

PARLIAMENT OF KENYA

THE SENATE

THE HANSARD

Thursday, 8th September, 2016

Special Sitting

*(Convened via Kenya Gazette Notice
No.7174 of 6th September, 2016)*

*The House met at the Senate Chamber,
Parliament Buildings, at 10.00 a.m.*

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

PRAYERS

PAPER LAID

The Speaker (Hon. Ethuro): Sen. Wako!

Sen. Wako: Mr. Speaker, Sir, I have signed the Report and I was told it has to come to you for approval before it is tabled here. So, I do not know whether you have approved it.

The Speaker (Hon. Ethuro): Okay, we will revisit the matter later. Next Order!

NOTICE OF MOTION

RESOLUTION TO ALTER THE SENATE CALENDAR

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I rise to give notice of the following Motion:-

THAT, pursuant to Standing Order 28(4), the Senate resolves to alter its Calendar in respect of Part III of the Fourth Session for the sittings scheduled to resume on 20th September, 2016 instead commences on 27th September, 2016.

Mr. Speaker, Sir, thank you.

(The Speaker (Hon. Ethuro) consulted with the Clerk-at-the-Table)

The Speaker (Hon. Ethuro): Order, Members, Standing Order No.39 allows me to reorder the business on the Order Paper for the convenience of the House. I, therefore, propose that we start with Order No.12 as we wait for more Members to come.

BILLS

THE ELECTION OFFENCES BILL
(NATIONAL ASSEMBLY BILL NO.36 OF 2016)

THE ELECTION LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.37 OF 2016)

(Bills deferred)

COMMITTEE OF THE WHOLE

THE ELECTION OFFENCES BILL
(NATIONAL ASSEMBLY BILL NO.36 OF 2016)

THE ELECTION LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.37 OF 2016)

THE COUNTY OUTDOOR ADVERTISING CONTROL BILL
(SENATE BILL NO.11 OF 2015)

THE EMPLOYMENT (AMENDMENT) BILL
(SENATE BILL NO.1 OF 2015)

THE COUNTY LIBRARY SERVICES BILL
(SENATE BILL NO.6 OF 2015)

THE PHYSICAL PLANNING BILL
(NATIONAL ASSEMBLY BILL NO.46 OF 2015)

(Committee of the Whole deferred)

MOTION**RESOLUTION TO ALTER THE SENATE CALENDAR**

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I beg to move the following Motion in an amended form:-

THAT, pursuant to Standing Order 28(4), the Senate resolves to alter its Calendar in respect of Part III of the Fourth Session for the sittings scheduled to resume on 20th September, 2016 instead commences on 4th October, 2016.

Mr. Speaker, Sir, as Members are aware, this recess has been interrupted several times for good reasons because we had to come back to attend to urgent national duties including this Special Sitting we are having today and the one we had yesterday.

Mr. Speaker, Sir, today, we are having a Special Sitting, and we had one yesterday and another one, a week ago. So, it has also occurred that in the process of this recess, for the first time as a House, we will have to sit almost entirely the whole of next week to deal with the matter concerning the proposed impeachment of the Governor of Nyeri County, Gov. Gachagua. For that reason, we have consulted across the political divide and are agreeable that we need to alter our calendar so as to assist Senators to adjust their schedules accordingly. Also, this will ensure that we complete the outstanding activities that will still be outstanding before we come back for the final part of this session.

Considering that we are sitting on Tuesday, Wednesday and maybe more days - you will be telling us when you do your communication - but we are likely to sit for several days continuously to deal with the Nyeri matter. Through this Motion, we are proposing that we move the resumption from our recess from 20th September, 2016, to the first Tuesday of October which is 4th October 2016.

Mr. Speaker, Sir, I want to urge my colleagues to support this Motion for the reasons which I have stated.

With those few remarks, I beg to move, and request my brother, the Minority Leader, to second.

The Senate Minority Leader (Sen. Wetangula): Thank you, Mr. Speaker, Sir, I will be very brief. Indeed, I join my brother to laud Senators for being readily available to be called upon to disrupt their recess to come to attend to matters of national importance and national concern. If you look at the input we have had even the previous sittings that were extraordinary, Members were sitting for long hours beyond the normal sitting time. I can envisage the intended proceedings in the matter of the Governor of Nyeri, this House maybe obligated to sit sometimes if need be up to midnight; meaning in one single day, there will be about three sessions. Consequently, the Senators have only about ten months to the next elections and we need to give them time to recess; to go and fraternise with their constituents. They need to strategise for those who want to become governors and for those who want to be re-elected as Senators. For those who want to be presidents like me need time to go all over the country to market our ideals so that we can get rid of this corrupt Jubilee Government and bring a more responsive government into the country.

Therefore, I urge Members to support this procedural Motion so that we can resume on the 4th of October 2016. With those few remarks I beg to second.

(Question proposed)

Sen. (Dr.) Khalwale: Thank you, Mr. Speaker Sir. I want to strongly support this Motion and also thank you for deciding to vary the Order Paper so that we deal first with this Motion before we come to the other substantive business. You deserve this commendation from me for this variance of the Order Paper. As you will see this morning, the Jubilee side is empty and not for nothing. So I believe that as we deal with this Motion, it will give them time to find their way into the House. It is not for nothing because I have seen on social media this morning that the Jubilee leaders have tramped to the Eurobond Towers; the headquarters of the campaign nerve centre of Jubilee.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order, Mr. Speaker, Sir. I appreciate the concern of the Senator of Kakamega County because, truly, we need numbers. It is true also that my side today is looking – temporarily - as if most of my colleagues are on the way. That notwithstanding, can the Senator for Kakamega, a man I respect a lot for fidelity to facts, laws and procedures; tell us which place in this country is called Eurobond Towers? Where are the towers and why are they called so? Can he substantiate that Jubilee Senators are in such a place? Otherwise, he must withdraw and apologise for trivializing a very important party activity that is taking place in the history of this country today.

Thank you.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, allow me to profusely apologise if the Majority Leader thinks that I was trivializing an important issue. I was not. In fact, I was acknowledging the grand event that is going to take place for more than two days.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Point of information!

Sen. (Dr.) Khalwale: I would like to be informed.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I would wish to inform the distinguished Senator for Kakamega County, also known as the bullfighter, that in response to what the distinguished Majority Leader has asked, Eurobond House is situated on Forest Road. It is an eight storied building, clad with a glass facade and constructed by a man called Mr. Kiarie from Kiambu. Mr. Kiarie Mbugua is very well known in many circles in this Town. Lawyers like Sen. (Prof.) Kindiki, Sen. Wako, Sen. Orengo, Sen. Kilonzo and I, know of the doctrine of *Res ipsa loquitur*. As a student of law yourself, I am sure you have come across this doctrine *Res ipsa loquitur*. The Auditor General- and this is what I am informing Sen. (Dr.) Khalwale - the Treasury under the command of one Mr. Rotich has been completely unable to show any single project in this country where Eurobond was expended – Kshs.253 billion. In the absence of that explanation, the opulence and obscenity we are seeing in town today can only be interpreted to be a beneficiary of the non-accountability of the Eurobond money.

Sen. Elachi: Thank you, Mr. Speaker, Sir, on a point of order. I appreciate the fact that my leader is a presidential candidate because I saw him launching his bid. But is he in order to say that indeed the headquarters of Jubilee is the fruit of stealing of Eurobond money while he is also a presidential candidate who is going to use businessmen in town and good friends in town? Will they also be the beneficiaries of Eurobond for the money that he is going to use to campaign? Is he not directly so a presidential candidate and he is about to receive billions from Kenyans who are well-wishers?

The Speaker (Hon. Ethuro): Order Members! There is something known as being relevant. This is about the calendar and not locations. I had given Sen. Wetangula inference. You must exclude all other possibilities in order to make the kind of inference you are making.

Sen. (Dr.) Khalwale!

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, indeed as I said at the opening of my contribution, the Senators from Jubilee have started coming in. so, you did a good thing. As I join my colleagues from Jubilee in celebrating this unique unprecedented show of might and opulence, I must also underscore that as “*Mtetezi wa wanyonge*”, I believe all on the side of Jubilee is not bad. There is one person on the Jubilee side whom we shall

celebrate. I have never met her in my life. For years, *Mama* Margaret Kenyatta has been fighting to get at least one ambulance for all the 47 counties. She has run, sweated, begged and she is making progress. I congratulate her.

But what a contrast that whereas the First Lady is sweating to get 47 vehicles, the President has bought 47 limousines from Eurobond that are now being driven in Nairobi, painted in colors of Jubilee and colours of blood? I do not believe that this is the way we should spend public funds.

The Speaker (Hon. Ethuro): What is it, Sen. Kagwe?

Sen. Kagwe: On a point of order Mr. Speaker, Sir. Is Sen. (Dr.) Khalwale in order to talk about 47 vans that have been bought by Jubilee when, this morning, the radio is reporting that Governor Hassan Joho is launching and flagging off 47 buses, limousines and 800 other combined forces of vehicles that are going all round the country for Coalition for Reforms and Democracy (CORD)? Is he in order?

Sen. (Dr.) Khalwale: Mr. Speaker, sir, indeed I am perfectly in order and proud to be associated with 47 vehicles that will symbolize hard work as espoused by CORD. CORD has not controlled any Eurobond. So, the money we have is from the blood and sweat of the Kenyans who support integrity and proper use of public funds. The money Jubilee has is the proceeds of Eurobond. Sen. Wetangula could not have put it clearer.

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! You are now completely out of order. Conclude and be relevant.

Sen. (Dr.) Khalwale: For that reason, Mr. Speaker, Sir, I wish to strongly support this Motion and hope that we will have time when our recess is extended for us to meet our contacts that keep on informing and giving us evidence of the looting that is done by Jubilee. I tell you there is a Luyha song; I cannot be allowed by the Speaker to sing. If only you could allow me, I would sing just one stanza.

(Laughter)

The Speaker (Hon. Ethuro): Order, Sen. (Dr.) Khalwale! How I wish I could allow you to sing. In fact, I would enjoy your singing but unfortunately; this is not the place, the time nor the subject to conduct a solo.

What is it, Sen. Kagwe?

Sen. Kagwe: On a point of order, Mr. Speaker, Sir. I was just wondering, in view of the urgency with which the honourable Senator feels like singing, would I be in order to propose that you allow him to sing the song in English?

The Speaker (Hon. Ethuro): Conclude, Sen. (Dr.) Khalwale. Sen. Kagwe is completely out of order. The only way the song might make meaning is in vernacular and he has no translation facilities here.

Sen. (Dr.) Khalwale: Mr. Speaker, Sir, I really thank you for protecting me. On a serious note, the import of the song is that you might abuse a position when you are in public office but at end time, thou shall be asked, what did you do? "*Ulirevwa marevo*".

Thank you and I support.

(Question put and agreed to)

The Speaker (Hon. Ethuro): Honorable Senators, I have two Communications to make.

COMMUNICATIONS FROM THE CHAIR

VISITING DELEGATION OF STUDENTS AND TEACHERS FROM KOINDI BOYS SECONDARY SCHOOL

The Speaker (Hon. Ethuro): I wish to recognize the presence of visiting students and teachers from Koindi Boys Secondary School in Murang'a County. They are seated at the public gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I wish to extend a warm welcome to them and on your behalf and my own behalf wish them a fruitful visit.

I thank you.

(Applause)

CONSIDERED RULING

MANNER OF DISPOSAL OF THE PROPOSED REMOVAL FROM OFFICE, BY IMPEACHMENT, OF THE GOVERNOR OF NYERI COUNTY

The Speaker (Hon. Ethuro): Following the resolution of the Senate yesterday Wednesday, 7th September, 2016, on the Motion against the establishment of a Special Committee to establish the matter of the proposed removal from office, by impeachment, of the Governor of Nyeri County, I undertook to rule on the manner in which the Senate will proceed with the disposal of this matter.

Honorable Senators, you will recall that on every occasion on which the question of the manner in which to consider the proposal for the removal of a governor by impeachment has arisen before this Senate, the Senate has proceeded to approve the formation of a special committee which has then, in terms of Section 33 (4) of the County Governments Act 2012, investigated the matter and reported within a period not exceeding 10 days, whether it found the particulars of the allegations to have been substantiated.

The defeat of the Motion for the establishment of the special committee yesterday means that we must determine the procedure and the timelines we will require in order for the Senate, acting as the whole legislative body rather than a committee, to dispose the matter.

Honourable Senators, you will note that neither Article 181 of the Constitution, Section 33 of the County Governments Act or our own Standing Orders shed any light on the procedure to be used if the route we took yesterday is to be adopted. This unprecedented situation necessitates recourse to Standing Order No. 1 of our Standing Orders which provides as follows:-

(1) In all cases where matters are not expressly provided for by these Standing Orders or by other orders of the Senate, any procedural question shall be decided by the Speaker.

(2) The decisions made in paragraph (1) shall be based on the Constitution of Kenya, Statute Law and the usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and other jurisdictions to the extent that these are applicable to Kenya.

In making this ruling, therefore, I am also guided by Article 259 of the Constitution which requires that the Constitution - in this case, Article 181 - be interpreted in a manner that promotes its purposes, values and principles, advances the rule of law and permits development of the law. I will also be guided by Article 70 which gives priority to the disposal of a Motion on the impeachment of the governor in our Standing Orders.

In paragraph seven, applying Article 259, it is, therefore, clear to me that there are two main pillars set out by the Constitution and the County Governments Act on the manner of proceeding with this process. These are:-

(a) Expedition: The process must not linger or be left in abeyance for an inordinate amount of time seeing that it is the question of a possible vacancy in the high office of a governor of a county that is in issue. We, therefore, need to investigate the matter and conclude within a stipulated period of not more than ten days.

(b) Procedural Propriety - namely, that the Senate acting as a quasi-judicial organ, must observe the principles of natural justice and, as far as possible, provide all the protections available to a citizen who is required to vindicate a right before a Constitutionally mandated organ.

Hon. Senators, taking one thing with another, and borrowing from the procedure we have employed in the past, I direct that having read the charges against Hon. Gachagua, the Governor of Nyeri County yesterday, the Senate, sitting in Plenary will conduct a hearing and make a determination on whether it finds the charges against the Governor to have been substantiated.

I direct that the procedure which the Senate has previously utilized through its Special Committee will also apply, with the necessary modifications, to the hearing by the Senate in Plenary. These procedures relate to the appointment and notification to the public of the days on which the Senate will consider the matter, invitation to the parties to appear, the summoning of witnesses and the procedure for the actual hearing. The detailed particulars of these are contained in the Rules of Procedure for the Hearing and Determination of the Proposed Removal from Office of a Governor which have been previously developed and which shall be circulated to all Senators and to the relevant parties.

Suffice it to state, for now, that the Senate will meet on Tuesday, 13th, Wednesday, 14th and Thursday, 15th September, 2016, to hear and determine whether it finds any of the charges to have been substantiated. For the avoidance of doubt, the proceedings of the Senate during the hearings shall be held in public and the rules of the Senate when sitting in Plenary shall apply with such modifications as the Speaker shall determine. It should be noted, however, that prior to voting on the charges, the Senate shall retire to a Deliberative Session in Camera.

In summary, the procedure will be as follows:-

(a) Before the sitting of the Senate on Tuesday, 13th September, 2016, the Office of the Clerk shall issue invitations to appear to the Governor and to the County Assembly of Nyeri in which shall be set out the charges and which invitations shall indicate the date

of the hearing and the information and the documents required for the purposes of the hearing.

(b) Charges against the Governor of Nyeri County will also be availed to Members starting today, Thursday, 8th September, 2016.

(c) Prior to the commencement of the hearings on Tuesday, 13th September, 2016, the Senate shall also meet in a pre-hearing camera briefing session. The members should note this one. The Senate shall, therefore, conduct the hearing which shall consist of hearing the case first by the County Assembly for the removal of the Governor and the response of the Governor to the charges.

On conclusion of the hearings, the Senate shall, as I have indicated before, adjourn to a deliberative closed session, whereafter, the Senate shall re-assemble in Plenary and vote on each of the charges. In accordance with Section 33(7) and Standing Order 68(5), the voting shall be by County Delegations.

d) The Governor shall cease to hold office if a majority of all the county delegations of the Senate vote to uphold any impeachment charge. If the charges are not substantiated, the Governor will remain in office.

Hon. Senators, the responsibility that vests on all of us in the disposal of this matter is great, more so because of the adoption of this procedure in the Plenary. I would, therefore, direct that all Hon. Senators avail themselves to the service of the Senate and the Nation throughout the period of the hearings next week, culminating in the voting on the proposed removal from office by impeachment of the Governor of Nyeri County. As a result, all other business of Committees stands suspended until the conclusion of this process. Indeed, the Motion we have just adopted on varying the calendar is to allow you more time for the Committee work which you may have planned for next week.

Hon. Senators, in the usual manner, according to our Standing Orders and Parliamentary Procedures and Practice, the Senate and each and every Senator, being now seized of the matter with the proposed removal from office by impeachment of the Governor of Nyeri County, it is not open for any Senator to comment in any forum in any manner prejudicial or pre-emptive to the fair and judicious determination of the matter.

I thank you.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. You have once again risen to the occasion. It was not clear to my mind yesterday how easy the process would be even as we went into that decision, but listening to you, it is clear that it is doable.

However, in view of the fact that this is one of the most important decisions that this Senate can make, not just on a governor, but you never know, in the fullness of time, on a President of the Republic of Kenya. Since you are now setting the precedence, you have spoken to the issue of a deliberative session that we shall retreat to. In my best knowledge and I believe it is the same to most of you who have been in Parliament for many years, before we vote on any matter, we debate and we never retreat to go and consider what we were debating so as then to emerge and say we will vote. This will help in convincing the members of the public that we shall not be retreating to go and cut positions or persuade people to change positions. Could you clarify further what it is that we are going to be doing in the deliberative session? You can do it now or later.

Sen. (Prof.) Lesan: Thank you, Mr. Speaker, Sir. I also want to congratulate you for the very wise ruling that you have made with regard to this very important activity that the Senate is going to undertake in the next few days. I did understand that there will

be two parties or two processes going on. The Committee will be there to guide the process. Of course, as you have said to summon the witnesses and the others, and, at the same time, we shall also have the plenary. My understanding was that the Committee is still going to be playing a role---

(Loud consultations)

The Speaker (Hon. Ethuro): Order, Senators! That is why he is seeking clarification.

Proceed Sen. (Prof.) Lesan.

Sen. (Prof.) Lesan: Mr. Speaker, Sir, that was my understanding. However, I stand guided if I misunderstood it. We do know that we will be faced with a lot of information. There are, probably, going to be tonnes of documents brought here. I am sure Hon. Senators will scrutinise all the documents and do a very thorough job within ten days. They may work outside of their hours to be able to deal with these issues.

Otherwise, I want to support your ruling and I know that my colleagues will do fair justice to the Governor and the people of Nyeri by considering this impeachment petition that has come to the Senate.

Sen. Wako: Thank you Mr. Speaker, Sir. Once again, your ruling and guidance is very clear on what ought to be done. I support your ruling. We must remind ourselves that we are now sitting as a *quasi-judicial* body. Therefore, as we follow the rules of the House as you have guided, we have to assume a posture of a *quasi-judicial* body. In as much as every Senator has the right to raise many points of order in the course of the hearing because those are the rules of the House, however, I plead with Members to be a bit restrained on points of order. We should also be a bit restrained on the light moments that we normally have at times. The light moments are good, but in this instance since we are a quasi-judicial body, we should be a bit restrained.

Mr. Speaker, Sir, on the issue of deliberative sessions that the Senator for Kakamega has raised, there is a point at which we can have it if it becomes necessary. Even in the Supreme Court they always retire and have their own deliberative sessions before issuing a judgement. Therefore, we should avoid the impression that would be created that this deliberative session will be to cut deals. Members of the public normally think that when politicians go into private sessions, they are there to cut deals and in the process, they never know what passes. It should be made clear that, that deliberative session is not there to knock on the heads of people, so that we agree on the same thing. Each Senator has a right to vote according to their conscience and opinion based on their own evaluation of the evidence adduced before the House. Therefore, it should not be misconstrued that even if we go into a deliberative session, undue pressure will be applied on the Senators to agree. That is not the case.

Mr. Speaker, Sir, I support your ruling.

Sen. Mutula Kilonzo Jnr.: Mr. Speaker, Sir, there is wisdom in a deliberative session. There are some matters that are legal and others evidential. It is fair that Senators do not rise on matters that are legal and speak to things that may cause problems. Maybe the Communication should have been that we will retreat not to seek a consensus, but to distill the facts, as Sen. Wako suggests.

In the case of a special Committee there should be a report to be debated in the Plenary. I do not know whether the HANSARD itself will be the report of the deliberations, after we come back to debate; that will be the report. That portion would augment the position by Sen. (Dr.) Khalwale as to what would happen during that session. It should not look as if we will deliberate, make a decision and then come here and play to the gallery as to the decision that we have already made. That is the position.

Thank you.

Sen. Ndiema: Mr. Speaker, Sir, thank you for the direction that you have given. What I heard is that an opportunity will be given to the county assembly to argue its case and also the governor to defend himself. What I did not hear is whether there will be an opportunity for the Senators to interrogate or question both parties. We need that clarification.

Since we shall be sitting as a *quasi-judicial* body, in this process it will be important that party positions should not come to play. We should look at the facts and the law, but not take party positions. That is normally accepted in the Plenary, but in this case, when we will be sitting as a *quasi-judicial* body, there is need for restraint in terms of taking party positions.

Thank you, Mr. Speaker, Sir.

Sen. (Eng.) Muriuki: Mr. Speaker, Sir, I support and compliment you for coming up with a clear direction on how to proceed on this. None of us was under the illusion that it was going to be an easy process.

I want to comment on the beginning and the end of it, more so, on the comments by Sen. (Dr.) Khalwale. When we are in a Committee dealing with impeachment proceedings, it is the same 11 Members who listen to the same charges and answers at the same time. However, when we are in the Committee of the Whole, there is that little challenge that Members come and go. Therefore, in the opening session, there will be need to clearly spell out the charges.

Again, since the clerks will be writing down what the charges and responses are, I suggest that, that session should not be for debate. The session is for what has been recorded in the proceedings; the same way a Committee may retreat to debate whether or not they agree, because they have to present a report to the House. In this case, it is seeking a reasonable concurrence on what was said and what the response was, so that there is a reasonable concurrence on what we will be voting on. Therefore, when we come here, each delegation will vote according to their understanding of what was clarified from the records by the Clerk.

Thank you, Mr. Speaker, Sir.

The Speaker (Hon. Ethuro): We should confine ourselves to the clarifications being sought.

Sen. Obure.

Sen. Obure: Mr. Speaker, Sir, I thank you for the useful guidance. The Sitting we will have next week should be a normal Senate Sitting, except that it is *quasi-judicial*. I am not sure whether we should put on the gloomy faces on that occasion, as suggested by Sen. Wako. I do not think that, that would be necessary. However, my understanding of the deliberative session is that we will sit in closed door session to seek clarifications, so that we can focus on the key areas before going into voting. I just need some clarification on that.

Thank you.

Sen. Elachi: Mr. Speaker, Sir, I also thank you for the direction. Indeed, it will be an opportunity to understand a plenary process. As an institution we need to be very careful, so that we deal with the matter with decorum. After reading the allegations, the clerks should guide us through questioning. We should set rules that will confine us within what we received from the county assembly, so that we do not personalize issues and make the session a theatre. It should be serious business that will make people appreciate the Senate as a House that can deal with matters.

Sen. Orengo: Mr. Speaker, Sir, I am grateful for the guidance that you have given to the House. However, there are two issues that I would like to seek further clarification on. Normally, when courts go into conference and eventually pronounce themselves on an issue by way of a verdict and the judgement, that judgement would explain why a particular decision was reached. If that decision is reached and there is no explanation or reasons anchoring that decision, then it will not be in accordance with the requirements of the Constitution.

Similarly, the decisions of the House are anchored through debate. People get to understand why we vote in a certain fashion following a debate. I am worried that if we retreat after hearing without some debate prior to retreating or after, then it will be difficult for people to know why we voted in a particular fashion. People need to understand why we have taken a vote in any particular way. I am fortified by the fact that when we go through a Committee and the Committee finds that the charges have been substantiated, the report is brought here and debated before a vote is taken.

Mr. Speaker, Sir, how can we merge the two very important considerations? One, that we need to have some conference in camera but secondly, we need to debate the issue on the basis of the evidence so that if the Senator for Siaya is voting any particular way, the public would have understood why the Senator for Siaya took that position? Those are the clarifications that I am seeking.

Sen. (Prof.) Lonyangapuo: Mr. Speaker, Sir, I join my colleagues in thanking you for giving the clear guidance and direction on how we will move on this matter. There have been speculations on social media and some people were already thinking that you gave a judgment. Some people did not hear what you read yesterday and some want to condemn other Senators for contributing the way they did. It is good that you have given the direction on what you meant by this. That is what we needed.

I also saw on television that some people thought that the Committee option was rejected because of claims of bribery. Those are stories that we have never heard of here since we had the four or five impeachment Motions. Kenyans need to be assured that the Senate is here as their custodian and the option that we chose is also allowed in our Standing Orders; that the whole House can turn out to be a Committee and that is what we have chosen. Thank you for giving the clear direction and to assure the people of Nyeri County that their issue is in safe hands.

Sen. Muthama: Mr. Speaker, Sir, this is the first time that the Senate is dealing with such an issue in the plenary. Let me liken what will be taking place here from Tuesday with the Select Committee that just concluded its work on matters to do with the IEBC and elections. Normally, the mode of debate in this House is that time is allocated to every contributor. Taking into consideration that the Governor will be here to be interrogated, the Office of the Speaker needs to come up with guidelines on how to deal

with that matter. Otherwise, it could be an issue that will take a lot of time and the interrogations could be complicated. So, I need clarification on the timing of the contributions. Will it be based on what has been the mode before or the approach will be similar to the one that we used to conduct in the Select Committee?

The Speaker (Hon. Ethuro): Finally, Sen. Kagwe.

Sen. Kagwe: Mr. Speaker, Sir, thank you for such an informed ruling. However, we have grown to expect from you no less than rulings that will be referred to in the future. For me, there are only two things. First, I think it is important for us to understand the difference in etiquette between a normal sitting of the House and that of a *quasi-judicial* House.

I have chaired an impeachment Committee, and I am aware of the time that sometimes it takes. Sometimes, we would sit all the way to midnight and so on even though the report was eventually rejected by the House. However, there are certain issues. For example, is the quorum for a *quasi-judicial* sitting the same as that of the House? If we do not have a quorum of the House, do we have a quorum for a *quasi-judicial* sitting? What happens to those of us who go out and come in as we normally do and then ask a question that has already been asked by someone else? What happens when the witnesses' side will have several witnesses, presumably brought by both sides of the House? What is the procedure for our questioning of these witnesses and at what point do we question them? Is it the whole House, a team or how do we proceed with that? In other words, I am raising etiquette issues and the difference between those two settings. I think it is also important for Members to clearly understand and perhaps for you to spell out in detail how we will proceed thereof.

The Speaker (Hon. Ethuro): Hon. Members, 11 of you have sought clarifications. Definitely, being a new procedure, it is understandable. You have raised issues about what this deliberative session in camera is and whether it is both a Committee and plenary. Sen. Wako, in obvious display of an exemplary career, basically raised issues of unnecessary points of order and counseled us on basically what both the deliberative sessions would do. That was supported by the decision of Sen. Mutula Kilonzo Jr. following definitely in the great tradition and also using words like distilling facts but also raising the issue of the report which was also supported by Sen. Orengo, who also raised the issue of how do we explain the reasons for the decisions that were reached. The issue of how Senators will interrogate that was raised by Sen. Ndiema and who also cautioned against partisan politics being introduced. Sen. Muthama raised the issue of the timings. Sen. Kagwe raised issues on quorum, repetitive questions and procedure of dealing with witnesses.

First, in a communication, we cannot bring all the issues. So, we only brought the broad issues that basically give you the general direction of things. That is why we have proposed a meeting on Tuesday morning between 9.00 a.m. and 10.30 a.m. for you to go through the rules which we have formulated on the way we will conduct the sitting. So, that will be a session for us to understand most of these issues that you have raised. Our proposal will be to start with a *Kamukunji* for those rules and then start the formal sitting from 11.00 a.m. So, that will clarify a lot of things.

The deliberative session is in camera and it has been explained. The idea is that we are conducting a hearing and we have the county assembly acting like the prosecutor and the governor as the defendant. So, the prosecutor will prosecute and the defendant

will defend the charges. There will be enough questions from the Senators. The proposal is that each of the Senators will not have more than two minutes. It can also be one question per Senator. That is why we made the provision that the Speaker will be moderating as we proceed.

However, at the *Kamukunji*, we will give the proposals and agree collectively on how many questions each Senator will ask and the time period each will need. That is why that session is important.

There will be no Committee. The House rejected the Committee method. Therefore, we have the other one. In the words of the new Prime Minister of the United Kingdom, “we cannot engage European Union through the back door.” There will be no Committee but it will be a full Plenary chaired by the Speaker from where I sit.

(Applause)

The points of order will not be encouraged unless it is critical. However, it will be brought to the attention of the Chair first so as to allow the Member to raise it. I shall determine if it is necessary or not. Generally, we will not accept many points of order.

We have said the process is *quasi-judicial*. We are trying to marry the two. We have looked at the examples of the Senate in the United States of America (USA) and other jurisdictions and we are satisfied with this procedure. However, the reasons for the decision and the Report will not be available. This is your baby and you will have listened to the charges being substantiated. You will have heard the defence and the deliberative session will be to help distill facts and go through the issues in terms of law and determine the real facts. It is not a session for cutting deals. In fact, the difference between the open session and the deliberative session is that, one is in camera and the other is open. We are not retreating for a workshop or to a hotel but we will be in this Chamber to determine the kind of issues we can come up with. It will be purely for the Senators. There will be no third party involved in the session. Therefore, nobody will bring deals from anywhere.

While I would be happier if the reasons were written and the rest, we are not the judiciary and we shall leave that to them. In this one, we shall borrow what is useful and we input in a form of a process and proceed along the lines we have suggested. There is a proposed Bill on how to conduct this business. That will be another opportunity for us to look at the experience of this particular period and inform the future.

Thank you.

(Applause)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Speaker, Sir, I did not intend to talk but after listening to you, I am worried about a small issue which the Speaker might want to entertain in your further reflection on this matter between now and Tuesday.

It is the issue of reasons. As my senior Sen. Orenge said, which I support, we shall sit as a *quasi-judicial* body. One of the indispensable requirements of procedural natural justice as opposed to substantial natural justice is that a decision that comes out of such a *quasi-judicial* process must be provided - obviously in writing - and reasons for it must be given.

Mr. Speaker, Sir, I am worried. I know you have thought about it extensively but between now and Tuesday, maybe there will be need for you to reflect further. I am not trying to challenge your ruling but it is something that you can think about and see whether it can be modified in one way or the other. Off the record, I am willing to share with the secretariat or yourself what I am thinking. This is something we had consulted with the Senate Minority Leader on how it can be modified slightly so that the issue of a decision and the reasons for that decision can still emanate from this process. I am sorry but I just thought it should go on record that that is something worth considering.

The Speaker (Hon. Ethuro): Order Senators. We have done one hour. I will just take it as work in progress. What the Senate Majority Leader has noted is significant but I must inform him that it is one area that I am comfortable with in terms of Article 47 on fair administrative action. That applies more to the executive institutions. This is a legislative process but I take your intervention and I will interrogate the matter further.

The Senate Minority Leader (Sen. Wetangula): Mr. Speaker, Sir, I did not intend to speak to this but my distinguished brother having raised the matter, we indeed discussed extensively about it with him at the Office of the Clerk yesterday. When I retreated to do further reading and look at the comparable jurisdictions, including Philippines, I noted that in all those jurisdictions - all grounded in the common law system like we do - the proceedings, once they end, the House goes to a direct vote. Nobody retreats to write a reasoned judgment or ruling. It is the vote of the House that is the decision and not what the Speaker or Clerk will write but what the vote will come out of the House is the decision.

This is what is practiced in almost all jurisdictions similar to ours.

The Speaker (Hon. Ethuro): Hon. Members, you may recall that in most of the decisions that you make, you have never demanded written reasons. This is because Parliament works on the basis of the sovereignty of the people and that is where power is derived from. That power has been delegated to its representatives. You are the ultimate--

Let us allow the Chair of the Committee of Legal Affairs and Human Rights to Table the Report.

PAPERS LAID

Sen. Wako: Mr. Speaker, Sir, I beg to lay the following Papers on the Table of the Senate.

REPORT ON THE ELECTION OFFENCES BILL

Report of the Standing Committee on Legal Affairs and Human Rights on the Election Offences Bill (National Assembly Bill No.36 of 2016).

REPORT ON THE ELECTION LAWS (AMENDMENT) BILL

Report of the Standing Committee on Legal Affairs and Human Rights on the Election Laws (Amendment) Bill (National Assembly Bill No.37 of 2016).

(Sen. Wako laid the documents on the Table)

BILLS*Second Reading*THE ELECTION OFFENCES BILL (NATIONAL ASSEMBLY
BILLS No.36 OF 2016)

The Senate Majority Leader (Sen. (Prof) Kindiki): Mr. Speaker, Sir, I beg to move that The Election Offences Bill (National Assembly Bill No.36 of 2016) be now read a Second Time.

I intend to take a short period of time in moving this Bill. This Bill is one of the two Bills that were heavily and extensively negotiated as a result of extraordinary events that happened in our country a few months ago, regarding political differences on the issue of the composition of the Independent Electoral and Boundaries Commission (IEBC). As a result, this House passed a Motion to establish a select Committee, which was a Joint Select Committee of both Houses of Parliament. That Committee brought a report that was approved unanimously in this House. Part of that Report consisted of two Bills namely, The Election Laws (Amendment) Bill, which is a part of the today's order later and the current Bill; The Election Offences Bill.

I will not speak much because these Bills were drafted as a result of the deep, extensive and frank consultations that took place during the process of the Joint Select Committee. I will just highlight some of the key clauses that are important and then Members can contribute. It is my hope that this being a *sui generis* legislation, in the sense that it is negotiated legislation, the common divergences will be minimal. I hope that the Senators will pass this Bill, so that we can immediately put in place the process of the proposed reconstitution of the IEBC and set the country back on track in terms of the electoral process. The elections are 11 months away from now.

Before I forget, I want to thank those who sat in this Committee, especially the leadership of Sen. James Orengo, the Senator for Siaya County; Sen. Kiraitu Murungi, Senator for Meru County and all the other colleagues who sat in this Committee, including Sen. Muthama and Sen. Mutula Kilonzo Jnr., for a job well done.

This Bill consolidates the election related offences. The Committee found that election laws are scattered all over in various pieces of legislation. Therefore, there was need to put all the laws related to elections in one statute. Secondly, those offences needed to be updated to remove some of the antiquated offences that have existed in our statute books for a long time and do not have a lot of meaning in present day terminology and electoral processes.

Mr. Speaker, Sir, there are a number of clusters of election related offences. In Clause 3, we have offences relating to the register of voters. These offences include printing, processing or otherwise making a document purporting to be a register. In other words, the making of illegal and unlawful registers is an offence. Aiding and abetting

someone to make such illegal registers is also an offence and so is giving false statement that finds its way into the election register when somebody is applying to be registered as a voter.

Clause 4 is on multiple registrations. It prohibits registration of one person more than once. The same clause has provisions relating to members of the IEBC; the Commission and its staff. Any commissioner or staff member of IEBC who aids, supports or helps a person to achieve multiple registration commits an offence and so is a candidate of any political party of any elective seat who aids a person to register more than once.

[The Speaker (Hon. Ethuro) left the Chair]

[The Temporary Speaker (Sen. Mositet) took the Chair]

Clause 5 deals with offences relating to voting. These includes:-

- (1) Forging, counterfeiting and destroying ballot material.
- (2) Unauthorized supply of ballot paper to any person.
- (3) Sale or purchase of ballot paper.
- (4) Unauthorized possession of ballot paper.
- (5) Putting into the ballot paper any strange material. In other words, putting into the ballot box anything, except the ballot paper that one is entitled or authorized to put after voting.

- (6) Taking a ballot paper out of polling station without authority.

I found this quite intriguing in the sense that it reminded me of the 1988 elections, during those days when Sen. Amos Wako was about to become Attorney-General; he was something else at that time. During that time the returning officer was the District Commissioner (DC). Therefore, people used to vote and after voting, the DC would put all the ballot boxes in a car and transport them a hundred kilometers away to the district headquarters for counting. In the process they would hide some ballot boxes in the bush or forest somewhere in the middle at night. They would be stuffed and loaded onto the Land Rover on the way to the District Commissioner's official residence. The counting would be done at night. By morning somebody who had won had lost and somebody who had lost had won.

I was very careful to say that at that time, Sen. Amos Wako, the Senator for Busia had not become the Attorney General. After he became the Attorney-General, things became better; starting with the repeal of Section 2(a) which he advised. From that moment, Kenya has never been the same.

Mr. Temporary Speaker, Sir, also criminalized is unauthorized printing and transportation of ballot paper. It also includes pretenses; where somebody pretends, for example, to be suffering from visual impairment or any other kind of disability so that they can be assisted yet they are not visually impaired or disabled. That is an offence. It is also an offence for any person to feign illiteracy so that they can be assisted to vote when they know how to read and write. These are some of the things that are used to destroy credibility of elections and tamper with proper outcome of the democratic will of the people of our country.

Mr. Temporary Speaker, Sir, in Clause 6, the Bill makes it an offence for any Independent Electoral and Boundaries Commission (IEBC) commissioner or staff to make a false entry on any document which they are charged with or aiding a person to pretend that they are impaired in one way or the other when in fact, that is not the case. It is also an offence by an officer of the IEBC to prevent a person from voting when they are entitled to vote, refuse to count ballot paper which is valid, count invalid ballot or declare unauthorized results.

In Clause 7, it is an offence not to maintain the secrecy of elections. Therefore, an election officer, candidate, agent or any other person who reveals information as to who has voted for who is guilty of an offence. Elections are supposed to be by secret ballot. That secrecy must be maintained.

Mr. Temporary Speaker, Sir, in Clause 8 we have offences related to impersonation; when people vote purporting to be who they are not. Clause 9 deals with bribery. The giver and the recipient of bribery commit an offence. In Clause 10, any undue influence on a person to vote or not to vote for a particular party or person is prohibited. I do not want to give examples that may derail debate because this Bill is a consensual legislation. Otherwise, I would have given examples of political parties and people who use all manner of tricks to unduly influence people to vote in a particular way, but because I can see Sen. (Dr.) Khalwale looking at me keenly, I will not say more on that point.

Mr. Temporary Speaker, Sir, the next Clause I would like to highlight is Clause 17.

The Temporary Speaker (Sen. Mositet): What is it, Sen. (Dr.) Khalwale?

Sen. (Dr.) Khalwale: On a point of order, Mr. Temporary Speaker, Sir. Is the Senate Majority Leader in order to deny Kenyans an opportunity to hear it from the horse's mouth that Jubilee is the party he is referring to? It is the one that is using all manner of tricks, including promising innocent, unknowing Members of Parliament (MPs) development if they joined Jubilee.

Mr. Temporary Speaker, Sir, could you compel him to make that disclosure?

The Temporary Speaker (Sen. Mositet): Sen. (Dr.) Khalwale, you are completely out of order!

Proceed, Majority Leader.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, Chinua Achebe in *Things Fall Apart* says that the very advanced in age, the very old women are always uncomfortable when dry bones are mentioned. He said that long time ago. I do not know in what context. However, in the context of Sen. (Dr.) Khalwale, I am not under any obligations to disclose what I intended to disclose. In any case, I have already given my reason. I do not want to disrupt debate.

Mr. Temporary Speaker, Sir, allow me to end by highlighting Clause 17. It is very important. It addresses an emerging issue that has been the subject of political debate in the last few years; technology. Therefore, for the first time, other than offences relating to technology being found in election rules, we now have them in the Statute proper. We have quite a number of rules relating to technology, including, interfering with data in a computer or a programme, altering documents or in any other way, interfering with the technological devices and appliances that are used during election. This Clause addresses a modern issue. If you do not protect technology yet we are investing in it heavily in our

electoral system, then we are likely to jeopardize the legitimacy of the entire electoral system.

Mr. Temporary Speaker, Sir, allow me to make one last highlight. That is Clause 18 on the duty of employers to allow employees reasonable period of leave so that they can vote. This is a very important Clause. In fact, it specifies that employers must give employees reasonable time to vote. In other words, not 30 minutes or one hour. The voting day should be available for voters. Those who vote far from where they work should be given more time so that they can travel to the places where they vote. In some countries, it is an offence not to vote. The Minority Leader is reminding me and I appreciate. In Australia it is an offence not to vote, unless you are sick or there is a very compelling reason why you cannot vote. I hope that is what we should perhaps be considering in future in this country. Voting, just like paying tax is one of the most sacred and inherent embedded civic duties that a citizen can do. Some of the things that citizens should feel proud of doing include voting, paying taxes and love and defend their country.

I would like to end there by noting that Clause 18 provides that when employees are given leave for purposes of voting, their salaries should not be deducted neither should they be penalized. Some employers might be cheeky. They may say, "Okay, fine. You can take two days off to travel to vote but we will deduct that from your salary." That provision prevents that kind of conduct.

Mr. Temporary Speaker, Sir, I do not want to speak more than I have done. I take this opportunity once more to thank Kenyans and the Committee on Legal Affairs and Human Rights of this House. Yesterday afternoon, I am sure they might have interacted with the public to have public participation on this Bill. I am satisfied this is an important Bill. It will sanitize, better and civilize our electoral processes, especially the parts that protect candidates or voters from being molested, coerced and unduly influenced. This is so that Kenya can be a country where citizens make their choices free from any influence as an expression of their birthright and democratic will.

Once more, I thank you, Sen. Orengo, Sen. Murungi and your team and all those who contributed in one way or the other, to the development of this proposed legislation.

Mr. Temporary Speaker, Sir, with those few remarks, I beg to move and in the tradition of this House, request my brother and counterpart, the Senate Minority Leader, to support this Bill.

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I wish to second this Bill. I start by saluting the Committee of 14 ably headed by Members of this House, the distinguished Senator for Siaya and the Senator who doubles as "the King" under whose jurisdiction, the Senate Majority Leader falls.

This Committee did an exemplary job, at least, at the end of a foul mood where people were injured, lives lost and the country had come to a level where uncertainty was becoming the order of the day. You heard of business people in Nairobi still counting their losses and wondering whether the Government was going to compensate them for the intransigent position it had taken that led to street demonstrations. Be that as it may, all is well that ends well. At least we commend the Government for having seen it necessary to sit down, talk to us and end up with a negotiated process that would make our elections freer, fairer, more democratic, acceptable and transparent.

Mr. Temporary Speaker, Sir, I salute the return of our senior most brother Sen. (Dr.) G.G Kariuki who has not been here for a little while. We welcome him back and wish him well in both health and everything else. He already has wealth and I wish him better health.

(Applause)

Mr. Temporary Speaker, Sir, before I go into the substance of the Bill, allow me on a very serious note to implore the Director of Public Prosecutions (DPP) that in the run-up to reach this situation where we set up the Committee, there was a confrontation between people who wanted to change the status quo and those who were resisting to maintain the status quo. In the process, people were arrested and taken to court. Even thereafter, there were Members of Parliament who were arrested because of speaking to matters related to what was going on. We had “the Pangani six,” “the Muthaiga Two” and our own colleague here, Sen. (Dr.) Khalwale, who, having been licensed to carry out demonstrations in Kakamega, was halfway attacked by a group of ruffians hired by the Governor of Kakamega County. In the process, he was arrested and arraigned in court.

Mr. Temporary Speaker, Sir, I urge the DPP, not only for these seven Members of Parliament, but for other Kenyans who may have been caught in this situation, either demonstrating or because they were supporting a cause of either agitating for or against this process, to review and terminate their cases for purposes of bringing healing and tranquility in the country.

This Bill also consolidates the scattered offences relating to elections that previously could be found in more than six or seven statutes. Now we do not need to rove all over. As good lawyers say, a good lawyer is one who knows where to find the law. It is easier to find a law that is based in one statute than when it is scattered in more than five, six or seven statutes.

Mr. Temporary Speaker, Sir, I join my colleague in quickly running through some of the clauses so that I give opportunity to my colleagues to speak. Clause 3 consolidates offences relating to registration of voters and preparation of registers. In the case of Right Hon. Raila versus H.E Uhuru Muigai Kenyatta and Others, the petition in the Supreme Court, the Independent Electoral and Boundaries Commission (IEBC) came to court and were not quite sure how many registers they used for the last elections. They said there was the master register, the green book, the black book, the red book and I do not know which other colour of books they had. The aggregate of that was that you could not determine how the elections were conducted.

Mr. Temporary Speaker, Sir, Clause 3 of this Bill makes it a criminal offence for the IEBC offices to maintain more than one register or to make any parallel register and purport to use it for elections. The penalty is heavy. One will get a Kshs2million fine or six years in jail or both. This will provide a deterrent. It does not end up with IEBC officials, but anybody established to have aided, abetted, counseled or procured the commission of an offence under this section will suffer the same fate of a heavy fine, a stiff sentence or both.

Mr. Temporary Speaker, Sir, Clause 4 of the Bill creates an offence on multiple registrations. Quite often, you find people who think they are cleverer than others, and who then go and register at Pangani, High Ridge or Westlands primary schools thinking

they will be able to make a kickback from candidates and roam from station to station, voting on the same day. Their days are not only numbered, but finished. They will have to be arrested and, if convicted, be jailed for a very long time. The fine is Kshs1million and the sentence is one year. I wish it was stiffer.

Clause 5 provides for offences relating to voting. Quite often you hear about ballot-stuffing; where electoral officers come with fake ballots and even corrupt agents are lured out of the polling room and a corrupt voting officer stuffs ballots. It can hurt anybody. My brother, Sen. G.G Kariuki was once a darling of the retired President, H.E Moi. The same darling hounded him out of politics through rigging, *ukweli ama uongo*?

(An hon. Senator spoke off record)

(Laughter)

Mr. Temporary Speaker, Sir, “darling” does not connote opposite sex or sexual. It is just proximate affinity to an individual that you like and talk to, like we used to ride in the same car with the President. Nobody does that in this country. I had not seen Sen. (Dr.) G. G. Kariuki in this House for so long that when I make reference to him, it is because I am appreciating his presence but not for any other reason.

Mr. Temporary Speaker, Sir, anybody who will stuff ballots will go to jail and people who commit such offences must be dealt with as firmly and harshly, upon conviction, as the Bill provides.

Mr. Temporary Speaker, Sir, Clause 6 deals with members of staff of the IEBC who, in the process of voting, also commit offences. Such offences include permitting ghosts or dead voters to vote. Of course there is no ghost. What they do is that they bring somebody who pretends to be what they are not and allow them to vote. Previously, when a person pretending to be what he is not went to vote and was arrested, he was prosecuted alone. Now, under this Bill, the officer who allows the pretender to vote is as guilty as the pretender himself. So, they will both be arraigned in court, prosecuted and charged. If convicted, they will be jailed for six years or pay a fine of Kshs1 million or both. This also includes people who register in several places. On polling day, if such a person eluded the scrutiny and detection of the officers and purports to vote again in Kibera, Olympic, Pangani or Highridge and he is caught, he will be jailed for six years or fined Kshs1 million.

Mr. Temporary Speaker, Sir, I would like Sen. Orengo to educate me on this when he will be speaking. They are trying to create an offence to persons pretending to be unable to read or write so as to be assisted in voting. I do not quite appreciate this offence because there are quite situations where an offence is created elsewhere to deal with people who intimidate voters. There are situations where some voters are intimidated to the extent where when they go to vote – they never disclose this and to have peace thereafter with their neighbours, marauding youth and so on – they say; *mimi sijui kusoma na kuandika*. Agents are normally there and the duty of an election officer is to assist people who want to be assisted. You will find them going in and saying; *mimi sijui kuandika, nitapigia yule Mwarabu*. Then they remember that *yule Mwarabu* is my distinguished brother, the Senator for Lamu.

(Laughter)

That is with a light touch.

Therefore, Mr. Temporary Speaker, Sir, when Sen. Orengo speaks, I would like him to tell me the mischief they were curing because sometimes people--- I do not know if Sen. Orengo has read a book by Sidney Sheldon about the mafia where a witness comes to court and when asked; "What is your name?" He says "eeeh." When asked again what his name is, he says "I cannot remember" and it goes on and on until he leaves. This is the same situation that happens when people go to vote. Because the distinguished Senator for Nyeri with his huge wallet has frightened everybody around, that causes people to declare that they will vote for him so that they go home with safety and security.

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. Whereas I agree, I pray that words from Sen. Wetangula's mouth land to God's ears, that my wallet may be as full. As he prays for that, is he in order to propose that I actually commit electoral offences by the definition of this law?

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, it is obvious that the distinguished Senator for Nyeri was not listening and he was not even ready to prosecute a point of order because the reason he stood up to say "point of order" is because the nominated Senator sitting ahead of him looked at him suggestively. He then stood up and said; "point of order". What I was talking about is the future. Yesterday, I said how honourable you are and I cannot change my opinion.

Mr. Temporary Speaker, Sir, Clause 6 of the Bill creates an offence by members of staff of the commission during the electoral process. Such offences include allowing people who pretend not to know how to read and write to be assisted. Although we are passing this Bill as it is, it would have been done better. It is also an offence for clerks to deliberately destroy, deface or reject ballot papers. This is very important and this is what you saw during last elections. At Bomas of Kenya, the electoral commission created what they called "the ninth candidate" and this were the spoilt ballots. At the time they maliciously and criminally disabled the electronic transmission system to go to manual so that they could cheat, the spoilt ballots had reached over 600,000 even before half the ballots were counted.

If electoral officers have been bribed, intimidated or both and are determined to rig out a candidate, all they will do is to deliberately mark in two boxes for anybody voting for Sen. (Dr.) Khalwale of Kakamega. They will mark for him and somebody else and that becomes a spoilt vote. At the end of the day, the Senator for Kakamega would have garnered or ought to have garnered 500 votes, which is the maximum you can get in a station. Out of those 500, he will end up with 100 acceptable ballots and 400 spoilt ballots. Even at the level of the law of probability, it is unlikely that 400 out of 500 people can cast their votes wrongly. This is what we are trying to cure and the officers of the IEBC found doing this will again be dealt with firmly and harshly.

Mr. Temporary Speaker, Sir, there are also situations where electoral officers maliciously exclude people from voting. In the countryside, many of our voters are either semi-educated or uneducated. They go into a polling room and may find some harsh-looking fellow with half-moon glasses looking at them and telling them; "get out of here!" That could make someone to leave before casting his vote. Such is an offence and

it will be punishable very harshly. It will also be an offence for an IEBC officer to fail to sign declaration forms.

Mr. Speaker, Sir, I was a victim of this in the last elections. There are situations where an officer declares the distinguished Senator for Nyeri County as a winner rightly because he has won. Then he does not sign the form of declaration that the Senator has won. The declaration of a winner and the time of declaration is critical when you go to court during petitions. For example in my case, when we challenge a petition that was filed 40 days after the declaration, we were shocked to learn that the declaration was undated and unsigned. So, the court ended up saying we cannot determine on this because we do not know when this declaration was made. With that you have no doubt to infer that the omission is fraudulent, criminal and malicious. An officer who does this will be fined Kshs1 million or be jailed for three years or both. This is how to stop this wickedness in our electoral process.

Clause (9) deals with offences of bribery; treating, feasting, *et cetera*, during an electoral period and it carries a heavy sentence of Kshs2 million or six years or both. What is important here - allow Sen. Orenge and his team to include Clause (9)(2); a person who accepts a bribe. The conmen who come to court to pretend that they were bribed so that they can nullify an election normally walk away. If such a conman comes to court and says on this day the distinguished Senator for West Pokot gave me Kshs20 and a cup of tea and a *mandazi* and induced me to go and vote for him---. A fellow like that will go in, in the same manner as the Senator who bribed him will. This will deter people from being coached and “tuned” to be fraudulent and false witnesses against winners of elections. There are many of them who will just volunteer, they are called witnesses for hire. They will pretend they were there, where they were not, and received what they did not receive, they saw what they did not see and in the end they ruin people’s careers without any justifiable cause.

Mr. Speaker, Sir, Clause (12) is very important. If the Office of the Director of Public Prosecutions (DPP) worked well on this, we would go to the next elections a different country. A person or a candidate who uses a public officer of the national security organs to induce or compel any person---. Even as we speak, the officials of *Nyumba Kumi*, the former DO’s and former DC’s now have a new name - Ward Administrators - and Members like Sen. Khalwale and Sen. Orenge who want to be Governors; they better be alert to this because Governors are recruiting and employing people everywhere including the Senator of West Pokot County. These are public officers earning public salaries and they go everywhere. They are now the campaign managers of the incumbents. This Bill now creates an offence and this offence carries an even heavier penalty and I like this.

So, from now a village elder, a *Nyumba Kumi* member, a sub-county administrator, a county administrator, a regional coordinator, like the Cabinet Minister for Interior and National Coordination, Hon. Nkaissery has been behaving ,who will be found championing the cause of a candidate will be fined Kshs10 million. Those village elders who are hearing me I want to urge you fellow Kenyans to steer away from an electoral process. Carry your card and your ID and go and quietly vote for a person of your choice. Do not be lured into being a campaign manager of an incumbent Governor or an incumbent President because that is not your duty.

You are employed by the government; whether County or National to discharge duties and responsibilities other than inducing people to vote for the person who you think employed you. You are neither employed by the Governor nor the President, who necessarily is not the current President. Any President in future including me; if a public officer campaigns for me as a DO or a DC, you are committing an offence for which you will be individually liable; the State will not pay your fine of Kshs10 million. You will be individually fined and auctioned because of transgressing the law. You will also go to jail for six years and you may even face both; Kshs10 million and six years.

Mr. Speaker, Sir, this is very important because the security intelligence--- and instead of the police protecting every candidate, you will find the police are busy following choice candidates and doing all manner of things. Equally, when elections come, I wish we went even further, where does the State end and where does the party end? Where does your official position as a Governor end and where does your official position as a candidate defending your incumbency begin? This is where public resources are routinely abused. I used to see this during the days of retired President Moi. When he goes out to campaign, even KBC, the national organ, is relaying the campaign lies for the whole country to hear. The police and NIS will go there a week in advance to intimidate people and so on and that time Sen. G. G. Kariuki was in charge of them and he is now a distinguished Senator in this House.

I will not turn to Clause (14): The Use of Public Resources.

Mr. Speaker, Sir, this is so important. I do not know who will bell the cat on this. Sen. (Dr.) Khalwale alluded to this when we were speaking about adjourning to the 4th of October. Public resources are routinely abused during elections. As long as you are an incumbent it is a licence to use public resources. That is why in Africa it is so difficult campaigning against incumbency because they have the State machinery at their disposal. I know Sen. (Prof.) Lonyangapuo wants to become the Governor of West Pokot. He will sell his property to go and campaign while the Governor is using the county budget to campaign. You cannot say then it is a fair campaign. The doctrine of free and fair elections is very simple; the elections must be free to the voter and fair to the candidate and it must be fair to all candidates. The race may belong to the strong but every competitor must be given a fair start. Every competitor must be given a fair deal. So, this Bill is very good and the Director of Public Prosecutions (DPP) will be the one responsible under Clause (21).

It is only the DPP who has powers. As I speak I remember a petition filed against me in Bungoma where some fellow who came there pretending to be a reverend said he was in a group of people where they were given money to vote. The Judge without any safeguards or any caution says he is convinced beyond any reasonable doubt that an offence was committed. How can you be convinced beyond reasonable doubt that Sen. Mositet committed an offence without hearing him out? That is neither fairness nor natural justice. This Bill cures that and it is very important. I am happy that in the case of my experience and in my own small way, I am contributing to the jurisprudence of this country in terms of how to manage elections before, during and after.

Mr. Temporary Speaker, Sir, there are many clauses others will speak to. I want to end here by supporting the Bill and urge the Director of Public Prosecution (DPP) to review all cases of those who were unfortunately arrested, arraigned in court and are being prosecuted in a matter that arose because of the tension that was created leading to

the committee of the 14 Members that then brought this product to this House and the 'Lower House'. I want to salute the 'Lower House' for passing the Bill as was drafted and placed before them.

I beg to second.

(Question proposed)

Sen. Orengo: Thank you Mr. Temporary Speaker, Sir. I rise to support the Bill and thank both the Majority and the Minority leaders for moving and seconding the Bill. I also want to thank the 14 Members of Parliament from the National Assembly and the Senate who worked hard in order to come up with this Bill and the Elections Laws (Amendment) Bill 2016.

Mr. Temporary Speaker, Sir, at the outset, I want to plead with the DPP because this Bill, the manner it has been crafted and the amendments that are contained in relation to the law currently was as a result of the participation and the contribution of the office of the DPP. Now that there are people who are facing criminal charges on account of their campaign to bring about this process, the DPP should use the goodwill that was created by this process; the establishment of the select committee as a basis of withdrawing all the charges against the people who may have been arraigned in court on matters that are related to the various campaigns which have been made out in relation to these Bills.

Mr. Temporary Speaker, Sir, one of them is a Member of this House; Sen. (Dr.) Khalwale. I cannot know why somebody like him would be charged with an offence of this nature because I know him well; that he would not commit offences like fraud or stealing anybody's property but this was in relation to the campaigns that are going on. I am not forgetting the "Pangani six" who include Members from both the Senate and the National Assembly. In the Senate, we had Sen. Muthama. I plead with him in the spirit which this matter was discussed, negotiated and concluded, he should withdraw those charges.

Mr. Temporary Speaker, Sir, as a precedence set by the Attorney-General *Emeritus*, Sen. Wako at one time when we had done the process of bringing about reconciliation and unity in this country. He discontinued many charges against many elected leaders including myself---

The Temporary Speaker (Sen. Mositet): What is your point of order, Sen. Kagwe?

Sen. Kagwe: On a point of order, Mr. Temporary Speaker, Sir. I wanted to propose and this would not apply to Sen. Orengo, given his work on this Bill and so on. I want to propose, given the time and the fact that we do want to get ahead with passing this Bill, we know Sen. Orengo has done a good job of negotiating this Bill and if he has read it, then we have also read it. I wanted to propose that we limit the contributions to a maximum of five minutes. Since I am going to be a contributor, I am proposing limitation of my own time so that we are able to make progress on it. Would I be in order to propose that?

The Temporary Speaker (Sen. Mositet): Yes. I think I am going to agree with the Senator because I can see we still have almost seven people who want to contribute to this. I know, may be, Sen. Wako may want to use more than five minutes as the Committee Chair. So, I could allow Sen. Orengo but in case he feels he can also shorten

so that Sen. Wako can have more time. For the rest, we can reduce to five minutes. In fact, I will want the House if possible to make sure that before we suspend the sitting, we finish with order Nos. 4 and 5 in the matter of debating because we may not have numbers to vote but the debates can be done.

Proceed, Sen. Orengo.

Sen. Orengo: Mr. Temporary Speaker, Sir, I appreciate the spirit in which the Senator for Nyeri County is bringing that point of order. I will try to be quick.

I was saying that Sen. Wako withdrew many criminal prosecutions against elected leaders and other public officials in relation to charges that were politically instigated during his time.

Mr. Temporary Speaker, Sir, the reason for this Bill was partly to have a stand-alone statute so that it is not part of the Elections Act. I think is as it should be. Secondly, the more important thing about this Bill is that election offences can only be tried in criminal courts. Even if there is an election petition against you, if the issues that are raised border on criminality, then conviction can only be made by a criminal court or competent jurisdiction. I think that is important.

Secondly Mr. Temporary Speaker, Sir, on the issue of the register, there is a definition of what a register of voters is. Never again are we going to hear of the existence of several registers. Even in accordance with this Election Offences Bill, there will only be one register as defined in the Elections Act. There will no green book, no black book, no yellow book and there will be no white book. Anybody who would prepare or print a register other than the one that is contemplated under the Elections Act will have committed an offence under Clause 3 of this Bill.

The commencement of prosecutions under this Bill must also occur within 12 months after the elections. We were worried that sometimes in certain circumstances people would be charged with offences that were committed many years ago and that would be brought for the purpose of ensuring that somebody is not allowed to exercise his freedom to participate in elections and not to enjoy his political right as spelt out in Article 38 of the Constitution.

Mr. Temporary Speaker, Sir, the Minority Leader brought an issue about the offence in relation to people who are pretending not to be able to read or write. This was supposed to capture people who commit offences on the basis that they have been promised a bribe; that out there is somebody waiting to be told by his agent in the polling room that so and so has voted for you. Such people go to the polling room and pretend that they cannot read and write for purposes of bribery. We thought that should be stopped.

Now that we are dealing with this Bill in the spirit that everybody should have something to say, I want to end up by pointing out Clause 15(1)(d) on page 18. I want to read it so that public officers of this Government can hear this. This is something very important for the Senate Minority Leader to know. It says:-

“A public officer who uses public resources to initiate new development projects in any constituency or county for the purpose of supporting a candidate or political party in that constituency or county, commits an election offence”.

With the recent visit of the President at the Coast where people kept on saying that people should support Jubilee or the President because he has initiated development projects in their county; this has been made an offence. Any Member of Parliament who

will want to support the President or a public officer on the basis that development is being brought to your county or constituency; that would be an offence. It does not matter when it is committed. It does not have to be during an election period, it is for all time. Any time any public officer stands up and says that he has done this road for you to support, for example, the Senator for Siaya County; that would be an offence under this Bill.

This is particularly for the leadership of Jubilee because they are in Government. If they do not comply with these new provisions, then the CORD or any other person can initiate private prosecution in regard to the commission of this offence.

I want to end up by saying that we have started on a new note, particularly in regard to---

(Sen. Orengo's microphone went off)

I urge the DPP to be more active in ensuring that our election process and the electioneering process is done in a free and a fair manner. We want, at the end of the day, everybody be satisfied with the outcome of our elections because whether we win or not, we will feel we participated in a free and fair election.

With those remarks I beg to support.

The Temporary Speaker (Sen. Mositet): Hon. Senators, our systems had gone down. You have to make your requests again. I remember the person who was following Sen. Orengo was Sen. Wako.

Sen. Wako: Thank you, Mr. Speaker, Sir, for giving me this opportunity. I am pleased to report to the House that although this Bill was referred to our Committee yesterday afternoon, we were able to meet and discuss it. The Committee was able to conduct a public hearing. As you know, the law requires public participation. Although there had been public participation at the hearings of the Joint Committee, we felt that it was also necessary for us to conduct that public participation because we were now discussing a Bill and not a Motion.

I will not go into the details of the offences that have been outlined in this Bill because, to me, the Senate Majority Leader and the Senate Minority Leader have adequately addressed the details. In brevity of time, I will not do that, except just to point out that the Bill consolidates the election offences into one Act. I have carefully read both the existing election offences and the proposed election offences. I can confirm to this House that in consolidating, most offences and penalties prescribed remain the same. It was merely an issue of consolidation.

There are just a few cases where the Committee recommended and increased penalty. One of these areas was Clause 3 which relates to offences of the register of voters where the existing penalty is a fine not exceeding Kshs100,000 or imprisonment not exceeding one year or both. That has been increased and rightly so, from Kshs100,000 to Kshs2 million. It says a fine not exceeding Kshs2 million and imprisonment not exceeding six years, or both.

The other area where they have increased the penalty are the offences relating to multiple registration as a voter. Whereas currently the penalty is Kshs100,000 or imprisonment not exceeding one year or both, that has been increased to Kshs1 million.

The most critical area and this is because our elections have sometimes been marred by violence and so on, is increase in the penalties relating to the use of force or violence during the election period. Under the existing legislation, the penalty is Kshs1million or five years or both, it has now been increased to a fine not exceeding Kshs2 million or imprisonment not exceeding six years or both.

There are one or two areas which I did not quite understand. This is where the penalties have been decreased. They must be having a good reason for it so I will not belabour that. Instead, I would want to go by the collective wisdom of the Committee in reducing penalties in that area.

Amongst the new offences is in Clause 16. That is a new one. The other two new ones which I really appreciate because we had a lacuna there are offences relating to the use of technology in elections. These are new offences which are fairly comprehensive. If one is caught in any one of the items there, they can be fined an amount not exceeding Kshs10 million or be imprisoned for a period not exceeding 10 years, or both. Many of the things are done through technology and the Chairperson of the Standing Committee on Information, Communication and Technology knows that. Most of the offences in Uganda's elections were on technology. Hi-tech offences are what we are now talking to.

Mr. Temporary Speaker, Sir, this morning I was listening to a person who got a Doctorate in a cyber-related field. I was amazed by what can be done to hack personal information through cyber-crime. It can even be hacked even through battery emissions and so on. I was astounded and shocked. Therefore, I laud the Committee for drafting very comprehensive new offences relating to use of technology in elections.

The other new offence which I laud the Committee for taking into account is breach of the electoral code. Initially, there was a requirement that parties and everybody must sign that electoral code. However, that code was honoured more in breach rather than observance. I am not aware of any case which went to court where one was accused of breaching the electoral code. The breach was almost non-existent because the penalty was around six months or Kshs100,000. However, if one now breaches the electoral code and particularly party officials, they stand to be fined Kshs1 million and/or imprisonment of six years. That is the Bill that we are asked to approve. There are up to six or so organisations that came to us yesterday afternoon on this matter. Most of what they said is that they had already informed the Joint Select Committee on IEBC. Therefore, appearing before us was a mere repetition of what they had already told the Joint Committee. We met and decided unanimously that we should recommend to this august Assembly to enact this legislation.

I beg to support.

Sen. Mutula Kilonzo Jnr.: Mr. Temporary Speaker, Sir, I rise to support the Bill. Clause 22 has not been highlighted yet it is very important. In Clause 22 the Committee proposed a timeline for the prosecution of these offences to be 12 months.

Under Clause 23, it was proposed that there will be special magistrates and special courts, the same way there are special judges to hear election petitions. There will also be timelines so that the persons who commit election offences are prosecuted within the five-year period, so that this is not used against them in the future. More importantly, the punishment that is supposed to act as a deterrent for the next election should be meted as quickly as possible.

I am extremely happy with Clause 19; aiding and abetting of offences. For those who have any doubt, this is not the national Government; it is also county governments. Therefore, all those ward administrators, village elders and village administrators who purport, pretend or imagine that they will participate in an election for purposes of entrenching existing public officials, including governors and others, will have a rude shock. They will be liable for a penalty and conviction not exceeding Kshs1 million. I do not want to belabor the point. The Election Offences Bill was there before. I am not sure about the wisdom of removing it from the law in the last general elections, but this is the way to sanitize the elections in Kenya.

Under Clause 12, jail awaits the officials from security agencies who pretend and act as polling clerks or presiding officers. I have a feeling that several people are going to serve jail terms under the new Elections Offences Bill. Therefore, the *caveat emptor* is out for any person who wants to interfere with the election equipment and electronic transmission like it happened in the last general election. Their time is up and their prison uniform is ready.

I support.

The Senate Leader of Majority (Sen. (Prof.) Kindiki): On a point of order, Mr. Temporary Speaker, Sir. I rise to request your indulgence and permission to move a short Procedural Motion regarding the election of two of our colleagues, so that they can relieve the Chair. This is because we have a long day and agenda ahead of us. Therefore, with your permission I can move the procedural Motion.

The Temporary Speaker (Sen. Mositet): Proceed.

PROCEDURAL MOTION

ELECTION OF SENATORS TO PRESIDE OVER THE HOUSE PURSUANT TO ARTICLE 107(1) (C) OF THE CONSTITUTION AND STANDING ORDER NO.18

The Senate Leader of Majority (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move the following Procedural Motion:

THAT pursuant to the Article 107(1) (c) of the Constitution and Stranding Order No.18, the Senate resolves to elect Sen. Mutula Kilonzo Jnr. and Sen. Lesuuda to preside over the sitting of the Senate today, Thursday 8th September, 2016.

We have a long agenda today, especially Order No. 4, which we are on now and Order No.5; The Election Offences Bill and The Election Laws (Amendment) Bill, respectively. The country is waiting for these laws to be in place. The election calendar is already suffering. In fact, I spoke to the Chief Executive Officer (CEO) of the IEBC and they are worried that we might need to act faster, so that they can deliver credible elections, which every person in this country craves for.

For that reason, I request colleagues to allow us to elect the two Senators. The Chair may want to walk out for a health break or take a bite; a hamburger or something. The two Senators are able and given the opportunity, they should provide relief to the Chair, so that we do not suspend the business of the House. If at some point a Senator wants to go for lunch, they can do so and come back. I request colleagues to understand

the urgency of this matter and allow the two Senators to do what I am requesting in this Motion.

Secondly, I plead with colleagues to be brief and to the point, so that we can finish this. It may not be possible for us to sit here throughout until we finish with the two critical agendas; the Second and Third Readings and so forth. We have consulted with my brother, the Senate Minority Leader. We suggest that we should come back at 4.00 p.m. for purposes of voting, because at that time we will need numbers for both the Second Reading and the Third Reading.

(Loud Consultations)

Sorry! I know this is unprocedural but I overheard a suggestion – I do not know from where – that 3.00 p.m. is a better time than 4.00 p.m. I am aware that there is a very important event going on in Kasarani Safaricom Stadium. Delegates of some of the parties represented in this House including the Party of the Senate Majority Leader; The National Alliance (TNA), are meeting from 2.00 p.m. to 3.30 p.m. So, we thought that TNA Senators could be given a leeway of about 30 minutes to make their way to the House.

Without much ado, I beg to move the Motion on Sen. Mutula Kilonzo Jnr. and Sen. Lesuuda. I request Sen. Ong'era, the Deputy Minority Whip, to second this Motion.

The Temporary Speaker (Sen. Mositet): Before Sen. Ong'era seconds, I know it is 12.30 p.m. Using Standing Order No.30(2), we can extend the sitting until maybe the debate is over.

Sen. Ong'era: Mr. Temporary Speaker, Sir, I rise to second and support the Motion. It is fairly straight forward.

We want to give you an opportunity so that you can go for a short call or have lunch. We do not want to stress you because we are discussing a very important Bill that will decide the electoral system in this country.

With those few words, I support and second.

(Question proposed)

Sen. Wako: Mr. Temporary Speaker, Sir, I support the Motion totally. It is good for the Senate Majority Leader to entrust the Opposition with this situation. He trusts that we can manage these issues while he is in Kasarani Safaricom Stadium.

I have stood to appeal to the Senate Majority Leader and the Senate Minority Leader. I felt that they took too long this morning in moving and seconding the Bill respectively. This is because we have already approved the Motion that included these clauses. They should assume that because of the brevity of time, we already know the contents of this Draft Bill. Therefore, there is no necessity for them to go through each clause up to the very end but just give us a general overview of what the Bill is all about, so that we can go on. At least, let us do that.

I can see if the same style is used in the next Bill, it will take a very long time to finish the considerations during the Second Reading. Since it takes too long, then the signal to us, Members, is that we should also take as much time as we should on those

Bills and yet we only have today to complete the business of this House. So, I appeal to them to be a bit brief in their moving and seconding.

(Question put and agreed to)

(Resumption of Debate on the Bill)

Sen. Kagwe: Mr. Speaker, Sir, I also rise to support this Bill. I will only mention two things. The first has to do with what Sen. Wako referred to and the use of technology raised in this Bill. The Committee on Information and Technology has published the Cyber Security and Protection Bill. It will come to this House soon. It is related to some of the offences that are now contained in this Bill. In the past, technology has been used negatively to rig rather than support. I think that the electoral body must now begin to use technology positively so that we can monitor elections online even as they happen. That is the way to avoid any suspicions on the electoral process.

The other issue is that throughout the Bill, the offences are mentioned as whether directly or indirectly. Indirectly is to also do with the use of mobile phones. It is not only physically that you can threaten somebody. You can bribe on M-pesa and use the mobile phone to comment on all the offences that are imagined in this Bill. Therefore, I think it is important for voters and the entire country to understand this. Today, people are committing offences on the mobile phone without knowing or even realising that they are as offensive as if you have spoken to the people individually. On the issues of directly or indirectly, I commend the Committee because we must include mobile phone offences.

Mr. Speaker, Sir, Clause 10(2) of this Bill is also an important one. This is because there have been instances where people have gone for 14, 15 and 16 year olds and registered them as voters, even though they are not of voting age. This is happening across the country in some areas. It is important for even those who are out there to realise that it is an offence to do so and this clause is very clear on this matter.

My only reservation is that this Bill should also have addressed party elections. The Bill avoids the issue of party elections and only refers to national elections. These offences should be as applicable in the national elections as they should be in party elections. Only then would we actually have completely addressed the issue of electoral offences as they happen at both party and national elections.

Perhaps Sen. Wako and others who were looking at this issue can tell us why they left out party elections in this process and only referred to the national elections of Parliament and others. This is very important given the fact that party hopping is no longer there and in some areas, party elections will constitute whether you have been elected or not. So, how can we protect people who have already stolen an election at the party level and tell them that now they are law abiding citizens when they come with dirty hands? So, there is a lacuna there. Something is missing. Let the law be applicable also to party elections.

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, I rise to strongly support this Bill. I am proud that I have gone down in history as being one of the 14 Members who enabled the country to come where we are now. Therefore, I use this opportunity to appeal to Senators to pass this Bill without amendments.

Mr. Temporary Speaker, Sir, the third Clause talks of the offence relating to the register of voters. I would like the new chairperson of the IEBC together with the commissioners that will be lucky to serve to be aware that this is a minefield. Nobody will ever do what we were witnessing. That is having more than one register and incidences where dead voters, underage voters and outright illegal voters are in the register. It is the responsibility of the chairperson to ensure that such people are not in the register. If he walks around and carries a register with those kinds of inclusions, it is an offence for which he is going to be punished.

Mr. Temporary Speaker, Sir, Clause 5 speaks to the offence relating to voting. Under Clause 5(a) the would be presiding officers are warned that incidences where illiterate voters in the rural areas would go to a presiding officer for assistance and the presiding officer marks for a candidate other than the intention of the illiterate voter or marks in a manner as to spoil the vote for the candidate that the illiterate chose, that presiding officer will bear the responsibility.

Clause 5 (b) and (q) warns the voters. We have voters who go to the polling stations pretending that they do not know how to read and write and request to be assisted. This kind of style is the old politics of KANU where the KANU candidates would tell their coordinators that the voters must pretend that they are not able to read and write so that they know that they are voting in proportion with the money they have been given to vote for a specific candidate.

Mr. Temporary Speaker, Sir, this is the time that our people will eat Jubilee money and they will vote in secret. There is no way Jubilee will know that the monies that they gave to our people have counted for nothing.

[The Temporary Speaker (Sen. Mositet) left the Chair]

[The Temporary Speaker (Sen. Mutula Kilonzo Jnr) took the Chair]

Sen. (Dr.) Khalwale: Mr. Temporary Speaker, Sir, congratulations.

(Applause)

Mr. Temporary Speaker, Sir, show them what CORD is made of. Clause 10 speaks to the issue of undue influence. I warn the clans in the Somali community of Kenya that they should read Clause 1 (b) which criminalises inducement and compelling of a person so as to refrain from becoming a candidate. Some clans in the Somali community of Kenya have been deciding on who to vie for elections. I hear they are misguided enough to suggest that Sen. Billow, one of the most distinguished politicians, should not be allowed as a candidate. Who are they? Those clan elders should know that they are committing an offence under Clause 10 (1) (b) if they dare touch Sen. Billow Kerrow. I will go to court to ensure that they are prosecuted, jailed and pay fines. Sen. Billow must be allowed to vie. The Governor of Mandera County must be allowed to vie for a second term.

Sen. Ndiema: Mr. Temporary Speaker, Sir, thank you for allowing me to contribute to this important Bill. From the onset, may I say I support the Bill but I think

there are some amendments that will be necessary to improve on it. I will be glad if, at the Committee Stage, they are included.

The Constitution of Kenya provides under Article 38 (2) that every citizen has a right to free, fair and regular elections. I emphasise the word “fair.” Every citizen has a right to elect a person. However, we saw during the last elections and there is also a tendency coming up where voters are being relocated to areas where they are not ordinarily residents for the purposes of voting for candidates of their choice.

Mr. Temporary Speaker, Sir, while it is proper that anybody can register anywhere and vote for the President, it is unfair for voters who are not residents in certain area to go to another area where they have no interest at all to participate in elections. In that way, they are overrunning the local residents and imposing a representative who is not a representative of the people. It is unfortunate that this movement of people to areas where they are not supposed to vote has not been criminalised.

In the previous Constitution, one would only register where he or she is a resident or where he or she has an interest of some sort. However, under the current legislation, that is not provided. This will cause a lot of tension. Where the residents there are minority and overrun by a group that appears to be bigger and perhaps from a different community, it will cause unnecessary tension and insecurity.

Mr. Temporary Speaker, Sir, it is unfair that this remains so. Looking at the nomination and appointments of commissioners, we have seen under the schedule here that the interests of gender and regional balance have been taken care of. However, the issue of minorities and marginalized communities has not been taken of.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Sen. Ndiema, are you speaking to the election offences. The nomination of commissioners is in the other Bill.

Sen. Ndiema: Mr. Temporary Speaker, Sir, I am speaking on the one on the schedule.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): It is in the Election Laws (Amendment) Bill (National Assembly Bill No. 37 of 2016).

Sen. Ndiema: Mr. Temporary Speaker, Sir, then it will come at the right time. I would also suggest that public participation be engaged on this matter, so that members of the public who may have a second thought are given an opportunity to do so before we vote.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Sen. Karaba, you were on my list but you do not appear now. Sen. Musila, you were also on my list. Sen. Karaba, have you removed your request?

Sen. Karaba: No, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Okay. You have five minutes.

Sen. Karaba: Thank you, Mr. Temporary Speaker, Sir. First of all, I want to congratulate you for making that good ruling and observation. Secondly, I congratulate you for being elected the Temporary Speaker for now. I hope that the rest of the process will be smooth.

We are discussing a very important Bill. In other countries, the proceedings on this Bill would have been covered live and people would be commenting as we speak. As we discuss this Bill, election fever is already on and campaigns have started. If one commits some of these electoral offences, he or she should be reprimanded. However,

despite talking about these offences, over the years no one has been prosecuted for the same. Therefore, it would be important if people who commit election offences are prosecuted. It should also be clarified when the time for campaigns starts and ends. Nobody should talk about elections before the appropriate time.

As I speak, some choppers are flying in some of the counties with aspirants pleading with people for support. Election fever has already started. Can we stop those movements and maneuvers, so that the aspirants are told in no uncertain terms that the campaign period is yet to come? If that was to happen from the Senate, we would be seen like we are discussing matters of importance.

Mr. Temporary Speaker, Sir, I have heard and read in the newspapers that in some places some people have already been elected through 'directed' democracy. In those places, some clans have already nominated and 'elected' their people. Will we honor that as elections even when it is not held at the same time as the general election? We should follow the timetable agreed on. Right now there are people who are sure that they will not face any challenge during the election time. We should be candid so that we avoid such utterances and directions from some nomadic pastoralists so that we do not get into problems. This may lead to tribal clashes in some of those areas. This House can contain some of the tribes from engaging in clashes.

Mr. Temporary Speaker, Sir, in some areas, nominations by political parties are taken as general elections. Some of these cases are notable in Nyanza and sometimes in the Mt. Kenya Region. The moment a person gets nomination in a particular party, they will not face anybody else in the general election. Does this Bill have anything to do with the party elections, so that the party elections in Nyanza, some parts of Rift Valley and Central regions can be seen as final? This situation can be tantamount to cheating, if somebody who has been elected in the party primaries thinks that he or she has been elected in the final elections. We must be careful because we have passed another Bill prohibiting party-hopping. If party-hopping will not be allowed and someone is already disadvantaged in the party primaries, we will have unfair representation, which is not natural suffrage. We should, therefore, interpret this Bill carefully.

Mr. Temporary Speaker, Sir, results are supposed to be released within a short time. To avoid any rigging results should be released from the polling stations, so that polling---

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Your time is up.

Sen. Musila.

Sen. Musila: Mr. Temporary Speaker, Sir, I wish to start by congratulating you for being elected by the House to preside over this session. Let me add my voice to the views expressed in relation to this Bill; The Election Offences Bill, 2016. I congratulate the select Committee for the work they did. It is as a result of that work that we have these pieces of legislation. I did not get the opportunity to congratulate the able ladies and gentlemen who did a very commendable job.

I wish to mention two issues relating to the Bill, because of shortage of time. I am assuming that we are on The Election Offences Bill.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Yes. We are still on The Election Offences Bill.

Sen. Musila: Mr. Temporary Speaker, Sir, the issue of public officers' participation and trying to influence elections has been with us for many years, in fact, as

long as this Republic was born. This is one of the offences that have continued to be committed with impunity. These laws are good, but the question people are asking is: Will we implement or prosecute culprits when they commit these offences? We have public officers who are involved in politics. Public officers, under the guidance of governors - not just in Kitui but all over the Republic - are already campaigning. I want to applaud the offence of promising development. As I speak, agents of governors and even public officers within the national level are going round promising development and things that obviously cannot be achieved, particularly in the counties. Therefore, these laws are good and I support them.

I want to urge that we should not have laws and expect to have good elections, unless we diligently ensure that we implement and prosecute, particularly, the public officers who are campaigning for individuals and candidates, particularly governors, who are already promising things that are meant to influence voters in the coming elections. I like the bit that says that one can be prosecuted even long after. I want to tell them that this law will be applied. Those who are breaking the law now better read this law when it is passed because they will end up in jails.

Mr. Temporary Speaker, Sir, I beg to support.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): I call upon the Mover to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move. However, given that we do not have the threshold for a vote, I request, under Standing Order No.54(3), that the Chair defer the putting of the question in the special circumstances for a Special Sitting, not to the following day, but to 4.00 p.m. by which time we hope that the Whips would have helped us to get enough Members to vote.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Your request is granted.

(Putting of the Question on the Bill deferred)

Let us move on to the next order.

Second Reading

THE ELECTION LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILLS NO. 37 OF 2016)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that The Election Laws (Amendment) Bill (National Assembly Bills No.37 of 2016) be read a Second Time.

Before I give my moving remarks, I congratulate you for being elected to preside over this Sitting. It is a great honour. This time I am speaking wearing my hat as somebody who comes from the greater Eastern Province. Therefore, I am happy as a person from that part of the country to see the Senator for Makueni County seated on the high Chair. He is also the Vice Chairman of Wiper Democratic Party. Good luck. Indeed, your star is shining bright.

Mr. Temporary Speaker, Sir, this Bill deals with the substantive electoral issues. It amends various electoral laws. As my senior, Sen. Wako, said this is something that we

are all conversant with in terms of the context and the political parameters that circumscribe this law. Therefore, I do not want to speak a lot, but to highlight three things as I move the Bill.

First; is the inspection and publication of the voters register in Clause 5. This Bill proposes at least 90 days before elections, the Independent Electoral and Boundaries Commission (IEBC) must open the register for inspection, especially with regard to verification of biometric data. After the verification period - which should be reasonable - is over, the IEBC is expected to gazette the closure of that period and, thereafter, publish the register. This is just to ensure that information about who is eligible to vote is available in good time. That is why the 90 days are there, so that we do not register people three months to elections. This information is available for inspection, verification and is published, to increase the transparency of elections.

The second one is with regard to the audit of the existing register. The clause does two things; one, it provides that six months before any election, the register must be audited. In this case for the coming election, the Bill proposes that the IEBC must, within 30 days after the passage of this law, engage a reputable professional audit firm to audit the register for the following purposes:

- (i) To verify the accuracy of the register.
- (ii) To recommend mechanisms for enhancing the accuracy of the register.
- (iii) To update the register to remove voters who might have passed on, relocated and may not be available to vote.

Once the audit for the purposes of the coming election is done, the audit firm shall report the findings of the audit to the IEBC, which is required to report to both Houses of Parliament the findings of that audit as well as the implementation. This is because the IEBC is obliged to implement those findings, but thereafter, report to Parliament.

Thirdly, it is on party primaries and lists. With regard to party primaries, the IEBC may, in accordance with Article 88 of the Constitution, upon the request by a political party, supervise party primaries. I know some of our friends; including my brother, the Senate Minority Leader and his coalition, not particularly Ford Kenya, but segments of his coalition have their own views about the involvement of the IEBC. I am not trying to say those views are not good, but that the Bill makes it optional. It says: "At the request of a political party." It is not trying to say that the IEBC must supervise party primaries. It may, if requested by a party, as we in the Jubilee Coalition have publicly announced that we shall be inviting the IEBC to conduct our party primaries when the time comes.

Mr. Temporary Speaker, Sir, this provision is envisaged in the Constitution. Therefore, it is not a strange thing. Other than the involvement of the IEBC at the request of a political party, the Bill provides that at least 60 days to the elections, the IEBC must publish the candidates who have gone through party primaries. This means that the primaries must be held at the very latest, 60 days before elections to provide enough time for those who are successful to campaign.

At least 21 days prior to the primaries, parties must submit the various candidates who will compete in the primaries. At 81 days to elections, there cannot be change in terms of parties. Therefore, after your party has said that for this seat candidate x, y and z are competing in our party, they will remain there and wait for the nominations which

will happen after 21 days. After that list has been forwarded, you cannot change your party.

There have been a lot of public comments on the so called party-hopping law. My understanding is that this provision is not telling Kenyans not to party-hop. It is saying that if you must party-hop, you hop as early as now.

Mr. Temporary Speaker, Sir, you can see the excitement which this thing is causing especially to the past beneficiaries of hopping like the Senate Minority Leader who has now been rendered quite relevant. What we are saying is that hoppers will still benefit but early enough. You cannot hop on the eve of elections, one month after elections or after nominations. In fact, we have just removed the timeline for hopping and brought it to as early as possible. So, all the hoppers in town and all over should hop.

Mr. Temporary Speaker, Sir, the other thing is the issue of party lists which has been very contentious. In the past, we have been providing lists after nominations but this Bill proposes that that should be done at least 45 days to elections. For purposes of record, the practice has been and it is in the Constitution that the party list should be provided before the election. What used to happen, especially in the previous election, is that the lists were done before the election and nominations. Some people who had been put in the party list ended up disowning or even campaigning against parties that eventually sponsored them and the parties were left helpless. They could not change. What this Bill has cured now is that the party list and those who have been nominated to Parliament and county assemblies will be nominated after the party primaries have been done, so that, for example, if there is a person who has not done well in the nominations and he is loyal to a party, he could be considered. Also, because at that point people cannot change parties, at least you will be sure of the loyalty of the people you are nominating.

Mr. Temporary Speaker, Sir, those are the few highlights I wanted to make and I do not want to go further than that. I take this opportunity, once more, to thank Senators for their sacrifice to sit over lunch hour to dispense this very important national duty. I hope when time for voting comes, we will consider voting favourably. With those few remarks, I beg to move and request the Senate Minority Leader to second briefly.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Senate Majority Leader, I thought you would expound on the word “shall” used for party nominations on the IEBC. I do not think you expounded on it. Instead, you used the word “may.”

The Senate Minority Leader (Sen. Wetangula): Mr. Temporary Speaker, Sir, I beg to second this Bill. Once again, I salute the Committee of 14 and its leadership; including Sen. Orengo and Sen. Muthama. I take this opportunity to repeat the appeal to the Director of Public Prosecutions (DPP) on the issue of those who have been charged in activities running up to these negotiations.

Mr. Temporary Speaker, Sir, let me start from where you asked a question. Actually, the word “shall” does not obligate the electoral commission to mandatorily conduct nominations but it is upon the request of a party. Once a party requests, it must conduct nominations. So, there are obligated on request but if they are not requested, then there is unlikely that anybody can force them.

Mr. Temporary Speaker, Sir, I will speak to a few things in this Bill. First is the issue of nominations and the timelines set. I think it gives parties and candidates who have been nominated ample time to try and reconcile themselves with those they have

defeated and heal any cracks within their parties, so that they can work as a team. Of course, there are some bad losers who, whatever efforts you make, will still pack up and go and that is expected in life.

Mr. Temporary Speaker, Sir, it also gives an opportunity to give ample time to the Independent Electoral and Boundaries Commission (IEBC) to submit names for printing of ballot papers. Quite often ballot papers come with a lot of mistakes because of the speed at which they do it. I remember it happened to one of our candidates in Trans-Nzoia. The ballot papers came with his photograph and a totally different name and this only happens at election time. So, voters come in and ask to vote for a Mr. Nyongesa and they are told the name that is there is for a Mr. Omar Juma, but the man is not Omar but the picture is his. There you end up losing for no fault of your own.

This Bill is also a good step on nominations. I had spoken to Sen. Orengo and my wish would have been that, in fact, the party lists are submitted to the IEBC after elections. In my view, nominations are a reward for hard work. They are rewards for loyalty. There is quite a number of people who find themselves on the list and as soon as they get on the list they say, "*tumemalizana.*" Their engagement with the party reduces to the minimum and they start hawking their political services to the highest bidder, knowing very well they are on the party list and would be nominated. That way, the party ends being shortchanged or cheated. Since the nominations will be done and the list will be submitted after nominations, it is a good development and progress because good candidates who may not be able to win nomination contests can be put on the list for consideration for nomination to either Assemblies or to the Senate.

Mr. Speaker, Sir, a lot has been talked about party hopping. In fact, this Bill out there is commonly called the party hopping Bill. Although it has so many other positive clauses, people have highlighted hopping more than anything else. Obviously, if a Member wants to stretch your argument at the constitutional level, the Member would say that it curtails the freedom of choice and curtails the freedom of association because there should be no timeline for one to decide who to associate with or to decide to choose what you want in terms of political party or whatever. It is also good because in a way, it restrains and brings what my friend Polycarp Igathe used to say when we were negotiating to reach to this that their interest as the Kenya Private Sector Alliance (KEPSA) was to bring some political hygiene in the manner in which we conduct ourselves.

I think it brings some hygiene to the extent that where a person goes for nomination and loses, such a person going to stand on another party immediately thereafter just undermines the strength and future of his own party. This Bill makes it easy for parties to maintain their members who are in politics so that when you go to elections, it is no longer the money or the box. If as a Member you decide to be here, you must be here. When you look at my friend, Sen. Bule, who was elected on a party ticket that belongs to this side, his act of betrayal was on day one; the first day. He came looking like a captive of one Sonko and sat there with Sen. Sonko policing him throughout the elections of the Speaker and from there, we have never had him on our side, and yet, in the records of Parliament my good friend, Sen. Bule, belongs to this side.

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order. Mr. Speaker, Sir. I understand the challenges the leader the Minority and his coalition are going through for the last few years until now. But I do not think it is in order for the

Minority Leader to impute improper motives on one Sen. Bule and Sen. Sonko. The insinuation by the Leader of Minority is that Sen. Bule does not know where he belongs and that he has been coerced to change sides without consequences.

The Senate Minority Leader (Sen. Wetangula): Captured!

The Senate Majority Leader (Sen. (Prof.) Kindiki): Secondly, the Leader of Minority is imputing improper motives on Sen. Sonko. Is he imputing improper motives on Sen. Mbuvi that he captured a fellow Senator and imprisoned him forcefully in the Chamber? These are grievous allegations. Could the Minority Leader substantiate, otherwise, he should withdraw and apologize to the two Senators and to Tana River and Nairobi counties respectively.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Sen. Bule! Although I cannot see you on my list but proceed.

Sen. Bule: On a point of order Mr. Temporary Speaker, Sir. Is my fellow Senator in order - if I can recall what I have undergone in the hands of CORD or Wiper? In 2013 when the party's primaries were conducted, I was deleted from the process by the party who believed that Bule cannot make it to Parliament? I was de-whipped and I sought refuge in that small party of which I cannot even recall the leader. So, I am a person who has the power to retain my sit whether as a private candidate or as Bule. So, that issue of party will never deny me---

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Sen. Musila, Sen. Bule is on a point of order. Have you finished?

Sen. Bule: I have not finished, Mr. Temporary Speaker, Sir. So, is the Senator in order to say that Sen. Bule has just crossed over? They threw me out of their window and there is no day that I will be with them again.

Sen. Musila: Mr. Temporary Speaker, Sir, I wanted to go on record that this Senator has never been a member of the Wiper party. If he did, I can certify here that Sen. Bule was not elected under the Wiper ticket. Therefore, it is erroneous for him to claim that he was a member of the Wiper party. Is it in order for him to claim that he is our member when in our registers we do not have any name like his?

The Senate Minority Leader (Sen. Wetangula): Point of information!

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Sen. Musila does not want to be informed. I have not given you the Floor Sen. Wetangula.

The Senate Minority Leader (Sen. Wetangula): I have been challenged and I will briefly say as follows. The distinguished Senator for Tana River County who is a good friend of mine was elected on Federal Party of Kenya (FPK) ticket, then led by Cyrus Jirongo. Jirongo signed an agreement with CORD and he stood as a Senator for Kakamega on his party ticket, competing with Sen. (Dr.) Khalwale on a CORD arrangement. When we came to the Senate, the first person to commit an act of treachery to CORD was none other than Sen. Bule who turned up in an immaculate white suit; brand new and still branded; literally looking like he was a prisoner of one Sen. Sonko, who was policing him throughout the voting and these Members can remember that. He nearly committed an offence we have just created of a man who knows how to read and write, but pretending that he does not know how to read and write so as to be voted for by another. The law is now getting tighter and my friend Sen. Ali Bule should now be warned because things are now changing for the better.

I also want to tell the politicians that they must have fidelity to their parties. The ever hopping and travelling members never end up well in politics. They keep on moving, but sometimes things do not work for them. Sen. Orengo was just reminding me, distinguished Senate Majority Leader, that when you talk of hopping, you should think of that sport called hop, step and jump. He reminded me that you only hop when you are close. You do not hop when you are a kilometre away. You run, gather momentum and speed and only hop when you are very close to the target. So by outlawing hopping, we are actually going contrary to the spirit of the Olympics Games.

(Laughter)

I want to hope that there will be internal democracy in parties. In fact, many Members who talk to me are telling me that they are frightened stiff of the monolith that is being created called Jubilee. This is because they are going back to the old days of *mama na baba*. People will be sitting somewhere or some invisible hands or men in dark glasses who will be determining who becomes a candidate and who does not. A lot of those fellows who are now excited in Kasarani and Bomas of Kenya will end up not being candidates because *chama kina wenyewe*. They must know if they do not know. *Hivyo vyama vina wenyewe*. I can assure you of that; Sen. Bule, things will not be easy there. Come to Ford Kenya, the door is open. *Hatuna ubaguzi* and we have no mischief or you can go to Wiper because they do not have mischief. Where you are now, you will be fried in your own oil. You should watch out. It is very amusing that of all people, it was Sen. Sonko who captured Sen. Bule.

I beg to second this all important Bill and I want us to pass it as it is. Just before I end, let me point out Clause 6. I think that is, probably, one of the critical clauses in this Bill. As I said in the morning in the other Bill, the IEBC turned up in the Supreme Court and alluded to the reference of four registers. The master register, the black book, the green book and another document that they said contained names and identities of Kenyans whose disability, included severed limbs and so on. That is a highway to cheating. I salute you Senators and our colleagues in the “Lower” House who were in the Committee. We wanted to re-register Kenyans afresh and it could be done. You may recall after the failed referendum of 2005, when the Interim Independent Electoral Commission came in, they removed the entire previous voters roll. In four months, they enlisted 12 million voters.

It could have been done, but since the Jubilee side became totally unreasonable, obstinate and intransigent on this matter, we did not want this to be a deal breaker. A compromise was found as outlined in Clause 6; that an independent firm will conduct a thorough audit to verify the accuracy of the register and update the register. There will be nothing like ‘principal register of voters;’ there will only be a register of voters. When you allow the acronym “principal” to a voters’ register, it means there are other registers. However, when you just talk of “voters’ register,” then there cannot be any other register; it is only one. Even the distinguished Senator for Tana River agrees with me; that he wants only one register because that is the only way fairness can be done.

Mr. Temporary Speaker, Sir, to accommodate the feelings of the distinguished Senator for Busia, Sen. Amos Wako, I beg to second.

(Question proposed)

Sen. Orengo: Mr. Temporary Speaker, Sir, it is nice seeing you sitting on that Chair; may you continue to sit there. I hope the Senate Majority Leader will continue to have the same confidence.

I congratulate the Committee for the 30 days hard work and the leadership of the two coalitions for giving their full support to the Committee. I also thank the leadership of the coalitions in both the National Assembly and the Senate. The Report of the Committee was signed by the leadership of the two Houses; the National Assembly and the Senate.

I will not go into the substance, because going clause by clause may take a lot of time. Sen. G.G. Kariuki posed a question that it is all well making these good laws, but unless they are obeyed---. However, unless they are implemented, it will be like somebody who goes to Church every Sunday and knows every verse in the Bible, but as soon as he leaves the Church, he is busy robbing a shop or raping a lady in the village. A law of this nature is so fundamental to our democracy that each person, both citizens and leaders, should do everything possible to make sure it is implemented, not in terms of what it says, but even its spirit and objectives. That is the only way that this will work.

Pele called football ‘the beautiful game’. That game works only when you obey the rules. Football is serious business, but it is partly entertainment. Nothing is more serious than politics; it is about people’s lives. We should play by the rules that we make. Gladly, it is those who participate in the business of politics who end up as Presidents, Senators or Members of the National Assembly. If we cannot obey the rules, then they are not worth the paper they are written on or even the time that we take in preparing legislation and enacting them. To that extent, it still remains to be seen whether this law will work.

Africa is in a terrible situation at the moment. It is very difficult to find a country in Africa where there has been a proper regime change; it is just a continuation. There has never been really a regime change even in Kenya. It is the Moi’s state that continues to rule this country in various shapes and forms.

If you analyse it properly, there has never been a proper change of government in this country in terms of truly an opposition party having a chance. If you go to Tanzania, South Africa and the whole of Africa, you will witness that for yourself. Now, there is the case of Gabon. Truly speaking, it is not that they do not have the laws. They do not have the will or commitment to obey their own laws. So, the beginning is fidelity and faithfulness to the law. That applies to every one of us, whether in Government or outside.

Mr. Temporary Speaker, Sir, I hope that as we speak, the commissioners that are still in place and are soon to go and the secretariat will desist from doing anything that will jeopardize the law that we are enacting. We know that if they now engage themselves in trying to prepare for the elections in the spirit of the old order and the laws that we are changing, then everything that we are doing now will be completely negated. Even the Chief Executive Officer (CEO) should be very careful about what he says. I like what we say to ourselves, that we cannot talk about Nyeri County and its governor now because we know our duty. So, the CEO of the Commission should be very careful about

what he says. He is committing himself to doing this and that, and we do not know what will happen when the new commissioners come in. So, he should be very careful.

Secondly, in the hearing of the Senate Majority Leader, something that will mess us up is happening in this country. Jubilee Party is trying to create a political behemoth. The marriage between the political parties that have joined this thing now called Jubilee is like a marriage between a behemoth and a hydra. If you have read the articles of Hobbs especially in relation to the civil conflicts that engulfed England in the 17th Century and you look at what happened in Europe between the two wars, there was a movement towards political domination. Parties were coming up not to practice democracy and give everybody a chance but to seek domination.

I am afraid that what Jubilee is doing at the moment will be inimical to democracy. They are trying to create a political monolith which will negate the gains that we have made. I mean, in the spirit of creating reconciliation and peace amongst ourselves, we have gone against party hopping. Now, buying political leaders from other political parties is no better. In fact, these defections that we are hearing about now are worse than party hopping. You find a Member of the Senate defecting before finishing his mandate with the political party that brought him here. I think that is a more serious offence than a hopper who is seeking an opportunity to get into the House. However, for those who are in the House and before they finish their mandate, they become easy prey or make themselves available to a political party that is seeking domination, I think that is something that is even more criminal than the party hopping that we are trying to stop. Let us not get to the old Kenya African National Union (KANU) Party state which was omnipresent, omnipotent and all-domineering.

Mr. Temporary Speaker, Sir, I am saying this because I remember when the National Rainbow Coalition (NARC) came into power, NARC appointed KANU Ministers into Government. Then, President Kibaki was in State House and appointed people like Njenga Karume who belonged to KANU as Ministers. The current President and Deputy President gave us the instructions-I and the late Mutula Kilonzo were ready and willing to fight for political space - to challenge that kind of domination. They were appointing Ministers from the opposite party. They were killing democracy as it were.

This culture that is coming up that we are having a behemoth or beast that is coming up to consume everybody is causing a disaster in this country. I hope the Senate Minority Leader with his colleagues in the Coalition for Reforms and Democracy (CORD) will put up a hard fight to make sure that this country will never be dominated by a political monolith. To that extent, it can bring bigotry and political conflicts like in Germany. The nationalists wanted complete political domination and there was no space for other political parties. I know that the opposition is up to the task and in that spirit. In 2017, we will have free and fair elections. If there will be no free and fair elections, Kenyans have shown that they can always stand up using the constitutional tools to say "No" to unfair elections.

Mr. Temporary Speaker, Sir, since there are a number of people who want to speak on this - and we want to conclude debate on this - I thank everybody who gave his or her contribution in this process. I appeal to the Director of Public Prosecutions (DPP) that in the public interest, and in the exercise of the powers granted to him by the constitution, which we cannot interfere with, to drop the cases against Sen. Muthama and

Sen. (Dr.) Khalwale together with the six Members from the other House; that these cases be withdrawn before this Bill becomes law.

I support. Thank you.

(Sen. Bule consulted loudly)

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Sen. Bule, we can hear your consultations.

Sen. Wako: Mr. Temporary Speaker, Sir, thank you, for giving me the opportunity to speak on this matter as the Chairperson of the Committee on Legal Affairs and Human Rights. First of all, I want to congratulate you. The Senators should know that the Temporary Speaker is a Member of my Committee on Legal Affairs and Human Rights. The Temporary Speaker together with Sen. Sang are my adopted sons when it comes to matters of the Senate. I am proud that my child is in the Chair, but exercise your rights if I overstep the Standing Orders; I will take it well.

The Senate Majority Leader and the Senate Minority Leader have explained the clauses of the Bill that we are about to approve. I am quite sure that Members have read them because they adopted the Report which had these two Bills. Therefore, I will not dwell much on the Bill itself. The Member who said that public hearings had not been conducted may not have been in the House when I was introducing the other report. I said that although the two Bills were referred to us yesterday, in accordance with the requirements of the Constitution, we conducted public hearings. Page 14 of the Report will mention those organisations that submitted to us. They include the Inter-Religious Council of Kenya (IRCK), the Committee on Administrative Justice, which submitted a written report and the Law Society of Kenya (LSK), which also made written submissions in support of the Bill. Although we had a short time we adhered to that and the public participated.

Mr. Temporary Speaker, Sir, I want to comment on the issue of party-hopping. This is an issue that has been on the public domain for quite some time. It really engaged us, as a Committee. Maybe, had there been a policy decision that allowed independent candidates after nomination, then the time schedules set out in Clauses 10 and 11 of the Bill would have been different. They would have been different because under Article 85 of the Constitution independent candidates are allowed. I was a member of the committee that allowed independent candidates. The main issue was that political parties – as we know them - did not have the internal democracy to ensure that free and fair primary elections are undertaken. Therefore, we wanted to give that opportunity to those who felt aggrieved to stand as independent candidates. Included in that was the introduction of the new political culture of independent candidates.

Article 85 (a) of the Constitution provides that:-

“Any person is illegible to stand as an independent candidate for elections if the person is not a member of a registered political party and has not been a member for at least three months immediately before the date of elections.”

Therefore, one is allowed to be a member of a political party, but if they want to stand as an independent candidate, they should not be a member of any party. They should have resigned from that party, according to the requirement of the Constitution, at least three months before the election date. If the election is in August and you want to stand as an independent candidate, and you are a member of a political, you should resign

from that party at least three months plus one day, so that by election date you have not been a member of any political party. That is a constitutional requirement.

Therefore, to that extent the law provides that every political party shall submit names of the party candidates who have been selected to participate in the general election at least 60 days before the election.

Mr. Temporary Speaker, Sir, before the election if you have to wait for the nomination to be completed before the 60 days and then you resign, it means you will not have been a member of that political party. The Constitution requires that you should have been a member for 90 days and that is why the party-hopping cannot take place after nomination.

If the Committee wanted to be a bit friendly to the independent candidate, they would have required the political parties to update names, not 60 days before the general election, but maybe four months before the general election so that any person who now feels aggrieved can resign and fulfill the requirements of the Constitution which are 90 days before the election date.

Mr. Temporary Speaker, Sir, there are many positives in not allowing party-hopping after the nomination since we are now trying to create a political culture. We are trying to make those who want to vie to think ahead on which party ideology they agree with, feel at home with and stick to that party rather than where the political party is just used to further the interests of an individual. That is because I am now in party “a” and since I have not been nominated you jump to party “b” overnight, all because of personal interest to be elected.

I am sure that this will create a positive new political culture in this country. To further that new positive political culture, it behooves the party leaders and the officials to really ensure that their party primaries are free, fair and above board. This is because we end up creating this situation where we are proceeding on the basis of good faith that it will happen. If it does not happen, then we will be creating party dictators who will be there and you can only be a member or participate if there is a nod from the top. That is what we must avoid.

I am appealing that as we accept these amendments, to stop party-hopping, which is good for the country. However, the political parties should also play their role in ensuring that their members enjoy all the political rights which are enshrined in Article 38(1) of our Constitution. It says:-

“Every citizen is free to make political choices, which includes the right—

- (a) To form, or participate in forming, a political party;
- (b) To participate in the activities of, or recruit members for, a political party; or
- (c) To campaign for a political party or cause.

(2) Every citizen has the right to free, fair and regular elections based on universal suffrage and the free expression of the will of the electors for—

- (a) Any elective public body or office established under this Constitution; or
- (b) Any office of any political party of which the citizen is a member.

Mr. Temporary Speaker, Sir, it is in that standing for positions that we want to make sure that the political parties have a system which is transparent, and democratic in nominating people to the various positions. This is not just for elections, but for all the positions that they require a political party even to nominate to stand in a particular area.

With those few remarks, after receiving those submissions and after reading the Report of the Joint Committee on the IEBC, we, as a Committee, recommend this Bill be enacted by the Senate.

Sen. Musila: Mr. Temporary Speaker, Sir, let me again add my voice to the sentiments expressed by my colleagues in respect to the Bill beforehand. That is the Elections Laws (Amendment) Bill (National Assembly Bill No.37 of 2016) which is in front of us. The two pieces of legislation; the one we have just finished Second Reading which is the Election Offences Bill (National Assembly Bill No.36 of 2016) and this one we are discussing now, the Elections Laws (Amendment) Bill, are very important because they are dealing with elections laws. The stability of any nation depends on how countries conduct their elections. As we discuss these Bills, we should bear in mind that we are discussing very important matters that can affect the stability of our country. I want to appeal, like my colleagues have done, that as much these laws we are proposing are good, the proof of the pudding is in the eating. Are we going to make these laws implemented after we pass them? That is the big question.

Mr. Temporary Speaker, Sir, let me make a few comments. First is on the issue of the IEBC conducting nominations and I think we are all for this. However, which IEBC? The current commissioners of the IEBC are being removed from office because of malpractices which they have committed in the past elections. I doubt whether the new IEBC that is yet to be constituted will run national elections and at the same time run nomination for political parties, but that is neither here nor there. After a request has been made and the IEBC has submitted the cost of that exercise, I would have liked to see a provision where parties can access public funds to pay the IEBC to conduct nominations. I know the IEBC will be submitting big estimates for political parties, which political parties will not afford. Therefore, it is fair that we say “may request.” I believe that all those parties that have huge resources will request this service and access it.

Mr. Temporary Speaker, Sir, we have discussed about election laws many times. I recall we used to have results being transmitted by road to the presiding officer. Between the polling station and the tallying area, that is where a lot of malpractices were committed. We went ahead and recommended that results should be announced at the polling station but this has not worked. Therefore, I welcome the inclusion of Clause 14 that requires transmission of results electronically for all candidates to the tallying centre because in the past, we have tended to treat the elections results of the presidential election as sacred, to the extent that they can only be handled at the tallying centre at the Bomas of Kenya or whatever it is. Therefore, I applaud the decision that all results will be transmitted from the polling station to the tallying centre for all candidates so that electoral officers at the tallying centre will not have an opportunity to interfere with the results when they finally arrive.

Mr. Temporary Speaker, Sir, I also want to talk briefly about party lists. You are aware that in the past we have nominated people way before the elections and during the campaigns as the Minority Leader says, they change loyalties and start dancing with the enemies because the list is already with the Commission and you cannot change it. Therefore, you end up with characters nominated by you but who do not have loyalty to your party. We have attempted to cure this. One of the biggest problems we have as political parties today is with the people nominated to various positions, be they Senators, Members of the National Assembly or Members of County Assemblies (MCAs), because

they cease to be loyal to those political parties and then they align themselves to other political parties. Therefore, I welcome the fact that this time round, political parties will be nominating people to various positions after their nominations so that we know who is loyal and who is not.

The issue of registration of voters is where unfairness and rigging starts. During the last elections, the IEBC ensured that certain areas got more kits for registration than others. I remember we talked to the then Minister for Constitutional Affairs, Hon. Eugene Wamalwa, to ensure that these kits are distributed fairly to all the constituencies but it did not work. So, some areas had more voters than others and because of shortage of kits, some voters could not be registered. Also, distances from one point to another were prohibitive. Therefore, I would like to urge that now, after this amendment, we want to ensure that the IEBC distributes these kits equally and also to ensure that where distances are big, there are more kits; they should not just consider the population.

Mr. Chairman, Sir, I must mention about identity cards. In the last elections, we saw people applying for identity cards and the Registrar of Persons refused to release those identity cards. I recall in my own case in the County of Kitui, the Registrar of Persons released the cards immediately after the elections, meaning that he did not want people to vote. He did not want people to register as voters and he withheld the cards. I understand 300,000 identity cards were kept by the County of Bungoma by the Registrar of Persons. This is an area where the Registrar of Persons must be jailed if he commits such offences. I said it here the other day; that the Registrar of Persons has reached retirement age since last year but he has been asked to remain. Why is this so? Is it because they want him to do what he did last time? We will be watching and these people must be penalized if they do anything that attempts to undermine the rights of voters.

Finally, during the last Bill, I talked about participation of public officers in elections. I say that this is as old as the Republic of Kenya. I want to see a situation where public officers are kept out of elections. Public officers have been warned for a long time and I know what happens with public officers when they are allowed to participate in elections. I can see Sen. Ndiema nodding because he was once a public officer and he knew how they used to manipulate elections when he was in public service. By the way, Mr. Ndiema, for your information was a very loyal officer under me those days. He was my District Commissioner (DC) and I do not know why he wants to challenge me. Let him keep his peace.

Finally, I want to say that this issue of public officers – and I will keep on emphasizing – county public officer are also---

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Order, Sen. Musila! What is it, Sen. Ndiema?

Sen. Ndiema: On a point of order Mr. Temporary Speaker, Sir. Did you hear the Senator for Kitui County saying that I was a very good officer and we did irregular things during elections?

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Sen. Musila, did you say that?

Sen. Musila: Mr. Temporary Speaker, Sir, I respect my junior officer and I would not say anything like that because if I did, then I would also be implicating myself. I just said that public officers must keep away from elections. The public officers as per

definition do not only include public officers serving under that national Government. It includes public officers serving under county governments. Therefore, we want to ensure that any public officer who participates in campaigns will be punished appropriately at the right time.

Mr. Temporary Speaker, Sir, these are very important pieces of legislation and I urge my colleagues to pass them and I also urge that those who are charged with the responsibility of implementing to do so. Otherwise, this will not have any meaning to this country.

I beg to support.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): I see no requests on my list except – what is your point of order Sen. (Prof.) Kindiki?

The Senate Majority Leader (Sen. (Prof.) Kindiki): On a point of order Mr. Temporary Speaker, Sir. You need to give us guidance from the chair. Earlier on, we had decided as a matter of policy, two things; one, these are negotiated views. Secondly, this is a Special Sitting. Three, the issue of elections is so urgent. We have to pass these things today. Four, some of us have not gone for lunch including the mover of this Motion. Five, some of the colleagues who were complaining that the Minority Leader is taking too long are the ones talking for hours including Sen. Musila who I had a lot of respect for, until now; we agree he speaks for one minute then he speaks for two hours, more than the Leader of Majority.

So, can you guide us that everyone who wants to speak is given 30 seconds? The biggest culprit is my brother Sen. Ndiema whom I see angling with a lot of papers and he has gone for lunch. Some of us have not gone for lunch.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Sen. Ong'era, you had requested for two minutes and you must be loyal to your request. What is your point of order, Sen. Wetangula?

The Senate Minority Leader (Sen. Wetangula): On a point of order Mr. Temporary Speaker, Sir. Is the Leader of Majority in order to tell us that his level and degree of respect for Sen. Musila is predicated on how long he speaks?

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Majority Leader, you should have clarified whether you still respect Sen. Musila. It is for the record.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, until 30 minutes ago, I had a lot of respect for the Senator for Kitui County because he is a seasoned politician and a long serving public officer. He had undertaken to me that his speech will be five minutes or less but he ended up speaking for 8 minutes. For that reason, that respect has dissipated completely until he regains it again. Otherwise, on a serious note, you should give us firm directions on how we proceed. Otherwise, we might lose the afternoon and the agenda.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): I just wanted to remind you that Sen. Musila still comes from the greater Eastern. Sen. Ong'era, you have two minutes.

Sen. Ong'era: Thank you, Mr. Temporary Speaker, Sir, for giving me this opportunity to contribute and support the Election Laws (Amendment) Bill (National Assembly Bills No.37 of 2016). As my neighbour, I would want to first of all congratulate you for the seat that you are currently occupying. From the look of things

and from the way you are conducting the proceedings; you are, indeed, a very good Temporary Speaker.

I also want to congratulate Sen. Orengo and Sen. Murungi and all Members who were in the bi-partisan Committee of the National Assembly and the Senate for the good work they did. However, I do not support the clause on party hopping because it denies us our democratic right to decide which party we would want to be in. There will be many people and good legislators who will be denied the right of coming to Parliament simply because of the clause on party hopping. This means that only the big parties in this country will have a chance to have supporters and legislators in the House. The small parties will have been denied that chance.

I support the Bill, but in future, we need to relook at this clause of gagging legislators by allowing only the big parties to conduct the Business of the House.

(Sen. Wetangula interjected)

I need your protection from the Senate Minority Leader.

I also want to support that tallying should be done at the polling station. We know that the experience we had in Bomas where I was one of the presidential agents was a horrifying experience that we would not want to go through.

I support the way this Bill has been written in totality, particularly on the electronic transfer of results.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Hon. Senators, there seems not to be further interests on this on my list. I am on my feet.

(A Senator spoke off record)

Your name does not appear on my list and I am told you had agreed with your leadership that you will wind up this proceeding as early as possible. I was not notified that your machines were not working.

Allow me to make the following communication before we wind up the proceedings.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION FROM SOSSIOT GIRLS SECONDARY SCHOOL, KERICHO COUNTY

Hon. Senators, I wish to recognize the presence of visiting students and teachers from Sossiot Girls Secondary School from Kericho County. They are seated at the Public Gallery. In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them and on behalf of the Senate and on my own behalf, wish them a fruitful visit.

I thank you.

(Applause)

Hon. Senators, this being a Special Sitting, and as per our Standing Orders No.29, we cannot complete this process until we vote. Upon consultations with the leadership, we will suspend this sitting, but let the Senate Majority Leader who is also the Mover of this Bill, reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move. On the basis of Standing Order 54(3), I request that you defer the putting of the question to 4.00 p.m. in accordance to earlier consultation.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): You moved the Bill so you need to reply.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Thank you, Mr. Temporary Speaker, Sir. I beg to reply.

The Senate Minority Leader (Sen. Wetangula): On a point of order, Mr. Temporary Speaker, Sir. That is not right. What the distinguished Senate Majority Leader had done earlier was correct. Even when you reply, you finish and move. That is the correct procedure.

The Temporary Speaker (Sen. Mutula Kilonzo Jnr.): Thank you. Now we have an agreement. I am satisfied as the Chair that the Senate Majority Leader has complied. Under Standing Order No.29, we suspend the Sitting to 4.00 p.m.

(The Senate Sitting was suspended at 2.15p.m.)

(The House resumed at 4.05 p.m.)

The Speaker (Hon. Ethuro): Just approach the Chair.

(Sen. (Dr.) Khalwale approached the Chair)

(Loud consultations)

Order, Senators! We will now commence the afternoon Session.

Sen. (Dr.) Khalwale: On a point of order, Mr. Speaker, Sir. Thank you for commencing the Session. However, on a matter of procedure, is my understanding wrong that when the House stood suspended, for you to come on the Chair, you should have come from the Speaker's Office behind you and that the clerk should have announced your entry into the Chamber from the office? We suspended the session since the Speaker had gone to the office to do many consultations and sign important documents.

(Laughter)

(Sen. Wetangula and Sen. Murkomen spoke off record)

The Speaker (Hon. Ethuro): Order, Sen. Wetangula and Sen. Murkomen! The point of order was not directed to you although I must agree that that was going to be my response. I really do not know where you get this procedural matter; that you must come from behind some chair. However, that tradition also depends on the facilities.

(Sen. Wetangula spoke off record)

As far as I am concerned, I am coming from my office. When we had good capacity, the temporary office of the Speaker was available behind, but now it is not.

(Sen. Sen. Murkomen spoke off record)

The most important thing is that I am here, Senator.

The Senate Minority Leader (Sen. Wetangula): Secondly, there was an exit at the back.

The Speaker (Hon. Ethuro): Correct. The infrastructure cannot support what you wish to happen. For all intents and purposes, it does not affect our business. The most important thing is to arrive to the seat and here I am. So, we are ready to proceed.

(Sen. Wetangula spoke off record)

You always know that the Plenary has never been a useful forum for discussing our internal matters.

Let us move to Order No.4.

BILL

Second Readings

THE ELECTION OFFENCES BILL
(NATIONAL ASSEMBLY BILL NO.36 OF 2016)

(Sen. (Prof.) Kindiki on 8.9.2016)

(Resumption of Debate interrupted on 8.9.2016)

The Speaker (Hon. Ethuro): Proceed to Order No.5

THE ELECTION LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.37 OF 2016)

(Sen. (Prof.) Kindiki on 08.09.2016)

(Resumption of Debate interrupted on 08.09.2016)

The Speaker (Hon. Ethuro): Hon. Senators, the House will now vote on these two Bills.

(A Senator spoke off record)

Order, Members! You need to revisit your Standing Orders. I am curious that Sen. Khaniri and Sen. (Dr.) Khalwale are not interested in that one, except for where the Chair

is coming from. I hope it has nothing to do with what we have heard previously of ‘kid brothers.’ You need to remove the card and log in again, just to make sure that it is working.

You may now commence voting.

(The Senators proceeded to vote)

DIVISION

ELECTRONIC VOTING

*(Question, that the Election Offences Bill
(National Assembly Bill No.36 of 2016) be now read
a Second Time put and the Senate proceeded
to vote by County Delegations)*

AYES: Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. Gwendo, Nairobi County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. Mohammad, Wajir County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Obure, Kisii County; Sen. Okong’o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

AYES: 25

NOES: 0

ABSTENTIONS: 0

The “Ayes” have it.

(Question carried by 25 to 0)

*(The Bill was accordingly read the Second Time and committed
to a Committee of the Whole today by leave of the House)*

DIVISION

ELECTRONIC VOTING

*(Question, that the Election Laws (Amendment) Bill
(National Assembly Bill No.37 of 2016) be now read
a Second Time put and the Senate proceeded to vote by County Delegations)*

AYES: Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. Gwendu, Nairobi County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. Mohammud, Wajir County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Speaker (Hon. Ethuro): Hon. Senators, the results of the Division are as follows:-

AYES: 25

NOES: 0

ABSTENTIONS: 0

The "Ayes" have it.

(Question carried by 25 to 0)

*(The Bill was accordingly read the Second Time and committed to the
Committee of the Whole today by leave of the House)*

The Speaker (Hon. Ethuro): Before we go to the next stage, I would like to encourage all the Senators to remain seated until we conclude this business, which is just voting. I do not think it will take long.

COMMUNICATION FROM THE CHAIR

VISITING DELEGATION OF TEACHERS AND STUDENTS
FROM KAPKORES PRIMARY SCHOOL, NAKURU COUNTY

The Speaker (Hon. Ethuro): Order, Members. I wish to recognize the presence of visiting students and teachers from Kapkores Primary School, Nakuru County. They are seated at the Public Gallery.

In our usual tradition of receiving and welcoming visitors to Parliament, I extend a warm welcome to them. On behalf of the Senate, and my own behalf, I wish them a fruitful visit.

Thank you.

(Applause)

I am afraid that today I will not allow the usual “escort” of my greetings. I have done it on your behalf and because of time constraints, we will move to the next Order.

COMMITTEE OF THE WHOLE

(Order for Committee read)

[The Speaker (Hon. Ethuro) left the Chair]

IN THE COMMITTEE

[The Temporary Chairperson (Sen. Sang) took the Chair]

The Temporary Chairperson (Sen. Sang): Order, Senators. We will handle two Bills only; The Election Offences Bill and The Elections Laws (Amendment) Bill. Since there is already consensus that we are unlikely to have any amendments to these Bills, it should take us a very short time.

Let us proceed, starting with The Election Offences Bill (National Assembly Bill No.36 of 2016)

THE ELECTION OFFENCES BILL (NATIONAL ASSEMBLY BILL NO.36 OF 2016)

Clauses 3-25 Clause 2, the Title and Clause 1

(Question, that Clauses 3-25, Clause 2, the Title and Clause 1 be part of the Bill proposed)

The Temporary Chairperson (Sen. Sang): Hon. Senators, we are done with the Election Offences Bill (National Assembly Bills No.36 of 2016). We should now proceed to the Division. The Senate Majority Leader, do we have the requisite numbers to proceed with Division?

The Senate Majority Leader (Sen. (prof.) Kindiki): Yes, Mr. Temporary Chairman, Sir.

The Temporary Chairperson (Sen. Sang): I now direct that the Division Bell be rang for half a minute and then we proceed to the Division on the two Bills.

(The Division Bell was rung)

We will start with the The Election Offences Bill (National Assembly Bills No.36 of 2016). Could the Door be closed and the Bars drawn?

(The door was closed and the bars drawn)

We will vote for 30 seconds.

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 3-25, Clause 2, the Title and Clause 1 be part of the Bill put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. Gwendu, Nairobi County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County and Sen. Wetangula, Bungoma County.

NOES: Nil.

The Temporary Chairperson (Sen. sang): Hon. Senators, the results of the Division are as follows:-

AYES: 25

NOES: Nil

ABSENTIONS: Nil

The "Ayes" have it.

(Question carried by 25 votes to 0)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairman, Sir, I beg to move that the Committee do report to the Senate its consideration of The Election Offences Bill (National Assembly Bill No.36 of 2016) and its approval thereof, without amendments.

The Temporary Chairperson (Sen. Sang): Hon. Senators, before we proceed, we have the other Bill so that we report at the same time for all of them. Shall we proceed to the next Bill.

THE ELECTION LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.37 OF 2016)

Clauses 3-41, Clause, the Title and Clause 1

(Question, that Clauses 3-41, Clause 2, the Title and Clause 1 be part of the Bill proposed)

DIVISION

ELECTRONIC VOTING

(Question, that Clauses 3-41, Clause 2, the Title and Clause 1 be part of the Bill, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. Gwendu, Nairobi County; Sen. M. Kajwang, Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. Mohamud, Wajir County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita Taveta County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Chairperson (Sen. sang): Hon. Senators, the results of the Division are as follows:-

AYES: 25

NOES: Nil

ABSENTIONS: Nil

The "Ayes" have it.

(Question carried by 25 votes to 0)

The Temporary Chairperson (Sen. Sang): Hon. Senators, we will now proceed to report on the two Bills. I call upon the Mover.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairman, Sir, I beg to move that the Committee do report to the Senate its consideration of The Elections Laws (Amendment) Bill (National Assembly Bill No.37 of 2016) and its approval thereof, without amendments.

(Question proposed)

(Question put and agreed to)

(The House resumed)

[The Temporary Speaker (Sen. Mositet) in the Chair]

The Temporary Speaker (Sen. Mositet): The Chairperson, could you report?

REPORTS AND THIRD READINGS

THE ELECTION OFFENCES BILL
(NATIONAL ASSEMBLY BILL NO.36 OF 2016)

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered The Election Offences Bill (National Assembly Bill No.36 of 2016) and its approval thereof without amendments.

The Temporary Speaker (Sen. Mositet): Proceed, Mover.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report. I request the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Wetangula) seconded.

(Question proposed)

(Question put and agreed to)

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that The Election Offences Bill (National Assembly Bill No.36 of 2016) be now read a Third Time. I request the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Wetangula) seconded.

(Question proposed)

Let the Division Bell be rung for 30 seconds.

(The Division Bell was rung)

Could the Bars be drawn and the Door closed?

(The Bars were drawn and the Door closed)

Please log in and start voting.

DIVISION

ELECTRONIC VOTING

(Question, that the Election Offences Bill (National Assembly Bill No.36 of 2016) be now read a Third Time, put and the Senate proceeded to vote by County Delegations)

AYES: Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. Gwedo, Nairobi County; Sen. Kajwang' M., Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. Mohamud, Wajir, County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County;

Sen. Mwakulegwa, Taita-Taveta County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orenge, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. Mositet): Hon. Senators, the results of the Division are as follows:-

AYES: 25

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 25 votes to 0)

(The Bill was accordingly read the Third Time and passed)

The Temporary Speaker (Sen. Mositet): Chairperson, you need to report on the next Bill.

THE ELECTION LAWS (AMENDMENT) BILL
(NATIONAL ASSEMBLY BILL NO.37 OF 2016)

Sen. Sang: Mr. Temporary Speaker, Sir, I beg to report that the Committee of the Whole has considered The Election Laws (Amendment) Bill (National Assembly Bill No.37 of 2016) and its approval thereof without amendments.

The Temporary Speaker (Sen. Mositet): Mover.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Speaker, Sir, I beg to move that the House do agree with the Committee on the said report. I request the Senate Minority Leader to second.

The Senate Minority Leader (Sen. Wetangula) seconded.

(Question proposed)

(Question put and agreed to)

The Temporary Speaker (Sen. Mositet): Proceed, Mover.

The Senate Majority Leader (Sen. (Prof.) Kindiki): Mr. Temporary Chairman, Sir, I beg to move that the The Elections Laws (Amendment) Bill (National Assembly Bill No.37 of 2016) be now read a Third Time. I request the Minority Leader to second.

(Question proposed)

DIVISION

ELECTRONIC VOTING

(Question, that the Election Laws (Amendment) Bill (National Assembly Bill No.37 of 2016) be now read a Third Time, put and the

Senate proceeded to vote by County Delegations)

AYES: Sen. Boy Juma Boy, Kwale County; Sen. Bule, Tana River County; Sen. Chelule, Nakuru County; Sen. Cheruiyot, Kericho County; Sen. Chiaba, Lamu County; Sen. Gwendo, Nairobi County; Sen. Kajwang' M., Homa Bay County; Sen. (Dr.) Khalwale, Kakamega County; Sen. Khaniri, Vihiga County; Sen. (Prof.) Kindiki, Tharaka-Nithi County; Sen. (Prof.) Lesan, Bomet County; Sen. Lesuuda, Samburu County; Sen. Mohamud, Wajir, County; Sen. Mositet, Kajiado County; Sen. Murkomen, Elgeyo-Marakwet County; Sen. Musila, Kitui County; Sen. Muthama, Machakos County; Sen. Mutula Kilonzo Jnr., Makueni County; Sen. Mwakulegwa, Taita-Taveta County; Sen. Obure, Kisii County; Sen. Okong'o, Nyamira County; Sen. Orengo, Siaya County; Sen. Sang, Nandi County; Sen. Wako, Busia County; and, Sen. Wetangula, Bungoma County.

NOES: Nil

The Temporary Speaker (Sen. Mositet): Hon. Senators, the results of the Division are as follows:-

AYES: 25

NOES: Nil

ABSTENTIONS: Nil

The "Ayes" have it.

(Question carried by 25 votes to 0)

(The Bill was accordingly read the Third Time and passed)

Sen. Murkomen: On a point of order, Mr. Temporary Speaker, Sir. Since this is the last business for today until next week as directed by the Speaker in the morning, am I in order to say that the rest of the few minutes we could be given a chance to make one or two comments which does not bind anybody to remain in the House? Others can be walking out. This is particularly because of the significance of the Bills that we passed as we had to move fast. I want to remind Sen. (Dr.) Khalwale that there is no party hopping.

The Temporary Speaker (Sen. Mositet): Sen. Murkomen, I do not know whether that is the mood of the House. The Speaker had ruled that we deliberate on the two Bills only. If that is the case, do we really need to comment or we adjourn?

ADJOURNMENT

The Temporary Speaker (Sen. Mositet): Order, Senators. There being no other business on the Order Paper, the Senate stands adjourned until Tuesday, 13th September, 2016, at 10.00 a.m.

The House rose at 5.05 p.m.

