacant.

*(Question of the further amendment proposed)*

*(Question of the further amendment, that the words to be inserted be inserted, put and agreed to)*

*(Clause 22 as amended agreed to)*

### *Clause 23*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23 of the Bill be amended by deleting the marginal note and substituting thereof the following new marginal note-

“Qualifications for nomination of candidates”.

I seek your direction. This is an amendment to the marginal note. We want to have the amendment stating qualifications for nomination of candidates on the marginal note, as opposed to nomination of candidates. So, I propose the amendment to Clause 23.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, I beg to move:-

THAT, Clause 23 of the Bill be amended in paragraph (b) by deleting the word “post” appearing after the words “holds a”.

I am lowering the bar, more specifically for the county assembly representatives. They should not be restricted; that they must produce a post-secondary qualification, but

a secondary school certificate that is recognized in this country should be sufficient to elect them into offices of county assemblies.

*(Question of the further amendment proposed)*

**Mr. C. Kilonzo:** Thank you, Mr. Temporary Deputy Chairman, Sir, I am just wondering because somebody who has gone up to Form Four and has a certificate, that is already “a post”. So, I do not find the necessity of this amendment!

**Dr. Nuh:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Is the hon. C. Kilonzo in order to state that post-secondary education is equal to someone possessing secondary education because “post-secondary” means you have to have a certificate beyond secondary qualifications?

**The Temporary Deputy Chairman (Mr. Ethuro):** That is correct!

**Dr. Nuh:** These are two different things!

**Mr. Wetangula:** Mr. Temporary Deputy Chairman, Sir, I want to persuade Members to see the sense in Dr. Nuh’s amendment. “Holds a post-secondary school qualification recognized in Kenya” means that you have a secondary school certificate and then post-secondary school certificate recognized in Kenya. If you have a secondary school certificate, it is not “post”. If that is all you have, then you are locked out! The danger is that this kind of clause will hurt, particularly so many Kenyan women in marginal areas. We have seen it here. There is no guarantee that the more educated you are, the better politician or leader you are! People who are just functionally literate have been very good in this Parliament! We know so! I want to urge the House that we agree to Dr. Nuh’s amendment because it is making it easier and better.

Let me finally give an example. A person who left school at Form Four and went to the army and rose to become a general, he still does not have a post-secondary qualification to bring a certificate here. Yet, we have generals here who are doing very well. I want to urge the House to agree to this amendment.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, I stand to oppose this amendment. I think it is important that if you want to assume positions of leadership in this country, after doing Form Four, do even some craftsmanship, secretarial or anything. It does not have to be a so serious course. Just do something to show us that you are serious with life. Let us allow those who will be representatives in the county assemblies be people who are serious with life.

**Ms. Karua:** Mr. Temporary Deputy Chairman, Sir, I want to oppose the amendment and to say that nobody should pretend that they are sympathizing with women. Many women have post-secondary school certificates. Women are well-educated. They need their rights for affirmative action and not sympathy.

I oppose.

*(Question, that the word to be left out be left out,  
put and negated)*

**Mr. Midiwo:** On a point of order, Mr. Temporary Deputy Speaker, Sir. I do not wish to challenge your ruling. However, there seems to be some kind of rigging.

**The Temporary Deputy Chairman** (Mr. Ethuro): When you explain do not use words like “rigging”. You know what it means in a Bill of this nature!

**Mr. Midiwo:** Mr. Temporary Deputy Chairman, Sir, I withdraw that particular word. However, there seems to be Members bending and shouting into the microphones so that they can be louder! That is wrong!

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Midiwo! I will not entertain further points of order. For the benefit of the House, the Chair only determines the volume of the voice vote. The Chair is not privy to the kind of information hon. Midiwo is trying to adduce here. So, he is completely out of order!

**Mr. Langat:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 23 of the Bill be amended by renumbering the existing provisions as Subclause (1) and inserting a new Subclause (2) as follows -

(2) Despite Subsection 1(b), a person may be nominated as a candidate for election as a President, Deputy President, County Governor, or Deputy Governor, only if the person is the holder of at least a university degree.

Mr. Temporary Deputy Chairman, Sir, we want to change this country. We want to professionalise the management of our resources and issues. We want the holders of these offices to be able to execute their duties which have been given in the Constitution. We have raised the bar even for the County Assembly Members. Therefore, it clearly follows that we must raise the bar for the President, County Governor and their Deputies given the nature of their duties. Therefore, I propose that we support this amendment.

*(Question of the further amendment proposed)*

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Chairman, Sir, I really want to support this amendment by hon. Langat. The Counties will be very important units of Government and a lot of services will be delivered from that entity. Therefore, we should show the country that with this new arrangement, it is not politics as usual. It is not your usual councillor who runs for Chairman of a County Council that will be a Governor, or a Deputy Governor. So, the hon. Member has come with an appropriate amendment.

I fully support it.

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, that is a beautiful amendment and I support it. Why have we excluded Members of Parliament?

**Hon. Members:** But that is covered somewhere else!

**Mr. Mungatana:** Okay, if it is covered elsewhere, that is okay.

I strongly support.

**Mr. C. Kilonzo:** Mr. Temporary Deputy Chairman, Sir, I just need to improve on that particular amendment by deleting the words, “at least a university” to read as follows, “at least a degree from a university recognized in Kenya”. This is for very obvious reasons because there are universities which are not recognized.

**Mr. Mungatana:** On a point of order, Mr. Temporary Deputy Chairman, Sir. I have just been informed that where we were supposed to deal with the university degree for Members of Parliament, it will not happen! So, I propose that a further amendment be

put now so that it covers Members of Parliament as well! “Member of Parliament” covers both representatives of Senate and Lower House.

**Mr. Lessonet:** Mr. Temporary Deputy Chairman, Sir, I equally want to support that amendment by hon. Mungatana that it must include a “Member of Parliament”.

**The Temporary Deputy Chairman (Mr. Ethuro):** Order, hon. Members! There are two further amendments which we need to dispose of. The first one is from hon. C. Kilonzo to delete the word “university”. The proposal from hon. C. Kilonzo reads “delete the word “university” and then you insert “a degree from a university recognized in Kenya”

Hon. Members, we want to dispose of the second amendment by the hon. Mungatana to include the “Member of Parliament” between “Deputy President” and “County Governor”.

**The Assistant Minister for Tourism (Ms. Mbarire):** Mr. Temporary Deputy Chairman, Sir, I think you are rushing us. The amendment by hon. Mungatana has far-reaching effects on very many people, especially women. I think you ought to give us a chance to debate this matter! It is not right! Some of the best performing Members of Parliament are women without degrees, doing better than all of us with degrees!

*(Several hon. Members stood up in their places)*

**The Temporary Deputy Chairman (Mr. Ethuro):** Order, hon. Members! Could you, please, all resume your seats first?

Let us not be excited about this. The Chair will give you as much time as you wish. But you must also remember that we are at the Committee Stage. So, we cannot really debate at length.

**Mr. Mbadi:** Mr. Temporary Deputy Chairman, Sir, even though I agree that in positions of leadership we need to go to school, let us not legislate and then regret later. I think it is important to observe that this decision we are just about to make will lock out a good number of Kenyans from seeking positions of leadership. I know in this country we have had people such as Tom Joseph Mboya who never had a degree. He was very wise. He contributed enormously towards the development of this country. So, please, let us ventilate. I oppose that further amendment.

**Mr. Musyimi:** Mr. Temporary Deputy Chairman, Sir, whereas I totally agree with the idea that those holding executive positions like the President, Deputy President, Governor and Deputy Governor need to have a degree, I cannot bring myself to see the logic behind legislating for other positions in this House. I completely oppose that amendment. We have a lot of very capable people who need to be in this House who do not have degrees. It is unnecessarily punitive and we should reject it totally.

**Mr. Kioni:** Mr. Temporary Deputy Chairman, Sir, I want to oppose that amendment for all the reasons that hon. Musyimi has given, but nothing to do with what hon. Mbarire said. We need to ensure that we are legislating for the whole country. The fact that many of us in this House have degrees does not mean that we lock out every other person out there who has quality. We have debaters and legislators who have been here without any degree who have made immense contribution to the legislative agenda of this country!

**Mr. Wetangula:** Mr. Temporary Deputy Chairman, Sir, I wish to oppose the amendment. The House we are going to have is a House of representatives and not an alumni of universities. We are not creating an elitist club. We have had great men and women in this country without degrees who have made major contributions to the political development of this country, namely, Tom Mboya, Grace Akinyi and many others. I want to urge Members that we should look beyond ourselves. I have a degree and a post degree qualification, but there are many people out there who can even be better leaders without the qualifications that I have.

I oppose.

**Mr. Koeh:** Mr. Temporary Deputy Chairman, Sir, I like this House because we have been giving conditions for every other Commission in this country. If there is somebody that would really wish that Kenyans go to school, I would love to see Kenyans going back to school. Looking at the Constitution today, we are talking of vetters. This Parliament will be vetting professors and everybody for every position. I would really plead with my colleagues that we support the amendments. All universities are open for us for evening, afternoon and morning classes.

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

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

*(Several Several Members stood up in their places)*

**Hon. Members:** Division! Division!

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Members! I have counted and determined that you have the requisite number to call for a Division. I, therefore, ask that the Division Bell be rung.

*(The Division Bell was rung)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! Resume your seats!

Hon. Members, just to clarify, the amendment that you are going to vote on is to include the words “Member of Parliament” between the word “President” and the word “county” in the proposed amendment by Mr. Langat, which I hope you all have.

So, those who will be voting “Ayes” will be voting for the inclusion of the words “Member of Parliament”, while those who will be voting “Noes” will be voting against the inclusion of the words “Member of Parliament” or for the amendment of hon. Langat to remain unchanged.

The Tellers for the Noes are Mr. Charles Keter and Dr. Nuh, whereas the Tellers for the Ayes are hon. Lessonet and hon. Sofia Abdi Noor. You will have 15 minutes to vote.

Those voting “Ayes” will proceed to the lobby to my right while those voting “Noes” will proceed to the lobby to my left.

## DIVISION

*(Question put and the House divided)*

*(Question negatived by 56 votes to 39)*

**AYES:** Messrs. Ali H.M, Anyanga, Chanzu, Cheruiyot, Duale, Ethuro, Gabbow, Ms. Karua, Mr. Keynan, Dr. Khalwale, Messrs. M. Kilonzo, Kimunya, Kiunjuri, Kivuti, Koech, Dr. Kones, Messrs. Kombo, Kutuny, Langat, Lessonet, Mbau, Mututho, Dr. Monda, Messrs. Mungatana, D.M Muoki, Murungi, Musila, Mwiru, Namwamba, Nanok, Nyamai, Nyammo, Ogari, Ojaamong, Okemo, Ombui, Oparanya, Dr. Otuoma and Mr. Wamalwa.

**Tellers of the Ayes:** Mrs. Noor and Mr. Lessonet

**NOES:** Ms. A. Abdalla, Ms. S. Abdalla, Messrs. Akula, Baiya, Balala, Ms. Chepchumba, Messrs. Chepkitony, Farah, Gitari, Godhana, Prof. Kaloki, Messrs. Jamleck Irungu Kamau, Kambi, Keter, Keya, Kiilu, Mrs. Kilimo, Messrs. C. Kilonzo, Kioni, Kiptanui, Dr. Laboso, Messrs. Linturi, Litole, Magwanga, Eng. Maina, Mr. Mbadi, Ms. Mbarire, Mr. Midiwo, Mrs. Mugo, Mr. Mung’aro, Dr. Munyaka, Messrs. Muoki, Musyimi, Muthama, Mwaita, Mwathi, Mrs. Ngilu, Messrs. Ngugi, Njuguna, Mrs. Noor, Dr. Nuh, Messrs. Nyagah, Obure, Mrs. Ongoro, Messrs. Orengo, Outa, Pesa, Rai, Sambu, Mrs. Shebesh, Messrs. Sirat, Sirma, Wambugu, Bishop Wanjiru, Messrs. Wetangula and Yinda.

**Tellers of the Noes:** Mr. Keter and Dr. Nuh.

**Abstentions:** Messrs. Abdikadir, Bahari and Eng. Gumbo.

*(Clause 23 as amended agreed to)*

### *Clause 24*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, assuming that Clause 23 carried the President, then this amendment is overtaken by events and I have to withdraw it. It is just confirmation that the President requires a degree.

**The Temporary Deputy Chairman** (Mr. Ethuro): It is unnecessary now since the amendment has been carried.

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I withdraw the amendment to Clause 24.

*(Proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Dr. Nuh, you have an amendment to Clause 24.



*(Loud consultations)*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, the hon. Members seem to be very excited after---

**Mr. Bahari:** On a point of order, Mr. Temporary Deputy Chairman, Sir. Hon. Members are consulting very loudly and yet, this is a very sensitive matter.

**The Temporary Deputy Chairman** (Mr. Ethuro): That is correct! Hon. Members, we are transacting very serious business and we need to pay attention. You are at liberty to withdraw from the Chamber, but do so quietly.

Yes, Dr. Nuh!

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 24 of the Bill be amended in Subclause (3) by inserting the following new paragraphs after paragraph (c) –

“(d) a County Governor;

(e) a County Deputy Governor;

(f) a member of a county assembly”

I understand this excitement because it was a fierce battle! So, if you win, you have to shout. The amendment I am proposing here is on Subsection 3 of Clause 24, where there are exemptions to Subsection 2; that if you are a President and you want to vie for the Office of the President, it is not a must that you vacate the Office of the President for you to vie for that office. This also applies to a Deputy President or a Member of Parliament who is serving.

In trying to add the position of a Governor; supposing someone was a Governor and the term expired upon the election of a new Governor, the Governor would want to run for the seat of the President? I do not see the reason why public officers who are exempted from running for the position of President, Deputy President and Member of Parliament should only be the President, the Deputy President and should not apply to Governor and Deputy Governor. I am proposing that we add the County Governor, the County Deputy Governor and Member of the County Assembly so that if they wish to vie for the Office of the President, they retain their seats until they are elected. Then they can resign. If they are not elected, they can continue to serve in their various positions.

*(Question of the amendment proposed)*

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Chairman, Sir, while I can see the sense in what Dr. Nuh is attempting to do, I think the Constitution is very clear in terms of qualifications and only limits to what is provided within the law. So, adding this would be unconstitutional. I would like to urge Dr. Nuh to refer to the Constitution and confirm that. That is because I believe the Constitution is very clear in terms of the qualifications. Subsection 2 refers to a person running for the Office of the President. I think there are some limitations already in terms of which public officers are exempted. It is only the President, Deputy President and Members of Parliament. All the other people would have to vacate their positions because that is in the Constitution. Anything we do here, that is inconsistent with the Constitution, will be rendered null and void.

**Dr. Khalwale:** Thank you Mr. Temporary Deputy Chairman, Sir. I want to support the proposal by hon. Dr. Nuh. According to me, it appears as if we are in a mental drive to preserve ourselves as Members of Parliament so that, where the law touches on an MP in unpalatable manner, we become over-protective. There is nowhere in this Constitution where they say; “a Governor shall not.” Therefore, we will not be offending the same Constitution if we allow the Governor to be included in the list of the people who will be protected by this Act.

I want to expand on the point of us being seen to preserve ourselves. On the vote that we have just taken, we have legislated in this House that a Governor and a Deputy Governor must have a degree. Since they are not here today, we have refused to put the same proviso for us, as Members of Parliament. If we think that something is good for a Governor – and the Governors will be coming from here - then let the same thing apply to MPs and Senators. The MPs and Senators of next year will come from this House. We must move away from legislating with a view of preserving only the interests of this House.

I support.

**Mr. Wetangula:** Mr. Temporary Deputy Chairman, Sir, I do not know Dr. Nuh’s amendment is not inconsistent with Section 137 of the Constitution. Section 137 of the Constitution is replicated, word for word, in the Clause he is trying to amend. So, whatever he is trying to bring in is inconsistent with the Constitution, therefore, void and should not be allowed. He should reconsider it.

**The Temporary Deputy Chairman** (Mr. Ethuro): Hon. Wetangula, you may wish to help us. He is not negating what the Constitution has provided for. He is adding more exceptions. Is that offensive?

**Mr. Wetangula:** Mr. Temporary Deputy Chairman, Sir, it is offensive to the Constitution. You cannot create new provisions in a municipal law that overrides what is in the Constitution. The basis of the law is the Constitution. Municipal laws are statutes.

**Mr. Mungatana:** Thank you Mr. Temporary Deputy Chairman, Sir. Let us read these things. If we could read them together, then we would understand that the proposed amendment is unconstitutional. It says: Qualifications and disqualifications for nomination as resident. “A person qualifies for nomination as Presidential candidate if the person;

- (a) is a citizen by birth;
- (b) is qualified to stand for elections as a Member for Parliament;
- (c) is nominated by a political party or is an independent candidate; and,
- (d) is nominated by not fewer than two thousand voters from each of a majority of the counties.

Subsection 2 reads; “A person is not qualified for nomination as a Presidential candidate if that person -

- (a) Owes allegiance to a foreign state; or
- (b) is a public officer, or is acting in any State or other public office.

The exception comes after that which says; Clause 2 - which I have just read “shall not apply to the President, Deputy President or a Member of Parliament”. So, it is very clear from that, that Governors are not covered. In fact, they are not covered under the Constitution. I tried to move this amendment at the KIE that we should cover Governors,

but nobody was listening. We are late now. We need a constitutional amendment to include it.

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to disagree. This section deals with the President. That is why it deals with these three entities that will most likely be the people who will be vying. The assumption is that if the President has an option for a second term, he would want to run. If a Deputy President wants to succeed a President, he or she can run. We are dealing with a section dealing with the Executive. Nothing in that section stops Parliament from legislating about Counties, Governors and County Assemblies. Absolutely not! This particular section deals with the qualifications of somebody who is running for the President. If we said that laws must be exactly as stated--- We have 600 laws. All those issues have not clearly spelt out this matter. Parliament has the power to legislate for County Governors. If Parliament decides that County Governors can hold office and not have to resign until elections, it can do that.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I once said that in law, there are as many opinions as there are lawyers in this House. We are not deficient of them. I think even the spirit of those who wanted to make this law--- You are told that, sometimes, you should not read the law as plain as it is. Sometimes, you need to look at the spirit and the intentions of some of the laws that are being made. The reason as to why public and state officers are asked to resign from their positions before they vie for any elective position is because, presumably, most of them were appointed to those positions. The only other elective position that becomes a State officer, apart from the President, Deputy President and a Member of Parliament, happens to be the Governor, the Deputy County Governor and the County Assembly. So, for someone who had been elected into an office being asked to resign before he can seek another office, it is being discriminatory. If a law discriminates against its own citizens, then that law in, itself, is inconsistent with the Constitution.

**The Temporary Deputy Chairman (Mr. Ethuro):** The Chair is ready to make a ruling, but knowing eminent lawyers and Ministers I will also give them an opportunity.

**The Minister for Energy (Mr. Murungi):** Mr. Temporary Deputy Chairman, Sir, we need to read Article 137 of the Constitution more closely. Article 137(1) talks about qualifications and disqualifications for elections as President. Article 137(2) says “a person is not qualified for nomination as a presidential candidate if the person owes allegiance to a foreign State or is a public officer or is acting in any State or other public office”. Article 137(3) says:- “Clause 2(b) shall not apply to-

- (a) The President
- (b) Deputy President
- (c) Member of Parliament.”

What Dr. Nuh is doing is to increase the number of exceptions under 3, so that it includes the Governor and other officers. Any addition, over and above the three, would be unconstitutional. So, the amendment if properly interpreted would be unconstitutional and, therefore, not admissible.

**The Temporary Deputy Chairman (Mr. Ethuro):** Order, hon. Members! This matter is clear as broad daylight in Turkana County. What Mr. Abdikadir argued was good, but for this section. He could do it in another section of the Bill. But this particular section 24 is actually quoted word for word from the Constitution which is Article 137. I

also wish to submit that 3 is trying to qualify 2(b). 2(b) is very clear, it is a public officer or acting in any State or other public office. That public office has already been defined by the Constitution. So, when the exceptions are made to that office, the Constitution has spelt out those ones. We cannot add more.

**An hon. Member:** Put the Question!

**The Temporary Deputy Chairman** (Mr. Ethuro): We cannot put the Question on an illegality.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I want to go by the wise counsel of the many lawyers who have spoken to this matter and humbly withdraw. But I put it on HANSARD record that it seems some sections of the Constitution are inconsistent with the Bill of Rights and we are discriminating against people who are of the same status like we are. I think, in future, the Minister for Justice, National Cohesion and Constitutional Affairs has to check whether there is a possibility of a constitutional amendment to cater for this office.

**The Temporary Deputy Chairman** (Mr. Ethuro): That is okay, Dr. Nuh. However, I want to remind you that in 2(1) the Constitution says it is our job to protect it. So, that amendment has been rejected.

*(Proposed amendment withdrawn)*

*(Clause 24 agreed to)*

#### *Clause 25*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 25 of the Bill be amended by renumbering paragraphs (d) and (e) as items (i) and (ii), respectively.  
It is just renumbering.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Eng. Gumbo, you have an amendment?

**Eng. Gumbo:** Mr. Temporary Deputy Chairman, Sir, my proposed amendment has actually been overtaken by events and I wish to withdraw it.

*(Proposed amendment withdrawn)*

*(Clause 25 as amended agreed to)*

*Clause 26*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir the amendment to this Clause was supposed to lower the bar of qualifications for someone to be elected to the position of a County Assembly Member. I had the intention of removing the post-secondary qualification requirement so that County Assembly representatives would only be required to produce a secondary school certificate. In view of the amendments which have already been passed that they will have to contend with Governors with degrees, I am a bit afraid that County Assembly representatives who will have only secondary school certificates will not muscle enough a County Governor who has a degree and his equivalent, the Deputy Governor.

I humbly withdraw my amendment.

*(Proposed amendment withdrawn)*

*(Clause 26 agreed to)*

*Clause 27*

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Chairman! There are several amendments in this Clause. We will allow Dr. Nuh first before yours.

**The Minister for Transport** (Mr. Kimunya): On a point of order, Mr. Temporary Deputy Chairman, Sir. Just to alert you that Dr. Nuh is attempting to delete Clause 27. If it is deleted there will be no Clause for further amendment. So, I would rather that we first of all go through the other amendments and then end up with his because his reasons for wanting it deleted may be because of issues that will be contained in the Clause.

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, Mr. Kimunya! First I had not proposed the Question. So, we should not have entertained the debate. Secondly, you are raising the wrong procedure. The procedure of the House is that we always take the deletion first because there is no point in amending in order to come and delete the Clause. So, you deal with the deletion first. If the deletion is defeated, then we come to the amendments.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I do not know why Mr. Kimunya is so paranoid because I am alive to the other amendments which are also coming. I am not working in isolation. I have consulted the Chairman of the Committee. I also want to humbly withdraw my amendment because I think the amendments by the Committee are better.

*(Proposed amendment withdrawn)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Dr. Nuh, you will also assist us. When you are withdrawing, just do it and you can make one liner. It should not be an opportunity--- I am sure you have expressed yourself sufficiently enough and hon. Members appreciate.

*Clause 27*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT Clause 27 of the Bill be amended-

- (a) by re-numbering the existing provision as Subclause (1); and
- (b) by inserting the following new sub-clause after Subclause (1)-  
“(2) Subsection (1) shall not apply to a fundraising for a person who is contesting an election under this Act or to a fundraising for a political party.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 27 as amended agreed to)*

*(Clause 28 agreed to)*

*Clause 29*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I beg to withdraw the amendment.

*(Proposed amendment withdrawn)*

*(Clause 29 agreed to)*

*Clause 30*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-  
THAT Clause 30 of the Bill be amended-

(a) in Subclause (1) by deleting the words “the supporters of” appearing at the beginning of the clause and substituting therefor the words “the persons who nominate”; and

(b) in Subclause (2) by deleting the words “the supporters of” appearing at the beginning of the clause and substituting therefor the words “the persons who nominate”.

This is essentially changing the term “supporters of” to “the persons who nominate.”

*(Question of the amendment proposed)*

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

*left out, put and agreed to)*

*(Question, that the words to be inserted  
in place thereof be inserted, put and agreed to)*

*(Clause 30 as amended agreed to)*

*Clause 31*

**The Temporary Deputy Chairman** (Mr. Ethuro): There are two amendments; one by the Minister and one by Dr. Nuh.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 31 be amended –

(a) by deleting Subclause (1) and substituting therefor the following new clause –

(1) A political party may appoint one agent for its candidates at each polling station”,

(b) In Subclause (3) by deleting the word “shall” and substituting therefor the word ‘may’”.

The reason is quite clear. We were unhappy and hon. Members criticized the original formulation so that a political party may nominate an agent at a polling station.

**Mr. Midiwo:** On a point of order, Mr. Temporary Deputy Chairman, Sir. We do not see the amendment on the Order Paper!

**The Temporary Deputy Chairman** (Mr. Ethuro): It is on page 2783!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): We are just making it user-friendly.

*(Question of the amendment proposed)*

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, I am not sure whether the Minister will want to carry both amendments in (a) and (b) because I have a problem with (b).

**The Temporary Deputy Chairman** (Mr. Ethuro): Mr. M. Kilonzo, I also noticed that you restricted your comments to (a). Maybe, you also wish to do (b).

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I proposed all of it to be acceptable to the House. That is because in (b), we are only saying that we change “shall” to “may” to make it, again, user friendly.

**The Temporary Deputy Chairman** (Mr. Ethuro): Both (a) and (b) are being moved by the Minister. So, you may wish to contribute to the two.

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, the amendment by the hon. Minister in (a) seems okay with me. But when he deletes sub-clause 2 which says a candidate nominated by a political party shall not appoint his own agent, I thought a better phrase would have been “may appoint his own agent”. That would have given the room for members to appoint and the Electoral Commission would accept it. But if it is

blank, then they may still gag and tell you that it is only the political party which can appoint an agent for you. Sometimes, they complain about the rooms which are not enough. So, I thought by deleting that clause, we will not be curing whatever hon. Members were afraid of; that is members would be allowed to appoint their own agents. I think deleting that sub-clause would not do justice and I wish to oppose the Minister's amendment, so that mine is carried.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, my amendment in (b) is actually addressing sub-clause 3 of 31 which deals with independent candidates. It does not deal with political parties. I have already amended sub-clause 3 in (1) by saying a political party may appoint one agent for its candidates at each polling station. Sub-clause 2 is to be deleted. If it does not appear, I would like to amend my amendment to say so. My proposal is that Clause 31(2) be deleted and we only leave the other one.

*(Loud consultations)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Order, hon. Members! Let us take the two of them. The first one is on (a) which says by deleting sub-clause (1) - and sub-clause one of the Bill reads: "A political party may appoint an agent for each of its candidates. That is what he is proposing to delete and then substituting with the new sub-clause: "A political party may appoint one agent for its candidates at each polling station." They appoint one agent! So, he has basically qualified the number of agents - an agent is one and the same - and the added the words "at the polling station."

**Hon. Members:** That is okay!

**The Temporary Deputy Chairman** (Mr. Ethuro): So, let me dispose of the amendments separately.

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

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairman** (Mr. Ethuro): Dr. Nuh, do you have another amendment?

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, it seems I was reading from the wrong page because I was reading the amendments by the Chairman. The amendments by the Minister seem to concur with mine so I withdraw my amendments.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Temporary Deputy Chairman, Sir, I hope Dr. Nuh' does not go away. I have not amended the clause that Dr. Nuh is amending if you look at page 2801. I will welcome it if he is to insist on it. In fact, that is why I did not propose this amendment because a candidate nominated by a political party may appoint an agent of the candidate's choice to replace Clause 31(2) which was saying that a candidate nominated by a political party shall not appoint his or her own agent.



**The Temporary Deputy Chairman** (Mr. Ethuro): Dr. Nuh, you are dealing with Subclause (2) while the Minister's amendments are on Subclause (1) and (3).

**Dr. Nuh:** Mr. Temporary Deputy Chairman, Sir, thank you for your guidance and I beg to move:-

THAT Clause 31 of the Bill be amended by deleting Subclause (2) and substituting therefor the following new Subclause-

“(2) A candidate nominated by a political party may appoint an agent of the candidate's choice”.

This will deny members who are vying for positions to nominate their agents. Political parties can sometimes become animals.

*(Question of the further amendment proposed)*

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

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 31 as amended agreed to)*

*Clause 32*

**Mr. Abdikadir:** Mr. Temporary Deputy Chairman, Sir, I beg to move:-

THAT, Clause 32 of the Bill be amended-

(a) in Subclause (1) by deleting paragraph (a); and  
by deleting Subclause (2).

*(Question of the amendment proposed)*

**Mr. Mungatana:** Mr. Temporary Deputy Chairman, Sir, this is a very dangerous proposition particularly for us who are political party managers. Subsection (2) says:-

“A person who has participated as a candidate in a nomination or selection of candidates of a political party shall not be eligible for nomination as a candidate by another political party”.

If we delete this, it means someone will run for nomination here, loses and goes to another party. We cannot have such indiscipline!

I oppose.

*[The Temporary Deputy Chairman  
(Mr. Ethuro) left the Chair]*

*[The Temporary Deputy Chairlady  
(Dr. Laboso) took the Chair]*

**The Minister for Energy** (Mr. Murungi): Madam Temporary Deputy Chairlady, I also oppose this particular amendment because the House has spoken in one voice against party-hopping. We are now introducing party-hopping through deletion of this clause. We must strongly oppose this dangerous trend.

**Mr. C. Kilonzo:** Madam Temporary Deputy Chairlady, they say experience is the best teacher. Prof. Sambili who is a Member of this Parliament was denied a certificate in her own party nomination after participating. This could have been because she is a woman. So is Ms. Wavinya, so is myself in the Ninth Parliament and many other people. There is party-hopping because the leadership of most of these parties is dictatorial. You are not able to practise democracy! If somebody is not loyal, as far as you are concerned there is no nomination. Therefore, it is very important to ensure that as we build political parties, we also do not destroy the human beings in the political parties.

**Mr. Wetangula:** Madam Temporary Deputy Chairlady, I strongly oppose the entire amendment. We have already legislated a new Bill of Rights in the Constitution. We roundly condemned party-hopping during debate in this House. I have great respect for my learned junior Mr. Abdikadir I do not know what extenuated him to bring this kind of callous amendment. We cannot---

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I take great exception to the term “callous”. This was a Committee that debated! It might not necessarily be my view.

**Mr. Wetangula:** Madam Temporary Deputy Chairlady, I am sorry. I withdraw the use of the word, “callous”. However, it is quite obnoxious.

I want to strongly oppose the reasons that have been given by my other colleagues. We must reject this.

**Mr. Duale:** Madam Temporary Deputy Chairlady, I stand to support this amendment.

Yes, we want better management and discipline in our political parties. How do you discipline the big party leaders during nominations? There are many Kenyans out there who are popular and who should have been in this august House but they lost because of party manipulations. We want to put it in law that never again, in the history of this country, a Kenyan fails to come to this House because of party manipulations!

**Mr. Koech:** Madam Temporary Deputy Chairlady, I stand to support this amendment.

Contrary to what Mr. Mungatana is talking about, deletion of this clause will actually discipline the political parties to make sure that they take care of their candidates and take care of them well. I want to plead with the party leaders that by deleting this, you are actually encouraging and helping to have the best people who will come and support you throughout.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Madam Temporary Deputy Chairlady, I stand to support this amendment.

Until the parties are fully democratized, we cannot risk putting everybody at the mercy of party leaders. This will especially affect women. We have seen examples of those women who would have lost the chance to come to this House just because they were women. They will mainly go into areas where the parties are not popular. That is where they will be allowed to stand.

I support.

**Dr. Kones:** Madam Temporary Deputy Chairlady, I also support the amendment. Actually this is meant to cure party dictatorship.

I suggest that we move the amendment.

**Mr. Bahari:** Madam Temporary Deputy Speaker, Sir, I stand to support the amendment. If a candidate decides to go elsewhere, what is the problem with the party leaders? Let the candidate prove himself or herself with the population!

Thank you.

**Mr. Ethuro:** Madam Temporary Deputy Chairlady, I want to seriously support this amendment.

I am a victim of parties that push nomination to the last minute. You are a favorable candidate but because they do not want you--- I went for KANU nominations but they declared somebody else the winner. If I did not have the opportunity to be accepted by another party, you would not have had the Ekwwe Ethuro you know.

**Mr. Jamleck Irungu Kamau:** Madam Temporary Deputy Chairlady, I also rise to support this amendment. We know political parties sometimes have their owners. Owners sometimes can be crazy people. They can actually lock people out at any minute.

Therefore, I support this.

**The Minister for Transport (Mr. Kimunya):** Madam Temporary Deputy Chairlady, even as we are moving this, let us refresh our minds. In Clause 29, we just passed to say:-

“A party that nominates a person to any election under this Act shall submit to the Commission party membership list of the party at least three months before the nomination of the candidate”.

**Hon. Members:** 45 days! 45 days!

**The Minister for Transport (Mr. Kimunya):** We amended it to 45 days!

The import of that is that 45 days before nominations, parties will have---

**Hon. Members:** Before general elections!

**The Minister for Transport (Mr. Kimunya):** Before nominations as per the amendment! The amendment was 45 days before nominations.

**Mr. Duale:** On a point of order, Madam Temporary Deputy Chairlady. The Member is misleading the House. It is 45 days to the general elections not to the nominations.

**The Minister for Transport (Mr. Kimunya):** Madam Temporary Deputy Chairlady, having agreed on this matter, it is important that we provide for no movement once the nomination process begins. Remember, we have seven elections at a go. Also, remember what we passed here on the Political Parties Bill and the membership. If you do not put all those things together, we will legislate something here which will allow for party hopping but will not work when you get to the nominations.

**Ms. Karua:** Madam Temporary Deputy Chairlady, having allowed party hopping in the Political Parties Bill, this is consequential. I am a survivor of being locked out. There was an attempt to lock me out in 1992 but because we have the number of days by which a party must submit the nominations, I think the problem we will have now is how to harmonise all the many provisions that are contradictory in the various Bills that we are passing. That is the dilemma we are going to have and party discipline cuts both ways. You can sit there and blame leaders but a party is made by its members. Let members rise up and make sure their parties are democratic. I support.

**The Assistant Minister for Housing** (Bishop Wanjiru): Madam Temporary Deputy Chairlady, I support the amendment strongly considering that we have not found a waterproof mechanism to deal with corruption within the political parties. So, for us to be able to make sure that good leaders are not frustrated and locked out of elections, let this clause be deleted.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, I think we have ventilated enough on this matter. In the interest of moving forward--- Unless you are really going to say something very different. Hon. Kilimo, is yours fundamentally different from what has been said?

**The Assistant Minister for Co-operative Development and Marketing** (Mrs. Kilimo): Yes, mine is different, Madam Temporary Deputy Chairlady. I want to give myself as an example. I had only two months on 28<sup>th</sup> October, 2007. I had moved from Orange Democratic Movement (ODM) to Kenya Democratic Alliance (Kenda). I had less than two months in Kenda to come back to this House. Since we did not mention in the Political Parties Bill how many days you require to move to another political party, I support this amendment.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, it has been brought to my attention that what you are talking about – 45 days is not applicable in Clause 29 that you have just passed. Clause 29 still remains as three months that the parties must give in their list before the nomination of a candidate. The 45 days is in Clause 14 and not in Clause 29. Please note. Therefore, in the interest of moving forward-- In view of what I have just said---

**Mr. Gabbow:** On a point of order, Madam Temporary Deputy Speaker, Sir. Now I can see the danger of rushing this Bill. Honestly, rushing these Bills through this Parliament will cause a problem. That is because now you are already telling us about the 90 days. That is three months and there is another clause which we are amending. So, I do not know the way forward. I do not know whether it is really necessary to rush these Bills, keeping us year until midnight and not going through the Bills. I do not think we are doing any justice to these Bills.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, I believe the Committee has done its work. The Chairman of the Committee, I hope there is no conflict between your deletion and the provisions of Article 29. I want to put the Question. Is there a conflict? Could you confirm that, Chairman?

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I do not know how I will be able to give you that here, but we will be able to correct anything later on. This proposal deals with outlawing one person who has been rejected in one party from moving to the other side, irrespective of how the time is. If they are caught out by time, that is a different matter. But that outlawing is what we are deleting.

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

**The Temporary Deputy Chairlady** (Dr. Laboso): Now, there was a further amendment by Dr. Nuh which was exactly the same as the earlier amendment.

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I withdraw the amendment.

*(Proposed amendment withdrawn)*

*((Clause 32 as amended agreed to)*

*(Clause 33 agreed to)*

*Clause 34*

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 34 of the Bill be amended in paragraph (d) by deleting the words “and as may be prescribed by the Commission”.

This relates to the clause that legislates how independent candidates are supposed to be handled and subsection (d) says: “The nominated candidate is selected in a manner provided for in this Constitution and as may be prescribed by the Commission.” I think giving so much power to the Commission to prescribe how independent candidates are selected is being high handedness and giving so much power to the Commission. I propose the deletion of the words “and as may be prescribed by the Commission”. I have already consulted the Chair and proposed that we have some further amendments to that.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to propose a further amendment to that. We should say: “Not just the Constitution but these Acts also.” So, after the word “Constitution” add “these Acts”.

**The Temporary Deputy Chairlady** (Dr. Laboso): Is it “Constitution” or “Commission”?

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, he is proposing deletion of giving that ability to the Commission. He is removing that and saying what is stated only in the Constitution. I am adding plus what is also stated in this Act.

*(Question of the further amendment proposed)*

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

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

*(Clause 34 as amended agreed to)*

*Clause 35*

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 35 of the Bill be amended by deleting Subclause (8).

With the realization that what we have passed in Clause 32 is deleting part “a”, I would want to propose that we delete Subclause 8 of Clause 35 which basically says: “A person who is nominated by a political party under Subsections 2, 3 and 4 shall have been

a member of the political party for at least three months preceding the date of submission of the party list by the political party.”

Madam Temporary Deputy Chairlady, this is restricting the freedom of association of Members – not only Members but also Kenyan citizens. What this clause says is that because the party has already been told to submit the list of the names three months before; and you must have been a member of that party three months before, then a member should have been a member of that political party six months before an election. Members have got the right to move from one party to another without calling it party hopping. It might be sightseeing or whatever you want to call it. So, I propose that we delete sub-clause 8 of Clause 35.

**The Temporary Deputy Chairlady (Dr. Laboso):** It is clearly three months preceding the date of submission. It does not say three months that you are purporting.

**Dr. Nuh:** Madam Temporary Deputy Chairlady, it says three months to date of submission. It says three months before the election which, to me, happens to be six months.

**The Temporary Deputy Chairlady (Dr. Laboso):** Is that your interpretation, hon. Mungatana. Hon. Members are, of course, at liberty to agree with you, or disagree with you.

*(Question of the amendment proposed)*

**Mr. Bahari:** Madam Temporary Deputy Chairlady, I beg to support this amendment because these serious time limits are undermining democracy.

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, as I said, we need to have some form of order within political parties. I am urging Members that we do not leave everything like that. Otherwise, we will make it nonsensical to join a political party. How do we articulate policy in this House if we do so? We will not have direction in the next Parliament.

Madam Temporary Deputy Chairlady, I humbly beg to oppose.

**Mr. Duale:** Madam Temporary Deputy Chairlady, I stand to support that amendment. I come from a nomadic community. That is one of the reasons why I am supporting this amendment. The point is that we join parties by consent. Until or unless when we reach where parties ascribed to the Political Parties Act, currently, parties do not become regional, or properties of individual. I can say that a number of Kenyans will suffer within this period of six months. So, I support the amendment of hon. Nuh.

**Mr. C. Onyancha:** Madam Temporary Deputy Chairlady, this new Constitution is about building institution. Parties are institutions. We want to build strong parties. We also want politicians to have faith in their parties.

I beg to oppose.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, one of the reasons why you find a Member of Parliament is not nominated by a Party, and the following day, he or she oppose the principles and policies of that party is because we nominate Members who we do not believe in parties. It is important that we put a threshold. If a member is to be nominated by a party, he should have been in that political party for a long time. They must take their time to understand the manifesto, principles and policies of that party.

Therefore, I oppose this amendment. It is a very dangerous amendment.

My colleague hon. Nuh is bringing so many dangerous amendments this afternoon.

**Ms. Karua:** Madam Temporary Deputy Chairlady, I think we are misunderstanding. If we go back to Subclause (2) of this Clause, you will see this nomination relates to the party list. Remember the nomination for candidates contesting election we disposed of in Clause 14. This Clause is not for abuse by party leaders. This is to protect party members who have been faithful and have worked to grow these parties, so that they have exclusivity when it comes to nominations. Lets us for once support our party members and not ourselves.

I, therefore, beg to oppose.

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Madam Temporary Deputy Chairlady, it concerns me that in efforts to amend this Bill, we are forgetting that Article 92 of the Constitution says as follow: “Parliament shall enact legislation to provide for (c) the regulation of political parties”. The more we continue diluting that requirement, the more the law will fail the test of this. Hon. Karua is right. This Article is not relating to nomination of candidates. It is relating to that party list that you must supply to the Registrar in advance, so that you are not changing at whim, merely because you have secured M. Kilonzo to move away from ODM-K. God forbid.

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Members, in the interest of moving forward, could we allow Dr. Nuh to say something about the amendment?

**Dr. Nuh:** Madam Temporary Deputy Chairlady, although hon. Mbadi is very furious with me, having listened to the party bigwigs, because I thought this Clause was an internal party affair that should not have been carried into this Bill of ours, I beg withdraw my amendment.

*(Proposed amendment withdrawn)*

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Mungatana!

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I move to amend Clause 34(9)---

**The Temporary Deputy Chairlady (Dr. Laboso):** It is 35!

**Mr. Mungatana:** Sorry, Madam Temporary Deputy Chairlady! I stand corrected! I have given notice that it will be an amended version – by saying that the party list may contain a name of any Presidential or Deputy Presidential candidate nominated for an election under this Act. The point I want to make---

**Hon. Members:** It is okay! *Sawa!*

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, if it is okay, then I do not need to explain.

**The Temporary Deputy Chairlady (Dr. Laboso):** It is okay you do not need to explain.

**Mr. Mungatana:** Thank you, Madam Temporary Deputy Chairlady. I beg to move:-

THAT, Clause 35 of the Bill be amended by deleting the words “shall not” and substituting therefor the word “may”

*(Question of the amendment proposed)*

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

*(Question, that the word to be inserted in place  
thereof be inserted, put and agreed to))*

*(Clause 35 as amended agreed to)*

*Clause 36*

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, clause 36 of the Bill be amended by inserting the words “on the same day as the day designated for submission to the Commission by political parties of nominations of candidates for an election” after the words “submit its party list to the Commission”.

This is essentially getting the party list, and the nominations submitted to the Commission on the same day.

*(Question of the amendment proposed)*

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

*(Clause 36 as amended agreed to)*

*Clause 37*

**The Temporary Deputy Chairman** (Dr. Laboso): We have a proposal by the Minister. Could we start by the Minister’s amendment?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo):

THAT, Clause 37 of the Bill be amended in Subclause (1)(f) by deleting words “the youth and four of whom the youth” appearing immediately after the word “and” and substituting therefor the words “four of whom shall be the youth”.

**The Temporary Deputy Chairlady** (Dr. Laboso): What is the import of your amendment, Minister?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, “the youth and four of whom” is purely a typing error. There was serious typing mistake because it says, “and the youth and four of whom the youth” --- I am sorry about this. I apologize. So, we are just correcting.



*(Question of the amendment be proposed)*

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

*(Question, that the words to be inserted in place thereof,  
be inserted, put and agreed to)*

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Chairman, do you have a similar amendment?

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Subclause (1) of clause 37 of the Bill be amended-

- (a) in paragraph (a), by deleting the words “twenty four” appearing after the words “shall include” and substituting therefor the word “twelve”;
- (b) in paragraph (b), by deleting the words “thirty two” appearing after the words “shall include” and substituting therefor the word “sixteen”;
- (c) in paragraph (c), by deleting the word “four” appearing after the words “shall include” and substituting therefor the word “two”;
- (d) in paragraph (d), by deleting the word “four” appearing after the words “shall include” and substituting therefor the word “two”;
- (e) in paragraph (e) by deleting the word “twice” appearing after the words “candidates reflecting”; and
- (f) in paragraph (f) of Subclause (1) by deleting the words “and the youth” appearing after the words “persons with disability”.

*(Question of the amendment proposed)*

**The Minister for Transport (Mr. Kimunya):** Thank you, Madam Temporary Deputy Chairlady. I wish the Chairman of the Oversight Committee on the Implementation of the Constitution would be attentive to this. The essence of the list being proposed is to contain not just enough names for that election, but even any vacancies being created. If you look at the Constitution, it shows that any replacement of people in a party list will go by the next on the list.

So, if you have a situation where you propose 16 names and you win all the seats and the 16 are named and then there is a subsequent vacancy, where will the Electoral Commission, in accordance with the Constitution, then draw the second name? The essence of this was to provide for parties to give more people than are required. The top 16 will be picked and the others will be available for “by-elections” of the nominated seats. The Constitution says that the names will be picked from the list that was submitted earlier for the entire period.

**The Temporary Deputy Chairlady (Dr. Laboso):** I think the point has been made, hon. Kimunya.

**Ms. Karua:** Madam Temporary Deputy Chairlady, that is not the correct position. The practice all over the world where there are party lists is that each party gives an exact number of seats, the reason being that no political party ever won elections 100 per cent

in the history of this country. These seats are going to be shared maybe half or three-quarters. Therefore, what will happen is that, although you gave 12 seats and got six, you still have a bank. In the totally unlikely event that you deplete the number of people on your list, there is a mechanism for replacement. This is easier than making the Commission receive a bulk of names. Let every party give 12 and remember we have 49 parties. Let every party give the exact number, for example, if it is 12, 12 seats and if it is 16 for senators, 16 seats. In the unlikely event of it being exhausted, there is a method for doing that.

**The Temporary Deputy Chairlady** (Dr. Laboso): I think your point has also been made.

**Mrs. Noor:** Madam Temporary Deputy Chairlady, I want to support the amendment. What hon. Karua has said about the world best practices, that is exactly what happens all over the world where party lists are used, for example, in Sweden and South Africa. The exact numbers are taken. This issue that is brought here of the extra numbers is just used to cheat the women of this country and to tell them that they are in the party list and have been picked. It is like a shopping bag that the political party wants to use. We are refusing to be used any more.

**The Assistant Minister for Nairobi Metropolitan Development** (Ms. Ongoro): Madam Temporary Deputy Chairlady, let me just add my voice to that. Really, it makes no sense when the maximum number that could possibly be nominated under any circumstance is 12. The issue of any political party being allowed to give 24 names is really just for politicking, so that if you go to any area or region of this country, you can then parade the names and say: "From this community, you see, we have nominated so and so", when you know very well that they will never reach number 20 or 21.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, even if you only give 12 names, chances are that the 12 may not find their way finally because ---

**The Temporary Deputy Chairlady** (Dr. Laboso): That has been said, hon. Mbadi!

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, can you just allow me to make my point? I think hon. Kimunya had a point. Let us have a hypothetical situation where one political party could win all the seats.

**Ms. Karua:** Where?

**Mr. Mbadi:** Please, can you allow me make my point, hon. Martha? You also made yours. I think we have democracy.

Suppose one political party wins all the seats in a county, for example, it is entitled to all nominations. You will give the names that were forwarded which were fixed. Suppose one dies, God forbid, and the Constitution says that you are supposed to use the list which had already been given, how then would you cure this? Will you allow other parties to give names? What is the problem with having more than the maximum number allowable for nomination?

I oppose.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Orengo, let us profit from your wide experience.

**The Minister for Lands** (Mr. Orengo): Madam Temporary Deputy Chairlady, the spirit of these special seats is that they are not based on one person one vote. The system is proportional representation. You should have your potential Members of

Parliament or nominees well before. It is not a list that you provide post election, so that the party members also feel represented. That is why in the ANC, they have a list according to seniority and they give as many as there are seats. So, when it comes to allocating seats, they just go back to that list which is based on proportional representation. This idea is brought in to make sure that political parties do not, after the elections, begin to sell seats, for example. After the election, you may now be waving and saying that: “We have 12 seats here, if you pay Kshs1 million per seat, you are going to get a nomination”. But in order to make sure that you deal with that mischief, you have a list in advance, which is registered with the Electoral Commission. This is the most sensible thing to do. It happens everywhere where the principle of proportional representation is used.

Hon. Mbadi is quite right. Like in South Africa, the ANC nearly won all the seats. So, you do not go back again to an exercise which you should have done before the elections. I think it is a good point to do it this way.

**Ms. Karua:** Madam Temporary Deputy Chairlady, there is a procedure for replacing if the list is exhausted or somebody dies, resigns from the party or joins another political party. The procedure of replacing a list, just like in the case of a Member of Parliament, you are given 21 days. For the party list, you are given 21 days, and we went clause by clause, after elections. If you are already serving and the list is exhausted, assuming that you have replaced twice and your number is finished, you have 21 days when the Speaker calls you and you can replace the names. In Kenya, even when KANU was *baba na mama*, no party has ever won the 12 seats alone.

**The Minister for Lands** (Mr. Orengo): On a point of information, Madam Temporary Deputy Chairlady, if you look at Clause 35(7) and (8), the list submitted to the Commission shall be valid for the term of Parliament.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, but is says that: “Notwithstanding the provisions of Clause 35, if there are no more candidates on the same party’s list, the Commission shall require the concerned political party to nominate another candidate within 21 days”.

**The Temporary Deputy Chairlady** (Dr. Laboso): I think that is taken care of.

**The Minister for Lands** (Mr. Orengo): All of it is there anyway.

**The Temporary Deputy Chairlady** (Dr. Laboso): So, are you still sticking by your amendment, Chairman?

**Mr. Abdikadir:** Yes, indeed, Madam Temporary Deputy Chairlady.

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

*(Question, that the words to be inserted in place thereof be inserted,  
put and agreed to)*

*(Clause 37 as amended agreed to)*

*(Clauses 38 and 39 agreed to)*

*Clause 40*

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, clause 40 of the Bill be amended by-

(a) deleting the words “seven days” appearing after the words “an election within” and substituting therefor the word “immediately”; and,

(b) by deleting Subclause (3) and substituting therefor the following new Subclause-

“(3) The Commission shall announce the provisional and final results in the order in which the tallying of the results is completed”.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in  
place thereof be inserted, put and agreed to)*

*(Clause 40 as amended agreed to)*

*(Clauses 41, 42 and 43 agreed to)*

**The Temporary Deputy Chairlady (Dr. Laboso):** Yes, Mr. Minister!

*Clause 44*

**The Temporary Deputy Chairlady (Dr. Laboso):** Yes, Mr. Minister!

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 44 of the Bill be amended in Subclause (1)(a) by deleting the words “independent or” and substituting therefor the words “or a”

This amendment is pretty straightforward. It is, again a correction. Subclause 1(a) says that a public officer shall not engage in the activities of any political party or candidate or act as an agent of a political party, independent or a candidate in an election. So, we want to remove the words “independent or” and change it to “or a”.

**The Temporary Deputy Chairlady (Dr. Laboso):** What is the import of the amendment, Minister?

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Madam Temporary Deputy Chairlady, the import of it is that by “public officers”, we are thinking of civil servants. We are not thinking of straight officers as such. It is, therefore, a method of ensuring that civil servants do not interfere with political party affairs.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in  
place thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairlady** (Dr. Laboso): The Committee has a further amendment to Clause 44.

Yes, Committee Chairman!

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 44 of the Bill be amended by inserting the following new Subclauses after Subclause (4)-

“(5) A public officer who intends to contest an election under this Act shall resign from public office at least seven months before the date of the election”.

(6) This section shall not apply to-

- (a) the President;
- (b) the Prime Minister;
- (c) the Deputy President;
- (d) a Member of Parliament;
- (e) a County governor;
- (f) a Deputy County Governor; and,
- (g) a Member of a County Assembly.

Madam Temporary Deputy Chairlady, I would also like to add that all the state officers are also public officers.

*(Question of the further amendment proposed)*

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

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Mungatana, I am told that you also have an amendment to Clause 44.

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, in view of the first amendment, I withdraw my amendment.

*(Proposed amendment withdrawn)*

*(Clause 44 as amended agreed to)*

*(Clause 45 agreed to)*

*Clause 46*

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, clause 46 of the Bill be amended-

(a) by deleting Subclause (2) and substituting therefor the following new Subclause-

“(2) A Member of Parliament may be recalled where the Member-

(i) is found, after due process of the law, to have violated the provisions of Chapter Six of the Constitution;

(ii) is found, after due process of the law, to have mismanaged public resources;

(iii) is convicted of an offence under this Act.

(b) by inserting the following new Subclause after Subclause (5)-

“(6) A person who unsuccessfully contested an election under this Act shall not be eligible, directly or indirectly, to initiate a petition under this section”.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in  
place thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, there is a further amendment to Clause 46 by Dr. Nuh.

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, Dr. Nuh has requested me to prosecute this on his behalf. He is saying that the amendment by the Committee is better. So, we drop this one.

**The Temporary Deputy Chairlady** (Dr. Laboso): Thank you. So, the amendment by Dr. Nuh is dropped.

*(Proposed amendment dropped)*

*(Clause 46 as amended agreed to)*

*Clause 47*

**The Temporary Deputy Chairlady** (Dr. Laboso): Committee Chairman, Dr. Nuh also has an amendment to Clause 47. Let us take it first.

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, Dr. Nuh has asked me to ask the House to accept his withdrawal of the reticular amendment to this Clause

**The Temporary Deputy Chairlady** (Dr. Laboso): Very well. Dr. Nuh has withdrawn his amendment.

*(Proposed amendment withdrawn)*

Committee Chairman, could you now move your amendment?

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-  
THAT, clause 47 of the Bill be amended-

(a) by deleting Subclause (1) and substituting therefor the following new Subclause-

“(1) A recall under section 46 shall be initiated by a petition which shall be filed with the Commission and which shall be-

(a) in writing;

(b) signed by a petitioner who-

(i) is a voter in the constituency or county in respect of which the recall is sought; and,

(ii) was registered to vote in the election in respect of which the recall is sought;

(c) accompanied by an order of the High Court issued in terms of section 46(3)”;

(b) in paragraph (b) of Subclause (2) by deleting all the words appearing after the words “represent at least” and substituting therefor the words “thirty per cent of the registered voters”;

(c) in paragraph (c) of Subclause (2) by deleting the words “prescribed fee” and substituting therefor the words “the fee prescribed for an election petition”; and,

(d) in Subclause (3) by deleting all the words appearing after the words “shall contain the names of” and substituting therefor the words “at least fifteen per cent of the voters in more than half of the wards in the county or the constituency, as appropriate”.

*(Question of the amendment proposed)*

**Mr. Koech:** Madam Temporary Deputy Chairlady, I actually expected the Committee to have gone further. When we talk of 30 per cent, it is possible for a Member of Parliament, where you have over ten candidates, to come to Parliament with 25 per cent of the votes cast. It is, therefore, possible to immediately get 30 per cent from those who did not vote or those who voted for other persons.

I thought that we would have proposed 75 per cent, just like when we want to amend the Constitution, so that we raise the bar for those who may demand a recall of their Member of Parliament. I am worried of this proposal. Therefore, I want to move an amendment to this amendment by deleting the words “thirty per cent” and replacing them with the words “seventy-five per cent”.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Koech, you will have to give us that amendment in writing and then we can prosecute it like other amendments.

**Ms. Karua:** Madam Temporary Deputy Chairlady, I want to plead with the hon. Member who has just moved the amendment to carefully look at the entire Clause. Thirty-per cent is only the threshold to make the petition accepted. Before the petition is accepted, someone will have to go to court to obtain an order from a court of law that the Member has been guilty of the violations set out. They will then have to get 30 per cent of the voters in the constituency.

Once that petition is validated, a vote will be called in that constituency – sort of a mini referendum – to agree or disagree with the recall of the Member. In order for the recall to be successful, at least, half of the registered members, and not those who vote, have to concur with the recall. So, putting it to 75 per cent would be unreasonable. The steps to be taken safeguard Members of Parliament.

Madam Temporary Deputy Chairlady, I want to emphasise that it is not this Parliament which will be affected by this provision because we are almost finishing our term. We are protecting Members of Parliament who will be elected from being disturbed by those who will have lost the elections. There is also a clause stating clearly that a person who lost the last election is not eligible to initiate directly or indirectly such a petition.

Therefore, I beg to oppose the amendment by hon. Koech and plead with him to withdraw it and leave the Committee's amendment.

**The Temporary Deputy Chairlady** (Dr. Laboso): We have not yet received hon. Koech's amendment. So, we are just discussing the amendment by the Chairman of the Committee at this point.

Yes, Minister!

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, could I persuade my good friend before he submits that amendment that if you make provisions in this clause that on the face of it appear to make it impossible for his voters to recall him, he is defeating the Constitution itself. Ms. Karua is dead right. Let us tread very carefully. The procedure that allows the voters to go and get the court order and the proposals that eliminate your opponent from being petitioners are adequate and 30 per cent is reasonable.

**Mr. Midiwo**: Madam Temporary Deputy Chairlady, I wish to support the amendment as proposed by the Committee and oppose the further amendment. The reason is that we do not need to look like we are denying people corridors of justice. I think Parliament needs to be a bit more careful. Thirty per cent is only to allow you to get to court and then they would come to the constituency where the threshold of people who may want to reject a Member of Parliament's existence in the constituency is 50 per cent. I plead with hon. Members that if more than 50 per cent of people in your constituency do not like, you do not need to be there. This is because you are really in the wrong place.

**The Temporary Deputy Chairlady** (Dr. Laboso): Are you persuaded, Mr. Koech, so that we can dispense of this?

**Mr. Mbadi**: Madam Temporary Deputy Chairlady, the Committee looked at this matter critically. Let us also not appear like we want to make this inoperational. We need to legislate things that can be implemented and 75 per cent is impossible. Again, if you look at the conditions that we have put, for one to be considered a non-performer, they are very difficult that any busybody will not have an opportunity to petition and even for the court to award that petition. So, let us leave the amendment as the Chairman had proposed.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Koech, I hope you are persuaded?



**Mr. Koech:** Thank you, Madam Temporary Deputy Chairlady. I have listened and heard that there is a clause that requires 51 per cent. I am yet to see it but if that is provided for, then I withdraw my amendment.

*(The further amendment withdrawn)*

**The Temporary Deputy Chairlady** (Dr. Laboso): We have a further amendment by Mr. Mungatana or is it being disregarded now?

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I think the earlier amendment takes care of that, so I withdraw.

*(The further amendment withdrawn)*

**The Temporary Deputy Chairlady** (Dr. Laboso): What about the amendment by Eng. Gumbo? Is it also disregarded in view of the Committee's recommendation?

Eng. Gumbo is not here, so the amendment is dropped.

*(The further amendment dropped)*

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

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 47 as amended agreed to)*

*Clause 48*

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, on behalf of Dr. Nuh, I beg to move:-

THAT, Clause 48 of the Bill be amended in Subclause (7) by deleting the words "shall not qualify to" appearing after the words "has been recalled" and substituting therefor the word "may".

Madam Temporary Deputy Chairlady, the reason for this small amendment where we are introducing the word "may" is because the clause says that once you have lost in the recall case, you are blocked from running in the subsequent election. We are now introducing this because as they say, in politics, two weeks is a long time. If the Member who lost his seat because of a recall in court has enough strength to convince voters in his constituency, let him be allowed to run and then the voters will decide whether the court was right or it was imposed on them.

*(Question of the amendment proposed)*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, if over 50 per cent of your voters have said that you did not represent them well, it is only fair that you leave the

arena for others to compete. I do not see why you should again subject your electorate to decide whether to vote for you if a few weeks ago, over 50 per cent of registers rejected you. Article 49 says so. I do not see why such a candidate or Member of Parliament after dissatisfying his constituents that much should be allowed again to stand. To me, that amendment should not be carried.

**Mr. C. Kilonzo:** Madam Temporary Deputy Chairlady, I wish to support that amendment. Let us not become the voters. Let us provide for legislation and let him or her put his case to the voters, if he or she comes back, well and good. If he or she does not, too bad.

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, we should support it because the Constitution says that every person, under political rights, is entitled to contest any seat in public office and the electors are also entitled to choose any person. It is not right to deny a person who has been recalled a chance to contest. So, I support that amendment.

*(Dr. Nuh stood up on his feet)*

**The Temporary Deputy Chairlady (Dr. Laboso):** Dr. Nuh, you cannot come in person and yet Dr. Khalwale moved on your behalf.

**The Minister for Lands (Mr. Orengo):** Madam Temporary Deputy Chairlady, I want to support this amendment because the Constitution in Article 104(1) - Right of Recall says:-

“The electorate under Articles 97 and 98 have the right to recall the Member of Parliament representing their constituency before the end of the term of the relevant House of Parliament.

(2) Parliament shall enact legislation to provide for the ground on which a Member may be recalled and the procedure to be followed.”

There is nothing in those provisions which say that you can stop that Member from running for elections. So, you cannot put a prohibition which the Constitution does not provide for.

**Ms. Karua:** Madam Temporary Deputy Chairlady, I oppose the amendment because we have raised the threshold of recall to a half of the registered voters. If we then allow a person recalled through such a rigorous means to run for elections, we are actually negating the right of recall. It would have been better if we allowed the recall to be 30 per cent and then you allow the person to contest. I urge hon. Members to also consider the feelings of the voters. If 50 per cent of the voters concur that you be recalled, I think in a just and democratic society, it is justifiable that such a person be prevented from running.

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Members, let us dispense of the matter. Mr. Wetangula, I have given you the Floor for just one minute.

**Mr. Wetangula:** Madam Temporary Deputy Chairlady, I support the amendment for the simple reason that the fact that 50 per cent have supported your recall, then you go to an election where there are 20 candidates – we have even had 49 candidates in one constituency - you will still have a chance to win. In any case, a recall is not an abolition of your constitutional right to contest any seat.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Namwamba, you will be the last on this matter.

**Mr. Namwamba:** Madam Temporary Deputy Chairlady, in law, we have the doctrine of double jeopardy. A person should not be taken through odium on the same matter twice. The mere act of a Member of this House losing a seat and having to be taken through the whole process which is quite harrowing, blocking the same Member from seeking or participating in the subsequent elections would amount to double jeopardy or punishment. Again, we know how transient public sentiments can be.

I support the amendment.

**Dr. Nuh:** Madam Temporary Deputy Chairlady---

**The Temporary Deputy Chairlady** (Dr. Laboso): Dr. Nuh, you already appeared in the form of the hon. Member for Ikolomani. Mr. K. Kilonzo, you will have a chance to contribute in another clause.

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

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 48 as amended agreed to)*

## **PROGRESS REPORTED**

### THE ELECTIONS BILL

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Chairlady, I beg to move that the Committee do report progress and seek leave to sit again today.

Hon. Members, as you will note, it is 5.30 p.m., and we still have a lot of business in the Committee and also within the House. There are three reports of the Committee that we need to also clear today. The leave of the House that we got on Wednesday was to extend the sittings of the House for Wednesday and Thursday, and today had not been covered. So, it is important that we then move into the House and extend our sitting, so that we can deliberate and finish all these things.

Madam Temporary Deputy Chairlady, I beg to move.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo) seconded.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Prof. Kaloki) took the Chair]*

#### THE ELECTIONS BILL

**Dr. Laboso:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the whole House is considering The Elections Bill and has instructed me to report progress and seek leave to sit again.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I beg to move that the House doth agree with the Committee in the said Report.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo) seconded.

*(Question proposed)*

*(Question put and agreed to)*

#### PROCEDURAL MOTION

##### EXTENSION OF SITTING TIME

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I beg to move the following Procedural Motion:-

THAT, notwithstanding the provisions of Standing Order No.20, this House extends the sitting time to the conclusion of the business appearing on the Order Paper.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo) seconded.

*(Question proposed)*

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I am just wondering whether there is any need of extending time, especially to pass unconstitutional legislation that does not recognize that “not more than two-thirds of an elected Chamber should be of the same gender”. It appears that we are moving in circles and the court will strike this legislation out and we will have to come back here to continue with the same thing. For those considerations, I do not think that this Motion is well considered.

I oppose it.

**Mrs. Shebesh:** Mr. Temporary Deputy Speaker, Sir, I also oppose this Motion.

Mr. Temporary Deputy Speaker, Sir, over 500 women just came a few minutes ago to the gates of this Parliament and have told us in no clear terms that what we are doing here is unconstitutional. Therefore, what we are continuing to do, even as we extend time, does not add any value to the constitutionality of this work that we are doing.

**Mrs. Noor:** Mr. Temporary Deputy Speaker, Sir, I oppose the extension. We had good political will as the women of the Tenth Parliament. We wanted to solve a

constitutional crisis in the future. We had a goodwill for this country and the men of the Tenth Parliament refused it.

I oppose this Procedural Motion.

**Mr. Mungatana:** Mr. Temporary Deputy Speaker, Sir, I just want to bring to the attention of the House the fact that we want to do our work as Members of Parliament. We want to finish this Elections Bill tonight. If the court has any ideas thinking that we are unconstitutional, those are matters that we will solve there. I want to remind this House that some people went to the Constitutional Court to say that the Supreme Court was not constitutional and they did not succeed. So, let us not assume that what we are doing is unconstitutional. It is constitutional.

**Mr. Samoei:** Mr. Temporary Deputy Speaker, Sir, let me join my colleagues in supporting this Procedural Motion.

*(Applause)*

While we are persuaded that the issues of gender are important and relevant and, in fact, the spirit of the Constitution supports the one-third or not more than two-thirds of an elected Chamber should be of the same gender, this is an issue that, along the line, we are sure has to be resolved one way or another. While that is the case, I do not think that this is the time for us to resolve that issue. The issue of finding a way around the Constitution to bring about the one-third principle is seized of this House and I am sure that, that will be sorted out at some point. Let us move ahead and conclude the business of today.

**Mr. Njuguna:** Mr. Temporary Deputy Speaker, Sir, I also take this opportunity to, very strongly, support the extension of time because of the nature and importance of the business ahead of us.

I support.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, first of all, I would like to plead and appeal to my lady colleagues in this House. I want to put it on record that we are not fighting the one-third representation of women. I am urging the Cabinet to kindly sit next week and come up with proposals of how, in the next Parliament, we will have at, least, one-third of either gender representation in this Parliament, so that we can pass a constitutional amendment to make the operation of the one-third rule possible. Trying to put that provision in this legislation will not help our course because in the same vein, we will be violating the same Constitution.

**Mrs. Shebesh:** On a point of order, Mr. Temporary Deputy Speaker, Sir, is it in order for the good MP for Gwassi to give the Cabinet the work of legislation when it is the work of Parliament? Is he in order?

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I think Madam Shebesh has refused to listen properly. For any legislation to be brought to this House, especially a constitutional amendment, it requires consultations. Let us avoid this idea of telling us that some people are demonstrating. So many people have demonstrated in this country. If there are people demonstrating, demonstrations are provided for in the Constitution. There is nothing wrong.

**Dr. Laboso:** On a point of order, Mr. Temporary Deputy Speaker, Sir. Is the Member for Gwassi in order to say; “there are people telling us?” If he wants to find out

the evidence of that, he should walk outside here and see the women of Kenyan protesting against the one-third rule.

*(Several hon. Members stood up in their places)*

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, I am still contributing. They have raised a point of order and I am responding. What I am saying is that a demonstration is a constitutional right. Let us not look at demonstrations as a crime. Kenyans are picketing and demonstrating. That is perfectly right because we will listen to their views. We shall take their views into consideration as we debate.

**The Assistant Minister for Nairobi Metropolitan Development** (Ms. Ongoro): Mr. Temporary Deputy Speaker, Sir, I stand to strongly oppose an extension of this sitting. If anything that touches on women issues is being rubbished by this same House that represents members of this country--- We know that this country is constituted of 52 percent women. Let it be on record--- Let me just correct hon. Mbadi. You are actually referring to the women of this country as “some people”. You have said some people are doing this and some people are doing that. They are demonstrating because their constitutional right is being violated. We will not sit in this House and listen to your ---

**Mr. Mbadi:** On a point of order, Mr. Temporary Deputy Speaker.

**The Assistant Minister for Nairobi Metropolitan Development** (Ms. Ongoro): Mr. Mbadi, I have the Floor!

**The Temporary Deputy Speaker** (Prof. Kaloki): Order, hon. Ongoro!

**The Assistant Minister for Nairobi Metropolitan Development** (Mrs. Ongoro): If we are going to have a constitutional crisis next year, then we had better have it this year.

**Mr. K. Kilonzo:** Thank you Mr. Temporary Deputy Speaker, Sir. I stand here to strongly oppose the extension for the simple reason that we are not going to do work here when the male Members of Parliament are not sensitive to constitutional issues which are being raised. We are not going to sit here and do something which is unconstitutional. I support the women of this country. The women of this country must have a say. Gone are the days when men used to carry the day. Wake up and smell the coffee. The women of Kenya must have their way!

*(Question put and agreed to)*

*(Several hon. Members stood up in their places)*

**Hon. Members:** Division! Division!

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, you know that you need, at least, 20 of you to have a Division! Therefore, the House will proceed to the Committee of the whole House.

## COMMITTEE OF THE WHOLE HOUSE

*(Order for Committee read)*

*[The Temporary Deputy Speaker  
(Prof. Kaloki) left the Chair]*

IN THE COMMITTEE

*[The Temporary Deputy Chairlady  
(Dr. Laboso) took the Chair]*

THE ELECTIONS BILL

*(Resumption of consideration interrupted  
in the Committee on 26<sup>th</sup> August, 2011)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Order, hon. Members! We are now in the Committee of the whole House to consider the Elections Bill, 2011. We will proceed from Clause 49.

*Clause 49*

**Mr. Mbadi:** Thank you, Madam Temporary Deputy Chairlady. The Chair of the Committee, hon. Abdikadir, has requested me to move the amendments on behalf of the Committee.

Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 49 of the Bill be amended by deleting the word “vote” appearing after the words “number of voters who” and substituting therefor the word “concur”.

This is basically to raise the threshold so that it is not only the members who vote, but members who concur that a Member of Parliament should be recalled should not be less than 50 per cent of the registered voters. So, we have raised the bar. Any Member of Parliament who will be recalled will require, at least, 50 percent of the registered voters in that constituency to concur that he or she is to be recalled.

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

*(Question, that the word to be inserted in place thereof  
be inserted, put and agreed to)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Gumbo has another amendment.

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, my amendment was meant to raise the bar even higher. However, I think the amendment that has been proposed, which sets it as 50 per cent, sufficiently covers what I had in mind. In that spirit, I want to withdraw my amendment.

*(Proposed amendment withdrawn)*

*(Clause 49 as amended agreed to)*

*Clause 50*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 50 of the Bill be amended in Subclause (5) by deleting the words “in the electronic media and in at least one newspaper” and substituting therefor the words “in the print and electronic media”.

Madam Temporary Deputy Chairlady, since this similar amendment has been carried through touching on electronic and print media, I hope that the House will find favour with it and will dispose of it immediately.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Minister, do you concur?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Yes, Madam Temporary Deputy Chairlady.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

**The Temporary Deputy Chairlady** (Dr. Laboso): I am informed that the Minister has amendments with regard to this clause.

**The Minister for Justice, National Cohesion and Constitutional** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, in view of this one, I withdraw my amendment.

**The Temporary Deputy Chairlady** (Dr. Laboso): The Minister’s amendment, therefore, stands withdrawn.

*(Proposed amendment withdrawn)*

*(Clause 50 as amended agreed to)*

*Clause 51*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 51 of the Bill be amended in Subclause (1) by deleting the words “in the electronic media and in at least one newspaper” and substituting therefor the words “in the print and electronic media”.

*(Question of the amendment proposed)*

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



*be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 51 as amended agreed to)*

*Clause 52*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady I beg to move:-

THAT, Clause 52 of the Bill be amended by deleting

Subclause (1) and substituting therefor the following new Subclause-

“(1) Where a referendum question requires a “yes” or no “answer”, persons intending to campaign for or against the referendum question shall form such national referendum committees and constituency referendum committees as are necessary”.

Madam Temporary Deputy Chairlady, the main reason for this is to allow more referendum committees and not just for one like when we had during the previous referendum. When we had referendum we could have allowed many people to form different referendum committees supporting the same initiative rather than restricting it to one referendum committee.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Madam Temporary Deputy Chairlady I beg to move:-

THAT Clause 52 of the Bill be amended in Subclause (2) by inserting the word “each” immediately after the word “committee” appearing on the fourth line.

Madam Temporary Deputy Chairlady, the reason for this is just to put the word “each” immediately after “committee” so that either side can have the right to have their own committees.

*(Question of the further amendment proposed)*

*(Question, that the word to be inserted be inserted, put and agreed to)*

*(Clause 52 as amended agreed to)*

*(Clauses 53, 54, 55, 56 and 57 agreed to)*

*Clause 58*

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 58 of the Bill be amended by deleting Subclause (2).

Basically, here, we are saying that a person who has committed an offence under Subclause (1), this is maybe he has been registered twice or more than twice, in addition to whatever he has been punished for, he will not be eligible to vote in that election or in the next election. We are saying that let us not punish these people because a lot of our people sometimes are registered twice without them knowing. So, I propose we delete that.

*(Question of the amendment proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, this country has suffered and has even lost lives on account of double registration that creates a window for allegations of rigging. The reason for this Subclause is to make it very clear, once and for all, that if you dare be caught registering twice, you will not only be barred from voting in that election, but also in the next. We have to be severe. I would persuade my learned friend because he has suffered himself and he knows what I am talking about from this disadvantage that he drops that amendment.

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I want to convince the hon. Minister that already this person is subject to a fine not exceeding Kshs100,000 or to imprisonment for a term not exceeding one year or both. Why then should we bar this person from voting in the next elections? We know most of the people who are subjected to this problem register twice without knowing. For example, we, as politicians, may help our supporters to register without knowing that they had registered or you come to learn later that they had registered. You do not know and he does not know that he has been registered or he had lost his voters card because of the illiteracy. Why punish him twice? It is not fair to have double jeopardy. So, I still think that the punishment which is already provided for is sufficient. I stand by this amendment that we must not punish these people twice. We should allow them to vote.

**Mr. Kabogo:** Madam Temporary Deputy Chairlady, I want to oppose strongly this amendment. There is no one who is ever registered twice by mistake. It is always for the purpose of rigging and we should not encourage rigging. I have been rigged out and I know the pain of being rigged out in an election. Let us oppose and make sure that Kenyans register once for the purpose of election.

**Dr. Nuh:** Madam Temporary Deputy Chairlady, when hon. Members speak, they speak from diverse backgrounds. I would not want to question why Mr. Kabogo would think someone would not register twice mistakenly because maybe the level of education of people in Juja Constituency does not compare to the level of education of people in northern Kenya. So, they might very well know the process of registration.

Madam Temporary Deputy Chairlady, until and unless we are able to educate our voters on the process of registration and the repercussions thereof, then the aspects of voters registering twice, not because they want to rig elections, but because of the ignorance of whatever it pertains, or even to the fact that they are not aware that they are registering twice---

You cannot punish someone twice. We either have to remove the fines and imprisonment we are talking about and make it the offences committed and punish him by not allowing him or her to vote. That is one punishment. So, the issue of double jeopardy as has been said by Mr. Mungatana shows that you are punishing someone twice for one offence committed, which I think even by all standards and laws does not apply.

I support the amendment.

**Mr. Kabogo:** On a point of order, Madam Temporary Deputy Chairlady. It is not the issue of the level of education of the electorate. It is the level of education of the clerks. They are uniform in the whole country. So, those clerks who are registering people twice should be stopped by this clause.

**Dr. Nuh:** On a point of order, Madam Temporary Deputy Chairlady. Is the hon. Member in order to mislead the House because when clerks are registering at a polling station, they do not have the register of the whole country? So, how can this clerk know that a voter who is registered in Bura is also registered in Garsen?

**The Temporary Deputy Chairlady (Dr. Laboso):** You have made your point!

**Ms. Karua:** Madam Temporary Deputy Chairlady, I am persuaded by my colleague, hon. M. Kilonzo, that nobody registers twice by mistake. Even where you are totally illiterate, it does not equal to being not knowledgeable or intelligent. Therefore, we should be obliging the clerks to put the question to anybody coming to register: Have you registered anywhere else again? We cannot cure this by allowing people to pretend that they registered because they did not know. The onus is on the members who want seats. Those of us who campaign for people to register, the onus is ours to educate them. However, we cannot allow double registration to be something light. Let the person be barred from voting and then politicians will know that you will lose votes by encouraging double registration.

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

**The Temporary Deputy Chairlady (Dr. Laboso):** Let us get the proposal by the Chair of the Committee.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 58 of the Bill be amended-

- (a) in Subclause (3) by inserting the words “a member or officer of the Commission or” at the beginning of the Subclause; and
- (b) by deleting Subclause (4).

I want to just put a correction. Actually, the words “a member or officer” of the Commission is not coming at the beginning but replacing the words “a person”, so that it is very clear who this particular provision is stopping from aiding another person to register as a voter more than once.

Madam Temporary Deputy Chairlady, the second amendment of deleting Subclause 4 is meant to avoid situations where maybe somebody, for example, hiked a lift in my car and I am a candidate, to go and register and I am sure not whether that person had already registered elsewhere. If that could be considered as aiding, then so many candidates would be found guilty of this offence. So, those are the amendments that I propose for this House to consider.

*(Question of the amendment proposed)*

**The Minister for Justice, National Cohesions and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, again, if anybody here were to sit in my office and see the problems that have been caused by this electoral fraud-- It is fraud to register twice. It is also fraud to aid and assist. Normally, what happens is that you find a politician loading his tribesmen or his clansmen into a van and drives them from station to station registering one twice. The damage that this has caused to this country is enormous. This aiding here is not just giving somebody a lift. If you will use your canter to transport people from one polling station to another to register, then you deserve not just Kshs100,000, but a fine of Kshs1 million. This has caused us enormous damage.

I want to persuade the Committee to withdraw Subclause (b).

**Mr. Abdikadir:** Yes, I think we can withdraw Subclause (b) in view of the fact that the House carried the earlier one.

*(Proposed subclause 58(b) withdrawn)*

*(Question of the further amendment proposed)*

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

**The Temporary Deputy Chairlady** (Dr. Laboso): Dr. Nuh, I think you will withdraw your proposal because it is similar to hon. Mungatana's which was negatived.

**Dr. Nuh:** Madam Temporary Deputy Chairlady, I humbly do so.

*(Proposed amendment withdrawn)*

*(Clause 58 as amended agreed to)*

*(Clause 59 agreed to)*

*Clause 60*

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT Subclause (1) of Clause 60 of the Bill be amended-

(a) in paragraph (h) by inserting the words “where required under this Act or any other law to declare the result of an election” at the commencement of the paragraph; and

(b) in paragraph (i) by inserting the words “except in the case of a member, officer or person authorized so to do,” at the commencement of the paragraph.

*(Question of the amendment proposed)*

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

*(Clause 60 as amended agreed to)*

*Clause 61*

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 61 of the Bill be amended-

- (a) in paragraph (a) of Subclause (2) by deleting the words “voting station” appearing after the words “secrecy of the” and substituting therefor the word “ballot”;
- (b) in Subclause (6) by deleting the word “voting” appearing after the word “secrecy of the” and substituting therefor the word “ballot”; and
- (c) in Subclause (7) by deleting the word “voting” appearing after the word “secrecy of the” and substituting therefor the word “ballot”.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed)*

*(Clause 61 as amended agreed to)*

*(Clause 62 agreed to)*

*Clause 63*

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 63 of the Bill be amended in Subclause (1) by deleting the words “a person who, directly or indirectly, in person or through another person” appearing at the commencement of the clause and substituting therefor the words “a candidate who”.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 63 as amended agreed to)*

**Mr. Abdikadir:** Madam, Temporary Deputy Chairlady, we had an amendment to Clause 61 on the Order Paper.

**The Temporary Deputy Chairlady (Dr. Laboso):** We dispensed with it!

*Clause 64*

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 64 of the Bill be amended by deleting paragraph (a) of Subclause (1).

*(Question of the amendment proposed)*

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

*(Clause 64 as amended agreed to)*

*Clause 65*

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 65 of the Bill be amended in paragraph (c) of Subclause (1) by inserting the word “unlawfully” after the words “in any manner”.

*(Question of the amendment proposed)*

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

**The Temporary Deputy Chairlady (Dr. Laboso):** There is a further amendment by Mr. Mungatana!

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 65 of the Bill be amended in Subclause (1) by deleting the words “a person” appearing at the commencement of the clause and substituting therefor the words “a candidate”.

Mr. Temporary Deputy Chairman, Sir, this offence of bribery should be restricted to the candidate. That is the amendment we are making.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Hon. Mungatana, could you, please, repeat?

**Mr. Mungatana:** Mr. Minister, I was saying that this offence of bribery should be restricted to the candidate. That is the amendment we are making.

**The Temporary Deputy Chairlady** (Dr. Laboso): Which means he is changing the word “person” to candidate.

*(Question of the further amendment proposed)*

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

*(Question, that the word to inserted in place thereof,  
be inserted, put and agreed to)*

*(Clause 65 as amended agreed to)*

*(Clauses 66 and 67 agreed to)*

*Clause 68*

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 68 of the Bill be amended in sub clause (1) by deleting paragraph (b) and substituting therefor the following new paragraph-

(b) forges, defaces or destroys any campaign or promotional material of an opposing candidate or political party;

Madam Temporary Deputy Chairlady, the proposal as it is now puts responsibility on the printer, which I do not think is what we intend. I am proposing that we amend it and include an article that outlaws forging, defacing or destroying any campaign promotion material of an opposing candidate or political party.

*(Question of the amendment proposed)*

**The Temporary Deputy Chairman** (Dr. Laboso): Hon. Gumbo, the Members do not seem to be clear about the import of your amendment.

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, Clause 68(1)(b) says:-

“A person who prints, publishes or posts up, causes to be printed, published, distributed or posted up, any advertisement, handbill, placard, or poster which refers to any election and which does not bear upon its face the names and addresses of the printer and publisher.”

So, what we are outlawing is the fact that poster should bear the name of the printer. To me, I do not think that is necessary.

Madam Temporary Chairlady, if I put the name of the printer, there is no requirement in this law that name that I put is an authentic name of the printer. I can put any name and call it a printer. So, I do not see what it is addressing or what it is proposing to cure. Instead, I am proposing a deletion, so that instead what we outlaw,

which is a problem in most of elections, is forgery, defacing or destroying any campaign or promotional material of an opposing candidate or political party.

**The Minister for Justice, National Cohesion, and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I think it makes sense. You cannot take action against a printer or a publisher merely because he has printed poster of M. Kilonzo. I can also print my own posters. So, hon. Gumbo has got a point subject to what the Chair has to say, I agree. I am only saying so, if it is Clause 68(1(b)).

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I suspect one of the mischiefs was that when somebody prints information for you that is false or injurious, you would want to know the candidate who did it. But you also want to know the printer. So, it should be a requirement that any time you print such material, the name of the printer is carried.

**The Minister for Justice, National Cohesion, and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, during elections, you find pamphlets and other materials which are so defamatory. Unless you know who is publishing it, you are also tied down. So, I would like to persuade my friend that you leave it as it is because you would be surprised that in the last elections, I noticed a situation, where somebody is printing posters saying so-and-so has withdrawn from the election, so-and-so has defected and so on. It contaminates election, so we want to know who has published and printed, so that we can sue them or prosecute them because it is an offence.

**Mr. Midiwo:** Madam Temporary Deputy, I was just seeking further clarification from the Minister. Is this particular clause targeting the printer, or the person who causes the printing or both? Could we be clear on this?

**The Minister for Justice, National Cohesion, and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, it is truly all of them. They must all be putting together, so that we can eliminate this very dangerous method of campaigning.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, Clause 68 is a long clause. It all carries offences. Some of them we are also asking for deletion. However, I think this one is reasonable. We will go for deletion of a number of others. It says:-

“A person who prints, publishes, distributes, or post ups, or cause to be printed, published or distributed or posted up any advertisement, handbill, placard, or poster which refers to any election and which does bear upon its face the names and addresses of the printer or publisher”.

So, what we want is any printer and publisher to ensure that anything they print, their name is there. If there is an offending billboard, you will know because it will not be carried without the printer’s name clearly indicated. It will help enforcement.

**The Temporary Deputy Chairlady** (Dr. Laboso): So, you oppose the amendment.

Hon. Gumbo, are you still comfortable with going on with your amendment?

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, I am not comfortable. The reason is I think we are headed to a situation where we will be punishing innocent people for mistakes committed by others. I think the responsibility should be on the candidate and not the printer, because the printer is doing a commercial business. So, I plead with my colleague if that be the case, then we propose a further amendment to safeguard the printer. It is the malice of the candidate we are trying to punish here. Why are we not



punishing the malice of the candidate and punishing somebody who is merely conveying a commercial interest? I plead with my colleagues to look at it that way.

**The Assistant Minister for Environment and Mineral Resources** (Prof. Kamar): Madam Temporary Deputy Chairlady, I would like to oppose the amendment. There is mischief sometimes during elections and you find that after you have your advertisement, other people run other advertisements in different colours in your name. It becomes very difficult. Even when the material has been published by yourself, you should say who you are. Even if it is your own, you must have an address, so that if it is authentic, people can address it somewhere and we can handle that. Before nominations, we have heard people saying that somebody has withdrawn and others have defected. Now that defection can take place within a very short time, we will be having those kinds of mischief.

**Mr. Midiwo:** Madam Temporary Deputy Chairlady, now that we understand their intention, all that we are asking is that for us to realize that this is an elections Act, are we going to put the burden on an ordinary printer who is just in commercial business to the extent that if somebody gives them work, they are supposed to be the police of what is offensive and what is not? How can that burden be? Could the Minister propose further amendments to at least protect the commercial entity?

**Mr. Koech:** Madam Temporary Deputy Chairlady, I have listened to my colleagues and I really want to plead with them that we leave the clause as it is. Our media houses sometimes have reported the wrong information about Members and we have been going to court accusing them even when we know the source of the information. We normally go to the printer. We should not have double standards here. Let us use the same way. We are protecting ourselves and we are also reminding the media houses and the printers to be careful.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I want to make a clarification. I think there is a misunderstanding. We are not criminalizing printing. We are criminalizing the fact that when you print, you do not put your address. All we are asking the printer to do is to put their name and address on whatever they have printed. When your name and address is not on what you have printed, that is a criminal offence and not printing. You can print anything.

**Ms. Karua:** Madam Temporary Deputy Chairlady, I want Members to know that a mischievous opponent can print as though you are the one printing and dirty your name all over. Why we are asking the printer to have his name and address is because he is the one who will be able to tell us that this material was brought by hon. M. Kilonzo and not by hon. Karua. So, we are protecting ourselves as well as the printer. We are not criminalizing it, but we want to trace where the material came from.

I beg to support.

**The Minister for Lands** (Mr. Orengo): Madam Temporary Deputy Chairlady, I have done a lot of elections petitions in my legal career and there are times when what a printer publishers borders on criminal libel and for that, he is responsible. So, the name and address is important and it is a good practice.

**Mr. Wetangula:** Madam Temporary Deputy Chairlady, if anyone of our colleagues here went to a radio station and spoke recklessly about people, you will sue the radio station plus the person who said the reckless things. So, if the printer is reckless,

they must identify themselves so that we can know how to deal with them. I think the clause is quite perfect.

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, the purpose of my proposed amendment was to delete that clause and introduce a new clause which is very important and talks about defacing and destroying campaign materials not covered in this Act. It is talking of nomination papers and all the others.

I wish to move a further amendment to that clause to introduce Subclause (p) to say that a person who---

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Gumbo, even before you continue, that is a new clause that you are introducing. It is not any of the clauses that are provided.

**Eng. Gumbo:** But I had moved an amendment to introduce---

**The Temporary Deputy Chairlady (Dr. Laboso):** But you are introducing an amendment to 1(b) and this is a new clause. What you are introducing is completely new. It has nothing to do with what is in Clause 1(b). All new clauses are brought at the end. So, you will not be introducing it at this point because it is new. It is different.

**Eng. Gumbo:** Madam Temporary Chairlady, it was actually my proposed amendment. It is not new. It is here. I was proposing deletion.

**The Temporary Deputy Chairlady (Dr. Laboso):** I do not know if we are together, hon. Gumbo.

**Eng. Gumbo:** We are not, Madam Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady (Dr. Laboso):** What you proposed was a deletion which you have now withdrawn.

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, with all due respect, and I stand guided; I had proposed a deletion and an inclusion. I have withdrawn the deletion, but I want to carry on with the inclusion.

**The Temporary Deputy Chairlady (Dr. Laboso):** Which I am saying you cannot do at this stage.

**Mr. Langat:** On a point of order, Madam Temporary Deputy Chairlady. I just wanted to say that if he was proposing a deletion and an insertion and you have refused the deletion, we cannot insert because there is nowhere to insert.

**The Temporary Deputy Chairlady (Dr. Laboso):** That is why we are saying that we move to the next one.

*(Proposed amendment withdrawn)*

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 68 of the Bill be amended-

(a) in Subclause (1) by-

(i) deleting paragraph (c);

(ii) deleting paragraph (n); and

(iii) in paragraph (o) by deleting the word “false” appearing after the words in “any manner whatsoever”.

(iv) in item (iii) of paragraph (o) by inserting the word “unlawfully” after the word “otherwise”; and

(b) by deleting Subclause (2).

Clause 68 is a very long clause and most of it is offences. We have to be very careful with offences. It has to be very specific. These are wide ranging offences.

Part (c) states:-

“Makes or publishes before or during any election for the purpose affecting the return of any candidate, any false statement or fact in relation to the person, character or conduct of such a candidate”.

We all understand that there are problems about people lying about you a, b, c.d. It is a problem, but criminalizing it in such wide ranging manner, this will be a very heated time and a lot of things will be said. Quite a number of them might not be true, but there is a difference between hate speech and what is being handled here. Hate speech is very serious, but there could be a lot of speech covered under this clause which will not be hate speech, but which infringes on the constitutional provision of freedom of speech and the freedom of the media because we are talking about any person. This particular offence is too wide especially in the elections period.

Clause 68(1) (c) says:-

“Any person who makes or publishes before or during any election, for the purpose of affecting the return of any candidate, any false statement or fact in relation to the person, character or conduct of such a candidate”.

Anything false about a candidate, even if I said you are brown and not black, is a criminal offence. There is freedom of speech which allows you to say some of these things without being criminalized. So, we are saying that the game of politics involves a lot of qualities. There is a difference between saying the truth and saying something that is illegal. There is a big difference. The truth is good and we should encourage it, but we should not criminalize speech to the extent where we are agreeing in this clause.

**Mr. Wetangula:** Madam Temporary Deputy Chairlady, I want to persuade my very good friend, the Chairman of the Committee. If you even look at our Vision 2030, you will see that we are talking about developing Kenya to an issue-based political arena. We want sanity in politics. Creating an offence is not necessarily punishing people. If anybody is arraigned in court, the allegation is subject to proof. We need this clause, so that we can be able to control people’s reckless tongues and people who just stand on platforms and abuse others with total abundance without caring whether they are injuring individuals, families and communities. It is important that we control the manner in which people speak about others in public.

**The Minister for Lands (Mr. Orengo):** Madam Temporary Deputy Chairlady, I will invite the Committee Chairman to put particular regard to one very important component of this offence, which reads as follows: “Makes or publishes before or during any election for the purpose of affecting the return.”

This means if you make any statement that does not affect the return, then it is not an election offence. I can tell you that I did an election petition one time in Mandera. A PICK candidate made allegations that the KANU candidate had defected, and the court found that his statement actually affected the return of that particular election.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I plead with our colleagues from the other side to accept this amendment. Let us take this deletion in its totality. If you look at the provision under (c), you will see that it is too general and can be very punitive. There is no problem if someone says that hon. Mbadi will win the presidency with 80 per cent and even gives figures that in Nairobi, he can score 90 percent because

sometimes politics is propaganda. Even in the USA, they just branded Obama as having been born in Mombasa. So, there is no problem. There is nothing wrong if you make it falsely to influence the campaign and it convinces people.

**The Temporary Deputy Chairlady** (Dr. Laboso): You have made your point, Mr. Mbadi.

**Ms. Karua:** Madam Temporary Deputy Chairlady, I just want to plead with my colleagues to allow this deletion. If you read this clause, you will realise that it does not make sense. It talks of any false statement of fact. How can something false be a statement of fact? This clause does not even know what it is talking about.

Secondly, if I am campaigning, selling myself, it will definitely affect your return because you will not be elected if I succeed. I will be elected. This is a nebulous statement, which is even stopping you from canvassing for your own votes. For all the other criminal offences, there is a law for them. If it is defamation, there is a law for it. If it is criminal libel, there is a law for it. If there is any other illegal thing, they are illegal practices. I urge you to go to the section on illegal practices. This is unnecessary clause, which will be used miscellaneously, and it will victimise you.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Chairlady, we are either getting tired or we are being over-selective. The issue under (c) is not about the making of a statement but it is the issue of a statement being made deliberately to affect the return by deliberately making a false statement on your personal character or conduct.

Imagine a situation where people go to Mandera Town and say that hon. Abdikadir, who has been here, was last night caught in Koinange Street. Surely, people in Mandera are likely to see you in a different light. The people spreading that kind of rumour will affect your results, and you will lose the election. So, they should be punished for that. That is the kind of thing we are allowing here by deleting. It is, therefore, important that we be very careful.

**Mr. Midiwo:** On a point of Order, Madam Temporary Deputy Chairlady.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Chairlady, protect me. I want to complete what I am saying very fast.

**The Temporary Deputy Chairlady** (Dr. Laboso): Order, hon. Midiwo! Please, allow hon. Kimunya to complete what he was saying.

**An hon. Member:** He is criminalising the street!

**The Minister for Transport** (Mr. Kimunya): No! No! You know the context in which I have said it.

In 2007, we came to this House with some Bills to criminalise hate speech and control the manner---

**Mr. Midiwo:** On a point of information, Madam Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Dr. Laboso): What is your point of information, Mr. Midiwo? Who are you informing?

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Chairlady, I do not need the information now.

**Mr. Midiwo:** I am informing the Minister.

**The Temporary Deputy Chairlady** (Dr. Laboso): He does not want the information.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Chairlady, I do not want the information. In the interest of time, I want us to remind ourselves that in 2007, hon. Martha Karua brought here some amendments to our programme in terms of criminalising hate speech and control the way people behave. We ignored it and said that this thing should be removed. We saw what happened after the elections. All this tribal animosity could also be cleared from here. You will regret if we delete this clause. I would rather we have it. Let us sort out the issue of the mitigation factors in terms of the person who will be taken to court for having made these allegations rather than lose it and get a candidate lose an election because of this kind of character assassination.

**The Temporary Deputy Chairlady** (Dr. Laboso): The point has been made, Mr. Kimunya!

**Mr. C. Kilonzo:** Madam Temporary Deputy Chairlady, you know, he is only looking on one side of the coin. Let us now turn the other side of the coin where all parties are guilty. Whenever all our parties campaign for their candidates, they want to make their candidates look very good. Obviously, most of the time, they do not give material facts so that one can get voted in. That is the other side of the coin. That is why, as Members of the Committee, we realised that if somebody uses this, he can come and say: “You won the election by over-praising your candidate.” In this case, then we will not be campaigning. If somebody comes and says: “Kimunya is a very good man; Kimunya has never committed any offence; Kimunya has never had issues in Parliament”, then Kimunya is elected; we are trying to protect people like Kimunya and others. What we are saying is that if you praise your candidate, you should not be accused by your opponent. That is the other side of the coin and there are many provisions under the law.

**The Temporary Deputy Chairlady** (Dr. Laboso): The point has been made, Mr. C. Kilonzo.

Hon. Members, I think we have ventilated---

*(Mr. Midiwo stood up in his place)*

Hon. Midiwo, do you have anything different from what has been said? Would you still inform anybody, because Mr. Kimunya did not want to be informed?

**Mr. Midiwo:** No, Madam Temporary Deputy Chairlady. I wanted to inform Mr. Kimunya about my story of Koinange Street but he declined.

I want to say that I agree with the Committee that this is a very dangerous clause to retain in this statute. I have seen people campaigning. Now that we are attempting to allow party-hopping, you can even use a song like “Atoti this way, Atoti that way”. Somebody said that he was called to be homosexual. It is open-ended. We have seen things like this in campaigns.

**The Temporary Deputy Chairlady** (Dr. Laboso): The point has been made.

Hon. Members, it is up to you to make the decision. I will, therefore, put the question.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I give the other one because the hon. Member had asked for the others.

**The Temporary Deputy Chairlady** (Dr. Laboso): Give the others.

**Mr. Abdikadir:** We are done with that Subclause. Let us go to the other section, which---

**The Temporary Deputy Chairlady** (Dr. Laboso): Can we dispense of this Subclause, so that we are not confused?

**Mr. Abdikadir:** Okay.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, I will now put the question, which is that Clause 68(1)(c) be deleted.

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

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, paragraph (n) is even more worrying. So, we are proposing deletion of paragraph (n). Clause 68(1)(n) says:-

“Any person who, with intent to affect the results of an election, makes or publishes a statement purporting to be a statement of fact, which is false, and which the person knows to be false---“

The issue is not that we do not understand that there is a problem, or that the problem should not be addressed, but this is extremely wide and you are creating a creating a criminal offence. If one is a prosecutor or a commissioner and wants to misuse this, by the time you correct that, it might be too late. So, we are proposing the deletion of this part.

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

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 68 be amended in part (iii) in paragraph (o) by deleting the word “false” appearing after the words “in any manner whatsoever”.

Madam Temporary Deputy Chairman, Sir, any person who publishes , repeats or disseminates in any manner whatsoever false information--- We are removing “false”. So, it will read:- “Any person who publishes, repeats or disseminates in any manner information with the intend to (i) disrupt or prevent the election (ii) creating hostility or fear in order to influence---“

Here, we want to strengthen the offence so that it is not just “false” but any information that is aimed at this.

**Mr. C. Kilonzo:** Madam Temporary Deputy Chairlady, so that hon. Members are not lost---

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members are okay.

**Mr. C. Kilonzo:** I am happy that Mr. Kimunya is not lost.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, so that we carry them together, I beg to move:-

THAT, Clause 68 be amended in item (iii) of paragraph (o) by inserting the word “unlawfully” after the word “otherwise”; and  
(b) by deleting Subclause (2).

Madam Temporary Deputy Chairlady, part (b) is outrageous. It says that a person who is convicted of an offence shall, subject to any express provision to the contrary, any written law relating to the election not be eligible to be registered as a voter ever or to vote in any election or not to be eligible to be elected at any election. This is absolutely outrageous. If you are convicted of an offence, you will face the law, pay your dues and you are still a person with your rights. This is unconstitutional and, therefore, we are proposing its deletion.

**The Temporary Deputy Chairlady** (Dr. Laboso): So, are we now taking all of them in totality?

**Hon. Members:** Yes!

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

**Eng. Gumbo:** On a point of order, Madam Temporary Deputy Chairlady. I propose a further amendment through the Minister.

**Abdikadir:** Since we removed part (ii), sub-section (iii) deals with part (ii). So, it is consequential.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, the proposal by Eng. Gumbo is very critical because in all those offences, we have not criminalized somebody who demolishes calls and destroys your posters.

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 68 be further amended by including a new Subclause 68(i)(p) which reads:-

“Any person who defaces, forges or destroys any campaign or promotional material of an opposing candidate or political party commits an offense.”

**The Temporary Deputy Chairlady** (Dr. Laboso): You just need to tidy up the numbering where it comes in.

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

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Minister, do you have a further amendment?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): I do not have an amendment to Clause 68.

**The Temporary Deputy Chairlady** (Dr. Laboso): There is an amendment that you were requested by the Chairman.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 68 be amended by deleting Subclauses (3) and (4).

This is a consequential deletion. Since we have deleted Clause 68(2), Clause 68(3) and (4) become inconsequential. Subclause (3) will be deleted and Subclause (4) will be renumbered.

**The Temporary Deputy Chairlady** (Dr. Laboso): Is it clear to everyone? Subclause (3) is consequential following the deletion of Subclause (2).

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

*(Clause 68 as amended put and agreed to)*

#### *Clause 69*

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 69 of the Bill be amended by inserting the following new Subclause after Subclause (5)-

“(5A) A member of the Commission or any person designated by the Commission shall have the power to impound or to order the impounding of any state resources that are unlawfully used in an election campaign”.

Madam Temporary Deputy Chairlady, the purpose of this amendment is to give power to the Electoral Commission or any member who is designated by the Electoral Commission to deal with people who use state resources on the spot. So, if it is me who is campaigning using the Constituencies Development Fund (CDF) vehicle, the Commission should be able to give an order for the impounding of that CDF vehicle.

**The Temporary Deputy Chairlady** (Dr. Laboso): Which part of Clause 69 are you amending?

**Mr. Mungatana:** It is part (5A). If you look at the Order Paper, you will see that the Legal Department drafted it to say that we should include a new Subclause after Subclause (5) to read (5A). You can see how they have drafted it. So, I propose that the Commission be given power to deal with people who use state resources on the spot.

**The Temporary Deputy Chairlady** (Dr. Laboso): Should it not come at the end?

**Mr. Mungatana:** It is not necessary. That is how we have been doing when we add clauses.

*(Question of the amendment proposed)*

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

*(Clause 69 as amended agreed to)*

#### *Clause 70*

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 70 of the Bill be deleted.



I propose the deletion of this clause because if you look at all these expenditures that are proposed here to be illegal, in fact, you will find that most of them make life very difficult during campaigns. If, for example, you are stopped from hiring or borrowing for purposes of conveying voters from one place to another, for some of us who come from very far-flung areas, it is almost impossible for some polling stations to be arrived at without some arrangements of transport in a sense for your supporters. So, this whole section makes it impossible for even voters to participate in real sense of the word. So, I propose that we delete it.

*(Question of the amendment proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, if we delete this clause - and I sincerely understand where Mr. Mungatana comes from - you will merely facilitate political shenanigans that have caused us very many problems. Clause 70 is such a long clause. It has subclauses 1, 2, 3, all the way to 8. I would have expected that he looks at one particular area and protects the worries that he has. Look at Clause 70(5) which says that a person who hires, borrows or uses for the purpose of conveying voters to and from a poll, any vehicle, vessel or animal or transport of any kind whatsoever which he knows the owner thereof is prohibited by Subclause (3), commits an offence. Therefore, I would like to try to persuade Mr. Mungatana, that this thing has caused this country enormous difficulties, because most candidates just use this method. They transport not only voters during voter registration, but also during voting. I want to persuade the hon. Member to withdraw his amendment.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I do not see anything wrong with that amendment because if there are certain areas where it is very difficult for voters to reach the polling station and some voters are very old, if someone aids them to exercise their political right to vote, I do not see anything wrong with that. So, I will support Mr. Mungatana's amendment.

*[The Temporary Deputy Chairlady  
(Dr. Laboso) left the Chair]*

*[The Temporary Deputy Chairlady  
(Mrs. Shebesh took the Chair)]*

**Dr. Kones:** Madam Temporary Deputy Chairlady, I am fifty-fifty. Where I come from, where distance is not a major problem and you probably have two candidates; one is well off and the other is not, it is like you are providing a situation where the other candidate who is rich is given the chance to transport most of his supporters to vote.

So, I oppose the amendment.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Chairlady, as we look at these things, it is important to know the operating words here. It is not just ferrying people, but we are saying; "for the purpose of promoting or procuring the election of a candidate." So, we are basically saying that it is an act being done for specifically bringing people to support you or to come and vote for you. Once you look at

Clause 70(1), it defines that anything done in furtherance of a contract for the purpose of promoting or procuring the election of a candidate at any election--- Once we understand that, then it is important that we have this here. I thought that earlier on we were talking about protection of women and marginalized areas and people who do not have the means. We do not want these elections to be just for people who can afford to hire a fleet of vehicles to ferry people to come and support them. Those people who do not have the money even to campaign for themselves will be disadvantaged because the voters will be saying: “Unless you take us to the polling station, like your opponent, we are not going to vote for you.” This could actually jeopardize the democratic process that we want to entrench in this country, by making sure that only the rich who can afford to ferry people get voted for. The poor and those who do not have the money will actually be marginalized. As you know our electorate, they will tell you: “Unless you take us, we are not going to vote for you.” So, it is important that we have Clause 70 to protect the gains in democracy and ensure that those who cannot afford to hire vehicles can also get their voters coming by leveling the playing field between those with the money and those without.

**Ms. Karua:** Madam Temporary Deputy Chairlady, first, I just want to say that this clause was even in the previous Bill. Transporting voters has always been an offence. If we are trying to improve the system, we cannot lower the threshold. Let us keep it illegal where it is, so that we do not disadvantage anyone in the election. This is a part of creating a fair playing field.

I oppose.

*[The Temporary Deputy Chairlady  
(Mrs. Shebesh) left the Chair]*

*[The Temporary Deputy Chairlady  
(Dr. Laboso) resumed the Chair]*

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, the beauty of all us being here is because we have different experiences. It is good for you to also understand that some of the areas we come from, people are pastoralists. A whole polling station could be deserted because people are in another place because the rains have disappeared and they are looking for pasture. Those people intend to vote, they have voters’ cards and you want to make sure that they participate in voting. Is it an offence to assist those voters to come and vote? They may not necessarily be voting for you, but they want to participate in the exercise.

Madam Temporary Deputy Chairlady, secondly, if you are in a village, there are those people who are very old and are incapable of even walking to the polling station, even within the village. I am talking about practical things. What is wrong with one organizing for someone with a small car to take that person to the polling station?

**The Temporary Deputy Chairlady (Dr. Laboso):** Okay! I think the point has been made, Mr. Mungatana.

Mr. Wetangula, you should be the last one!

**Mr. Wetangula:** Madam Temporary Deputy Chairlady, I want to convince my learned junior that transporting voters, under whatever guise and description, is an

offence. We cannot create any law that gives advantage to those who have money against those who do not. It is the obligation of the Electoral Commission to ensure that people vote by taking polling stations as close to them as is practically possible and ensuring that polling hours where necessary can be adjusted to give people time to vote. But to allow candidates a free for all to carry voters, it is very dangerous. It is like underwriting corrupt practices.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, I think that is enough ventilation on that matter.

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

**The Temporary Deputy Chairlady** (Dr. Laboso): We can now continue with the proposal by the Committee.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 70 of the Bill be amended-

by inserting the following new clause after clause (1)-

“(1A) Upon the filing of an election petition in respect of an electoral area and prior to the conclusion of a by-election in respect of that electoral area where a court determines that a by-election is to be held, it shall be an offence to-

(a) knowingly register voters in the electoral area in which the by-election is to be held;

(b) knowingly cause the registration of voters in the electoral area in which the by-election is to be held; or

(c) transfer voters in substantial numbers to the electoral area in which a by-election is to be held.

(d) in Subclause (6) by deleting the word “votes” appearing after the words “for the purpose of conveying the” and substituting therefor the word “voters”.

When you petition an election, honesty dictates that the circumstances for any by-election, should it be called upon, should be as it were for the Member you have challenged. Therefore, between the time one files a petition – and if one predicts that one can go through with the petition - some people may try to transport voters to their constituencies in anticipation of that petition. Therefore, this is to outlaw circumstances where people would be transferring voters from neighbouring constituencies. Part “b” is to correct a typographical error. Instead of “voters”, the word should be “votes.”

*(Question of the amendment proposed)*

**Dr. Kones:** Madam Temporary Deputy Chairlady, I would like to get a clarification from the Mover on part “c” where it says: “It shall be an offence to transfer voters in substantial numbers.” Are you saying that you are limiting that to a certain number? When you talk about a substantial number, that means that, you are allowing the transfer of voters to a certain extent. That is in part “c” of the amendment.

**The Temporary Deputy Chairlady** (Dr. Laboso): You are seeking an explanation on the use of the word “substantial” How would you determine this?

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, we were trying to avoid the mischief because transferring voters from another constituency is not illegal. However, when you do it in a way that clearly shows intent to influence the outcome of an election in another constituency, then that becomes illegal or unethical. That is why we feel that if you transfer substantial number of voters, then that should be outlawed.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, I hope that clarification has been made.

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

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

**The Temporary Deputy Chairlady** (Dr. Laboso): Eng. Gumbo has another amendment.

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 70 of the Bill be amended by deleting the word “votes” appearing in sub clause (6) and substituting therefor the word “voters”. This was just a typographical error. Instead of having the word “votes”, we should have the word “voters”.

**Mr. Mbadi:** On a point of order, Madam Temporary Deputy Chairlady.

**Eng. Gumbo:** On a point of order, Madam Temporary Deputy Chairlady. Why does Mr. Mbadi want to take credit? That is my amendment.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, that was my second amendment which I moved.

**The Temporary Deputy Chairlady** (Dr. Laboso): That has already been overtaken by events. So, please, withdraw.

**Eng. Gumbo:** I withdraw.

*(Proposed amendment withdrawn)*

*(Clause 70 as amended agreed to)*

*(Clause 71 agreed to)*

*Clause 72*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 72 of the Bill be deleted.

I propose that we delete the entire clause. The Committee felt this was a very dangerous provision in the law because if you outlaw the use of loud speakers, then we will not campaign.

*(Question of the amendment proposed)*

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

*(Clause 72 deleted)*

*(Clause 73 agreed to)*

*Clause 74*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 74 of the Bill be amended-

(a) in Subclause (1) by deleting the word “incites” appearing after the words “engages in or” and substituting therefor the words “knowingly aids or abets”; and

(b) in Subclause (5) by inserting the words “where the presidential candidate knowingly abets or aids in the election offence.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 74 of the Bill be further amended by deleting Subclause (2).

The reason why I am proposing this is rather obvious. We are trying to make candidates do the impossible thing of policing all political party supporters.

I beg to move.

*(Question of the further amendment proposed)*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I support. I think the provision here is one that you cannot control.

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

*(Clause 74 as amended agreed to)*

*Clause 75*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 75 of the Bill be amended in Subclause (1) by deleting the words “or county” wherever they appear in the Subclause and substituting therefor the words “county or ward”.

We are simply trying to make sure that the wards are included. So, we are deleting the words “or county” and putting “county or wards” because there will be wards.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, clause 75 of the Bill be amended-

(a) in Subclause (1) by inserting the words “of such a nature as to make it impossible for an election to proceed” after the words “where election offences”; and

(b) by deleting Subclause (4).

This is basically to make sure that the Electoral Commission can only postpone elections where the offences which have been committed are of a nature that would make the election impossible or to proceed. The Electoral Commission is not allowed to postpone an election on flimsy grounds.

The other one of deleting Subclause (4) is to ensure that the results of elections are declared only after the results have been received by the Electoral Commission in total.

*Question of the amendment proposed)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Just elaborate a little bit.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I think there is no problem with the first one as I heard it from the Minister, but let me just read the second amendment that the Committee proposed.

We propose to delete Subclause (4) which reads:

“Notwithstanding the provisions of this section, the Commission may, if satisfied that the results of the elections will not be affected by voting in the area in respect of which substituted dates have been appointed, direct that a return of the election be made.”

This is to ensure that we do not disenfranchise some voters in participating in elections.

*(Question of the further amendment proposed)*

**Mr. Mungatana:** No, let us think about it together. I have no problem with that first part. However, what this law is proposing is that you may have a situation where two polling stations because of whatever reasons, the election has been disrupted at that particular point and the returning officer is not able to proceed with the process but then you have maybe in that area 20 or 100 registered voters. The returns that are already in the tallying centre are in their thousands. The results are obvious by the nature of the way it is. Why should we stop the election results being announced because of a polling station where chaos have been created and there is material number of votes? So, this should one should not delay the results. Let us say that number (iv), we oppose it, but the first part we accept it.

**Dr. Kones:** Madam Temporary Deputy Chairlady, I want to support what Mr. Mungatana has said. We could be waiting for results from one or two constituencies which do not affect, for example, the presidential tally. If that is already catered for, then I think it is good not to keep the country waiting for results when the outcome is already known.

So, I oppose the amendment.

**Mr. Wetangula:** The proposal is to delete. Is that right?

**The Temporary Deputy Chairlady (Dr. Laboso):** Yes.

**Mr. Wetangula:** I oppose it for the simple reason that when we are passing laws, we should not leave any room for possible mischief. There was a time when there was the notorious electoral process here called *mlolongo*. On the face of it, it is very easy for people to stand on a queue and count them and announce the results. However, the District Commissioners, who were the Returning Officers, were recording the short queues for the winners and the long queues for the losers. Mischief!

A Returning Officer can easily decide even where he has counted only half the votes and say is enough, I can declare the winner on the pretext that there was a problem somewhere. Let us have laws that are clear; that leave no room for doubt; that create no room for mischief. I suggest that---

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, if I got Mr. Wetangula correctly, in his contribution, it is like he is supporting the amendment.

**The Minister for Transport (Mr. Kimunya):** Madam Temporary Deputy Chairlady, I think it is important we remember where we are coming from and the success, for example, that we saw with the Interim Independent Electoral Commission of Kenya (IIEC) where the results were being relayed live as they counted. Even halfway, you would already know who has won. The risk we have here is that if we criminalize that and should the IIEC decide that because of disruption in a polling station somewhere in Kipipiri which has only 500 registered voters, until that election that they have said should be postponed is concluded, the presidential results for the entire country should not be announced. The tension that will be created in the country will be unbearable. So, let us look not just in terms of our own election at the local level, but we are talking of this election, includes the election of the President.

I would urge the Committee to withdraw this amendment. Let us have this provision, so that it facilitates what we are doing.

**The Temporary Deputy Chairlady (Dr Laboso):** All your contributions, if I understand you right, seem to be supporting the deletion.

**The Minister for Transport** (Mr. Kimunya): No, if we delete this, it will be a criminal offence to announce anything until the election has been completed. However, if we leave it as it is, it gives a window to the IIEC that even when they have postponed an election because of a certain area, that postponed election should not affect the results of the other results they already have if that election results will not materially change the election. So, let us retain it as it is. I would like the Committee to review your deletion.

**Dr. Khalwale:** Mr. Temporary Deputy Chairlady, I want to oppose this proposal that we delete with reference to the current way of announcing results where they are almost real time.

In a situation where they are real time, because of mobile telephony, the candidate and his agents are able to get the results slightly ahead of the tallying centre. So, when you are following the tallying and your agents tell you that if the votes of a particular polling station arrive, they will materially affect the results, there is nothing that will stop you from instructing your supporters them to cause chaos in that polling station, so that that result cannot come. This happened in Kamukunji and Kilgoris. With this particular window of opportunity, it is now for the IIEC to say, anyway, you might have done what you did, but we think the results were not going to make any material difference had they been included. They will still announce the winner.

We must oppose the amendment.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I kindly beg the House to withdraw this amendment because from the deliberations, then we move on.

*(Proposed amendment withdrawn)*

*(Question of the amendment proposed)*

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

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

*(Clause 75 as amended agreed to)*

*Clause 76*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 76 of the Bill be amended-

(a) by renumbering the present provision as Subclause (1); and

(b) by inserting the following new Subclauses after Subclause (1)-

“(2) An electoral dispute under sub-section (1) shall be determined within seven days of the lodging of the dispute with the Commission.

(3) Notwithstanding Subsection (2), where a dispute under sub-section (1) relates to a prospective nomination or election, the dispute shall be determined before the date of the nomination or election, whichever is applicable”.



Madam Temporary Deputy Chairlady, Clause 76 talks about those electoral disputes that the IIEC can address. We are setting the timeline so that the people are not kept in suspense for a long time.

*(Question of the amendment proposed)*

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

*(Clause 76 as amended agreed to)*

*(Clauses 77, 78 and 79 agreed to)*

*Clause 80*

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 80 of the Bill be amended by deleting the word “dismissal” appearing in sub clause (3) and substituting therefor the word “dismiss”.

It is just a correction. Instead of the word “dismiss”, we used the word “dismissal”.

*(Question of the amendment proposed)*

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

*(Question, that the word to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 80 as amended agreed to)*

*(Clauses 81, 82 and 83 agreed to)*

*Clause 84*

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 84 of the Bill be amended in sub clause (2)-

(a) by deleting paragraph (a);

(b) by deleting paragraph (b);

(c) by deleting paragraph (c);

(d) by deleting paragraph (e);

I think this was made in error because when we put the vote in the box, there is no way of knowing who voted. So, when you say that the vote of a person who was not in the register, you cannot tell who was in the register or who was not. You cannot tell the vote of a person whose vote was procured by bribery once is in the box. You cannot know the vote of a person which was procured by bribery and the vote of a

person proved to have voted in more than one constituency. The ballot papers are indistinguishable once in the ballot box. So, those provisions do not make sense and I am proposing that we delete them.

*(Question of the amendment proposed)*

**The Minister for Lands** (Mr. Orengo): Madam Temporary Deputy Chairlady, I just wanted to say that during the scrutiny of votes, and this is normally a very tedious process in an election petition whereby you have all the records in respect of an election. So, you will have the registers and the counterfoils. You will also know in respect of the counterfoils, who actually was handed over which ballot paper. So, you can actually, during scrutiny, make such a determination. Although I think probably, on the question whether it should be deleted or not, I am neither here or there. But I know that in an election petition, when you do a scrutiny---

**The Temporary Deputy Chairlady** (Dr. Laboso): Can we get the Chairman's comment on this?

**Mr. Abdikadir**: Madam Temporary Deputy Chairlady, the issue is not that this particular vote is for "x". The issue is that, that person voted. The register shows that this person voted and that he should not have voted. So, there is your vote. That is the vote we are looking at and not specifically this particular ballot paper belongs to "x". So, if you voted, we will know you voted. If you voted in two places, we know you voted in two places, irrespective of whether we know which specific ballot paper was yours.

**Eng. Gumbo**: Madam Temporary Deputy Chairlady, for example, look at subclause 84(2b), it talks about the vote of a person whose vote was procured by bribery, cheating or undue influence. How will you be able to know that somebody procured a vote by bribery?

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, that is how hon. Orengo and I made a fortune. It is so easy to prove. So, I really want to persuade my good friend, hon. Gumbo, that this is always the discretion of the judge. The mere fact left here is for the judge to determine on the basis of evidence, affidavits, oral, otherwise, whether it was procured in this manner. So, please, leave it. Do not delete these clauses.

**The Temporary Deputy Chairlady** (Dr. Laboso): I think these are very legal matters. Hon. Gumbo, from all indications, it seems like all the learned friends seems to understand what it is all about.

**Eng. Gumbo**: Madam Temporary Chairlady, all the learned friends, except my friend, Ms. Karua, seem to understand. Before I withdraw it, I need further guidance.

**The Minister for Lands** (Mr. Orengo): Madam Temporary Deputy Chairlady, for example, if in Rarieda Constituency, during an election, you got 500 votes and your opponent got 495 votes; during the scrutiny, it is found that any of the votes of anybody who, probably, voted, but should not have voted, but he actually cast a vote, that one is struck out without necessarily identifying the ballot. If he had procured a vote through a bribe, then it is the number of votes which will determine the winner. So, if there were ten votes which were irregularly or unlawfully cast, it affects the number of votes. Your majority is now cut down. It is normally a tedious process in an election petition.

**Ms. Karua:** I am just unable to understand. Yes, from the register you can know a certain person who should have not have voted has voted. Now when you come to scrutinise and they have voted for me, the others have voted for Eng. Gumbo, how would you know that the one who voted for Eng. Gumbo is the one who was not supposed to vote because you cannot trace the vote to any one person. We are now getting to a place where you can cook evidence as to whose vote it was. We have already passed a clause which is preventing anybody who is assisting a voter from disclosing whom they voted for. How are you going to trace that vote? Whose vote are you going to deduct, is it my vote or Eng. Gumbo's vote?

**Mr. Wetangula:** Madam Temporary Deputy Chairlady, let us understand the difference between a vote and a ballot paper. The judge is not striking out the actual paper. He is striking out the vote. This is a court process. If I go to court and prove, that hon. Abdikadir voted twice, then his vote is invalid and struck off. If I prove that hon. Gumbo has bribed to vote, then his vote becomes invalid and is struck off. This is what this section is saying. So, the numbers reduce as we strike off upon proof. You are not striking the ballots. You are striking the votes. This is what this law is all about.

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Members, we really must move from this.

**Mr. K. Kilonzo:** Madam Temporary Chairlady, while I agree with you that we must move on, we must also try to avoid ambiguity. Clearly, from the discussion we are having here, you would realize that we as lawmakers cannot agree on the difference between and the vote. Therefore, I want to support that we delete this clause, so that ambiguity is clarified.

Mr. Minister, hold your horses. Let us also debate because we want to carry the House together.

**The Minister for Transport (Mr. Kimunya):** Madam Temporary Deputy Chairlady, the issue here is that there is a very clear distinction between identifying a ballot paper and a vote. What we are simply confusing is that scrutiny does not mean you go looking for the person whom the ballot paper belongs to. These provisions are already in the existing law. These provisions have already been used in all the scrutiny that has taken place and will take place in future. They have been verified and they have never been challenged. Let us not challenge them now when we have just imported them from the existing law and we are transiting them. Let us not dilute the existing law without cause. Nobody has challenged the rules of scrutiny. If you dilute them here, you will be finding a situation where the court has ruled that there were 100 people who were found to have been bribed. Let us retain it as it is.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I am not a lawyer, but I am persuaded that this (b) is very important where it is because the vote which was procured through bribery, I believe that the judge could ask the petitioner to produce a witness and if a witness can confirm that hon. Mbadi bribed 50 voters, those 50 can be reduced from my total number of vote. That is the import of this.

**The Temporary Deputy Chairlady (Dr. Laboso):** I think we have deliberated on this matter long enough.

**Ms. Karua:** Madam Temporary Deputy Chairlady, that may be so, but this Clause is not clear. If it was clear to say that if evidence is adduced, but now you are just giving powers to strike a vote. A court should not act in vain. Whose vote is being struck

out? Whose ballot is going to be struck out? If it is a just a ballot, then it is in vain. It should go.

**The Temporary Deputy Chairlady** (Dr. Laboso): Honestly, we must move forward.

**The Minister for Lands** (Mr. Orengo): Madam Temporary Deputy Chairlady, I am feeling very frustrated. I have been in court so many times and this is one of the most important grounds on any election petitions. In fact, the judges would normally allow a scrutiny only where the difference is small. Because when the victory is overwhelming, then they say that it may not change the vote. But where the majority is like five or ten and you can actually bring evidence--- I was doing a case from Budalangi, and I think hon. Namwamba knows about it, where evidence was adduced in court; women were brought in court and they said: ‘Actually the candidate paid money to me at this hour, this time’. There was evidence that that vote was secured through a bribe. If there is that truth, then this particular law is saying that that vote should be struck off and not the ballot. This has been good law. It is there in India, the UK and everywhere.

**Mrs. Noor:** Madam Temporary Deputy Chairlady, thank you for giving me this chance. I am talking from a lay man’s point of view. Hon. Orengo has just said that somebody admitted in court that she was bribed. Why can you not jail that person and prosecute her?

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

*(Clause 84 agreed to)*

*Clause 85*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 85 of the Bill be amended by inserting the words “a minor” after the words “by reason of”.

This is to add the word “minor” so that the Clause can read as follows:-

“No election shall be declared to be void by reason of a minor non-compliance with any written law.”

This is meant to ensure that if there is significant non-compliance with the written law relating to election, then the election should be declared void.

*(Question of the amendment proposed)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, we are the legislators. Are we making minor laws? At what point do you make a minor law or a major law? So, a violation is a violation. Therefore, this amendment should be withdrawn.

*(Question, that the word to be inserted be inserted, put and negated)*

*(Clause 85 agreed to)*

*Clause 86*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 86 of the Bill be deleted and substituted with the following new clause-

“An election court shall award the costs of and incidental to a petition and such costs shall follow the cause. “

The opinion of the Committee was that there are some Kenyans who go through election petitions and win. It is established that the mistake was with the electoral commission but they are denied the costs. So, the costs need to be paid. There were examples given.

*(Question of the amendment proposed)*

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

*(Question, that the words to be inserted in place thereof be inserted, put and agreed to)*

*(Clause 86 as amended agreed to)*

*(Clauses 87, 88, 89, 90, 91, 92, 93, 94, 95 and 96 agreed to)*

*Clause 97*

**The Minister for Justice, National Cohesion and Constitutional Affairs (Mr. M. Kilonzo):** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 97 of the Bill be amended in Subclause (1) by inserting the words “of the High Court” immediately after the word “Registrar” appearing in the second line.

We are simply adding the words “Registrar of the High Court”. For avoidance of doubt, the words we are adding should be “Registrar of the High Court” but we had just put the word “Registrar”.

*(Question of the amendment proposed)*

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

*(Clause 97 as amended agreed to)*

*(Clause 98, 99, 100, 101, 102, 103,*

*104, 105, 106 and 107 agreed to)*

*Clause 108*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT clause 108 of the Bill be amended by inserting the following new subclause after Subclause (2)-

“(3) A person who is convicted of an offence under this Act shall not be eligible for election or nomination in an election under this Act for a period of ten years following the date of conviction”.

Madam Temporary Deputy Chairlady, we realized that people get involved in many election irregularities knowingly and cause a lot of harm to this country. Therefore, if you have been convicted of an offense, you should be barred from contesting for a period of not less than ten years following the date of conviction.

*(Question of the amendment proposed)*

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

**The Minister for Lands** (Mr. Orengo): Madam Temporary Deputy Chairlady, I want to plead with Mr. Mbadi that, normally, when there is a conviction in relation to an election offense for ten years, maybe by the time you are convicted the petition has gone on for three years. In actual fact you may find that it turns out that you will be convicted for more than five years. That means not running for elections for 15 years. I would rather urge that the amendment should be “five years” because some of the offenses are not things that you can describe as felonies. They are probably misdemeanors. For example, if you did not include the name of the printer in your poster, that is an election offence; and then you are punished not to run for an election for ten years which translates to 15 years. I think that is rather draconian. I propose that there be a further amendment to five years rather than ten years.

**Ms. Karua:** Madam Temporary Deputy Chairlady, I just want to say that we are coming from a background where this country nearly went down because of electoral fraud. So, this amendment is designed to make it very expensive for anybody to indulge in any malpractice. As a result, we shall all fear and warn our supporters severely. We should leave it at ten years.

I, therefore, oppose the further amendment.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): Madam Temporary Deputy Chairlady, for this country to be on the right path, we have to maintain the ten years so that this country---

*(Loud consultations)*

**Madam Temporary Deputy Chairlady** (Dr. Laboso): Order, hon. Members! The General is on the Floor. Give him an opportunity.

**The Assistant Minister, Ministry of State for Defence** (Maj-Gen. Nkaisserry): It is my time to speak and I am saying that for this country to get on the right path, we have to punish people. We do not have to bring people who are thieves to Parliament as law-makers after five years. Let us make it ten years so that by the time it lapses he or she would not be fit to be elected.

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, I want to appeal to hon. Members to listen to the many years of experience of Mr. Orengo in matters of petitions. The law, as it stands, provides that the sins of your agents can be visited on you as a candidate. There is nothing that will stop your agent from being involved in a bar brawl which will then be converted into an election offence; that you went and beat people. Then you are locked out for ten years for an offence which you did not commit. Let us punish offenders for five years, which is good enough. It means that you will be out of Parliament for ten years.

I support the amended version.

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I also want us to---

*(Loud consultations)*

Madam Temporary Deputy Chairlady, please, protect me.

**The Temporary Deputy Chairlady** (Dr. Laboso): Order, hon. Members! Allow Mr. Mungatana to make his contribution.

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, election offences strictly speaking, are a special class of offences. They are not criminal in the sense of criminal offences, in the sense that the crimes which are being committed here could even be crimes of omission. We must not punish people so severely because if you look at this, there is already a fine of Kshs1million. Why should you charge someone Kshs1 million and then tell him "for ten years you are not going to stand and it could be an omission?" I do not think that it is fair. Let us just put it at five years.

I support Mr. Orengo.

**Mr. Wetangula:** Madam Temporary Deputy Chairlady, I want to urge my colleagues that we used to have this draconian law before the IPPG of 1997, where people convicted, particularly Members of Parliament, used to be barred from standing even in the next election. We removed that with the IPPG to the extent that if you lose out on the term where you have been convicted and the fine is on, that is enough punishment. In any case, the purpose of our Penal system is not necessarily to punish, but also to correct. If we have to correct people, then meting out draconian punishments is not right. I urge that we go by the five years proposed by Mr. Orengo.

**Mr. Njuguna:** Madam Temporary Deputy Chairlady, I support the amendment by Mr. Orengo. If somebody is convicted at the age of 60 and you serve him with an additional ten years, literary you are killing the spirit of this person and denying him his democratic right.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. Njuguna, Mr. Orengo's proposal has not come to the Floor yet. However, you have just said what you would like to say.

Yes, Mr. Midiwo!

**Mr. Midiwo:** Madam Temporary Deputy Chairlady, I want to plead with my colleagues, that coming from where we came from in 2007, ten years is nothing. We must put sanctions on crime to deter crime. If you know that you will be barred for five years versus ten years, you would rather think that five years is nothing. We are a nation that is trying to improve. Now that the courts are being vetted and are improving, they will not be victimizing people unnecessarily. This notion that a criminal still has a right to contest in future; that the sooner they finish and contest again, the better, is very bad. A criminal is a criminal and they do not always have to be in public office. We should even ban them from contesting forever.

I support.

**Dr. Kones:** Madam Temporary Deputy Chairlady, this is a provision under what is called “general penalties”. That is for those offences not provided for. I would like to know which are these offences which have not been catered for, that you really want to severely punish. Do we have any punishment that has been given in this Bill that exceeds five years? So, I will go five years.

**Mr. Mbadi:** On a point of order, Madam Temporary Deputy Chairlady. The Bill is very clear. It says a person who contravenes a provision in this Act. So, this is not another offence that is not in the Act. It is already provided for. It is the offences under the Act. If you are convicted as a result of committing an offence under the Act, then whatever we are proposing will apply.

**Mr. C. Kilonzo:** Madam Temporary Deputy Chairlady, I am in total agreement with the proposal that we reject 10 years, purely, because if an election offence is committed, and you are told that from the date of conviction - Chances are that the date of conviction is not the same as the date of election. That means that you will be convicted after the election and, automatically, you will not contest in the next election. So, at the end of the day, that would be almost like 10 years. I want us to reduce that period to five years so that, in the next one, you will have lost 10 years. If you pursue this, you will have lost 15 years.

*(Question of the further amendment proposed)*

**The Minister for Lands (Mr. Orengo):** Madam Temporary Deputy Chairlady, I just want to demonstrate that what we are doing cannot be right. The offences which are more serious, the sentences are already spelt out. You cannot make an offence for which a sentence has not been provided for. It is more serious. The ones which are provided for are more serious. For example, for the elections offences under clause 68, the punishment is Kshs1 million or a term sentence not exceeding five years. Then, it also says that a person who is convicted of an offence under this part is not eligible to be registered as a voter and cannot vote at any election.

For this specific offence, the punishment is lighter than the ones for which offences are not provided for. It makes sense that this should be five years. I can tell you that you need to understand this. One of these days, if you are found guilty and you go before a judge who, by just looking at your face, sees that you have not committed an offence but he says: “You look like a criminal.” Then, you are made to suffer for 15 years, and you have already served a jail sentence or probably paid a fine of Kshs1 million. I think that there will be no sense of justice in that kind of situation.



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

*(Question, that the word to be inserted in  
place thereof be inserted, put and agreed to)*

*(Clause 108 as further amended agreed to)*

*Clause 109*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 109 of the Bill be amended by inserting the following new subclause after Subclause (2)-

“(3) A member of the Commission or any person designated by the Commission shall have the power to impound or to order the impounding of any state resources that are used in an election campaign”.

We have been complaining about the misuse of State resources in campaigns. This is meant to make sure that we do not lament why the Election Commission cannot take action and yet, they have no way of taking action. We are providing them with the power to deal with those who misuse State resources. If you are a Cabinet Minister and you are driving a Government vehicle, it is impounded.

*(Question of the amendment proposed)*

*(Question, that the word to be inserted  
be inserted, put and agreed to)*

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT, Clause 109 of the Bill be amended by deleting the word “Commissions” appearing in Subclause 3 and substituting therefor the word “Commission”.

This is just a typographical error. The sentence should read: A member of the Commission or any officer designated by the “Commission” not “commissions”. So, it should be “Commission”.

*(Question of the further amendment proposed)*

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

*(Question, that the words to be inserted in place  
thereof be inserted, put and agreed to)*

**Dr. Kones:** Madam Temporary Deputy Chairlady, just some clarification. There is the amendment which you have just passed by Mbadi and yet we had also passed a similar amendment in Clause 69. It is exactly the same.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, there is no harm if the same law is repeated. It is superfluous.

**The Temporary Deputy Chairlady** (Dr. Laboso): That will be cleaned up.

**Mr. Mungatana:** Just to clarify. That amendment that Dr. Kones is talking about is my amendment. That one was talking about impounding State vehicles or things like that. This particular one is dealing with arresting those individuals. So, those are two different powers which both are needed by the Commission in order to supervise this election properly.

**The Temporary Deputy Chairlady** (Dr. Laboso): Thank you for the clarification, Mr. Mungatana.

*(Clause 109 as further amended agreed to)*

*(Clause 110 agreed to)*

*Clause 111*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move:

THAT, Clause 111 be amended by inserting a new Subclause (3) reading as follows:-

“Exercised only after a draft of the proposed regulations has been approved by the National Assembly at least six months preceding the General Elections”.

The idea is that all these regulations required by Clause 111 be at least made available to the National Assembly for scrutiny to ensure that they comply with the Constitution and the Act. It is not an attempt to gag or influence the Commission, but it is just for clarity six months before.

*(Question of the amendment proposed)*

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, I just want to remind hon. Members why we should adopt this amendment. Hon. Members, you will remember when we passed the so-called “Mututho” law, we passed a very good law but when we allowed the regulations to be drafted without the approval of this House the regulations that have been taken to the field are so bad on the ground that, if they had been brought here, some of them would never have been approved.

So, I propose that we support the amendment so that whatever regulations that will come because we are the principal players in this field, we approve them before they assume the full force of law.

I support the amendment.

**The Temporary Deputy Chairlady** (Dr. Laboso): Mr. C. Kilonzo, and you have a habit of standing before your time.

**Mr. C. Kilonzo:** Madam Temporary Deputy Chairlady, I have noted your concern. I think these are crucial amendments to avoid very queer rules and regulations which might ambush Members. We have all seen a requirement which says that they

might require a report from the National Security Intelligence Service (NSIS). If a report from NSIS will be required, hon. Khalwale who is against the Government will never get any recommendation from NSIS, not to mention hon. Mbadi and even myself.

So, I think it is important we have approval of the House.

**Eng. Gumbo:** Madam Temporary Deputy Chairlady, I fully support this amendment, but I think as lawmakers we should be consistent. I have always advocated for regulations governing the laws that we make here to be brought to the House. Many times I have been pushed aside. Sometimes bad remarks are made that as an engineer, I should be concerned with carrying stones and not making laws. We should be consistent so that when we make laws--- These are the pitfalls that have been seen that somebody out there will make regulations that negate the spirit of the law and we have no powers to look at them. I was overruled in the Act governing the Independent Electoral Boundaries Commission (IEBC) and many others.

So, I am glad that the Minister is now seeing the essence of making those regulations and bringing them here for approval before they come into effect.

**Mr. Midiwo:** Madam Temporary Deputy Chairlady, just a quick one. This particular law is very important. We have also gone ahead, just to inform hon. Gumbo, to put it in some laws which are coming before us maybe tonight. However, it is very important just to give one example. In the ongoing football elections, some people are being denied chances of contesting because somebody in the Kenya Revenue Authority (KRA) does not like them. So, we are saying that all regulations from now and in future, in any law we make, must come here for scrutiny and approval by Members of Parliament.

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

**The Minister for Transport (Mr. Kimunya):** Madam Temporary Deputy Chairlady, I just want to say something for clarity here. We are saying that these regulations will only be exercised after a draft proposal has been approved by the National Assembly at least six months preceding a general election. My worry is: If the commission is to make some regulations within six months before we go on recess – within the six months period before the elections, who will approve those regulations because they will be null and void for purposes of that election? Yet the whole essence of giving them power to make some regulations is to be able, for example, to lay some regulations, gazetting a certain area. I think it is important that we look at this matter with some flexibility. My understanding of what the Minister approved was that the regulations will be tabled. However, what is formally recorded here is that they will be approved six months before elections. So, we need to be very careful that we are not confusing the time of their being tabled here and with the time of their being approved six months before.

**Mr. Midiwo:** Madam Temporary Deputy Chairlady, I want to convince hon. Kimunya. What we are trying to cure here is a scenario that on the eve of nominations, you can use your influence wherever you are to make the commission make a particular regulation which affects just your opponent. What stops the commission from being

prepared for elections six months before? They are required to submit the names within 90 days anyway. What is wrong with this? I want to plead with hon. Kimunya.

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT clause 111 of the Bill be further amended in paragraph (z) of Subclause (1) by inserting the words “with reasonable grounds” after the word “provide”.

This is just to add with “with reasonable grounds” before the word “provide” so that the election can also only be postponed with reasonable grounds.

**The Temporary Deputy Chairlady** (Dr. Laboso): Are you okay with that?

**The Minister for Lands** (Mr. Orengo): I have put further amendments to the amendment and instead of the word “with” use the word “on reasonable grounds”

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I have to support. Certainly, in matters of English Language, I am sure hon. Orengo is better than me. If it were matters of calculations, I would not have accepted.

**The Temporary Deputy Chairlady** (Dr. Laboso): It is like polishing up of your amendment.

Is that your amendment, hon. Orengo, or you are donating it to the Committee?

**The Minister for Lands** (Mr. Orengo): I donate it to the Committee.

*(Question of the further amendment proposed)*

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

*(Clause 111 as further amended agreed to)*

*(Clause 112 agreed to)*

*Clause 113*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move:-

THAT the Bill be amended by deleting Clause 113 and substituting therefor the following new clause –

**Repeals**

**Cap.7**

**Cap. 66**

113. The National Assembly and Presidential Elections Act and the Election Offences Act are repealed.

This is pretty straightforward. The law being repealed is the National Assembly and Presidential Elections Act, and Election Offences Act, instead of selecting several parts of the law.

*(Question of the amendment proposed)*

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

*be left out, put and agreed to)*

*(Question, that the words to be inserted in place thereof  
be inserted, put and agreed to)*

*(Clause 113 as amended agreed to)*

*New Clause 26A*

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, the new Clause 26A by hon. Dr. Nuh cannot be executed again because it is the matter that we went into a Division for. Therefore, that one stands dispensed with.

**Dr. Khalwale:** On a point of order, Madam Temporary Deputy Chairlady. Whereas I agree with you that it was dealt with earlier on, if you allow me, I will show you the difference. In Dr. Nuh's amendment, which he has allowed me to move for him, there are two parts, namely, 26(1), which was dealt with earlier on in the afternoon.

**The Temporary Deputy Chairlady** (Dr. Laboso): Can you then move?

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, allow me to move New Clause 26A(2) only, which reads:-

“Subsection (1) shall not apply to a person who served as a Member of Parliament before the commencement of this Act”.

He has numbered it as section 1 on his amendments. Then I am moving (2). The first one, we resolved that a person shall qualify for nomination to the Office of the President, Deputy President, County Governor, Deputy Governor and Member of Parliament if that person holds a degree. Earlier on in the afternoon, we resolved that issue and left out part (2), which I now want to prosecute.

I beg to move:-

THAT, Subsection (1) shall not apply to a person who has not served as a Member of Parliament before the commencement of this Act.

The import of this is that when we bring those people who are going to come here with higher standards of education, they will come to start learning the Standing Orders and how to move Motions.

**Mr. Wetangula:** On a point of order, Madam Temporary Deputy Chairlady. While I regret interfering with hon. Khalwale, he is not being absolutely factual. Part (1) of that Clause; the issue of a degree applying to a Member of Parliament was defeated. So, you cannot now say that what is above does not apply to former Members of Parliament unless you qualify that as well.

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, I was building up my argument.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Member, I have already decided that this matter cannot be re-introduced. We have already dealt with it exhaustively and gone into Division on it. We actually dispensed of it.

**Dr. Khalwale:** Madam Temporary Deputy Chairlady, with maximum respect to the Chair, probably, if you allowed me to conclude my remarks, then you will make a more informed decision. This is not personal. As you know, I am a man of many letters. So, I have no limitations. The point I was prosecuting is that, the people who will come

here with those high certificates will come and start learning some of the things that the people who have already served in this House already know.

They will learn the Standing Orders and the former Members already know that. They will learn how to do a Motion and all these manner of things. I am saying that we use this saving clause, so that Members who have already gathered experience as Members of Parliament can be saved from the provisions of sub-section (1).

A precedent has already been set in this country whereby when we used to ask for the language test, Members of Parliament who already have served this House, usually do not need a certificate of proficiency in language.

I beg to move.

**Mr. K. Kilonzo:** On a point of order, Madam Temporary Deputy Chairlady. Just to improve on what hon. Khalwale has said, I want to put a rider that that applies only to the Tenth Parliament.

**The Temporary Deputy Chairlady (Dr. Laboso):** Order! Hon. Members, quite honestly, we are getting out of our realm. We cannot be coming to legislate for ourselves. We cannot come and talk about a clause that limits everybody else and exempts the Members of the Tenth Parliament. My earlier ruling stands. Let us stick by what we decided. We went into Division and this matter was dealt with.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, we had said that, because it is a leadership issue, the National Assembly and the Senate should be open to people who have degrees and people who do not have degrees. That is the decision we have made. To re-open it now is to question or appeal against that decision.

Your ruling must stand, Madam Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady (Dr. Laboso):** Thank you. Hon. Members, we really must move from this issue.

**Mr. C. Kilonzo:** On a point of order, Madam Temporary Deputy Chairlady. I was hoping that this House would benefit from the many lawyers who are here, including the Minister. I am told that somewhere within the law, when a right has been conferred to you, it cannot be denied to you later. So, we would really have benefitted from the lawyers we have in this House.

*(Several hon. Members stood up in their places)*

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Members, this matter has been disposed of. Therefore, we must move from this matter. The Chair has ruled that this matter has been dispensed of with. Let us move on.

**Mr. Waibara:** On a point of order, Madam Temporary Deputy Chairlady. I am saying this House cannot use this Bill to discriminate against Members of Parliament who have served this country all these years. We have served this House all these days.

**The Temporary Deputy Chairlady (Dr. Laboso):** Hon. Waibara, with all due respect to yourself – you are our good colleague – we are not legislating for ourselves. We are legislating for posterity, and this decision has already been made. So, let us move on. We have already made a decision, not as individuals. We went into Division and we have dispensed with the matter. Therefore, can we move to the next Clause?

**The Minister for Public Health and Sanitation (Mrs. Mugo):** On a point of order, Madam Temporary Deputy Chairlady. I think we said in this Bill that this decision

does not affect those who have been Members of Parliament. I think we had such a Clause in the Bill, unless it was removed. We must save all Members of Parliament.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Order! Order! Hon. Members, we cannot legislate for ourselves. We really cannot legislate for only what affects us. We are legislating for Kenya and for posterity.

Move the New Clause, hon. Sofia Abdi Noor!

**Mr. Waibara:** Madam Temporary Deputy Chairlady---

**The Temporary Deputy Chairlady** (Dr. Laboso): Order! Order, hon. Waibara!

**Mr. Waibara:** On a point of order, Madam Temporary Deputy Chairlady!

**The Temporary Deputy Chairlady** (Dr. Laboso): We have moved to another Clause, hon. Waibara!

**Mr. Waibara:** Madam Temporary Deputy Chairlady---

**The Temporary Deputy Chairlady** (Dr. Laboso): It is not on the Order Paper, hon. Waibara. We have moved on.

**Mr. Waibara:** On a point of order, Madam Temporary Deputy Chairlady---

**The Temporary Deputy Chairlady** (Dr. Laboso): Order! Order, hon. Waibara!

**Mr. Waibara:** On a point of order, Madam Temporary Deputy Chairlady.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Waibara, can you, please, move out of the Chamber?

**An hon. Member:** No! No!

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Waibara, can you, please, withdraw from the Chamber? The Chair has ordered!

**An hon. Member:** Please, give him a chance.

**The Temporary Deputy Chairlady** (Dr. Laboso): Well, I will give him a chance, but let him be seated.

*(Mr. Waibara resumed his seat)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Continue, hon. Sofia Abdi Noor!

*New Clause 34A*

**Mrs. Noor:** Madam Temporary Deputy Chairlady, I beg to move:-

THAT the following new Clause be inserted after Clause 34-

**Gender principle 34A.** The Independent Electoral and Boundaries Commission shall so manage elections, having regard to Article 90 of the Constitution among other provisions of law, as to ensure that the principle provided for in Article 81(b) of the Constitution is observed at all times in respect of the National Assembly, the Senate and the county assemblies.

(2) The Commission shall reject a party list that does not comply with the

requirements set out under Subsection (1).

Madam Temporary Deputy Chairlady, we are trying to bring this amendment in order for the Electoral and Boundaries Commission, when managing elections, to consider and appreciate the general principles of elections that were given under our Constitution. Under Article 27(6) and (8), there is a right that indicates that the full effects of the realization of the rights will be effected by legislation. What we are doing now is that we are legislating for elections. This amendment will cure the discrimination, problems that we will face in future and the constitutional crisis that we foresee in future. I am proposing this amendment so that in future, we do not enter into a problem that we could have solved today. I plead with hon. Members that this is a constitutional matter or right. I want to tell them that under the Constitution the electoral principle will be implemented through a legislation that we are trying to do now.

I urge this House to support me in this amendment.

*(Question of the New Clause 34A proposed)*

*(New Clause 34A read the First Time)*

*(Question, that New Clause 34A be read a Second Time, proposed)*

**Ms. Karua:** Madam Temporary Deputy Chairlady, I want to plead with the hon. Members to hear me out. We are just seeking to be heard. This may look like the same clause that was here but this is a totally different clause and I will explain. The clause that was here earlier on was obliging political parties to do something during their nominations. This is a clause asking the Electoral Commission to organize so that we can progressively achieve the principles in the Constitution. As you know, the Electoral Commission---

*(Loud consultations)*

Madam Temporary Deputy Chairlady, could you protect me from the loud consultations, especially here?

**The Temporary Deputy Chairlady (Dr. Laboso):** Order hon. Members!

**Ms. Karua:** The Electoral Commission, in arranging these matters, is obliged by the Constitution to consult with political parties because the principle of participation is entrenched in our Constitution. I plead with hon. Members to let this clause pass so that we shall not have lost completely the principle of not more than two-thirds of any gender; so that the dialogue can continue through the Electoral Commission. Let us have this understanding that we are opening the way for both men and women of this country to be able to participate in the elective processes. We are pleading for understanding, and we are asking for a partnership between the fathers, sons, husbands and friends who are in this House and the women of this country who are your mothers, sisters, wives and daughters. We are seeking a meaningful partnership that will open way for your daughters. Do not see those of us who are already in Parliament. We may not require this



support but think of your daughter. Do not close the door for your own daughter or grandchild. We are seeking your partnership and co-operation.

I beg to support this Clause.

**The Assistant Minister for Nairobi Metropolitan Development** (Ms. Ongoro): Thank you, Madam Temporary Deputy Chairlady. I plead with this House to hear the proposal that is being put on the table. Honestly speaking, we are simply trying to avert a possible constitutional crisis. What we are doing here is making a statement directed to the political parties; we are just getting another voice pleading with them, to be compliant with the provisions of the new Constitution.

Under the new Act, political parties will be funded. What we are saying is that if a political party will not have provided and taken due care to ensure that the two-thirds rule has been adhered to, then that political party does not qualify to be funded. Fifty percent of taxpayers in this country also happen to be women. I do not see why any political party should be funded after they have failed to comply with what is constitutionally provided for, and what has been debated even in this Chamber.

Madam Temporary Deputy Chairlady, if we allow this, we are simply saying and making a bold statement that every political leader or party must ensure that during the process of nomination, they ensure that they even give women nominations in politically viable constituencies so that they are compliant. But at presentation of their nomination list, if the political party is not compliant, and does not present a list that contains not more than two-thirds of either gender, that political party should not only be denied funding, but in future should even be considered for deregistration.

Thank you, Madam Temporary Deputy Chairlady.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Chairlady, I beg to oppose this introduction knowing that I am a minority in my house. In terms of gender, I am the most mainstreamed. I am the only man in my house and we are three. I am with two women. However, we cannot legislate in the wrong way just to accommodate the sentiments that are coming through here.

Madam Temporary Deputy Chairlady, there was a Clause 14 amendment that came to the Floor of this House. If you look at it, there was a “c” that was rejected by this House earlier today that had said:

“In nominating candidates for an election under subsection (1) a political party shall ensure that no more than two-thirds of its nominees are of the same gender.”

It was rejected after canvassing under the same argument that we are hearing today because it was not practical to do so. I remember Ms. Karua gave us her own example of the nominations that had taken place in NARC-K in the last three elections. She said that out of those three elections---

**Ms. Karua:** On a point of order, Madam Temporary Deputy Chairlady. Is it in order for the Member for Kipipiri to start discussing me without a Substantive Motion?

**Hon. Members:** Refer to him as honourable.

**Ms. Karua:** Madam Temporary Deputy Chairlady, I referred to him as the Member for Kipipiri. The honour part is taken for granted. He is not merely quoting me. He is discussing.

**The Minister for Transport** (Mr. Kimunya): Madam Temporary Deputy Chairlady, I am not in any way discussing her character or conduct. I am quoting what she contributed in the Floor of this House. The Member gave us an example that in the

last three by-elections, NARC(K) - the party that she chairs - has nominated male candidates only. The reason was because one of the female candidates withdrew and had to be replaced with a man. I was just demonstrating that even out of three by-elections, you could not raise the one-third at that level. How do you then facilitate, at the national level, to obligate all political parties that if they do not submit a list that has the two-thirds gender compliance, then the Electoral Commission shall reject that list?

What this new amendment is attempting to do – I can see the Mover mischievously looking at us – is basically to introduce, through the back door, what was thrown out through the front door.

**Mrs. Noor:** On a point of order, Madam Temporary Deputy Chairlady. Is the Member in order to insult me as being mischievous? Could he withdraw and apologize?

**The Minister for Transport (Mr. Kimunya):** Madam Temporary Deputy Chairlady, in the interest of peace with hon. Sophia, I withdraw and apologize. However, the point I am making is that we made a decision this morning. That decision was very clear. We agreed that it was impractical to do this for now, unless we have a constitutional amendment. For the information of the House, on behalf of Government, on Monday morning at 10.00 a.m., the Cabinet has called a special meeting to discuss the issue of how to work out these constitutional requirements, so that we align all our electoral processes with the new constitution. I would like to suggest that, instead of us attempting to mess up with a good law that we have just passed, let us collect all the views over the weekend. Then we process them through the normal consultative process and we come out here with a comprehensive constitutional amendment that will address the issue of how we achieve the one-third and two-third gender rule. It could be women or men. But let us not attempt to introduce that in this law.

I beg to oppose.

**The Minister for Agriculture (Dr. Kosgei):** On a point of order, Madam Temporary Deputy Chairlady. I do not understand how my colleague is telling us about an agenda in Cabinet. Are we also saying that Parliament is also constrained by what is likely to come out in the Cabinet?

**Mr. Midiwo:** On a point of order, Madam Temporary Deputy Chairlady. I plead that we only have a few hours. Whatever we are passing here must go to the Attorney-General and to the President for signature tonight by midnight. I only pleading that you shorten the interventions and debate. We are here because we are trying to beat some deadline.

**The Temporary Deputy Chairlady (Dr. Laboso):** I think what Mr. Midiwo has suggested is quite in order. Could we have very few remarks now?

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I want to say one thing. Let us not attempt to cure a fundamental problem by having a poor legislation. Let us not have a lazy kind of way of fixing this. Let us have a way of having this matter discussed properly. You cannot legislate on how the Electoral Commission is going to manage elections.

**Mrs. Shebesh:** Madam Temporary Deputy Chairlady, you have heard clearly what Mr. Mbadi has said; that this amendment proposed by Ms. Noor is a lazy amendment. We have had amendments brought numerously here today on the Floor. Nobody has been accused of bringing a lazy amendment. This is the work of Parliament. Is it in order for Mr. Mbadi to abuse and again insult Ms. Noor?

**Madam Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, as an English teacher, I even do not know whether there such a thing as a lazy amendment. I do not think that amendments can be---

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, this amendment, by all standards is lazy because it is not helping anything. If you attempt to solve a problem in a way that is not solving it, then you are lazy. That is a lazy way of doing it.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, I think we really have to dispense with this matter. Remember we have only one way of determining a matter in this House.

*(Question, that the New Clause 34A  
be read a Second Time, put and negated)*

*New Clause 35A*

**Mrs. Noor:** Madam Temporary Deputy Chairlady, I beg to move:-  
THAT, the following new Clause be inserted immediately after Clause 35-  
After the announcement of the results of an election under this Act, a political party that does not meet the requirements of Article 81(b) of the Constitution shall have its financial entitlement under the Political Parties---

*(Loud consultations)*

Protect me, Madam Temporary Deputy Chairlady. I have a right to speak!  
**The Temporary Deputy Chairlady** (Dr. Laboso): Order, hon. Members! Allow Ms. Noor to move her amendments.

*(Loud consultations)*

Order hon. Members! We will not move by all the noise that is going on. Allow Ms. Noor to move her amendments.

**Mrs. Noor:** Thank you, Madam Temporary Deputy Chairlady, for protecting me. I know this is a country for men and men must listen to the minorities.

The following new clauses should be inserted after Clause 35-

“1. After the announcement of the results of an election under this Act, a political party that does not meet the requirement of Article 81(b) of the Constitution shall have its financial entitlement under the Political Parties Act or any other fund reduced by such a proportion as the registrar of political parties or any other public officer may decide.

2. in deciding the proportion of funds to be reduced under Subclause (1) the registrar of political parties or any other public officer shall take into account the overall performance of the political party in an election; whether the political party took an effort in good faith to comply with the requirements of Article 81 of the Constitution.

Madam Temporary Chairlady, I am brining this proposal to commit the political parties. This has happened in France. The French Parliament adopted it to make sure that the political parties do stand for gender, equity and equality as a principle that they accepted. As a principle that we have appreciated in this country, we must now ask our

political parties that only six seats, for example, in Orange Democratic Movement (ODM) like in Nyanza, should be given to women. Women should contest and then take the seat of hon. John Mbadi. For example, in the Party of National Union (PNU), all the seats that are in Central Province and Mount Kenya should be given to women so that the political party will be committed and will have a time to---

*(Loud consultations)*

Please, let me finish.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, please, let her move her amendment.

**Mrs. Noor:** Madam Temporary Deputy Chairlady, this has happened in developed countries. We are in looking into the future. Vision 2030 is looking into the future. If we want a vision that wants to develop and empower this country, how can we empower and develop this country when our political parties do not want us? So, I appreciate the principle that we put in our new Constitution.

This is going to free us and the women in those political parties will be able to appreciate and work for their political parties day and night. I propose that you support this. You have refused and you have shown us that in many ways, you men of this House. But, please, do support this.

*(Question of the New Clause 35A proposed)*

*(New Clause 35A read the First Time)*

**Ms. Karua:** Madam Temporary Deputy Chairlady, I wish to second the amendment and remind Members that the majority will have their way, but the minority must have their say. I intend to contribute robustly and profusely to this amendment. This is a very well thought out amendment. It is replicating what was in the Political Parties Act, 2007, that any political party that does not fulfill the gender quota gets a reduced funding. This is a way of penalizing political parties to help Kenya to develop by integrating women in leadership and decision making.

We know that the Scandinavian countries which have integrated this principle have the highest, not just life expectancy, but the well being and better life for its citizens. Countries develop faster when they include both men and women in decision making. Even this Parliament, if the Members were to be honest, they will see that the contributions of the few women have taken it far. Even the Cabinet, minus the women, might also crumble.

Madam Temporary Deputy Chairlady, we are saying that even in the rural homes, without the women, the homes will collapse. Many of the Members here should recognize their mothers as heroes for having brought them up in difficult circumstances. Those are the special qualities that the women will bring into leadership and decision making. We shall not tire to say that it is a tragedy that people who swore to defend the Constitution now sit here to start desecrating the same Constitution by refusing to recognize the principle of gender inclusivity. This is no different from the principle of affirmative action in monetary matters. We should be able to stand and say that when you

give the marginalized regions more money, we are discriminating against the other regions but then the Constitution allows affirmative action to redress historical injustices. Women have been marginalised for centuries. This is the time to do affirmative action for women. We are, therefore, asking for the support of this House; for sobriety in debate and we are telling the women of Kenya: “Look at your Members of Parliament. They will only appreciate you when you are campaigning for them. They appreciate you as work horses in your parties, but they do not recognize you as full human beings, equal to them.”

This is a notice to women; go to parties that will appreciate you. Look at how your Members are voting here and then understand which Members recognized women as equal citizens of this country. Remember this is the Second Reading. I can talk for the whole evening because it is Second reading.

*(Loud Consultations)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Order, hon. Members! Order! We have been guided because in the interest of time, we might be getting ourselves into a crisis, when we have worked so hard. This is one area that we would like to really ventilate enough on because, as I said, it is Second Reading. However, time does not allow us. The Chair is also very interested in that topic, but nonetheless, we must make progress. We must move forward.

Hon. Karua, kindly conclude your contribution.

**Ms. Karua:** Madam Temporary Deputy Chairlady, if the House allows, I would quickly summarise. However, it is difficult to summarise with cat calls.

Madam Temporary Deputy Chairlady, once again, I want to call for sobriety. We swore to defend the Constitution. We should not be the ones to undermine the same Constitution we chose to swear by. It is unfortunate that certain Members of the Cabinet are ready to stand here and dismantle the same Constitution they swore by. However, I thank God because we have begun to see the identities of those who have been a major road block to the implementation of the sections that favour gender inclusivity. I am asking each one of you to rise up to the occasion in the name of your daughters, mothers, sisters and women who brought you to this Parliament, in the name of Kenya and the men of goodwill, I call upon you to support this amendment.

I beg to second.

**Hon. Members:** Put the Questions!

**The Temporary Deputy Chairlady** (Dr. Laboso): Let us put the Question hon. Members in the interest of time.

**Ms. Karua:** Madam Temporary Deputy Chairlady, I was only seconding. You have not even proposed the Question.

*(Question, that the New Clause 35A  
be read a Second Time proposed)*

*(Several hon. Members stood up in their places)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Order, hon. Members! The problem is the time. We would like to debate as I have said, but with all due respect—

**Ms. Karua:** On a point of order, Madam Temporary Deputy Chairlady. Having proposed the Question, it would be totally unprocedural to put the Question without even a modicum of debate. This House would be breaking its own rules. It is better you limit contribution, but you cannot bar debate.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Madam Temporary Deputy Chairlady, I thank you for the opportunity. I would say very few words.

First of all, I am really dismayed and worried. We started this from the Eighth Parliament, the Ninth, and now it is the Tenth, and it is the same kind of reaction from our male colleagues. I am really shocked that nothing has changed. Once things are put on the Paper and you do not even want to listen---

*(Mr. K. Kilonzo interjected)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Thank you Mr. K. Kilonzo, you are not one of the ones who hold that position.

**The Minister for Public Health and Sanitation** (Mrs. Mugo): Madam Temporary Deputy Chairlady, I am quoting this from experience. Any time women issues are discussed in the House, most people are shouting and refusing even to listen to reason. I wonder how we can even debate if they behave like it is rubbish. There is no interest whatsoever to hear those issues. I just wanted to say to my male colleagues here that women issues are family issues. The new Constitution has recognized international laws as part of Kenyan laws. Such laws of affirmative action exist. So, we should honour women issues when they are debated in this House. I support strongly the Motion on the Floor and urge my colleagues to be patient and not think of women just as the women they see here, but the women of Kenya who have equal rights.

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, I will be very brief. I understand your directions as earlier given. Let me confirm, first of all, that this Parliament has been very progressive on women issues so far. Surely, that has to be recognized. Let me also confirm that it is very difficult to implement this issue. It is really a difficult issue. Whatever decision that we take has to be difficult, but the proposal by hon. Noor in this instance, gives us one of those good opportunities. It helps us encourage political parties to comply with this rule on something that is not very expensive. The State is being asked to fund political parties.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Order, Members! Allow the Chairman of the Committee to speak! Order!

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, if hon. Mbadi will let me have my say, the Constitution requires political parties to be equitable and to have the principle of parity when it comes to the Constitution. So, if a political party, for example, has 95 per cent of its nominees as men, surely, that political party will not have met the Constitution. This Parliament is also required under Article 100 to encourage---

*(Loud consultations)*

**Hon. Members:** You cannot force political parties!

**The Temporary Deputy Chairlady** (Dr. Laboso): Order, Members!

**Mr. Abdikadir:** Madam Temporary Deputy Chairlady, it is not forcing political parties. We are saying that since the State is going to give you money, if you have more women on your ballot, you get more money. It is to encourage the political parties. If we have rejected a constitutional amendment, namely, the party list, surely on the funding issue, we can be flexible.

I support.

**Mr. Langat:** Madam Temporary Deputy Chairlady, I think you have been very kind to the Member who moved this Motion. We have been discussing the same thing since morning. Our Standing Orders say that if something has been decided upon, then we should move to something else. We want to support the issue of gender. Unfortunately, we want our women colleagues to bring this matter in a proper manner. What is happening is that they are bringing the correct things, but the wrong way. We want them to come up properly with a good proposal under the Constitution and we will support them.

I oppose.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Langat, this is a different proposal. It has nothing to do with what was proposed in Article 14 and what was passed this morning.

**The Minister for Water** (Mrs. Ngilu): Thank you, Madam Temporary Deputy Chairlady. I stand to support this Motion. I want to say that all is not lost. From where we are coming as the women of Kenya - we started this way back in 1990s - we did not know that one day, we would be standing up in this House and speaking authoritatively. For sure, in the next Parliament, we shall have the two thirds or one third majority in this House. With the new Constitution, there is no way that we will have a National Assembly that is not going to have the required number of women. So, although we may not have it right now, we are going to work towards it. We need to come together as women and ensure that this happens. Once we work together, we will ensure that the Constitution is amended and once it is amended, we will have the numbers.

I support.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, I now have to put the Question. We cannot debate any further.

*(Question, that New Clause 35A be read  
a Second Time put and negatived)*

*(Several hon. Members stood up in their places)*

**Hon. Members:** Division! Division!

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Members, I am afraid, you have not raised the required number of 20 Members. Can we move on to hon. Mungatana's New Clause 59A?

**The Minister for Lands** (Mr. Orengo): On a point of order, Madam Temporary Deputy Chairlady. I am feeling very bad that on a major issue like this one, on which I have been standing to catch the Eye of the Chair so that my voice could be heard, I did not get an opportunity to speak.

**The Temporary Deputy Chairlady** (Dr. Laboso): Hon. Orengo, it is now too late. We have moved to the next clause.

*(Loud consultations)*

**The Temporary Deputy Chairlady** (Dr. Laboso): Order! Order, hon. Members! Allow hon. Mungatana to move his amendment.

*New Clause 59A*

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I beg to move:-  
THAT, the Bill be amended by inserting the following new clause after clause 107-

**Opinion polls** 107A. A person who conducts an opinion poll or publishes the results of an opinion poll at any time within nine months of an election commits an offence and is liable, on conviction, to a fine not exceeding two million shillings or to imprisonment for a term not exceeding three years or to both.

**The Temporary Deputy Chairlady** (Dr. Laboso): What is the import of your amendment?

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, those of us who have been here since morning have passed a law here, saying that we cannot have *Harambee* eight months towards elections. The import of that law is so as to try and create a level field. If you look at Clause 42, you will see that we have created obligations on fairness as far as media reporting is concerned during election and during campaigning.

**Mr. Outa:** On a point of order, Madam Temporary Deputy Chairlady. Could I be in order to ask Mr. Mungatana to be brief? This is because we have been here since morning and we do not want to miss the deadline. He should hit the point instead of debating.

**Mr. Mungatana:** Madam Temporary Deputy Chairlady, I will do that. I was moving so quickly and I was about to conclude.

I am saying that if you look at Clause 42, you will find that we are trying to make restrictions on the media so that we can create a level playing field. I have also talked about the restrictions we have put upon ourselves as far as *harambees* are concerned. All we are saying in this clause is that because of the way these opinion polls have also in a way created uneven level playing field for politics, particularly of late when we have this opinion poll carrying this particular opinion about candidates and then the next day you have another opinion poll carrying another opinion on the same candidate--- This clause is proposing that they can do all the opinion polls now but eight months towards the general elections we remove them.

*(Question of the New Clause 59A proposed)*



*(New Clause 59A read the First Time)*

*(Question, that New Clause 59A be read a Second Time, proposed)*

**Dr. Kones:** Madam Temporary Deputy Chairlady, I rise to oppose the amendment, first of all for restricting my profession and secondly, for not specifying what kind of opinion polls he is talking about because we carry opinion polls on several issues.

I oppose.

**Mr. Midiwo:** Madam Temporary Deputy Chairlady this amendment is that which seeks to gag the media through the backdoor. These opinion polls are done by media agencies and we cannot be in the business of denying the media freedom of expression.

**Ms. Karua:** Madam Temporary Deputy Chairlady, I oppose the amendment. Much as we may be irritated by the polls, it will be in restraint of freedom of expression. It is better that we find other ways of communicating.

I oppose.

*(Question, that the New Clause 59A be read a Second Time, put and negatived)*

*(First Schedule agreed to)*

### *Second Schedule*

**Mr. Mbadi:** Madam Temporary Deputy Chairlady, I beg to move:-  
THAT, the Second Schedule be amended by-  
(a) deleting item (e) of paragraph 6; and  
(b) deleting paragraph 9.

Madam Temporary Deputy Chairlady, the first one is to remove section “e” which says “refrain from publishing or repeating false, defamatory or inflammatory allegations”. Paragraph says that there shall be no appeal from an order of the Commission imposing a penalty or sanction under paragraph 7(a). You cannot deny a citizen an appeal.

Madam Temporary Deputy Chairlady, I propose that those be deleted.

*(Question of the amendment proposed)*

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

*(Second Schedule agreed to)*

*(Third Schedule agreed to)*

*(Title agreed to)*

*Clause 1*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move:-

THAT, clause 1 of the Bill be amended by inserting the words “and shall come into operation on such date as the Minister may, by notice in the Gazette appoint” immediately after the expression “2011”.

Madam Temporary Deputy Chairlady, the clause, the way it is now, does not give a commencement date. It is far better that we have something like this. Hon. Members can trust me that I will operationalize it quickly.

*(Question of the amendment proposed)*

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

*(Clause 1 as amended agreed to)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Madam Temporary Deputy Chairlady, I beg to move that Committee doth report to the House its consideration of The Elections Bill and its approval thereof with amendments.

*(Question proposed)*

*(Question put and agreed to)*

*(The House resumed)*

*[The Temporary Deputy Speaker  
(Prof. Kaloki) in the Chair]*

## **REPORT, CONSIDERATION OF REPORT AND THIRD READING**

### **THE ELECTIONS BILL**

**Dr. Laboso:** Mr. Temporary Deputy Speaker, Sir, I beg to report that a Committee of the Whole House has considered the Elections Bill, Bill No.34 of 2011, and approved the same with amendments.

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that House doth agree with the Committee in the said Report.

**The Minister for Lands** (Mr. Orengo) seconded.

*(Question proposed)*

*(Question put and agreed to)*

**The Minister for Justice, National Cohesion and Constitutional Affairs** (Mr. M. Kilonzo): Mr. Temporary Deputy Speaker, Sir, I beg to move that the Elections Bill, (Bill No.34, 2011), be now read a Third Time.

**The Minister for Transport** (Mr. Kimunya): Seconded.

*(Question proposed)*

**Mrs. Shebesh:** Mr. Temporary Deputy Speaker, Sir, as we conclude this day, I would like us to know that we have been misleading and misrepresenting ourselves as leaders of this House in terms of the support of the two-thirds principle in the Constitution. It is our work as legislators to come up with suggestions and proposals on this Floor. We have attempted as much as we can, as women legislators. Today is a sad day for us. Even as we support this; let us know that we have disappointed the women folk in this country.

*(The Bill was accordingly read the Third Time and passed)*

## MOTIONS

### ADOPTION OF REPORT ON APPOINTMENT OF MR. EDWARD R. OUKO AS AUDITOR-GENERAL

**Mr. Okemo:** Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, this House adopts the Report of the Departmental Committee on Finance, Planning and Trade on the approval for appointment of Mr. Edward R. Ouko as the Auditor General, laid on the Table of the House on Thursday, 25<sup>th</sup> August, 2011.

Mr. Temporary Deputy Speaker, Sir, on 23<sup>rd</sup> August, 2011, in a Communication from the Chair, the Speaker informed the House that he had received communication from His Excellency the President that, after consultation with the Right hon. Prime Minister, he had given the nomination of Mr. Edward R. Ouko to be considered for appointment as the Auditor-General.

On the following day, the 24<sup>th</sup> of August, Mr. Edward R. Ouko appeared before our Committee and we had an oral interview with him. In accordance with the provisions of Article 229 of the Constitution, Clause 1 states that there shall be an Auditor-General

who shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.

Article 229, Clause 2, specifies that to be qualified to be the Auditor-General, a person shall have extensive knowledge of public finance or at least 10 years experience in auditing or public finance management.

Mr. Temporary Deputy Speaker, Sir, I will summarize by saying that we found the candidate qualified and he met all the criteria as specified in the Constitution and he was fully qualified to act as the Auditor-General of Kenya.

Therefore, the committee recommends that Mr. Edward R. Ouko be appointed Auditor-General of the Republic of Kenya.

I just want to take this opportunity to thank the Members of my Committee who spent a lot of time and we actually went through this at very short notice. I would like to recommend, therefore, that the House approves the appointment.

**Mr. Kombo:** Mr. Temporary Deputy Speaker, Sir, I beg to second.

*(Question proposed)*

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, I support the Motion, but regrettably, it appears that the posts that have been decided lately, it has been a balancing act and horse trading. We hope that this will be the last time and we hope that, progressively, we will move more to merit, not horse trading and balancing.

I support.

**The Assistant Minister for Nairobi Metropolitan Development** (Ms. Ongoro): Mr. Temporary Deputy Speaker, Sir, I rise to support this appointment which I believe was purely on merit and on the basis of regional balancing that we have been so much wanting to achieve. This is the first time that Luo Nyanza is getting any constitutional office. So, I beg to support.

Thank you.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I stand to support the appointment of this fine gentleman and to confirm that, contrary to some allegations that have been made here that this gentleman may have been picked because of any horse trading, this is a man of international repute. I would have given him this job or any other job in any other organization without bothering to find out where he comes from.

I think it is important we distinguish our politics from trying to tarnish or diminish the stature of some of these office holders because of our own personal differences here.

Mr. Temporary Deputy Speaker, Sir, I beg to support.

**Mr. Midiwo:** Mr. Temporary Deputy Speaker, Sir, I support and since the mood of the House is supporting, could you just put the question?

**The Temporary Deputy Speaker** (Prof. Kaloki): Is that the mood of the House?

**Hon. Members:** Yes!

*(Question put and agreed to)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Next Order! Chairman of the Constitutional Implementation Oversight Committee!

ADOPTION OF REPORT ON APPOINTMENT OF  
GITHU MUIGAI AS ATTORNEY-GENERAL

**Mr. Abdikadir:** Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, this House adopts the Report of the Constitutional Implementation Oversight Committee (CIOOC) on the approval of Prof. Githu Muigai for appointment as Attorney-General of the Republic of Kenya.

Mr. Temporary Deputy Speaker, Sir, I will be very brief. This appointment is per Article 156(4) of the Constitution. Prof. Githu Muigai is a citizen of this country, born in 1960. He is eminently qualified in terms of qualifications; academic or practical. He holds various awards and honours. He was a visiting professor of law at Wedner University in the United States of America (USA). He was a recipient of the Law of Society of Kenya (LSK) Roll of Honour. He holds a PhD in law and a LLM. He, indeed, was a professor in the law school for more than 20 years and we received glowing letters from those who supported him. The committee interviewed and vetted the individual and found him suitable.

I beg to move and hon. Mbadi will second.

**Mr. Mbadi:** Mr. Temporary Deputy Speaker, Sir, allow me just to quickly second this Motion. Even though that particular's individual appointment was controversial early this year but, those of us who vetted that eminent Kenyan would agree that he qualifies to be the Attorney-General of this country. I would just ask and plead with him that given the hope and confidence that the people of Kenya have in him, he should not disappoint us the way the former occupant of that office did. Thank you.

*(Question proposed)*

**The Minister for Lands** (Mr. Orengo): Mr. Temporary Deputy Speaker, Sir, I wish to support and go on record to say that, of the many people whom I know who could be Attorney-General of the Republic of Kenya, Prof. Githu qualifies eminently to be the Attorney-General of the Republic of Kenya. I have had occasion to do many cases with him and I know he is going to discharge his responsibilities as the Attorney-General with distinction.

The other thing that I would ask is that all arms of the Government, including Parliament and the Executive - but particularly these two arms of Government - should allow the Professor to be the Attorney-General of the Republic of Kenya. That is because if that is not the case, then the office of the Attorney-General cannot function in the manner in which it is supposed to function in terms of the Constitution.

I support.

**Mr. Chanzu:** Mr. Temporary Deputy Speaker, Sir, I also rise to support the Motion that Prof. Githu Muigai to be appointed as Attorney-General. I have known him as a very balanced person and as a person of a very high distinction.

Mr. Temporary Deputy Speaker, Sir, he is a man who is above any ethnic inclination and the like. So, with his qualifications, experience and knowledge, and being a Kenyan, he deserves to be appointed as the Attorney-General of the Republic of Kenya.

With those few remarks, I beg to support.

**The Minister for Energy** (Mr. Murungi): On a point of order, Mr. Temporary Deputy Speaker, Sir. Since all hon. Members are supporting this appointment, could we now put the Question.

*(Applause)*

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, is it the mood of the House that we put the Question?

**Hon. Members:** Yes!

*(Question put and agreed to)*

ADOPTION OF REPORT ON APPOINTMENT OF  
MS. AGNES NANGILA ODHIAMBO AS  
CONTROLLER OF BUDGET

**Mr. Mbau:** Mr. Temporary Deputy Speaker, Sir, I beg to move:-

THAT, this House adopts the Budget Committee Report on the Nomination for the appointment of the Controller of Budget laid on the Table of the House on Thursday, 25th August, 2011.

Mr. Temporary Deputy Speaker, Sir, as you may be aware, the Committee of Budget comprises of 15 Members plus all the Chairmen of other Committees. In the meeting with the nominee, this Committee was able to interrogate and thoroughly interview this candidate and was able to be convinced without any shred of doubt, that this is a lady, who is competently qualified with all the requisite qualifications to perform the duty that appertains to the position of the Controller of Budget.

Mr. Temporary Deputy Speaker, Sir, I want to say that this lady has 25 years of high level management experience; the last one being the Chief Executive Officer of the Constituencies Development Fund (CDF). There is nothing as difficult as having served in a position where you directly serve Members of Parliament. This lady, for two and half years, has served these Members of Parliament diligently, without complaints. We found her sufficiently qualified and unanimously recommend Ms. Agnes Nangila Odhiambo, equal to the task of the Controller of Budget of the Republic of Kenya, for the next 8 years.

I urge hon, Namwamba to second.

**Mr. Namwamba:** Mr. Temporary Deputy Speaker, Sir, allow me to second by making just two points. The first point is that this nominee is one of those persons who, if confirmed to take this position, will project the image of a true Kenyan. This is a lady who, when you look at her profile, you will see that she was born in Budalangi Constituency.

In her pursuit of education, she has gone to diverse schools, including Ngandu Girls in Nyeri, University of Nairobi here in the City. When you look at the manner in which she has served this country in whatever position she had held, especially the last position which she held as CEO of CDF, she has demonstrated that she can serve this country; that she can work with everybody without fear or favour.

Mr. Temporary Deputy Speaker, Sir, the final point I want to make is that, as this House considers this nominee and other future nominees, let us focus on the merit of the candidate without unnecessary profiling. At the end of the day, we pick individuals to serve the country.

With those few remarks, I beg to second.

*(Question proposed)*

**Mr. Ngugi:** Thank you, Mr. Temporary Deputy Speaker, Sir. This is a lady that most of us have interacted with. She has done her job very efficiently and professionally. I have no hesitation in supporting her nomination.

**The Minister for Water and Irrigation** (Mrs. Ngilu): On a point of order, Mr. Temporary Deputy Speaker, Sir. Judging from the mood of the House and how we know this lady, would I be in order to request you to put the question?

**The Temporary Deputy Speaker** (Prof. Kaloki): I will, but let me allow a few Members to contribute.

**Mrs. Noor:** Thank you, Mr. Temporary Deputy Speaker, Sir. I want to take this chance to congratulate the two Principals. They have demonstrated in this particular nomination that they respect the Constitution that they have sworn to protect. This nomination appreciates the one-third principle that we have been talking about the whole evening. They are true sons of this country because they respected, appreciated and upheld the Constitution.

**Ms. Karua:** Mr. Temporary Deputy Speaker, Sir, just one and a half words; this is a woman of distinction. This is a good ending because the women of Kenya are happy that a woman of distinction has been recognized.

I support.

**The Assistant Minister for Nairobi Metropolitan Development** (Ms. Ongoro): Thank you, Mr. Temporary Deputy Speaker, Sir. I stand to support the nomination of this woman, not just because she is a woman, but I am supporting a Kenyan with impeccable credentials, who really qualifies to occupy the position for which she has been nominated. Going by the other positions she has held before, I have researched and found not a single time that she was convicted of anything or abused her office.

**Mr. Sambu:** Mr. Temporary Deputy Speaker, Sir, this is a lady with impeccable academic and professional qualifications and experience. I have no doubt in my mind of her ability to do the job.

Therefore, I support.

**Mr. Pesa:** Thank you, Mr. Temporary Deputy Speaker, Sir, for giving me a chance to support the nomination of this very dedicated daughter of Kenya. I have had a chance to work with her in the CDF and this is one of the ladies that I am sure, given this appointment, will serve this country to the best of her ability.

I support.

**Mr. C. Kilonzo:** Thank you, Mr. Temporary Deputy Speaker, Sir. As a Member of the CFC dealing with matters of the CDF in Parliament, I can only have one word for Agnes Odhiambo; she is as good as they come.

I support the Motion.

**The Minister for Transport** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I think the records and the accolades of Agnes Odhiambo speak for themselves. So, I join everyone else to support her nomination.

While still here, allow me to take this opportunity to record the profound thanks of the Government to all Members of Parliament for having given up your weekend---

**An hon. Member:** On a point of order, Mr. Temporary Deputy Speaker, Sir.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Kimunya, could you make your final comments on the matter.

**The Minister for Lands** (Mr. Kimunya): Mr. Temporary Deputy Speaker, Sir, I want to take this opportunity to record the thanks of the Government to all Members of Parliament for the time they have given and for living up to the expectation of Kenyans in terms of ensuring that all the Bills that were required to be passed for purposes of constitutional implementation have been passed within the time that was set out in the Schedule.

I also want to use this opportunity, on behalf of hon. Members, to record out thanks to the parliamentary staff working for us in the National Assembly for their dedication. They have been working with us throughout the nights and days. We have all worked together and achieved this success.

I would also like to commend the wonderful chairing by hon. Joyce Laboso and hon. Ekwe Ethuro, and all the presiding officers of the House who have taken us through this entire period.

Thank you.

**Ms. Chepchumba:** Mr. Temporary Deputy Speaker, Sir, I want to join my colleagues in congratulating the gracious lady for the appointment she has been accorded. This is a credit to the women of Kenya.

I beg to support.

**The Minister for Agriculture** (Dr. Kosgei): Mr. Temporary Deputy Speaker, Sir, given what the women of this House have gone through this evening, we are very happy. I just want to record my support for this eminently qualified Kenyan woman.

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, can the Chair put the Question?

**Hon. Members:** Yes!

*(Question put and agreed to)*

## ADJOURNMENT

**The Temporary Deputy Speaker** (Prof. Kaloki): Hon. Members, having concluded the business on the Order Paper, this House now stands adjourned until Tuesday, 30<sup>th</sup> August, 2011, at 2.30 p.m.

The House rose at 9.40 p.m.